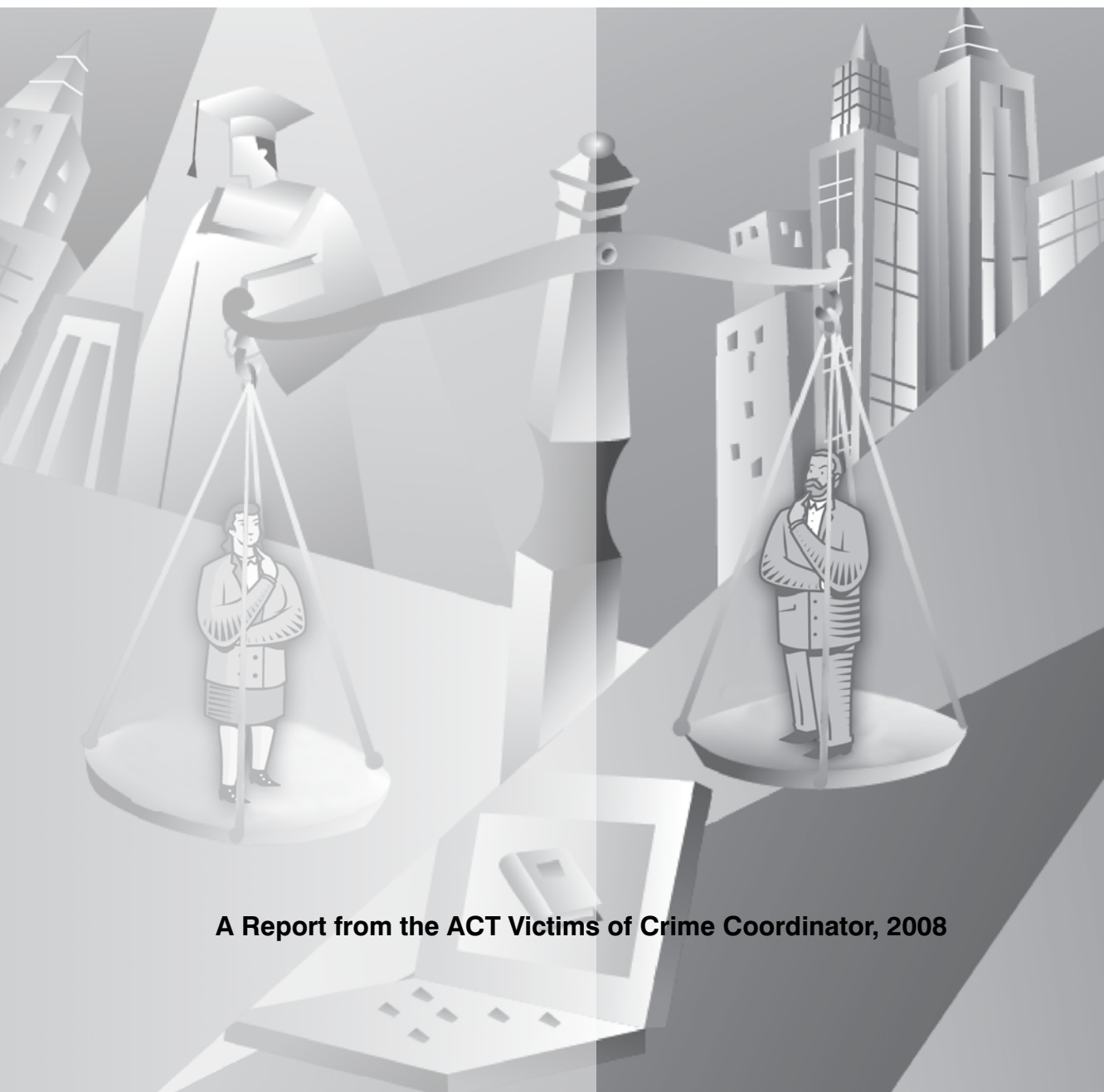


THE QUALITY OF JUSTICE

**Operation of the *Victims of Crime Act 1994*
in the Australian Capital Territory 1996–2007**



A Report from the ACT Victims of Crime Coordinator, 2008

Crime changes people in fundamental ways that do not lend themselves to quick and easy solutions.

Norris, Kaniasty & Thompson (1997)

... legitimacy is affected by injustice, specifically unjust procedures.

Tyler (1990)

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ABBREVIATIONS AND ACRONYMS

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ACTCS	ACT Corrective Services
ACTP	ACT Policing
AFP	Australian Federal Police
AIC	Australian Institute of Criminology
ALRC	Australian Law Reform Commission
CLRC	Community Law Reform Committee
CMH	Case Management Hearing
CPS	Care & Protection Services
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
FIWT	First Instance Warrant
FV	Family violence
FVIP	Family Violence Intervention Program
PROMIS	Police Realtime Online Management Information System
SACAT	Sexual Assault & Child Abuse Team
UN	United Nations
VATAC	Voluntary Agreement to Attend Court
VOCAL	Victims of Crime Assistance League (ACT & Region)
VoCC	Victims of Crime Coordinator
VSA	Victim Support Australasia
VSS	Victims Services Scheme

ACKNOWLEDGEMENTS

There are very many people in the ACT and other jurisdictions both here and overseas who have generously responded to my endless queries, and who are themselves working for more compassionate and effective responses to victims of crime. I am wholly indebted to them all in their many locations and functions.

There is much that needs to be done to improve the responses to victims of crime in the ACT. The professionalism, wisdom, skill and compassion of many of those involved in the administration of justice gives me hope that so much more can be achieved. In particular I wish to thank:

- My colleague within the Office, Jane Caruana, as a thoroughly professional, compassionate and 'humourful' advocate for victims of crime.
- The management and support workers in Victim Services, the Domestic Violence Crisis Service, Canberra Rape Crisis, SAMSSA, VOCAL, FAMSAC and CARAU. Your quiet work is a daily miracle.
- The staff and management of the ACT Magistrates Court for their hosting of the Office and administrative support, and who work behind the scenes to make the small changes that are important.
- ACT Policing at all levels and especially the Victim Liaison Officers. Policing is a tough job to get right and there are many who go the extra mile.
- The previous ACT Director of Public Prosecutions for his willingness to re-examine sacred cows and for his patience. And to the Acting Director, the many prosecutors and Witness Assistants who have tried to do their best for victims of crime.
- The staff and management of ACT Corrective Services for their preparedness to listen and to work in partnership.
- Colleagues in the Department of Justice & Community Safety for their commitment to public service, and to the fair and effective administration of justice.
- The Legal Aid Office (ACT) for being able to think and act outside the square on so many occasions.
- Staff and students and the ANU College of Law for never-ending generosity with their knowledge and time.

The untimely death of The Hon. Justice Terry Connolly, is a loss to the administration of justice in the ACT. I especially wish to acknowledge his leadership and vision as Attorney General in 1993-94 in introducing the Victims of Crime Bill, and the humanitarian concern he consistently displayed to victims and witnesses as a Judge in the ACT Supreme Court.

Very particular thanks and my whole-hearted admiration go to those victims of crime whose experiences inform this report, and to their families and friends. Without you we would know very little.

Robyn Holder

ACT Victims of Crime Coordinator

June 2008

EXECUTIVE SUMMARY

Crime is an extraordinarily diverse phenomenon ranging from murder to criminal damage; and from arson to motor vehicle theft. It is also not a random event and certain populations and places are at a higher risk of victimisation than are others.

Deciding whether or to whom to report an incident is perhaps one of the most elementary of help-seeking choices that victims of any type of crime perform. Without crime victim assistance Brandl & Horvath (1991:293) claim *“the capabilities of the police in controlling crime would be greatly reduced, to say nothing of the difficulties that would arise in the other components of the justice system.”* For a variety of reasons only about half of incidents that occur in the community are reported and only about half of these reveal allegations of offences.

The range of the effects of crime at an individual and a community level is considerable. Crime affects people in different ways and not all victims will have the same response to the same crime. There are no quick and easy solutions to the pervasive, broad and persistent impact that crime has on people. Most victim support services struggle to respond to the diversity and range of need.

The passing of the 1985 United Nations (UN) *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* has acted as a watershed in the debate about the scope of victimization and the responsibilities of the State. While there are differences between legal systems across the globe, there is a remarkable degree of consistency in the critique that crime victims have made of the response of justice agencies. The Declaration provides a framework for jurisdictions to acknowledge and act upon victim interests especially within criminal proceedings.

Victims of crime who engage with the justice system act as citizens who are attempting to achieve something they value, whether it be something practical or something they think they ought to do out of civic duty or a sense of justice.

In all Australian jurisdictions including the ACT a pragmatic though piecemeal approach to addressing the unmet needs and rights of crime victims has resulted in law reform and service responses that traverse humanitarian, welfare and justice domains. A range of legislative and administrative instruments have been applied in the States & Territories to reflect the obligations of the UN Declaration. The *ACT Victims of Crime Act 1994* was one of the first such instances of law reform in Australia.

At a national level, the Standing Committee of Attorneys General (SCAG) adopted a 'national charter for victims' rights' in 1996, and in July 2005 SCAG issued a joint communiqué reaffirming their commitment to justice for victims of crime. Also in October 2005, on the 20th anniversary of the UN Declaration of Basic Principles, the Commonwealth Law Ministers approved a Statement of Basic Principles of Justice for Victims of Crime. In 2008 the Federal Home Affairs Minister announced a Federal Criminal Law and Procedure Forum to consider reforms in the federal criminal jurisdiction including, amongst other matters, the rights of victims of crime.

In giving effect to the main recommendations of the 1993 Community Law Reform Committee, Terry Connolly MLA, Attorney General, in his tabling speech for the Victims of Crime Bill said:

"... this Bill is a significant step forward in redressing the traditional inequality and imbalance that victims have felt in relation to their position in the criminal justice system. The measures ... will provide victims of crime with the measure of dignity to which they are entitled through ensuring that they are accorded an appropriate and recognized position within the criminal justice system."

The legislation set out Governing Principles for the Treatment of Victims of Crime in the administration of justice, and established the Victims of Crime Coordinator (VoCC) position to (amongst other things) promote the Act, investigate allegations of breaches of the General Principles and to report to and advise the Attorney General. The legislation does not constitute a statement of actionable rights. Indeed, no Australian jurisdiction has yet provided penalties for non-compliance with victim rights by a public officer.¹

This report describes the methods and processes employed by the Victims of Crime Coordinator to respond to allegations of breaches of the Act, to act as the statutory advocate and to promote reform in the interests of victims. It also describes the constraints on these functions.

Members of the ACT community who are victims or family of victims and who contact the VoCC may or may not be representative of all victims of crime. There is no simple way of determining whether the concerns and complaints are typical or atypical. In summary, victims of crime commonly complain to the VoCC about:

- Lack of case status information from police & prosecution.
- Absent or inadequate follow-up provided by police.
- Perception that the investigation has been cursory and inadequate.

¹ Amendments tabled in 2007 in the South Australian Parliament do contain provision of penalties.

- Inadequate or no information about their rights, responsibilities and role within the criminal justice process.
- Inadequate information from and contact with the prosecution including about appeal processes.
- The process of charge negotiation determined without reference to the victim.
- Lack of information about and support at court.
- The time taken to finalise a matter at court.
- A perception that the victim's voice and interests are not heard nor represented at court.
- Mixed views about the adequacy or otherwise of sentences imposed.
- Lack of or no information about the implications of the outcome of a matter.
- No or inadequate information about victims rights.
- Discourteous, inappropriate and unprofessional remarks to victims.
- Lack of information or notification about escapes from custody or changes to an offender's management.

Criminal justice agencies in the ACT notably ACT Policing, the ACT Director of Public Prosecutions and ACT Corrective Services have all made significant efforts over the years to respond to the concerns that victims have raised—directly or through the VoCC.

The *ACT Victims of Crime Act 1994* has provided a framework through which victims and justice practitioners can consider their rights and responsibilities. The legislation has provided a vehicle to enable reforms relating to victims of crime in certain aspects of agency practice and in criminal procedure. It has also provided a backdrop to stimulate discussion and debate about the role of victims in the criminal justice system.

Since 1994 a considerable number and range of law and service reforms relevant to victim interests have been implemented in the ACT and elsewhere.

However, it is not possible to say whether the legislation has comprehensively redressed *“the traditional inequality and imbalance that victims have felt in relation to their position in the criminal justice system.”* Neither is it possible to say that a majority of victims in the criminal justice system receive their rights in a consistent and reliable manner. In no other area of government or public administration would citizens be expected to perform a function critical to the maintenance of our society but without support and assistance given as normal and routine. Indeed, to have their

very interest in participating treated with deep suspicion and subject to hostile questioning as to motive.

There are many problems—not least sufficient resources—that undermine the ability and capacity of justice agencies and the VoCC to respond effectively to victims and to assist them with rights and entitlements.

It is now clear that the legislation is out-of-date. Reforms in other Australian and overseas jurisdictions have moved far beyond those in the ACT.

Victims' inherent respect as citizens for the legitimacy of the justice system can be stabilised through consistent and dynamic procedural recognition and inclusion that is not mediated through their roles as a complainant or as a witness - so long as sufficient practical and other assistance is provided as a matter of course.

However, a justice system that is mature and robust enough to respond to the challenges of the 21st century requires an even more radical recognition of the victim as a legitimate party afforded all the rights and protections of other citizens, including the accused, in their access to justice and respect for their human rights.

RECOMMENDATIONS

The recommendations of this report are that:

1. The review of the *Victims of Crime Act 1994* that has been announced by the ACT Government be a wide-ranging and thorough consideration of the attributes essential to enable members of the community who are victims of crime to engage with and participate effectively in the administration of justice, the extent to which victims' 'rights' can be strengthened and universally applied, and how these rights can best be protected and promoted.
2. The review should actively seek the views of victims of crime about their experiences in the administration of justice in the ACT.
3. The review of the Act should also include a review of the role, functions and powers of the Victims of Crime Coordinator, and of the investigation and reporting procedures following an allegation of a breach of the Act.
4. An independent evaluation of the effectiveness of the legislation in meeting the interests of victims of crime in all their diversity should be conducted.
5. Concrete and inclusive measures be implemented across all agencies in the administration of justice to ensure that all victims 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.
6. All agencies in the administration of justice develop and implement policies and procedures outlining these measures as service deliverables to victims of crime. The policy framework should state standards to the timeliness and quality of the service to be provided and should state performance measures.
7. All agencies in the administration of justice should develop training modules on victims of crime and their interests, and the particular policy & procedural framework of that agency and other relevant agencies. The training should be delivered regularly as part of the core and in-service professional development for new staff and for existing staff.

8. All agencies in the administration of justice should regularly make available to staff attendance at conferences, workshops and other activities relevant to the involvement of victims of crime in the administration of justice.
9. All agencies in the administration of justice should collaborate on implementing an evaluation every five years of their responses to victims of crime.
10. ACT Government should support these agency-based developments within a whole-of-justice strategic plan to be coordinated and resourced by an effective and central governance framework. The strategic plan should focus on ensuring that all victims of crime receive the information and assistance they need in connection with their involvement in the administration of justice.

INTRODUCTION

The ACT *Victims of Crime Act* ('the Act') was introduced in 1994. It followed an earlier enquiry and report from the Community Law Reform Committee in 1993.² At that time the Committee recommended that an evaluation of victims of crime reforms be undertaken.³ The then Attorney General, Terry Connolly MLA, accepted this recommendation in his tabling speech.

This report does not claim to be that evaluation of the effectiveness of the Act. It does, however, strongly recommend that an evaluation is long overdue.

The report sets out to provide an overview of developments in the ACT and other jurisdictions to meet the interests of victims of crime, and, through an analysis of the calls made to the Office of the Victims of Crime Coordinator (VoCC), to provide an assessment of the operation of the Act and associated law reform over the past twelve years. It draws on national and international research to illuminate and contextualise local developments. From these sources the report discusses the use of statute to direct and regulate change within the criminal justice system. Recommendations for future directions conclude the report.

The report necessarily focuses on the crime victim within the administration of justice because the *Victims of Crime Act 1994* specifically does so. Whilst the Governing Principles for the Treatment of Victims of Crime contained within the legislation relates distinctively to the relevant international charter, this restriction to the justice system can be a limitation. A significant majority of victims of property crime would chose to contact the criminal justice system by reporting the incident to police. However, the majority of all people victimised by crime, especially by personal crime, do not (see further discussion at p14). The proportion of both victims of property crime and victims of personal crime in contact with prosecution, criminal courts and corrections is extremely small.

Nonetheless no-one denies the importance of the criminal justice system as the apex of measures and structures for the determination of disputes or offences that take place within society. How the system delivers justice is crucial to the legitimacy it is afforded by every member of our community.

2 ACT CLRC (1993), *Victims of Crime*, Report No.6, ACT Attorney-General's Department, Canberra.

3 Ibid., p.126.

METHODOLOGY OF THIS REPORT

This report presents the data collected on clients who have contacted the Office of the Victims of Crime Coordinator from 1995 to 2006. It includes data on the types and range of enquiries received and the action the Victims of Crime Coordinator (VoCC) has taken in relation to them. The report also highlights the recurrent issues raised with the Office through those enquiries.

The methodology used to collect the data includes:

- A series of questions asked of callers;
- Information drawn from callers' narratives; and
- A comparison of data over twelve years.

It should be noted that the clients that contact the Office of the VoCC are only a very small percentage of the number of victims of crime in contact with criminal justice agencies and an even smaller percentage of the total number victimised by crime in any given year in the ACT.

The report provides a discussion of relevant research and theoretical literature from Australia and overseas on crime, victimization, and criminal justice and law reform.⁴

In December 2007, a Consultation Draft of the report was provided to ACT Policing, the Director of Public Prosecutions, ACT Law Courts & Tribunals, the Department of Justice & Community Safety and ACT Corrective Services.

⁴ Some of the discussion is drawn from papers written and presented by the Victims of Crime Coordinator over the years at various conferences.

PART 1:
CRIME, ITS IMPACT AND
CONSEQUENCE



PART 1:

CRIME, ITS IMPACT AND CONSEQUENCE

1. THE PREVALENCE AND PATTERNS OF CRIME

1.1 Widespread concern about crime and disorder is a phenomenon especially over the past twenty years, as is debate about crime victims and responses to them (Fattah 1991, Elias 1986). It is important, therefore, to set a context to these discussions in the ACT.

1.2 Crime is an extraordinarily diverse occurrence ranging from murder to criminal damage; and from arson to motor vehicle theft. Getting a clear picture of the extent and impact of crime, patterns of criminal victimisation and the characteristics of its victims is, therefore, not a simple matter.

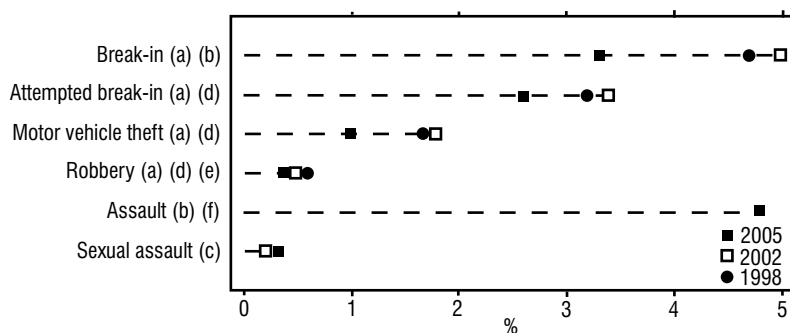
Three key sources of information are surveys of the general community (in particular the national crime and safety surveys of the Australian Bureau of Statistics), research into specific victims in specific locations (for example, of sexual assault survivors who access the Canberra Rape Crisis Centre), and official statistics of incidents reported to police and the processing of these through the various justice agencies. Together these three sources provide, not a comprehensive picture, but spotlights onto local crime.

1.3 At a national level, the Australian Bureau of Statistics (ABS) *Crime and Safety Survey* has shown that approximately 5.3% of Australians over 15 years of age had experience of one or more personal crimes.⁵ In 2005, nearly half a million households had experience of a property crime. The *Crime and Safety Survey* comprises citizens who self-report their experience of victimisation.

1.4 The ABS surveys consistently show that those most at risk of assault are young people and males, and that the offender is also most likely to be male. The surveys also consistently show that females are most likely to be assaulted by someone they know and to be assaulted in their own homes.

5 See www.abs.gov.au/ausstats/abs@.nsf/Lookup/669C5A997EAED891CA2568A900139405. And see also ABS, *Personal Safety Survey*, 2005

Chart 1: Crime and Victimisation in Australia 1998-2005

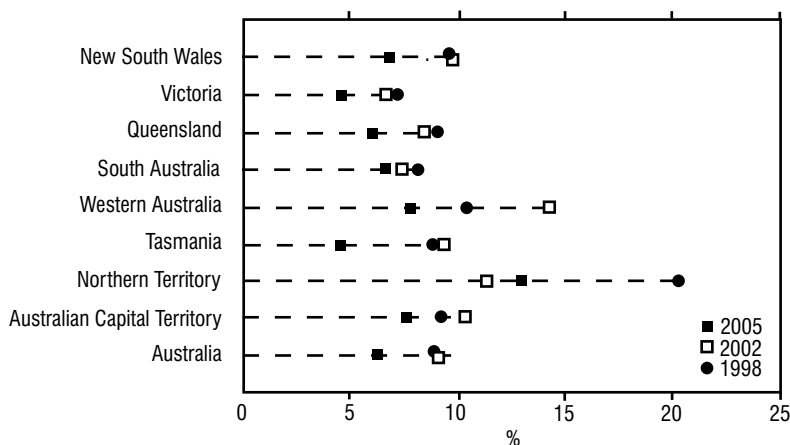


- (a) Households
(b) Persons aged 15 years and over
(c) Persons aged 18 years and over. Data for 1998 are not included, as males were not included prior to 2002.
(d) Differences between the 1998 and 2002 rate are not statistically significant.
(e) Differences between the 1998 and 2005 rate are not statistically significant.
(f) Differences between the 2002 and 2005 rate are not statistically significant.

SOURCE: ABS, Crime & Safety Australia, 2005

1.5 The last three ABS *Crime and Safety Surveys* show that household experience of crime has progressively declined in the ACT although the recorded decrease was not statistically significant.

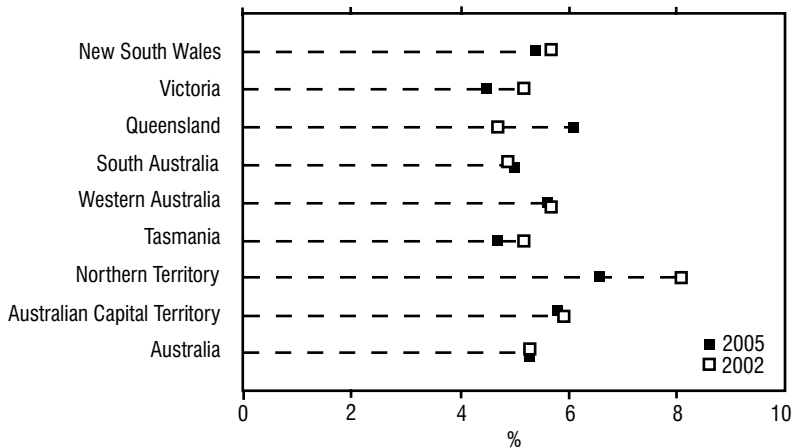
Chart 2: Household crime victimisation rates across States and Territories 1998-2005



SOURCE: ABS, Crime & Safety Australia, 2005

1.6 Personal crime victimisation prevalence rates varied only slightly in most states and territories between the 2002 and 2005 surveys, and hardly at all in the ACT.

Chart 3: Personal Crime Victimisation Rates across States and Territories 1998-2005



SOURCE: ABS, Crime & Safety Australia, 2005

1.7 It is now widely acknowledged that crime is not a random event and that certain populations and places are at a higher risk of victimisation than are others.⁶ For example (at a national level):⁷

- Rental homes have a significantly higher break-in (and attempted break-in) victimisation rate than homes that were owned or being purchased.
- Young people are victims of robbery more often than older people, and three quarters of robbery victims are male.
- Young people are also victims of assault more often than older people, and 54% of assault victims are male. People who are unmarried, who are unemployed and who are born in Australia are also more likely to be victims of assault.
- Since the age of 15, there were an estimated 40% of women who experienced violence compared with an estimated 50% of men.⁸
- Women are more likely to experience harassment and stalking than are men, and are three times more likely to experience sexual violence.

6 See, Farrell, G. and Pease, K. (1993), *Once Bitten Twice Bitten: repeat victimisation and its implications for crime prevention*, Home Office Crime Prevention Unit Series 46, London; and Mukherjee, S. and Carcach, C. (1998), *Repeat Victimisation in Australia*, Research & Public Policy Series 15, Australian Institute of Criminology, Canberra.

7 Ibid.

8 ABS (2005), *Personal Safety Survey*, Canberra.

1.8 Furthermore, the empirical research in Australia and overseas suggests that, in general terms, victims and offenders come from largely overlapping populations.⁹ Indeed, noted Canadian criminologist, Professor Ezzatt Fattah emphasises that the roles of victim and offender in general are “neither fixed nor antagonistic but revolving and interchangeable”.¹⁰

9 Fattah, E. (1997), “Toward a Victim Policy Aimed at Healing, No Suffering”, in Davis, Lurigio & Skogan (eds), *Victims of Crime 2nd ed*, Sage; and Maguire, M. et.al. (1997), *The Oxford Handbook of Criminology*, Clarendon Press, Oxford.

10 Fattah, op.cit., p.266.

2. REPORTING CRIME

2.1 The crime and safety surveys are perhaps Australia's most comprehensive source of information on the prevalence and patterns of crime and victimisation. The next most comprehensive source is those incidents that are reported to and recorded by police.

2.2 Deciding whether or to whom to report an incident is perhaps one of the most elementary of help-seeking choices that victims of any type of crime perform. Without crime victim assistance Brandl & Horvath (1991:293) claim *"the capabilities of the police in controlling crime would be greatly reduced, to say nothing of the difficulties that would arise in the other components of the justice system."*

2.3 In general, victims of crime will tell someone about their experience at some time, if not always the police. The national ABS survey shows that the vast majority of assault victims, for example, seek help after an incident and this is most usually from a family member (61%) and/or a friend or neighbour (57%).¹¹ The British Crime Survey (2004-05) shows that only about 40% of all crime are reported to police, with 39% reported in the USA.¹² Reporting rates for different offences do vary.¹³ In particular, the population-based surveys show that personal crime, including domestic violence, is generally under-reported (Walby & Allen 2004).

2.4 The decision to report an incident to police is most often made by victims themselves.¹⁴ Although for certain types of offences, such as child abuse, reporting to police is likely to be undertaken by a third party. The proportion of victims that reported the most recent incident to police has not changed significantly over the past three ABS national surveys and varies depending on the type of offence:¹⁵

- 74% for household victims of break-in
- 31% for household victims of attempted break-in
- 90% for household victims of motor vehicle theft
- 38% for victims of robbery
- 31% for victims of assault.

11 ABS (2006), *Crime & Safety Australia 2005*, Canberra.

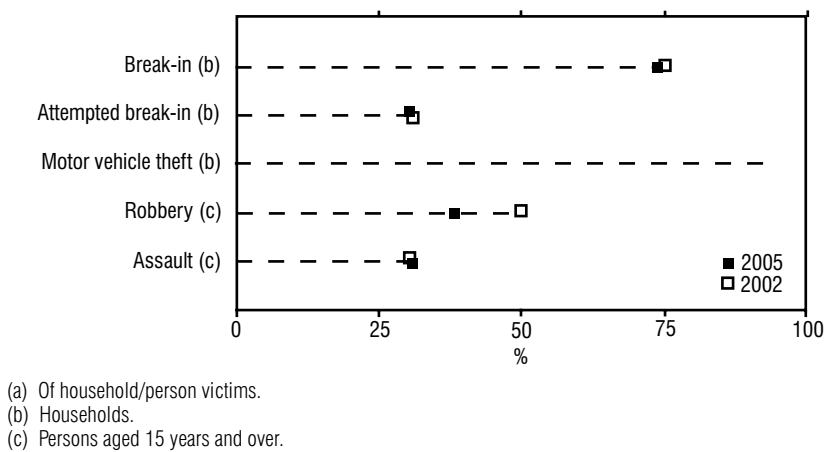
12 British Crime Survey 2004-05 and Department of Justice (2003), *Reporting Crime*, US Bureau of Crime Statistics.

13 International Crime Victim Survey (2000), pp.61-62.

14 For example, an analysis of the Family Violence Database of ACT Policing revealed that 70% of domestic violence incidents were reported to police by the victims (Holder 2007).

15 ABS, op.cit.

Chart 4: Reporting rates, to police 1998-2005



SOURCE: ABS, Crime and Safety, Australia, 2005.

2.5 Common reasons given for not reporting incidents to police include that there was nothing they could do (31%), the incident was too trivial or unimportant (20%),¹⁶ the victim (in personal offences) considered it a personal matter or would take care of it themselves, or a feeling that police would not do anything. This latter finding has been shown to be particularly relevant to people who have been victims of crime on a number of occasions.¹⁷

Common reasons given for not reporting the most recent break-in to police included:

- that there was nothing the police could do (31%), and
- that the incident was too trivial or unimportant (20%).

2.6 A 1996 national *Women's Safety Survey* by the Australian Bureau of Statistics (ABS) showed that 19% of women surveyed who had experienced physical abuse from a man in the previous 12 months had reported to the police.¹⁸ The ABS *Personal Safety Survey* (2005) of men and women in Australia did show that there has been a change in the incidence of violence reported to the police since the 1996 survey.

16 ABS (2006), *Crime & Safety Australia 2005*, Canberra.

17 International Crime Victim Survey at www.aic.gov.au

18 Australian Bureau of Statistics (1996), *Women's Safety Survey*, Canberra, p.7.

- 36% (70,400) of women who experienced physical assault by a male perpetrator reported it to the police in 2005 compared to 19% (54,400) in 1996,¹⁹ and
- 19% (19,100) of women who experienced sexual assault by a male perpetrator reported it to the police in 2005 compared to 15% (14,700) in 1996.²⁰

2.7 In both these surveys, and the Australian component of the International Violence Against Women (IVAW) survey (Mouzos & Makkai 2004), women who experienced violence from a current partner were far less likely to report the abuse to police than were women who experienced abuse from an ex-partner.²¹ UK, Canadian and New Zealand studies have had similar results (Walby & Allen 2004; Rodgers 1994; NZ Victimisation Survey Committee 1997).

2.8 The ABS publish reports on incidents reported to and recorded by police agencies across Australia, the latest being Recorded Crime-Victims (2005).²² As would be expected, the population-based crime and safety surveys show a higher incidence than in this sister publication. This statistical differentiation continues as a reported matter then progresses through the stages of investigation to prosecution and to court finalisation. Many factors affect this pattern of “attrition” and are illustrated in Chart 5 from the UK’s Crime Science Institute at the London School of Economics.

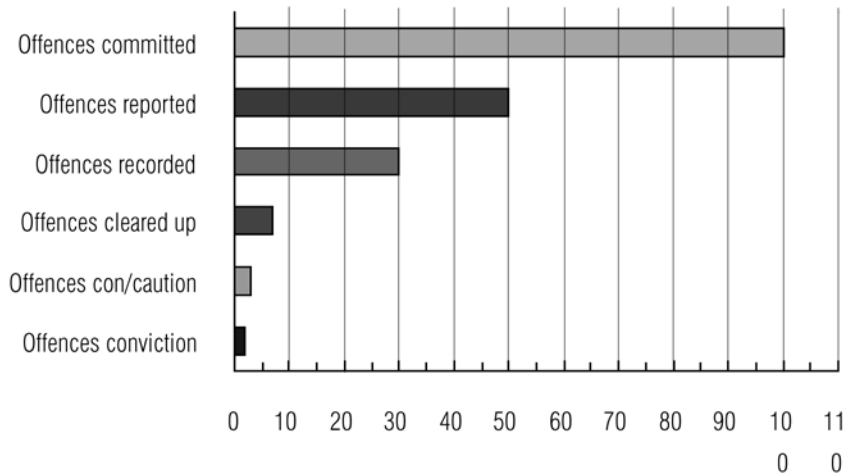
19 Australian Bureau of Statistics (2006), *Personal Safety Survey, Australia*, Canberra, p.21. The survey found that 5.8% of women had experienced an incident of violence in the 12 months prior to the survey and 39.9% had experienced violence since the age of 15. Of those women who had been physically assaulted, 31% were assaulted by a current or former partner (pp5-9).

20 ABS Personal Safety Survey

21 6.3 women per 100 who experienced violence from a current partner in the previous 12 months called for police assistance in comparison to 34.6 per 100 in relation to a previous partner (ABS 1996:32). 17% of women who experienced physical assault from a current partner in the previous 12 months reported to police as opposed to 61% of those reporting a previous partner (ABS 2005:21). Analysing the Australian component of the IVAW Survey, Mouzos & Makkai (2004:101) found that, while 14% of women who had experienced intimate partner violence reported to police, only 8% of those experiencing violence from a current partner reported and 24% of those experiencing violence from a previous partner.

22 ABS, *Recorded Crime-Victims 2005*

Chart 5: Attrition in the Criminal Justice System (LSE, UK)



2.9 Data published in the *ACT Criminal Justice Statistical Profile* and supplied by ACT Policing confirms this differentiation.²³ “Incidents” reported to police may or may not constitute an offence, and those recorded by police as constituting an “offence” may or may not be “cleared” in some manner. The term “cleared” including that an offender was proceeded against, the offence was not substantiated or it was cleared in some other manner.

2.10 The actual number of incidents reported increased 18.3% from 2001/02 to 2005/06 (Chart 6).

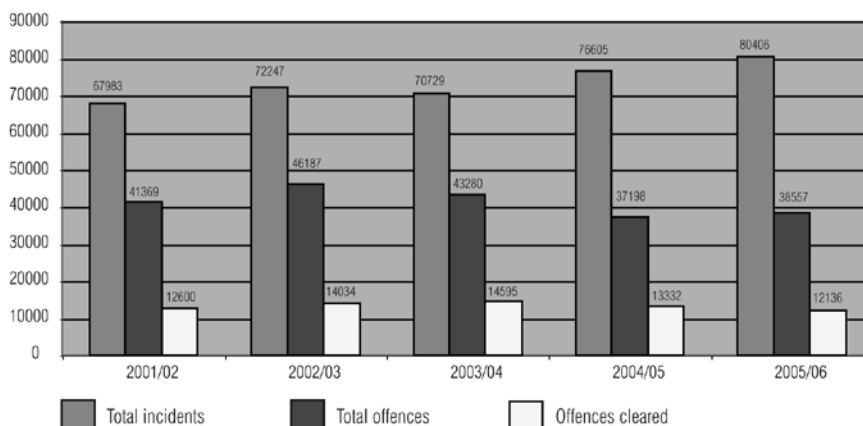
2.11 In the years 2001/02 to 2003/04, the proportion of “incidents reported” that were subsequently “offence cleared” was just over 60% in each year. In 2004/05 and 2005/06, the proportion of “offences cleared” dropped to 49% and 48% respectively (Chart 6).

2.12 The “indexed rate”²⁴ of offences reported to police as published by the ABS reveal increases across most major crime categories in the ACT over the past few years.

23 Note: the data contained within the ACT Criminal Justice Statistical Profile may differ from that published by agencies in their own Annual Reports.

24 The ABS states that an “indexed rate” is a convenient way of interpreting change over time within a jurisdiction. The indexes refer to victimisation rates per 100,000 persons. Using an “indexed rate” requires the identification of a ‘base year’. If that year demonstrated atypically high or low offence statistics, subsequent comparisons against that ‘base year’ would provide an inaccurate picture of general trends within a jurisdiction.

Chart 6: ACT Policing Criminal Justice Statistics



Source: Department of Justice and Community Safety

Table 1: Offences reported to police (ACT)—indexed rate

Offence	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05
Homicide	111.1	255.6	111.1	211.1	111.1	100.0	211.1	344.4	344.4	133.3
Assault	95.6	89.6	88.4	89.0	91.5	100.0	101.0	101.2	89.2	89.0
Sexual assault	67.0	63.6	49.7	54.2	66.5	100.0	102.5	90.9	124.2	89.3
Robbery	83.6	93.5	118.6	126.7	123.2	100.0	82.1	78.2	84.2	94.2
UEWI*	78.7	76.8	97.7	127.4	132.1	100.0	102.5	87.2	86.3	76.2
MVT**	68.2	68.2	105.6	141.7	121.2	100.0	85.7	103.3	69.0	84.1

SOURCE: ABS, Recorded Crime-Victims, Australia (2005)

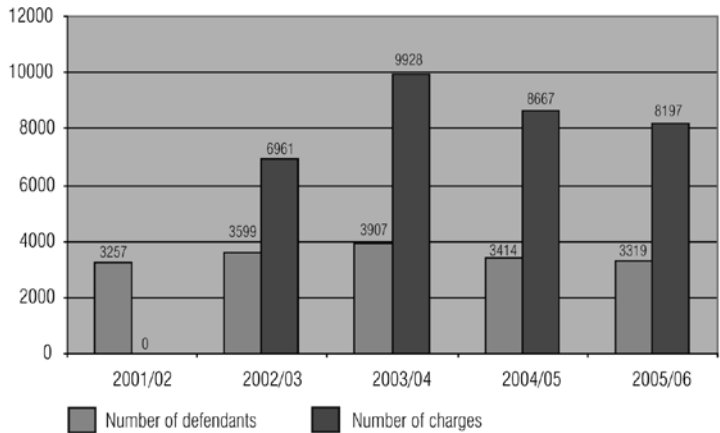
* Unauthorized entry with intent

** Motor vehicle theft

NOTE: Some offences, such as "homicide and related offences", are small in number in the ACT so small changes can appear more significant in the indexed rate.

2.13 If, after being alerted to an incident, the police form a reasonable suspicion that an offence has been committed then a person (an 'alleged offender') may be charged with committing a criminal offence. Those charges and the preliminary evidence are then submitted to court by the prosecution acting for police on behalf of the community. When these charges are presented at court and the person charged is required to appear, this forms the most public part of the criminal justice system. The number of defendants and the number of charges coming before the Magistrates Court are given in Chart 7.

Chart 7: ACT Magistrates Court—Number of defendants and charges finalised



Source: Department of Justice and Community Safety: Criminal Justice Statistical Profiles.
Note: Number of charges not available for 01/02 and quarter ending September 2002.
Statistics exclude drug, traffic and miscellaneous offences.

2.14 The datasets from ACT Policing (Chart 6) and from the ACT Magistrates Court (Chart 7) have different counting rules and are not directly comparable. For example, the term “offence” is not directly comparable to the term “charge”, and the “offence” count for ACT Policing in one year will not necessarily relate to the defendant/charge count made by the Magistrates Court for the same year. However, some rudimentary comments may be made. Using 2005-06 as an example, it can be said that of the approximate 38,500 offences identified by police in the ACT and of just over 12,000 cleared by them, nearly 3,500 offenders enter the court system to answer over 8,000 charges.

2.15 As stated above, police are not the only ones that victims seek assistance from. Victims of personal crime in particular are consistently shown to disclose primarily to persons close to them. That is, friends and family. The national 2005 *Crime and Safety Survey* found that 91% of assault victims sought some form of support after the most recent incident against them. This is an increase on 85% in the 2002 survey.²⁵ Most commonly this was a family member (61%) and/or a friend or neighbour (57%).

2.16 The Women’s Safety Survey (1996) confirmed overseas studies showing similar disclosure patterns. Under the auspices of the ACT Domestic Violence Prevention Council (DVPC), a study was conducted into these personal networks (2000).

²⁵ See www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/F50CC9985653BB76CA25715A001C9053?opendocument

3. THE IMPACT AND CONSEQUENCE OF CRIME

3.1 The range of the effects of crime at an individual and a community is considerable.²⁶ Crime affects people in different ways and not all victims will have the same response to the same crime. The impact of a crime such as burglary is sometimes underestimated and by the same token not all victims of an assault will necessarily be affected for a long time. A crime may also affect the family and friends of victims. Parents of victims often speak of the distress they feel for their child (even if they are an adult) and their inability to help their children. The effects of crime may fall into the following categories:

- Physical,
- Material,
- Financial,
- Emotional/Psychological, and
- Social.²⁷

3.2 It is perhaps obvious to state that the impact and consequence of crime varies according to the nature of the offence. Other variables²⁸ include:

- Experience of prior victimization,
- Personal characteristics of the victim such as age, gender, and educational and socio-economic background,
- Nature of the relationship between victim and offender,
- Frequency and severity of the offending, and
- Occupation and lifestyles.

3.3 The physical harm from assault can vary from a scratch to grievous bodily harm. The ABS Crime and Safety Survey (2005) showed that 65% of victims of robbery were not injured and 77% of victims of assault were not injured in the most recent incident.²⁹ Using a different sample of victims, one US study found that about half of victims injured required some medical care, and 19% were treated at a hospital (Zawitz 1993).

26 For some studies see for example, Maguire & Corbett 1987, Waller 1986, Shapland et.al 1985.

27 See also Waller, I. (1986), "Crime Victims Not to be Orphans of Social Policy: Needs, Services and Reforms" in Miyazawa, K. and Ohya, M. (eds), *Victimology in Comparative Perspective*, Tokyo, Seibundo Publishing.

28 See, for example, Laud, J. (1997), "Patterns of Criminal Victimization in the United States" in Davis, Lurigio & Skogan, op.cit., pp12-19.

29 The review of victim services in Victoria identified that 76% of victims were not physically injured while 65% of victims were emotionally affected. Department of Justice (February 2002), *Review of Services to Victims of Crime*, Melbourne, p.14.

3.4 The Australian Women's Safety Survey (1996) showed that 48% of women who were physically assaulted by a man in the previous 12 months sustained a physical injury such as cuts, bruises and scratches.³⁰ In the ACT, approximately 19% of victims of domestic violence reported to police over a three year period revealed some injury.³¹

3.5 Laud (1997:21) comments that *"victims may suffer a wide range of economic penalties. These include direct cash and property losses, property damage, medical expenses, work time loss, and security costs, as well as more intangible costs such as fear of crime, a potentially trying involvement with the criminal justice system, and a general deterioration of the quality of life."* A 2003 Australian Institute of Criminology report into the costs of crime estimates that the annual direct and indirect cost of all crime is nearly \$32 billion.³² This is \$1,600 per person per year in Australia, and five per cent of GDP.

3.6 On a per incident basis the average cost is:

- \$1.6 million for each homicide
- \$1,800 for each assault
- \$2,500 for each sexual assault
- \$3,600 for a robbery
- \$2,400 per burglary
- \$6,000 per theft of a vehicle

3.7 The emotional and psychological impact of crime also varies considerably. The impact is shown to vary over time and to be influenced by factors such as the nature of the support provided by family and friends, the intervention of formal authorities and individual characteristics and resilience factors.

3.8 The nature of the offence itself is also and obviously shown to be a variable in assessing impact. For example, studies of women who have suffered rape show high levels of fear, depression, and exhaustion, and 44% continue to meet the full criteria for post traumatic stress disorder (PTSD) three months after the incident.³³

30 McEwin, M. (undated), "An Overview of the Women's Safety Survey" (ABS), p.9, at www.aic.gov.au/conferences/outlook97/mcewin.pdf

31 Holder (2007), *Police & Domestic Violence: an analysis of Domestic Violence Incidents Attended by Police in the ACT and Actions Arising*, Australian Domestic & Family Violence Clearinghouse, Sydney.

32 Mayhew, P. (2003), "Counting the costs of crime in Australia", Trends and Issues, Australian Institute of Criminology, Canberra. Costs include medical costs, lost output, intangible costs, property loss and the costs of criminal justice and victim assistance. See www.aic.gov.au/publications/tandi/tandi247t.html

33 For a summary of the literature see Resick, P. and Nishith, P. (1997), "Sexual Assault" in Davis, Lurigio and Skogan (eds), op.cit., pp27-52.

3.9 Family violence affects a considerable number of people in the community especially women and children.³⁴ Domestic violence is a leading cause of death of women in Australia.³⁵ Child abuse and neglect impacts on children's cognitive, social and psychological development.³⁶

3.10 In their longitudinal population-based American study, Norris, Kaniasty and Thompson (1997) confirmed that victims of crime experience higher levels of anxiety, depression and hostility than did people with no experience of crime. The study further confirmed the greater impact of violent crime as opposed to property crime, and the persisting nature of the effects of victimisation.

3.11 Janoff-Bulman and Frieze (1983) contend that criminal victimisation challenges three fundamental assumptions for people: "the illusion of invulnerability, the view of oneself in a positive light, and the perception of the world as a meaningful place."³⁷ From this perspective, the buffering effect of social support for crime victims—both informal and formal—is highly likely to mitigate longer-term effects by working directly and indirectly in restoring these shattered views. Norris et.al's longitudinal study confirms this (pp156-160).

34 See for example, Humphries, C. (2007), "Domestic Violence and Child Protection: Challenging directions for practice", *Issues Paper No.13*, Australian Domestic & Family Violence Clearinghouse, Sydney; Taft, A. (2003), "Promoting Women's Mental Health", *Issues Paper No.8*, Australian Domestic & Family Violence Clearinghouse, Sydney.

35 Fraser, K (2003), "Domestic Violence and Women's Physical Health", Topic paper, Australian domestic & Family Violence Clearinghouse, UNSW.

36 See Finkelhor, D. (1997), "The Victimization of Children and Youth" in *Ibid.*, pp101-103.

37 Discussed in Norris, F., Kaniasty, K. & Thompson, M. (1997), "The Psychological Consequences of Crime" in *Ibid.*, p.153-154.

4. VICTIMS' NEEDS

4.1 *"Crime changes people in fundamental ways that do not lend themselves to quick and easy solutions"* is the conclusion of the longitudinal study by Norris and his colleagues (1997:163). The authors further remarked upon the pervasiveness and breadth of crime's effects, the persistence of these effects, and the impact of the recurrence of victimization.

4.2 It is perhaps a surprising finding, but Norris, Kaniasty and Thompson state that their study "suggest[s] that the most effective support we can provide crime victims is to restore their tarnished beliefs" (1997:162). They go on to explore the hopeful theme of responsiveness to victims especially through "protective neighbouring", mobilizing support from families and friends, from mental health professionals, and improving the reaction of criminal justice agencies.

4.3 Given the huge diversity of crimes and the range of impacts, it is not surprising that victims' needs are also diverse and that most victim support services struggle to respond.³⁸ For example, two studies have found that crime prevention was the single service most desired by victims though it was the service they were least likely to receive from victim assistance programs (Skogan, Davis and Lurigio 1990; Gardner 1990). At the same time, the need to respond to that much smaller proportion of victims for whom trauma is profound and persisting, and/or to assist that proportion for whom the crime has devastated their physical capacity to function effectively are critical challenges.

4.4 The sense that they as an individual person matter, and that the social order shows respect through acknowledging the harm done and dealing with it effectively are clearly important on a number of levels to crime victims. These beliefs are further shown to interact with people's preparedness to support the operation of the law and legal institutions. The psychology of procedural justice (Tyler 1990; Tyler and Huo 2002) underpins many reforms in the administration of justice from restorative justice (Strang 2002) to problem-solving courts (Frieberg 2001). At a local level, Hinds & Murphy (2007) have identified that respect for police and a preparedness to cooperate relates in large part to the manner in which police engage with members of the community. The Law Commission of Canada has suggested that these types of processes fall under the overarching term "participatory justice".³⁹ In essence, the term is

38 Newburn, T. (1993), *The Long Term Needs of Victims: a review of the literature*, Research & Planning Unit Paper 80. Home Office, London.

39 Law Commission of Canada (Nov 2003), *Transforming Relationships Through Participatory Justice*, Ottawa.

applicable to any justice process that depends upon or requires citizen participation or engagement.

4.5 The needs of victimized individuals in most western jurisdictions are concretely responded to through social support (informal and formal⁴⁰), and through the justice system. The ACT Community Law Reform Committee in their report *Victims of Crime, Report No 6* stated there were five main needs required of the criminal justice system by crime victims.⁴¹ These were:

- Information,
- Support,
- Recognition of harm,
- Reparation for harm, and
- Effective protection.

4.6 However, none of these needs are confined to victims of crime in the criminal justice system and nor is a response to those needs restricted to criminal justice agencies.

40 By "informal" it is meant the personal and social networks of people. That is, their family and friends, work colleagues, neighbours, and faith and other community resources. By "formal" is meant the more organised and/or institutional responses. That is, health and medical services, clinical and welfare assistance, justice agencies, and established community social services.

41 Outlined by Drs Waller and Baril in Daubney, D. (1988), *Taking Responsibility: Report of the Standing Committee on Justice and Solicitor General on its Review of Sentencing, Conditional Release and Related Aspects of Corrections*, Toronto.

5. HISTORICAL & THEORETICAL CONTEXT TO CRIME VICTIM DEVELOPMENTS

5.1 In every society and in every time, there have been people victimised by the behaviour of others; behaviour that harms the victim's physical, psychological, emotional, social, material and financial well-being.

5.2 In the recent past, the nature and scope of this victimisation has been debated. Some early victimologists (Mendelson 1956, Elias 1986, Fattah 1991 and 1994) claimed that the discipline – the study of victims and their victimisation – should not confine itself to victims of crime but should acknowledge victims of accidents, natural disasters, human rights violations, victims of all types of oppression and discrimination, victims of environmental degradation and victims of state corruption (Garkawe 2000; 2004). Such a broad definition has been termed 'general victimology' as opposed to the terms 'penal or criminal victimology' which is confined to victims of crime (Bienkowska 1992, van Dijk 1999).

5.3 The nation-wide Victim Support Service in New Zealand, for example, responds to victims of crime, accident and emergency. Whilst victim services in Australia restrict their focus to crime, the evolution of acts of mass terror (for example, the Bali bombing) has involved some victim services in some Australian jurisdictions.⁴²

5.4 The passing of the 1985 United Nations (UN) *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (Appendix B) has acted as a watershed in the debate about the scope of victimisation. The Declaration appears to have fashioned near universal agreement that victimology would relate to the study of victims of crime (Garkawe 2000).⁴³ Argument about the shifting and controversial nature of victimisation and the term 'victim', however, continues.⁴⁴

5.5 The interplay between criminal victimisation and other types of social victimisation such as racism, sexism and homophobia is now well

42 It is worth noting that the UK Government Inquiry into responses to the July 2005 bombings in London found that it was the follow-up support for victims and their families that broke down most significantly (*The Guardian Weekly* 2006). The proposed redraft of the UN Declaration on Victims suggests including victims of terrorism in the proposed convention.

43 Two recent articles Lima (1999) and Garkawe (2001) have however taken a broad view of 'abuse of power victims' in reflections on government actions and entities, and the Stolen Generations.

44 O'Connell, M., "Victimology: an introduction to the notion of criminal victimisation", and Davis, R., Taylor, B. and Titus, R. (1997), "Victims as Agents: implications for victim services and crime prevention", in Davis, Lurigio and Skogan, op.cit., pp1670-179.

recognized.⁴⁵ Acknowledging the manner in which aspects of personal and group identity serve to make some people more vulnerable to crime is a feature in studies into sexual assault, child abuse, and 'hate crime'.⁴⁶ Similarly economic and social disadvantage is recognised as creating the seedbed for both victims and offenders in most offence types.⁴⁷ This broader social and political landscape is the context for the claim that victims' rights are a firmly a matter of human rights in international law (Garkawe 2005).

45 See for example, Davies, P., Francis, P., and Jupp, V. eds (1996), *Understanding Victimisation*, Newcastle, Northumbria Social Science Press.

46 See for example, Davies, P., Francis, P., and Jupp, V. eds (1999), *Invisible Crimes: their victims and their regulation*, London, Macmillan; Garofalo, J. (1997), "Hate Crime Victimization in the United States" in *Ibid.*, pp134-145; Dobash, R. and Dobash, R. (1992), *Women, Violence and Social Change*, Routledge, London; and Morgan, J. and Zedner, L. (1992) *Child Victims*, Clarendon Press, Oxford.

47 See for example, Mukherjee and Caracach (1998), *op.cit.*; Matthews, R. and Young, J. eds (1986), *Confronting Crime*, London, Sage, and Carlen, P. *Women, Crime and Poverty*, OUP, Milton Keynes.

6. VICTIMS OF CRIME AND CRIMINAL JUSTICE

6.1 The place of the victim in the legal system is also controversial.⁴⁸ This place, in most western democracies, inherits a broadly similar common law history and jurisprudence.⁴⁹ Over the Middle Ages, as the English lords forced restrictions to the King's absolute power, the entitlement to seek and extract restitution for actions designated as criminal shifted. The victim (if he or she was wealthy and educated) became responsible for investigating and prosecuting crime. The individual benefited in that he or she was directly in charge of proceedings and was the direct beneficiary of restitution (Karmen 2001, Rude 1985).

6.2 The establishment over time of a State-run, procedurally-driven justice system was boosted in England and other colonial societies by the need of governments to assert authority through centralised law enforcement agencies and new penal options over rapidly evolving societies. It also served to respond to the new liberalism of the 18th and 19th centuries which claimed that criminal law should serve the interests of society and not the individual.⁵⁰ The parties to criminal proceedings changed from victim and accused, to the State and the accused. Many incidents and behaviours were delineated as 'private disputes' to be dealt with in tort. The victim henceforth became peripheral to criminal legal proceedings.⁵¹

6.3 While there are differences between legal systems, there is a remarkable degree of consistency in the critique that crime victims have made of the criminal justice system. These revolve around the victim's lack of standing in criminal proceedings other than as witness for the Crown and what flows from that (Cook, David & Grant, 1999). In brief, victims express concerns at the lack of:

- General information about the process of investigation, protection, prosecution and adjudication.

48 van Dijk, J., Kaam, R. & Wemmers, J. (eds)(1999), *Caring for Crime Victims: Selected Proceedings of the 9th International Symposium on Victimology*, Criminal Justice Press, and Elias, R. (1986), *The Politics of Victimisation*, OUP, Oxford

49 Sebba, L. (1996), *Third Parties: victims and the criminal justice system*, Columbus Ohio, State University Press; Walklate, S. (1989), *Victimology: the victim and the criminal justice system*, Unwin Hyman, London; and Shapland, J. Villmore, J. and Duff, P. (1985), *Victims in the Criminal Justice System*, Gower, Aldershot, UK.

50 Bronitt, S. and McSherry, B. eds (2000), *Principles of Criminal Law*, The Law Book Co, Sydney and Lacey, N. and Wells, C. (1998), *Reconstructing Criminal Law*, London, Butterworths.

51 Refshauge, R. (2002), "Prosecutorial Discretion in Australia" in Moends & Biffot (eds), *The Convergence of Legal Systems in the 21st Century*, and Keating, N. (2001), *Review of services to victims of crime and Crown witnesses provided by the Office of the Director of Public Prosecutions*, Officer of the DPP, WA.

- Feedback about the progress of investigation and prosecution of their particular case.
- Their alienation from key decision-making about charging, bail and the decision to prosecute.
- The lack of opportunities for input into consideration of sentencing options and offender management.
- The dismissive and sometimes disrespectful attitude of criminal justice practitioners.
- The lack of access to and availability of support and rehabilitation services, and prevention advice and assistance.

6.4 These concrete omissions comprise the core of crime victims' dissatisfaction with and alienation from the criminal justice system. Many commentators (see for example Shapland 2000, van Dijk 1999, and Ziegenhagen 1989) have pointed out the dangers that flow from this dissatisfaction. That, for example:

- Citizens may choose not to report crime to authorities;
- This patchy crime reporting means reduced opportunities for detection and ineffective prevention strategies;
- Citizens provide less information and extend little cooperation to prosecution authorities;
- There is an erosion of confidence in the very concept of justice as well as in justice agencies;
- There is increased potential for social division and disharmony; and
- Faith in the concepts of integrity and accountability that are so crucial to both victims and offenders (as well as to justice practitioners) is deeply undermined.

6.5 In recent years, a range of initiatives has been developed to respond to these concerns. These range from compensation and counselling schemes, to restorative justice programmes, to legislating for the 'rights' of crime victims. On the former there is substantive social agreement. On the latter there is not (Ashworth 1993 and O'Connell, undated).

7. JUSTICE OBJECTIVES OF VICTIMS OF CRIME⁵²

7.1 Some may say that the alienation of the victim from the criminal justice process that has taken place over the past two centuries and the treatment of victims in court is reason for the small proportion of victims of crime who do report to police or other authorities.

7.2 However, in examining both incentives and costs associated with victim reporting using data from the US National Crime Victimization Survey 1992-1998, one study considered victim reporting behaviour to be *"rational in the sense that victims are attempting to achieve something they value, whether it be something practical or something they think they ought to do out of civic duty or a sense of justice."* (Felson, et.al. 2002:619) This way of looking at victim behaviour poses victims as citizens first that have what could be called 'justice objectives'.

7.3 Some studies have examined the stated objective or motive provided by victims for reporting to police. Crime & safety surveys in three countries reveal clusters of motive around victims' sense of civic duty and their desire for protection. In the USA, the primary reason victims of violence give for reporting is a belief that the incident was a crime (30%). The second most common reason was self-protection (19% prevent future violence, 17% stop offender). A further 15% express a concern for others (9%) and their duty to tell police (6%).⁵³ In the British Crime Survey 2004-05, of those who reported crime to police, 43% did so because crime "should be reported" and 37% reported because they wanted to see the offender punished.⁵⁴ In Australia, 20.3% of contact between police and the public is initiated by the latter. Of this, 40.5% of citizens made contact in order to report a crime (Sced 2004).

7.4 Responses to the International Crime Victim Survey across 17 countries showed that victims of sexual incidents and assaults were (predominately) more interested to stop the violence and (secondly) for retribution, than were victims of property offences. Between a quarter and a third of victims of violence offences reported to police because they felt they "should" and that it was "serious". A further quarter reported "to get

52 This section is drawn from an article submitted (2007) by R. Holder to the *International Journal of Comparative and Applied Criminal Justice*.

53 Bureau of Justice Statistics (March 2003), "Reporting Crime to the Police 1992-2000", Special Report, US Department of Justice, p.7. Victims of more serious offences such as rape and sexual assault, aggravated assault and serious violent crime express a higher degree of concern to protect others than to victims of other violent offences such as robbery or 'simple assault'.

54 Allen et.al. (2006), *Policing and the criminal justice system - public confidence and perceptions: findings from the 2004/05 British Crime Survey*, Home Office Online Report 07/06, Home Office, London.

help". Across all crime, the majority of victims reported because they felt they "should" and that it was "serious".⁵⁵

7.5 The victim of crime is an informed citizen⁵⁶ making choices about what of the resources available in the community will assist with his or her purpose – consciously expressed or otherwise. This concept of "citizen" places the individual in a relationship with a "range of bodies and people who are continuously mediating their daily lives." (Pattie, Seydl & Whiteley 2004:110) Victims of crime may seek guidance from a range of social supports such as family and friends,⁵⁷ health professionals (Bacchus et.al 2003), and the clergy (Gordon 1996). They do so according to different circumstances and with different expectations. As active and rational citizens, victims of crime make judgments about who to access, why and for what purpose.

⁵⁵ ICVS (2000), pp68-69.

⁵⁶ That is a 'rights-bearing' person who engages with the democratic process and its institutions, who has views about the values and ideas of civic society, and experience with its various manifestations and forms (Richard Ehrlich 1999).

⁵⁷ WSS, ICVS

8. SERVICE & COMMUNITY RESPONSES TO CRIME VICTIMS

8.1 Service & community responses have also been influenced by local, national and international academic, policy, legal and service trends in responses to crime and to crime victims. The contemporary 'victims of crime movement' in the ACT as elsewhere is a broad church with many influences in its global and local history.⁵⁸ Reformers who claim to respond to the unmet needs and rights of crime victims are influenced by a range of philosophical and ideological influences.

8.2 The eminent Dutch criminologist, Jan Van Dijk (1984), has identified four of these key influences on the victim of crime movement all of which derive from specific historical contexts.⁵⁹

- *The 'Care' Ideology* emphasizes humanist relief of suffering and community absorption of hardship. It views the criminal nature of the offence as secondary and is critical of the bureaucratic and stigmatizing features of state welfare institutions.
- *The 'Rehabilitation' Ideology* arises from a concern for treatment rather than punishment of offenders and sees aid for the crime victim as a part of this overall aim.
- *The 'Retributive' or Criminal Justice Ideology* arises from disillusion with rehabilitative and deterrent penal policies. It aims to punish on a notional scale of damage to society (and to the crime victim). This ideology takes to itself the idea that the crime victim desires justice, moral vindication or revenge, and seeks participatory rights for the crime victim within the criminal justice system
- *The 'Abolitionist' Ideology* advocates a new system based on principles of civil law. It proposes mediation, reparation, aid to the crime victim and crime prevention in community's control. This ideology promotes the idea of informal social control over criminal behaviours.

8.3 Of course, none of these ideologies is absolute in concept nor is 'pure' in application. All overlap. Nor are they necessarily ideas that conflict to the point of undermining the intention of reform. In all Australian jurisdictions including the ACT a pragmatic (or some may say piecemeal)

58 O'Connell, M., op.cit; Strang, H. (2002), *Repair or Revenge: victims and restorative justice*, Clarendon Press, Oxford; and Hopkins & McGregor, H. (1991), *Action for Change*, Allen & Unwin, Sydney.

59 Victimology itself, as an academic discipline, claims three key and sometimes overlapping tendencies (Garkawe 2000). That is, the "conservative" or "conventional" victimology within the 'law and order paradigm'; "critical victimology" originating in the left idealism of the 1960s and 1970s; and "left realist" victimology which argues a radical and realistic response to conservative law and order policies.

approach to addressing the unmet needs and rights of crime victims has resulted in law reform and service responses that traverse all of these ideological positions.⁶⁰

8.4 So too is this diverse ideological landscape inhabited by reformers from different practice and professional orientations (van Dijk et.al 1999; Rock 1988). The first Victim Support Scheme in the UK was initiated by the Probation Service (Maguire & Corbett 1987). Victim Support (UK) is now a multi-million pound enterprise of considerable scope and influence. Refuges and associated domestic violence services, as well as rape crisis lines and sexual assault centres place their origin firmly within the women's liberation movement. Family or group conferencing initiatives (more broadly restorative justice) derive their influences from the child protection, family therapy, mediation and probation fields (Strang 2002).

8.5 A diversity of interest groups – from lesbian and gay activists to racial minorities and civil libertarians – have similarly influenced the imposition of legislative frameworks designed to enhance accountability and transparency around the activities of criminal justice agencies (Cook, David and Grant 1999). Specific campaigns for the 'rights' of crime victims and more effective acknowledgment have, in nearly all countries been led strongly by survivors themselves such as survivors of child sexual abuse and the families of homicide victims (Robinson 2004; Guliano 1998).

60 Victorian Department of Justice (2005), *Victims' Charter: community consultation paper*, Department of Justice, Melbourne; Keating, N. (2001), *Review of services to victims of crime and Crown witnesses provided by the Office of the Director of Public Prosecutions*, Officer of the DPP, WA; Justice Strategy Unit (1999, 2000a, 2000b), *Review on Victims of Crime: Reports One, Two and Three*, Attorney-General's Department, Adelaide, SA; Qld Department of Justice (1998), *Review of the Criminal Offence Victims Act 1995: implementing the fundamental principles of Justice for victims of crime, Discussion Paper*, Department of Justice & Attorney General, Brisbane; Social Systems & Evaluation (1997), *A Review of the Operations and Effectiveness of the Victims of Crime Act (WA)*, Ministry of Justice, Perth, WA; Penney, R.K., Gerhardy, S., & Canny, S. (1993), *Victims of Crime: the Northern Territory Experience*, Northern Territory University Press, Darwin; and ACT Community Law Reform Committee (1993), *Victims of Crime*, Report No 6, Attorney General's Department, Canberra.

9. NATIONAL AND INTERNATIONAL DEVELOPMENTS

9.1 In addition to the 1985 UN Declaration of Basic Principles (Appendix B), the interests of people victimised by crime are served by a range of other international instruments. For example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Resolution 34/180 1979), and the Convention on Rights of the Child (44/25 1989).

9.2 Recently, the UN Crime Congress received representations from accredited bodies that the Declaration of Basic Principles be reviewed and endorsed as a convention in international law.⁶¹

9.3 In addition to the Declaration, the UN Office for Drug Control and Crime Prevention, through its Centre for International Crime Prevention, produced two reports aimed at assisting countries to implement the Declaration.⁶² The *Handbook on Justice for Victims: on the Use and Application of the United Nations Declaration of Basic Principles for Justice for Victims of Crime and Abuse of Power* (1999:16) recommended jurisdictions implement nine 'clusters of services' being:

- (a) crisis intervention,
- (b) counseling
- (c) advocacy
- (d) support during investigation of a crime,
- (e) support during criminal prosecution and trial,
- (f) support after case disposition,
- (g) training for professionals and allied personnel on victim issues,
- (h) violence prevention and other prevention services, and
- (i) public education on victim issues.

9.4 In Australia the Standing Committee of Attorneys General (SCAG) adopted a 'national charter for victims' rights' in 1996⁶³ (Appendix C), and in July 2005 SCAG issued a joint communiqué reaffirming their commitment to justice for victims of crime. Also in October 2005, on the 20th anniversary of the UN Declaration of Basic Principles, the Commonwealth Law Ministers approved a Statement of Basic Principles of

61 The World Society of Victimology and the Netherlands victims' research institute, INTERVICT, convened an expert group in December 2005 to draft the proposed convention (Garkawe, S., email communication with Victim Support Australasia, September 2006).

62 The Handbook, and a *Guide for Policy Makers on the Use and Application of the United Nations Declaration of Basic Principles for Justice for Victims of Crime and Abuse of Power* (1999), Centre for International Crime Prevention, New York.

63 See Standing Committee of Attorneys-General, Item 19, Documents and Summary Matters, Taupo, New Zealand, 14 October, 1992, Volume 2.

Justice for Victims of Crime (Appendix D). The Law Ministers agreed that “member countries would give consideration to the national implementation of measures designed to give practical effect to th[e UN Basic Principles of Justice for Victims of Crime and Abuse of Power], in particular for serious crime.”

9.5 The Federal Minister for Home Affairs, the Hon. Bob Debus MP, announced a Federal Criminal Law and Procedure Forum for September 2008 to examine, amongst other matters, victims rights in the federal criminal jurisdiction. The Forum is to include a wide range of interest groups and stakeholders.

9.6 The world’s first International Criminal Court⁶⁴ has made it the responsibility of the Court’s Registry to establish a Victims and Witnesses Unit (Article 43 and Chapter 2). The establishing charter sets out the Court’s responsibilities to ensure the protection of victims and witnesses and their participation in proceedings (Article 68 and Chapter 4), provides for the Court to seek reparations and invites victim submissions on these (Article 75), and even establishes a Trust Fund for the benefits of victims of crime within the jurisdiction of the Court.

9.7 A number of national or peak bodies represent the interests of the various service streams in Australia.⁶⁵ The Women’s Emergency Services Network (WESNET) acts as the peak for refugees and other services addressing domestic and family violence. The National Association of Services Against Sexual Violence (NASASV) represents sexual assault services. Victim Support Australasia (VSA) “exists to advance the interests of people victimised by crime and encourage the development of support services throughout Australasia, whilst striving towards a crime free society”.⁶⁶ In pursuit of these objectives, VSA has produced a series of Position Papers that seek to elucidate standards and frameworks that would lead to greater national consistency and quality of service.⁶⁷

9.8 The *Recommended Levels of Service for Jurisdictions* (Position Paper No.1 1997) set out a framework for:

- Specialist and ‘generic’ victim support services,⁶⁸
- Inter-agency communication, co-ordination and strategic planning,
- The core components of police response to victims,

64 Rome Statute for the International Criminal Court (1998) and its Rules of Procedure and Evidence (2002).

65 For further information see www.wesnet.org.au, www.nasasv.org.au, and www.victimsupport.org.au

66 Victim Support Australasia, Constitution, Ratified July 1997.

67 Found at www.victimsupport.org.au

68 Position Paper No.5 sets out *Minimum Standards for Crime Victims’ Services*, Brisbane, 2002.

- Aspects to prosecution responses to victims,
- The role of corrections & probation,
- Recognising the role of courts and tribunals,
- Including victim interests in crime prevention, and
- A leadership and direct provision role for governments.

PART 2: REFORM IN THE ACT



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10. REFORM IN THE ACT

10.1 The legislative and service reform process in the ACT has been in part a response to the extent and consequence of criminal victimisation as outlined in Part I of this report. Reforms were driven in particular by people in the ACT community who had suffered serious crime and come together as ACT Victims of Crime Assistance League (VOCAL), and other community organizations such as the Domestic Violence Crisis Service and Canberra Rape Crisis Centre (Strang 2002; Hopkins & McGregor 1991).

10.2 A major aspect of the government response to the demand for reform was to examine the place of victims in the criminal justice system, and specifically, examine the 'rights' of victims.

10.3 To this end, in 1990, the ACT Community Law Reform Committee (CLRC) was provided a reference by the then Attorney General, Bernard Collaery MLA, to review the role of the victim of crime in the Territory's criminal justice system and to report:

- (a) Whether the current system adequately deals with the needs of victims;
- (b) Whether the Territory should adopt the use of victim impact statements such as in South Australia,
- (c) On the need for any further measures or legislation to improve the delivery of justice to victims of crime, and
- (d) On any other relevant matter the Committee wishes to take into consideration.⁶⁹

10.4 In making its report three years later, the CLRC acknowledged the common law heritage of the ACT.⁷⁰ The Committee noted the content of the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and recommended that it *"should be enshrined in legislation to ensure that those charged with the responsibility of putting the principles espoused in the Declaration into effect have clear guidelines."*⁷¹

69 CLRC Terms of Reference, 13 December 1990, *Ibid.*, p.v.

70 CLRC, *op.cit.*, pp 2-5.

71 *Ibid.*, p.36.

10.5 In addition to setting the principles of the UN Declaration into legislation, the Committee recommended:⁷²

- The creation of a victims assistance program,
- Improved information and notification provision from justice agencies,
- Certain participatory rights within criminal proceedings,
- Assistance for victim/witnesses,
- Court security enhancements,
- Means to convey safety concerns for bail and parole proceedings,
- The introduction of Victim Impact Statements,
- A pilot diversionary scheme for juvenile offenders (and accompanying video),
- Some reforms to the [then] *Criminal Injuries Compensation Scheme*,
- Expert evidence as to capacity for child witnesses with an intellectual disability,
- Establishment of a Victims of Crime Coordinator (VoCC) position to have a coordinating, promotional and service delivery role,⁷³
- Training for criminal justice agencies,
- A levy on existing fines,
- An evaluation of the recommendations, and
- A review of unsworn statements of the accused.

⁷² *Ibid.*, pp.viii-xxi.

⁷³ *Ibid.*, pp.120-123.

11. THE ACT VICTIMS OF CRIME ACT 1994

11.1 In giving effect to the main recommendations of the Community Law Reform Committee, Terry Connolly MLA, Attorney General, in his tabling speech for the Victims of Crime Bill said:⁷⁴

“... this Bill is a significant step forward in redressing the traditional inequality and imbalance that victims have felt in relation to their position in the criminal justice system. The measures ... will provide victims of crime with the measure of dignity to which they are entitled through ensuring that they are accorded an appropriate and recognized position within the criminal justice system.”

11.2 The Attorney further tabled amendments to allow for the provision of Victim Impact Statements in certain circumstances, and provisions in Acts relating to bail and parole that recognized victims' concerns about the need for protection from violence or harassment by the offender.⁷⁵

11.3 It took until December 1999 for the Committee's recommendation for a victim assistance program to be adopted through the establishment of the Victims Services Scheme (VSS).⁷⁶ In 2006-07, the VSS became a service unit within the Department of Justice and Community Safety. Subsequently, it became part of a new agency within the portfolio, Victim Support ACT.

1.4 Whilst the Commonwealth Government signed the UN Declaration of Basic Principles on behalf of Australia, it is the States and Territories, being responsible for criminal justice, that were obliged to give it effect. The ACT Government was amongst the first to do so in statute form.⁷⁷

11.5 The *ACT Victims of Crime Act 1994* incorporated Principles Governing the Treatment of Victims of Crime (Part II) (Appendix A), being that all those engaged in the administration of justice shall, as far as

74 Terry Connolly, MLA, Attorney General, Tabling Speech, *Hansard*, 10th November 1994, pp 4023-4024.

75 *Ibid.*, p.4025

76 The VSS was established from reforms to the ACTs Criminal Injuries Compensation Scheme. See ACT Attorney General's Department (1997), *Reform of the Criminal Injuries Compensation Scheme*, Discussion Paper, Canberra; and Victim Support Working Party (1998), *Victim Support in the ACT: options for a comprehensive response*, Canberra. The contract to provide the VSS was awarded to ACT Health who provided the service until the end of 2006.

77 South Australia was the first Australian jurisdiction to declare, in 1985, a set of administrative guidelines. Its declaration was amended and drafted into legislation in 2001. The Western Australia *Victims of Crime Act* was passed in 1994, the Queensland *Criminal Offences Victims Act* in 1995, the NSW *Victims Rights Act* in 1996, and the Victorian *Victims Charter Act 2006*. Tasmania and the Northern Territory have administrative charters.

practicable and appropriate, follow these principles in the treatment of victims of crime:

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 the 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.

11.6 Furthermore the Act established the Victims of Crime Coordinator (VoCC) as an independent statutory appointment of the ACT Government. The Coordinator holds office for a period not exceeding 3 years but is eligible for reappointment.

11.7 The Coordinator's main functions pursuant to section 7 of the *Victims of Crime Act 1994* are as follows:

- To promote the governing principles in relation to the victims of crime;

- To encourage the provision of efficient and effective services for victims;
- To promote reforms to meet the needs of victims;
- To develop educational and other programs to promote awareness of the needs of victims;
- To disseminate information concerning the operation of the Act and the functions of the coordinator;
- To maintain a register of services available to victims;
- To ensure, as far as practicable, that victims receive the information and assistance they need in connection with their involvement in the administration of justice;
- To advise the Minister on matters relating to victims;
- Any other function assigned to the coordinator by or under any other law of the Territory.

11.8 The Victims of Crime Coordinator has the power to:

- Be present at the hearing of a proceeding in court, unless the court directs otherwise (section 8); and
- Investigate conduct in the administration of justice where there are reasonable grounds to assume a breach of the General Principles of the act (section 9).

11.9 Section 9(3) stipulates that the VoCC must report the results of an investigation to the Attorney General.

11.10 Other provisions in the Victims of Crime Act relate to compliance with the Governing Principles and the operation of investigations into allegations of breaches. Section 5 provides that

A person who exercises a function in the administration of justice must have regard to the governing principles mentioned in section 4, as well as other relevant matters.

11.11 Section 9(2) provides that people exercising a function in the administration of justice must give information to the Coordinator for an investigation into an allegation of a breach. Furthermore, section 6 provides legal immunity for people exercising a function in the administration of justice who give information to the Coordinator.

11.12 The VoCC position-holder was additionally appointed in 2000 to perform the statutory functions of the Domestic Violence Project Coordinator.⁷⁸

⁷⁸ The DV Project Coordinator is a position established under Part 3 of the *Domestic Violence Agencies Act 1986*. The VoCC was inaugural chair of the statutory Domestic Violence Prevention Council (DVPC) from 1998-2001 and is currently an ex-officio member. The DVPC auspiced the Family Violence Intervention Program.

12. RELATED LAW REFORM

12.1 Since 1993 there have been a number of related developments that recognize the interests of victims of crime. Legislative reforms and amendments that directly or indirectly relate to victim of crime interests in the justice system include but are not restricted to the:

- *Victims of Crime Act 1994*.
- *Domestic Violence and Personal Protection Order Act 2001*.
- *Bail Act 1992*: sections 9F relating to bail for domestic violence offences, 23A relating to victim concern about the need for protection, and 47A relating to victim notice of bail decisions.
- *Victims of Crime (Financial Assistance) Act 1983*.
- *Crimes (Restorative Justice) Act 2004*.
- *Crimes (Sentencing) Act 2005*: sections 7(1)g relating to the purpose of sentencing, 33(1)d, e, f and g relating to relevant considerations in sentencing, 42(4)k relating to information for pre-sentence reports on the need to protect victims, s43(1) relating to contact with victims on pre-sentence reports, s47 relating to victim impact statements, and s136 relating to victim information exchange between criminal justice entities.
- *Crimes (Sentence Administration) Act 2005*: sections 123, 124, 133 and 192 relating to the role of the victim in parole deliberations, and Chapter 10 relating to victim registration and offender information.
- *Evidence (Miscellaneous Provisions) Act 1991* provides for certain victim/witnesses giving their evidence via closed circuit television.
- Provisions relating to the role of victims in release to license determinations and access to offender information.

12.2 More recent law reform has considered the place of the victim in proceedings under the *Children and Young People Act 1999*, the *Mental Health (Treatment and Care) Act 1994* and in relation to sexual offences. The ACT Government announced in 2007 a number of law reform proposals to protect child and adult victims in giving evidence in sexual offence proceedings

13. 'RIGHTS' OF VICTIMS OF CRIME

13.1 Jurisdictions in Australia and overseas have responded differently to the UN Declaration of Basic Principles and to demands by victim of crime groups to improve their status. Some have instituted administrative charters and declarations, and others statutes. Some use the language of 'rights' and others of 'principle'. Whether legislated rights get the crime victims more than "pity and politeness" in their dealings with criminal justice agencies is a matter of some debate (Erez 1999).

13.2 Formal implementation of the 1985 UN Declaration of Principles on Victims of Crime and Abuse of Power "*refers to the law-in-the-books*" (Brienen & Hoegen 2000). As mentioned previously, the States and Territories of Australia have placed the law 'on the books' in various guises.

13.3 A similar picture exists in Canada, the USA and much of Europe. In Canada, in 1988, all the Federal, Provincial and Territorial Ministers responsible for justice agreed on a *Statement of Principles for Victims of Crime* "*that would guide them in promoting access to justice, fair treatment, and provision of assistance to victims of crime*" (Waller 1996:100). Other than Alberta and Ontario, these principles have been placed in provincial legislation.

13.4 In the USA, all states have victims' rights legislation that not only encodes the key aspects of the UN Declaration but some have moved further into articulating participatory rights. By 1997 twenty-nine states had added victims' rights to their Constitutions.

13.5 A remarkable recent survey of 22 European countries, the Tilburg study (Brienen & Hoegen 2000), sought to identify the extent to which guidelines contained within Recommendation (85)11 of the Council of Europe had been met. That study found that the proportion of European states that had issued one or more victim-oriented reforms since 1985 had increased from 18% to 66%.

13.6 Lamborn (1991), a prominent commentator on victimological issues, concurs with reference to the United States. On the issue of the 'constitutionalisation' of victims' rights he said:

"For the most part these amendments are ineffective in substantially advancing the interests of victims. Their effectiveness is diminished by vagueness, qualifications that allow nullification, the need for legislative implementation, the absence of enforcement mechanisms, express deference to the rights of defendants, and unexpressed subordination to the federal constitutional rights of defendants. Thus the symbolism becomes empty, and the amendment is destined to disappoint victims and their advocates."

13.7 Whether victims' rights legislation is "empty" or not, commentators also point to the importance of **actual** implementation. This "*refers to the law-in-action*" (Brienen & Hoegen 2000). A 1993 report on implementation of the UN Declaration across the globe remarked that progress had been insufficient because of two key factors. One being "*the marginalisation or compartmentalisation of victim and human rights concerns within the UN system, which hinders effective follow-up work. The other has been the inability or unwillingness of the member states themselves to take action ...*" (Groenhuijsen (1999:91). In reviewing the steps taken at an international level for formal implementation Marc Groenhuijsen, Director of Netherlands Research Institute on Victims (1999:92) concluded that "*victims' issues are not a priority in many countries*".

13.8 Respected UK criminologist, Joanna Shapland points out that rights documents have tended not to introduce anything new (2000:153). In the main, they codify victims existing **responsibilities** to criminal justice. These mirror the existing **expectations** that criminal justice has of the crime victim—to report crime, to provide a full statement, and to be a good witness for example.

13.9 A distinction may be made between a list of obligations that is given legislative effect and those that are an administrative direction. The distinction between obligations that are couched in terms of 'rights' rather than 'principles' may, however, be more symbolic than real (Oppermann 2001:13).

13.10 The language of 'rights' may be perceived as carrying more authority, symbolism, acknowledgment and enforceability. An administrative charter, on the other hand, "*is a form of quasi-legislation embodying rules which are not directly enforceable in civil or criminal proceedings*" (Brienen & Hoegen 2000:253).

13.11 The evidence, however, is mixed on whether legislated rights are likely to generate a higher level of compliance by system practitioners. A 1989 study in the US (Hillenbrand & Smith) found that whilst there was a high level of support for the legislation, "*in general, [criminal justice] practitioners in victims rights states with explicit legislative provisions about particular victims rights and their colleagues in victims rights states without explicit language reported similar levels of activities relative to the particular rights*" (p18). Two exceptions to this relate to prosecution activities. A later American study (Beatty, Howley and Kilpatrick 1997:2) found that even in the states with strong statutory protection victims' rights continued to be denied. They conclude that "*strong legal protection—either through State constitutional amendments or other means—appears to be a necessary but not a sufficient condition for ensuring the protection of crime victims' rights,*

because a host of intervening factors, such as knowledge, funding, and enforcement, mediates the actual 'delivery' of victims' rights."

13.12 The importance of resources to implement victims' rights was acknowledged in a study by the US Vera Institute of Justice. That report concluded *"the potential burden of victims rights legislation is greatly reduced because, even when notified, most victims choose not to exercise their rights"* (Davis, Henderson & Rabbitt 2002).

13.13 Coming to a different conclusion that the US studies was Dutch research into the impact of victims' rights legislation (Wemmers 1994, 1996). Jo-Anne Wemmers, for the Dutch Department of Justice, found that the status of the victim guidelines did actually impact on the perceived *"importance of victim rights and awareness of them"*. The Dutch studies further claimed that the new legislated guidelines significantly improved notifications and restitutions to victims (Wemmers 1996).

13.14 The Tilburg study in Europe also supported *"the creation of a formal duty"* to perform certain obligations as a first requirement in advancing a reform agenda. The researchers went on to claim, however, that *"the exact status of the formal duty does not make much of a difference"* (Brienen & Hoegen 2000:1006).

13.15 This conclusion was supported in a review of the ACT Victims of Crime Act (VOCA) by Mariana Oppermann (2001:12), who viewed the difference between 'rights' and 'principles' as *"more semantic than practical"*. The ACT, Western Australia, Queensland and the Northern Territory use the language of 'principle' or 'guideline' while NSW, South Australia and Tasmania use the term 'rights'.

13.16 Even though the evidence about the importance of the **status** of the guidelines is mixed, the Tilburg study concluded by pointing out the importance of the **content**. The South Australian Review on Victims of Crime reached a similar conclusion (1999:para 16.1). The content that counts is:

- The specificity of the right,
- The qualifications placed upon it,
- The designation of a responsible agency to deliver the right, and
- The relative strength or weakness of the promotional/ compliance mechanism(s).

14. LEGISLATIVE COMPLIANCE OPTIONS

14.1 No Australian jurisdiction has provided penalties for non-compliance with victim rights by a public officer. Indeed, a 2001 judgment in the ACT Supreme Court affirmed certain protections for public bodies.⁷⁹ A victim of abduction and sexual assault initiated proceedings against the Director of Public Prosecutions and the Australian Federal Police for negligence. The Master of the Supreme Court, Terry Connolly, referred to English judgments as persuasive in their case against imposing a duty of care on either public body. Moreover, no intention to confer a right of private action for breach of the provisions of the *Victims of Crime Act 1994* could be found. The action failed.

14.2 The NSW, Queensland and South Australian Acts prohibit criminal or civil liability being attached for breaches. However, the different legislation does not exclude disciplinary action against a public official for a breach.⁸⁰ Indeed, citizens who are crime victims may, in all jurisdictions, access existing bodies such as the Ombudsman and the procedures of the relevant agency when pursuing a complaint. However, none of these bodies monitor the complaint's relevance to victims of crime legislation.

14.3 The ACT and NSW⁸¹ are the only jurisdictions to have legislatively established bodies to deal with compliance to the charters. In the USA, compliance mechanisms vary from an inter-agency committee supported by Department of Justice staff (Colorado), to a specified alternative dispute resolution victim service within Department of Justice (Wisconsin), to a statutory Ombudsman (Minnesota) (Davis, Henderson & Rabbitt 2002, and Victoria DoJ 2005).

14.4 Reforms before the South Australian Parliament are the first to propose that penalties attach to breaches of the *Victims of Crime Act 2001*. The proposed provisions suggest that the Commissioner (also a new position) may, by notice in writing to the public agency or official, recommend that the agency or official issue a written apology to the relevant victim.

14.5 In the UK, the first Victims Charter (1990) contained a statement of 'rights' without articulating either how these would be monitored or how they would be delivered. The second Charter (1996) provided

79 *Nicole Maree Mensinga & Gail Maree Mensinga v The Commissioner Australian Federal Police and The Director Director of Public Prosecutions* (2001) ACTSC 46

80 A freedom of information case in Queensland involving an ACT crime victim resulted in disciplinary action being taken against the public official. The point at issue, however, was not part of either the Queensland or the ACT victims' legislation (VoCC, *Annual Report 2001-2002*, Canberra, p.10).

81 The in-coming Labor Government in South Australia in 2006 included in its manifesto that it would establish a Commissioner for Victims Rights.

standards for those rights and referred to the existing complaint resolution mechanisms of the relevant agencies (Hoyle, Morgan & Sanders 1999). The new Domestic Violence Crime and Victims Act 2004⁸² in the UK established a Commissioner for Victims and Witnesses. That package of reform further enabled the UK Parliamentary Commissioner to undertake investigations in relation to the Act.

14.6 The New Zealand *Victims Rights Act 2002* sets out 'mandatory rights' for victims of crime with complaints mechanisms directed to the relevant agency or, if unsuccessful, to the Ombudsman or the Privacy Commissioner.

14.7 In all examples the powers are relatively limited to a general promotion of victims' rights and of reform to meet the needs of crime victims generally. The strongest powers are those that relate to receiving and investigating complaints. The ACT *Victims of Crime Act* stipulates that the VoCC must report the results of an investigation into an allegation of a breach of the Governing Principles to the Minister. The NSW Act allows the Bureau to attempt to resolve the complaint and where this is not possible, to report to the Attorney General who may table the report in Parliament. In one US jurisdiction, remedies include the possibility of either a private or a public reprimand, or a fine (Vera Institute 2002).

82 <http://www.opsi.gov.uk/ACTS/acts2004/20040028.htm> The *Parliamentary Commissioner Act 1967* s5 was amended to provide that the Commissioner may investigate where "a member of the public claims that a person has failed to perform a relevant duty owed by him to the member of the public", and in relation to the victims code of practice.

15. STATUTORY ADVOCACY AND COMPLAINTS MANAGEMENT

15.1 The evidence strongly suggests the importance of a means to promote and ensure compliance with victims' rights legislation giving weight to the adage that 'rights without remedy are rhetoric'.

15.2 Research by the Vera Institute of Justice in the US showed that, where victims were consistently informed of their rights, they were more likely to exercise them (Davis, Henderson & Rabbitt 2002). Furthermore, studies in three countries show there is a strong correlation between the involvement and notification of victims, and their satisfaction with the criminal justice system.⁸³

15.4 As previously stated, the primary mechanism in the ACT for the promotion of the legislation, adherence to it and responses to allegations of a breach of the Act is the VoCC position. In an analysis of the ACT legislation, Mariana Oppermann (2001) stated that, *"this power to investigate is designed both to ensure that compliance can be monitored and to provide victims with a (limited) form of redress for breaches of the principles"*.⁸⁴ This is evidenced by the comments of the then Attorney General during debate about the Victims of Crime Bill (1994). He noted that one of the most important aspects of the Bill is that

*'... [the investigative power] provides that the coordinator can investigate conduct about [the governing principles]; so he [sic] can investigate if there have been problems with the charter... That is designed to grant systemic change. It is designed to change attitudes within the court administration and within policing'*⁸⁵.

15.5 The investigative power under VOCA is also limited in terms of providing some redress for victims. It only entitles the VoCC to investigate and mandates that, where a breach is found, the VoCC report to the Minister for Justice⁸⁶. The investigative power does not extend to either the resolution of breaches⁸⁷ nor to the imposition of any form of sanction for breach.

83 Kilpatrick et.al. (1998) in the USA, Wemmers (1996) in the Netherlands and the HO Inspectorate of probation (2000) in the UK.

84 Oppermann, M. (2001), "Towards Inclusion? Providing for victims under the *Victims of Crime Act 1994* (ACT)", Research Paper on file with the author. p.14

85 Australian Capital Territory, Legislative Assembly, 1994 Debates 4278

86 *Victims of Crime Act 1994* (ACT) s 9(2)

87 By contrast, NSW does not establish an investigative power but empowers the Victims of Crime Bureau to use its best endeavours to resolve complaints it receives from victims (s 11 *Victims Rights Act 1996* (NSW)). The method used for dealing with complaints in both the ACT and NSW is in practice very similar. Both attempt first to provide victims with the necessary information to deal with the problem themselves and where necessary contact the relevant agency on behalf of the victim (Oppermann 2001:15).

15.6 This section describes the calls to the VoCC, the investigative process in response, and the relationship – if any - of callers concerns to the legislation.

15.6.1 Investigation and Reporting

Section 9 of the Act enables the VoCC to receive and investigate “conduct in the administration of justice which the coordinator believes on reasonable grounds involves a breach of the governing principles”. Section 9(3) states that “the coordinator must report the results of an investigation to the Minister”. However, conducting a full investigation and report into an individual matter is very time and resource intensive. Therefore since 1996, the VoCC has chosen to make only a handful of formal investigations requiring a report to the Minister.

A supplementary measure developed by the VoCC involves formal correspondence with the Head of an Agency engaged in the administration of justice about individual matters. The VoCC outlines the matter and the concerns, and invites the Head of Agency to look into and consider whether the conduct of the agency has been reasonable within the terms of the *Victims of Crime Act 1994*, the agency’s own policies and procedures, and the circumstances of the matter. The outcome of such review may be reported to the Attorney General where it provides a useful example of a systemic issue.

Section 9(2) of the Act stipulates that a person must give information, as far as practicable, to the Coordinator for an investigation. However, the legislation does not provide guidance to agencies or to the Coordinator about the conduct of an investigation.

15.6.2 Redress for a Breach

The formal complaints investigation and reporting process of the VoCC is unregulated and distinguished by an absence of protocol, procedure and timelines.⁸⁸ On the one hand, this enables a high degree of flexibility in investigative and resolution method. On the other hand, it does not provide for a transparent and accountable process. Similarly, there are no impositions that flow from the submission of a report to the Minister. That is, for the Minister to table a report, or to oblige a response from the Minister and/or the relevant agency.

In theory a case may be made out under the *Administrative Decisions (Judicial Review) Act 1989* (AD(JR)) if it could be proved that a person failed to take into account one of the governing principles⁸⁹. Such a case would

⁸⁸ Unlike for example, the legislated complaints process in the *Discrimination Act 1991*, and health complaints in the *Human Rights Commission Act 2005*.

⁸⁹ Australian Capital Territory, Legislative Assembly, 1994 *Debates* 4276.

most likely be grounded on ss 5(e) and 5(2)(b) of the AD(JR)⁹⁰. However, Oppermann (2001) has argued that, because of the general nature of the Governing Principles in the *Victims of Crime Act*, and particularly the fact that a person need only have ‘regard’ to them and apply them “as far as practicable and appropriate”,⁹¹ it is likely that such a course of action could only succeed in an exceptional case.

The ACT legislation does not expressly preclude disciplinary action being taken against a person “engaged in the administration of justice” for a breach of the Governing Principles. However, the VoCC has no knowledge of any such disciplinary action arising from a complaint made via the Office under the Act.

Further, the ACT Supreme Court found, in an action for negligence in *Mensinga & Mensinga v. The Commissioner of the Australian Federal Police & the Director of Public Prosecutions*,⁹² that there was no basis for a duty of care between a victim of sexual assault and the agencies, and no intention to create such a duty in the *Victims of Crime Act 1994*.

As in other areas of public administration, a victim’s complaint may be referred to the Ombudsman. Since 1996, approximately 15 such matters have been referred by the Victims of Crime Coordinator. In addition and depending upon its nature, a matter may be referred to other ACT oversight and complaints resolution bodies. In recent years, cases relating to the protection of a child and the response to an allegation of abuse within an aged care facility have been referred to the Public Advocate. One matter relating to the conduct and management of a mentally unwell person was investigated both by the VoCC and the Health Services Complaints Commissioner, and one matter involving a complaint about a community based victim service was referred to the Health Services Complaints Commissioner.

15.6.3 Individual Advocacy

Section 7 of the *Victims of Crime Act* provides that the VoCC shall:

s7(g) “... ensure, as far as practicable, that victims shall receive the information and assistance they need in connection with their involvement in the administration of justice;”

90 Failure to take a relevant consideration into account in the exercise of a power (s 5(2)(b) AD(JR)).

91 *Victims of Crime Act 1994* (ACT) ss 4, 5.

92 *Nicole Maree Mensinga & Gail Maree Mensinga v. The Commissioner of the Australian Federal Police & the Director of Public Prosecutions*. 18/5/2001: Master Connolly, [2001] ACTSC 46

An individual's complaint may therefore give rise to advocacy on their behalf to enable the person to participate effectively in legal processes as they flow from reporting crime.

Alternatively, the enquiry may be best and most effectively resolved as a matter requiring advocacy alone. This area of practice is by far the most common for the VoCC Office and it is also the most contentious for criminal justice agencies. Agencies say that there needs to be more clarity on the distinction between advocacy as 'assistance' or as a 'service' within the administration of justice, and 'workplace resolution' of a complaint.

15.6.4 Workplace Resolution

In the main, the VoCC facilitates resolution of complaints (or operational enquiries) in a manner similar to that performed between the ACT Ombudsman and ACT Policing.⁹³ Unlike that process, however, the direct involvement of the VoCC Office is retained.

In essence the stages of the investigative and resolution process for callers to the Office are:

1. Receipt of enquiry and clarification of the nature, scope and of the problem, and the agency(s) to whom the concern relates,
2. Determination of whether the matter constitutes criminal victimisation or some other, and whether it falls within the jurisdiction of the VOCA/VoCC (common responses to this aspect can include referral to other services, information giving, providing an explanation of the process of investigation and prosecution, and a clarification of expectations with the complainant),
3. Clarification of the outcome desired by the complainant,
4. Explanation of the VoCC process of enquiry and powers, and agreement on way forward,
5. Information gathering from the relevant agency (with regard to police this usually involves a request made to one of the police Victim Liaison Officers (VLO) for a check on the computer entry for the matter). The ACT Ombudsman refers to this process as the 'pre-investigation enquiry'.
6. Consideration by VoCC of most appropriate way to proceed which could involve (a) providing the information or clarification on action to the complainant thereby resolving the matter, (b) making a request for consideration of further action by the informant and/or the VLO, (c) requesting a review of the matter by the relevant supervising officer, (d) referral to the Ombudsman and/or for legal advice, (e) making a formal investigation, and (f) logging the complaint for inclusion in a later 'systems review'.

93 ACT Ombudsman, *Annual Report 2004-2005*, Canberra, page 18.

There is no provision in the *Victims of Crime Act 1994* to respond in this manner to matters raised with the VoCC by victims of crime. However, without this approach all matters raised would necessarily fall subject to the formal investigative power afforded the VoCC under section 9. This would have significant resources implications not only for the VoCC Office but also for agencies engaged in the administration of justice.

15.6.5 Review & Enquiry

The statutory functions of the VoCC include the promotion of reforms to meet the needs of victims (s7C) and an obligation to advise the Minister on matters relating to victims (s7H). In addition, the investigative power at s9 of the *Victims of Crime Act* is not restricted to individual cases.

Taken together these provisions enable the VoCC to initiate and enquire into a wide range of matters relevant to the interests and needs of victims in the administration of justice. Some enquiries have resulted in reports to the Minister, including:

- Repeat victimisation of victims of residential burglary (1999),⁹⁴
- The responses of personal networks to domestic and family violence (2001),⁹⁵
- The response of ACT Policing to allegations of sexual assault (March 2002),
- Victims of residential burglary, crime prevention and sentencing (2004),⁹⁶ and
- Evaluations of the Family Violence Intervention Program (2000, 2001 and 2006).

Furthermore, the VoCC may make submissions to enquiries of the Legislative Assembly and other arms of government. Since 1996, these have included submissions relevant to:

- The Delaney Review of the ACT ODPP (2006),
- A review of the *Mental Health (Treatment and Care) Act 2006*,
- The audit of courts administration (2006),
- The review of the Ngambra Circle Sentencing Court (2004),
- Sentencing reform (2004-05),
- The ACT Bill of Rights Consultative Committee (2002),
- Review of victims services (2002, 2003 and 2005/6),

94 Conducted with the Department of Justice and Community Safety (DJACS).

95 Conducted with the Domestic Violence Prevention Council.

96 Conducted with DJACS, the AFP, the Australian Institute of Criminology and Council on the Ageing.

- Reviews of legislation including on domestic violence and protection orders, children & young people, bail and sexual offences, restorative justice (2003), and
- Legislative Assembly inquiries into criminal injuries compensation/ financial assistance (1998, 1999 and 2003).

15.6.6 Provisions Enabling Information Disclosure and Exchange

The effective management and resolution of enquiries or complaints to the VoCC is significantly affected by access to information. Some of the information sought is as rudimentary as an accurate date of the incident alleged. Other information requests are more complex as they go to the formation of a view on the rationale for an agency's decision.

Both government and non-government agencies are rightly concerned that their exchange and disclosure of information has a lawful basis. Section 6(1)b of the *Victims of Crime Act 1994* provides that a person must, as far as practicable, give information that they reasonably believe is required by the Coordinator for an investigation. Section 6(2) provides a measure of immunity to a person providing information to the Coordinator. Section 9(2) provides that a person must provide information for the purposes of an investigation of an allegation of a breach of the Governing Principles.

Over the years these provisions have been barely adequate to enable the VoCC to effectively discharge her obligations, and barely adequate to protect those from whom the information is sought. A strict application of the provisions of the Act to enable effective information exchange to resolve a matter would require that the VoCC formally declare the enquiry is a section 9 investigation.

15.6.7 System Advocacy⁹⁷

The concept of '**advocacy**' responds to an understanding that "many people in society are disempowered by systems which have a significant effect on almost every aspect of their lives."⁹⁸ An advocate speaks or acts on another's behalf to secure them enhanced rights or to bring about a beneficial change in their life.⁹⁹ Advocacy – in particular individual advocacy - describes actions taken to:

1. Safeguard people who are vulnerable.
2. Enable people to express their needs and make their own decisions.

⁹⁷ Extracted from the Victims of Crime Coordinator, *Annual Report 2005-2006*, Canberra, pp.5-10.

⁹⁸ Extracted from *Principles and Standards of Independent Advocacy Organisations and Groups*, Advocacy 2000, located at www.siaa.org.uk

⁹⁹ Henderson, R. & Pochin, M. (2001), *A Right Result: advocacy, justice and empowerment*, Bristol, The Policy Press.

3. Access information for and enable access to information to explore options and participate in decision-making.
4. Speak without constraint on behalf of people who are unable to do so for themselves.

Systems advocacy, on the other hand, focuses on the 'best interests' of the constituent group as a whole, and comprises activities focussed on policy, procedural, service and legislative reform with agencies engaged in the administration of justice.

Statutory advocacy is established "when a degree of operating independence is seen to provide either objectivity or to promote efficiency".¹⁰⁰ The Uhrig Review (2003:31) identified a number of ways in which statutory authority¹⁰¹ contributes to these outcomes being:

- The separation of specialised activities,
- Providing a narrow and clearly defined set of functions,
- Establishing a degree of independence, and
- Creating a distinct body to deal with cross-portfolio matters.

The Uhrig Review noted that through such establishment, "*Government can allocate dedicated resources to achieving specific functions. This provides confidence for the Parliament, the Government and the community that sufficient commitment and resources are being provided to areas of specialisation.*" (2003:31)

Statutory advocacy for victims of crime therefore reflects recognition by the ACT Legislature and community that these interests are so important to the administration of justice that they should be recognised and set down in law. It further recognises that in the justice system nothing happens without authority in law or legitimacy granted through statute.

In July 2007, the VoCC was been given responsibility for the administration of certain services to victims of crime including of the Victims Services Scheme. The differentiation necessary between this administrative responsibility, advocacy for victims in the administration of justice and the oversight and complaints resolution functions of the statutory position will need greater clarification over time and should form part of a review of the *Victims of Crime Act 1994*.

100 Uhrig Review (June 2003), Review of Corporate Governance of Statutory Authorities and Office Holders, Commonwealth of Australia, 0.31.

101 The Victims of Crime Coordinator's position is defined as an 'entity' under sections 196 and 226 of the Legislation Act. A 'position' is taken to include an 'office' as an 'entity'. The VoCC position and office is not a 'statutory authority'.

PART 3: PROBLEMS AND ISSUES



PART 3:

PROBLEMS AND ISSUES

16. OVERVIEW OF VICTIM COMPLAINTS/CONTACTS

16.1 Of the 4,000 enquiries received by the VoCC Office over the last 12 years, nearly all have been within the general jurisdiction of the *Victims of Crime Act*. In the vast majority of instances, people have called the VoCC Office with a problem that they would like sorted or indeed with a problem that they didn't fully realise was one. The average citizen does not know of his or her rights in such a specialised area unless it was necessary for them to do so.

16.2 The contacts with the VoCC from victims of crime, their family and friends will not necessarily be typical of all victims of crime. There is no simple way in which the VoCC or Heads of Agencies can conclude that the concerns reflected in this report are typical or atypical.

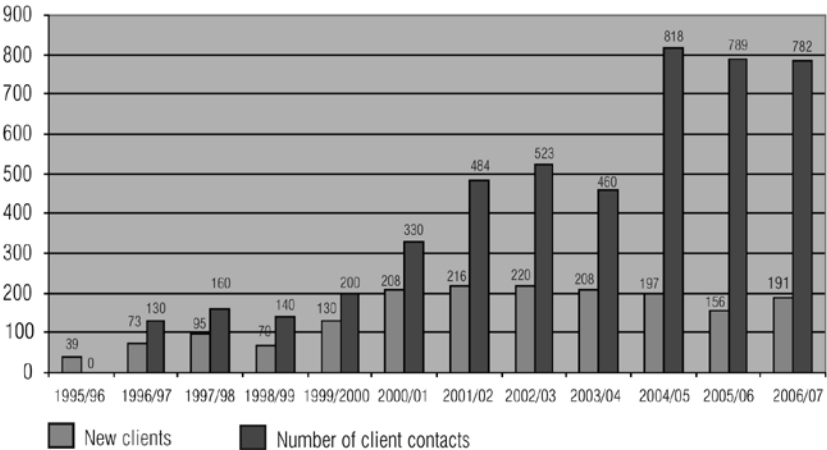
SNAPSHOT PROFILE OF CALLERS

- Since 2001, the average number of client contacts per year is nearly 820.¹⁰²
- About half of the calls each year relate to new clients.
- On average since 1995, approximately 37% of callers are male and 63% female.
- While the majority of matters relate to adult victims, about 17% on average per annum relate to child victims.
- The proportion of Indigenous clients has varied from a high of 5% pa to 1%.
- Similarly, the proportion of callers from non-English speaking backgrounds has been as high as 5% and as low as 2%.
- The type of incident experienced by the caller is typically an assault matter (58%).
- Sexual assault is the next most common incident for callers being 19%.
- About 6% of matters per year relate to property offences such as criminal damage or motor vehicle theft.
- The majority of callers know the perpetrator either as ex-partner, partner, neighbour or known other.

NOTE: Since 2000, the VoCC Office has been staffed by two people including the coordinator.

¹⁰² From 2004/2005 a new method of counting contacts was instituted. All contacts in all files were counted rather, as in previous years, those on caller contact sheets.

Chart 8: Victims of Crime Coordinator’s Office—Number of new clients alongside number of contacts made



Source: ACT Victims of Crime Coordinator’s Office

16.3 In general it can be said that the discourtesies and exclusions all too typically experienced by citizens as complainants or victims of crime appear to be treated, even by good governance authorities such as the Ombudsman, as normal and routine practices of agency cultures far removed from expected standards of customer service (Zauberman 2000, Shapland 2000). These omissions throw into some doubt the “constitutional perspective in a liberal democracy” that there exists a relationship of “reciprocal responsibility between the courts and the public” (Parker 1998:15).

16.4 Since 1996, the numbers of calls to the VoCC that relate to police response are over three times those regarding prosecution. It must be noted, however, that police deal with far more crime victims on a daily basis than does the Office of the DPP. The most common problem articulated by callers is for information.¹⁰³ Information is, of course, critical to the second most common area of complaint. That is, that the victim has been left out of the criminal justice process.

103 See also, Maguire, M. (1985), “Victims’ Needs and Victim Services: Indications from Research”, *Victimology*, vol.10

KEY INFORMATION NEEDS OF VICTIMS OF CRIME

- Status of the investigation and its outcome,
- The nature, process and constraints of investigative practice,
- Victim rights and entitlements,
- Information to help prevent future victimisation,
- Sources of support and protection,
- The nature of the criminal justice and prosecution process, and their role as the victim/witness,
- Decisions regarding the charge, bail, prosecution, plea, appeals and so forth,
- The court process, dates, locations and support for court,
- What opportunities exist to participate in the process such as bail, victim impact statements, pre-sentence reports and parole,
- Court outcomes and their implications, and
- Probation, corrections, parole management and license management, and the implications.

16.5 Central to the problem of information provision (or notification) to victims is the fact that no agency engaged in the administration of justice in the ACT—police, prosecution, courts or corrections—have systematic means of **delivering** their legislative obligations to every eligible crime victim. Neither do they have the means to require individuals to **record** the interaction, to **monitor** their compliance, or to produce global data on **performance** for the purposes of evaluation.¹⁰⁴ This is, of course, in large part a resource issue and one that demands leadership from Government and Heads of Agencies.

1.6 Developments in other jurisdictions have attempted to address this systematic failure through a variety of measures including:

- A 'one-stop shop' arrangement (UK),
- An 'opt-in' process whereby a notified victim can elect to be placed on record to receive information (WA DPP),
- Referral of certain matters with consent (WA Police & WA VSS, UK police and VSS),
- Witness Care Units whereby specialist staff from police and prosecution co-locate and act as a central source of information (UK),

104 Holder, R. (2001), "Band Aid Or Big Stick: Legislation as a Means of Changing Criminal Justice Responses to Victims of Crime", Paper for the *Empowerment After Trauma National Conference*, Brisbane, May 2002.

- Victim help-cards or booklets for distribution by police attending and incident, or in follow-up (NSW, ACT),
- Victim Notification System being web-based, toll-free phone or e-mail registration and notification systems related to federal and state offenders (USA), and
- Victim registers for parole and/or other sentence administration (most jurisdictions).

16.7 The UK appears to lead in this and many other areas of reform in the criminal justice system. A central and cross-departmental Office for Criminal Justice Reform (OCJR) provides major strategic policy, program and research leadership (Appendix E for more information). Local Criminal Justice Boards bring together representatives of key justice agencies to implement the policies and programs. The national *No Witness No Justice* program implemented since 2004 is a central element in the reform program.

16.8 An individual's upset at a perceived disrespectful attitude of an officer, a person's distress at the lack of follow-up following provision of a complaint of alleged criminal conduct, and a victim's confusion as to what happens next in the criminal process are all common calls to the VoCC Office. As German research into this area concluded (1991) - if you don't think it necessary to keep someone informed, then you don't. And strictly speaking to process a criminal allegation does not require a victim to be kept informed.

16.9 Since 1996 some complaints raised by victims have been and remain consistent. Other areas of complaint have been responded to with agency initiatives and, as a consequence, have dissipated. In particular the ACT Family Violence Intervention Program has created a high level of support and case management for victims of family violence. This has reduced the level of complaint to the VoCC from victims of family violence about the adequacy of responses from agencies engaged in the administration of justice. Successive initiatives from ACT Policing addressing residential burglary such as Operate Anchorage and Operation Halite have served to improve responses to victims of this offence and so reduced the level of complaint to the VoCC.

17. CHARACTERISTICS OF COMPLAINANTS

17.1 The data collected dates back to 1995 when the position of Victims of Crime Coordinator was first established. Since that time the Office of the Victims of Crime Coordinator has seen a steady increase in the number of new clients each year. Since 2003-04 the numbers of new clients have plateaued with the number of contacts per client increasing. This trend reflects the increasing complexity of advocacy for crime victims within the criminal justice system. The increase in the number of contact per person reflected from 2004-05 results from a more thorough analysis of files within the VoCC Office and therefore a more accurate reporting of the level of engagement with the individual victim of crime.

Victim Characteristics (Charts 9 and 10)

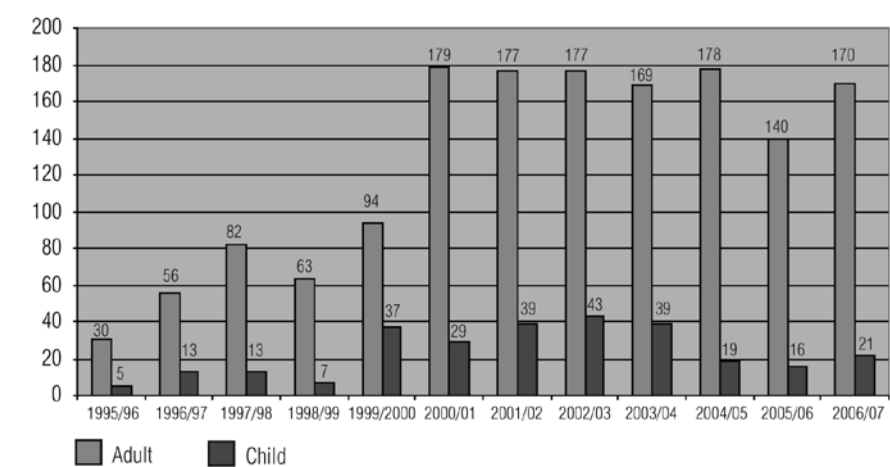
The data collected in this chart relates to the gender and age of the victim. The majority of clients is female and almost doubles the number of male clients. Most calls are in relation to adult victims.

CASE 1: Debra had been the victim of severe violence at the hands of her husband, Tom. Despite the level of violence she had always been reluctant to involve police. Eventually, following one incident where Tom attempted to drown her, beat and kicked her repeatedly, Debra managed to escape to a neighbour. The neighbour called the ambulance and the police. Tom was ultimately convicted and given a term of (suspended) imprisonment.¹⁰⁵

The majority of callers are the primary victim of crime but the Office also receives a substantial number of calls from family and friends of the victim. Parents calling on behalf of their children (young or adolescent) make up a substantial proportion of the calls received from those other than the primary victim.

¹⁰⁵ All case examples provided in this report are actual cases reported to the VoCC Office. All names and some details have been changed to protect individual privacy.

Chart 9: Victims of Crime Coordinator’s Office—Number of new clients: ratio of adult to child



Source: ACT Victims of Crime Coordinator’s Office

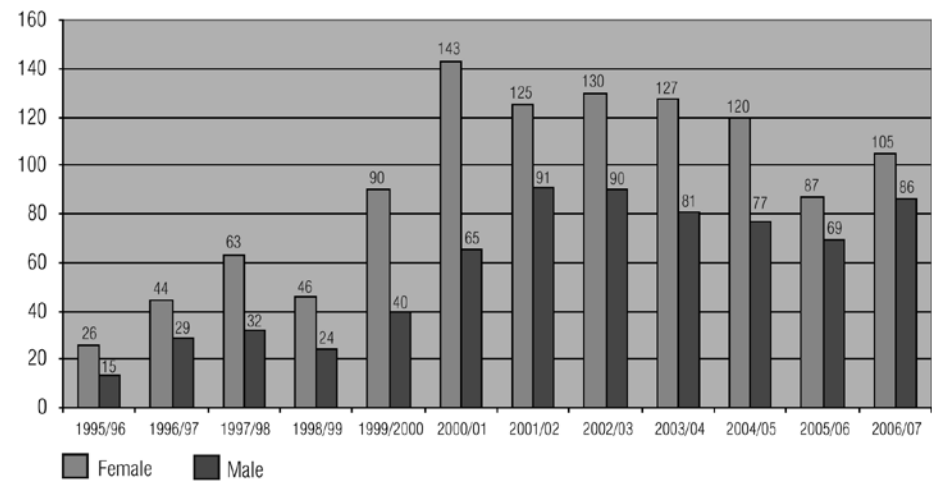
CASE 2: Sarah called on behalf of her son, Sam, who had been assaulted by other men outside of a nightclub some months previously. Sam had suffered head injuries and had been taken to hospital. The extent of his injuries necessitated significant time off from work. Sam also needed remedial dental treatment. Sarah was concerned that her son was not coping as he was not going out as previously, had mood swings and could not concentrate on his job.

A significant proportion of the adults, particularly female, make contact in relation to recent incidents of sexual assault. A proportion of sexual assault matters, and for nearly all males in this category, related to adult survivors of childhood abuse.

CASE 3: Penny had been the victim of childhood sexual and physical abuse committed by her brother. Penny said that the abuse changed her whole personality and character. Her school grades dropped, she began to self-harm and engage in risky behaviours, ran away from home and used drugs. She now had children of her own and a relationship that she wanted to work. Penny asked for help to do this.

Male callers make up a large proportion of assault victims with young males making up the majority of the total sum of male victims.

Chart 10: Victims of Crime Coordinator’s Office—Number of new clients: ratio of male to female



Source: ACT Victims of Crime Coordinator’s Office

Statistics on the number of those callers that are Aboriginal and Torres Strait Islanders or from non-English speaking backgrounds are only recorded if the caller identifies themselves or is otherwise identified as belonging to one of these groups. Clients who identify as being of Aboriginal or Torres Strait Islander descent have fluctuated from 1% to 5% of total annual clients. The Office provides victim advocacy for victims whose matter has been accepted for sentence within the Ngambra Circle Sentencing Court.

CASE 4: Angela’s daughter, Penny, had been subject to an act of indecency committed by a cousin. She said that she and her daughters were subjected to hostility and harassment from the offender’s family. Angela felt unsupported by others in the Indigenous community and left the ACT to join relatives’ interstate. The move involved significant social, material and financial disruption for the whole family.

Clients from culturally and linguistically diverse backgrounds have also fluctuated from 1% to 5% of total annual clients.

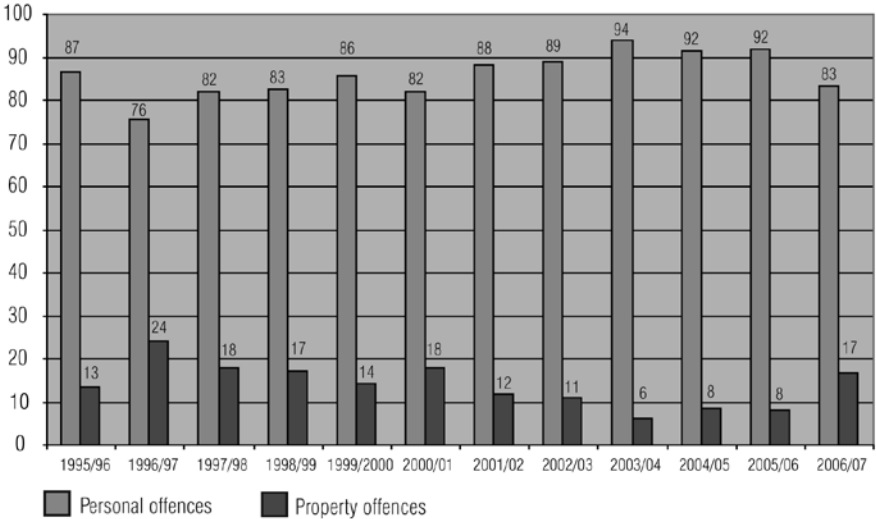
Victim/offender relationship

The majority of clients of the Office knew the identity of the offender. Approximately half of callers identified the offender as either their partner, ex partner or family member and this reflects the high number of family violence incidents that clients’ enquiries related to. The high proportion of offenders known to victims also relates in part to the number of non-

family violence assault and sexual assault incidents. Offenders who are “known others” include where the victim either knew the offender prior to the incident such as a neighbour or fellow student. Where the victim does not know the offender, the offence is likely to be burglary, stranger assault, robbery and theft.

Type of incident (Chart 11)

The vast majority of calls received by the Office relate to personal crimes. (See Chart 11) Approximately 83% of calls received over the last 3 years related to personal crime.



Source: ACT Victims of Crime Coordinator’s Office

Many callers identified more than one offence committed against them. In some cases several people may have been the victims of one offence (eg armed robbery).

Most calls were from clients who had been the victim of an assault. Of this group approximately half had an injury that required medical attention. In the main, where the caller was an adult female, the assault was identified as a family violence matter. Victims of family violence often also reported incidents of threats, harassment including stalking and property damage by ex partners.

Young males made up a large proportion of assault victims. The proportion of young males assaulted by strangers and the proportion assaulted by someone known to them were broadly similar. Common features of stranger assaults include:

- The attack occurred at night in clubs/nightclubs or on the street in the vicinity of these sites;
- There was usually more than one offender involved in the attack,

- The circumstances, especially where involving a group of people and the unwillingness of bystanders to provide statements, made police investigation difficult, and
- The victim feared some form of retribution.

Commonly the incidents involved extremely vicious physical assaults often committed by a number of offenders and resulting in significant physical and psychological injuries. However, while young men were willing to receive medical attention for their physical injuries, they were often reluctant to access support and counselling services available to them. Many spoke about how unprepared they were for the impact of the offence on all areas of their life.

CASE 5: Andrew was training to be a chef and worked at a restaurant in the city centre. Leaving work late one evening he was set upon by a group of other young males. Andrew's jaw was broken and cheek fractured. He needed significant dental treatment and suffered headaches for months afterwards. Andrew's taste buds appeared affected by the injuries and he feared for his future vocation as a chef.

Many of the assault victims contacting the Office also made enquiries in relation to obtaining a protection order against the perpetrator or to find out the conditions of the offender's bail.

Enquiries from sexual assault victims made up the second highest category after assault victims. These victims were mostly female and had been victims of a recent assault or victims of childhood sexual assault and may have only recently disclosed or reported the matter to police. The majority of callers knew the offender and identified them as an ex partner, family member or family friend. These callers also included some that still had not reported the incident to police.

CASE 6: Patrick had been the victim of acts of indecency committed against him by a person active in the community. After some months, he told his parents about what had happened. Not until some years later, when he learned that the person was still doing community work with children did Patrick decide to report his allegations to police.

Enquiries where the offence constituted harassment, threats or stalking were the next highest category that the Office received. Many of these were related to family violence matters. Other victims of these offences were often high school or tertiary students, or neighbours.

CASE 7: Harry was in his first year of college when he was attacked by a group of youths who attended the same college. The incident took place just outside of the school grounds. As a result of the assault, Harry suffered injuries to his head and body. He felt unable to return to the college so transferred. Nonetheless his study grades dropped significantly as he experienced headaches, panic attacks and an inability to concentrate. Assessment showed that he suffered a minor long-term brain injury.

In many incidents of harassment (including stalking), evidence for the offence can be difficult to obtain as the offender(s) usually engages in the behaviour when the victim is alone or the offender has left the scene by the time police arrive. This can make it difficult for police to identify a suspect, to form a belief on reasonable grounds that an offence has taken place and to locate evidence sufficient to warrant a criminal charge. Sometimes the only avenue for a victim is to make an application to the Court for a protection order. Then problems occur in enforcing the order.

Often where a neighbour engages in harassing and intimidating behaviour, victims are not confident about approaching the perpetrator themselves and may be reluctant to report to police for fear of the consequences. Sometimes the victim perceives that there are mental health or drug and alcohol issues involved for the perpetrator. In a significant number of cases both the offender and victim are tenants of Housing ACT. In recent years, improvements to Housing ACT tenant case management, initiatives to address safety in public housing, and police referrals to support services has reduced the number of these types of call to the Office.

CASE 8: Stephen and Dawn lived in an outlying suburb. They complained that youths in the neighbourhood were committing numerous incidents of criminal damage, harassment and anti-social behaviour. They and other residents were intimidated by the youths. Stephen and Dawn were scared about reporting the incidents or applying for a protection order because they had heard about another resident doing so and then being targeted by the youths.

Burglary, robbery, armed robbery and theft was the next highest category of calls received by the Office. Of particular concern are offences such as armed robbery that target young people working in locations such as fast food outlets, petrol service stations and local supermarkets. Young people in this situation typically are casual workers without recourse to the usual employee entitlements to assistance and without the knowledge and

capacity to claim these entitlements through the usual advocacy services of trade unions and/or community or legal services. Slightly similar though different issues arise for the small owner-operator of a local business, for example, newsagent, pharmacy or post office in suburban locations.

Police action

The client calls to the Office do not reveal a particular pattern with regard to the distribution of problems and complaints across stations within ACT Policing. The two substantive and inter-related problems that callers have about police are the lack of case status information and inadequate or non-existent feedback. This has substantially improved in those offence areas where resources and effort have been targeted. Notably for family violence and sexual offences. However, it is not an infrequent complaint to have victims stating that they have called numerous times, left messages and not been responded to. The next most common area of complaint relates to the victim's perception of the adequacy and thoroughness of the investigation.

CASE 9: Chris experienced an assault from his neighbour within a context of previous disagreement. He left 6 messages over a number of weeks in an effort to speak with the investigating officer to provide information about the injury he suffered.

Court action

The data on the number of prosecutions is only recorded where the victim has disclosed the information or where the information relates to the nature of the problem raised. Very many victims have ill-informed views about the court and prosecution process that are sometimes derived from television. Many also are under the impression that they "lay charges" against an alleged offender or decide to "drop charges". Many are also concerned about the consequences of giving evidence against someone they know such as an ex-partner, family member or work colleague.

CASE 10: Jasmine was the victim of violence by her husband. She was very reluctant to give evidence at court against him. She said that she feared he would go to prison, that his family were making it hard for her and she just wanted him to get help.

Referral Patterns

The majority of clients to the Office are self-referrals. Most state that they found the contact information in the phone book. Clients are also referred by the police, prosecution and court staff. Victim services such as the

Victim Services Scheme, VOCAL and the Domestic Violence Crisis Service also refer clients to the Office.

Type of contact

The majority of contact by and communication with clients by the Office is through telephone. Office interviews, court attendance and 'drop-ins' take place less frequently but remain common. The majority of clients call once for information requiring a call back after enquiries are made. A growing and substantial proportion of clients have a higher level of need or multiple issues that generate a case management approach and consequently a larger number of contacts over months. These cases may require the involvement of other agencies where the VoCC will coordinate the information and responses.

VOCC Action

Many clients had more than one query that related to their particular incident. This included general information about their rights, the criminal process as well as information regarding the financial assistance scheme. A significant proportion related to case status enquiries. In many cases the VoCC made enquires on behalf of clients and mostly of the police. Referrals and protection order enquiries made up a substantial sum of the action taken by the VOCC.

Factors including the nature of the complaint and perceived and articulated interests of the complainant will influence whether the VoCC action is to conciliate, to formally seek a review of the complaint by the agency, or to conduct an independent investigation.

CASE 11: Dennis was wounded with a knife and hospitalised for 3 days. The person charged with a number of offences was referred to the Mental Health Tribunal. After several adjournments, the more serious charge was not proceeded with and the lesser charge dismissed under s334 of the Crimes Act 1900. Dennis contacted the Office when he could not get a response to his telephone calls. The VoCC located the relevant information and provided it to Dennis. The VoCC sought a review of the matter by the Director of Public Prosecutions and found that, contrary to the *Victims of Crime Act 1994*, the victim was neither consulted nor advised about the decision to modify the charges, and nor was he advised about the outcome of proceedings. The Director acknowledged the oversight, drew attention to some procedural and resource shortcomings and apologized to the complainant. There is no requirement to inform or involve the victim of an offence of proceedings under the Mental Health (Treatment and Care) Act 1994. This issue was included in a submission by the VoCC to a review of the Act (2006). Two years after the incident Dennis remains unable to resume his studies at a technical college.

18. NATURE OF COMPLAINTS/CONCERNS

18.1 Complaints about the adequacy and thoroughness of police investigations appear to wax and wane. In the 5 years from 1996, those offence areas where this type of complaint was most commonly heard were in the areas of residential burglary and domestic violence.¹⁰⁶ Since that time, police in particular have invested considerable strategic and structural resources to these two offences areas notably through Operation Halite (property crime) and Operation Glean (the Family Violence Intervention Program).

18.2 Since 1996, the main concerns raised by clients with the Office of the Victims of Crime Coordinator have included:

- Lack of case status information from police & prosecution.
- Absent or inadequate follow-up provided by police.
- Perception that the investigation has been cursory and inadequate.
- Inadequate information about their rights, responsibilities and role within the criminal justice process.
- Inadequate information from and contact with the prosecution including about appeal processes.
- The process of charge negotiation determined without reference to the victim.
- Lack of information about and support at court.
- The time taken to finalise a matter at court.
- A perception that the victim's voice and interests are not heard nor represented at court.
- Mixed views about the adequacy or otherwise of sentences imposed.
- Lack of or no information about the implications of the outcome of a matter.
- No or inadequate information about victims rights.
- Discourteous, inappropriate and unprofessional remarks to victims.
- Lack of information or notification about escapes from custody or changes to an offender's management.

106 Holder, R., Payne, J. & Makkai, T. (2004), *Crime Victims and the Prevention of Residential Burglary*, ACT Department of Justice, Canberra, found that of the victims who were dissatisfied with police response, 47% said it was because they were "not thorough/professional in investigation".

18.3 Criminal justice agencies in the ACT notably ACT Policing, the ACT Director of Public Prosecutions and ACT Corrective Services have all made strenuous efforts over the years to respond to the concerns that victims – directly or through the VoCC – have raised. These three agencies in particular have all established specialized positions or units to enable them to respond on a more consistent basis to victims and their families.

19. ADHERENCE TO THE VICTIMS OF CRIME ACT

19.1 The absence of routine and robust mechanisms to provide victims with their 'rights' within the justice process, and the absence of means to monitor and report on the delivery means that consideration of adherence to the Act can only be anecdotal. By anecdotal is meant, analysis of those cases brought to the attention of the VoCC by victims and by persons assisting victims. Where empirical evidence exists, such as through research, these will be commented upon.

Governing Principle (a)

A victim should be dealt with at all times in a sympathetic, constructive and reassuring manner and with due regard to his or her personal situation, rights and dignity.

This provision predates the *Human Rights Act 2004* (ACT) that sets out fundamental principles for human dignity and equality.

CASE 12: The family of a homicide victim reflected how sensitive and compassionate the investigating officers were over the early days of the investigation in so many small ways. They were particularly impressed and grateful that this level of support continued over the months of the criminal proceedings. The principal investigator still makes contact with the family every so often.

This principle is difficult to measure. Some research conflates this 'right' with measurements of satisfaction with authorities. The ACT research into the experience of victims of residential burglary found that 88% of victims were satisfied or very satisfied with police response. 26% stated that the reason for satisfaction was the police sympathy for the victim, while 4% stated that it was because police conveyed outcome information to the victim.¹⁰⁷ The 2001 evaluation of the Family Violence Intervention Program (FVIP) found that 74% of victims were satisfied or very satisfied with police response.¹⁰⁸ Of the 18% of victims who were dissatisfied or very dissatisfied with police response some commented on the lack of understanding or sympathy.

In cases brought to the attention of the VoCC, a proportion of victims spoke about inappropriate comments made to them by criminal justice personnel and the impact of those comments on them. Victims are often in a fragile state and what may seem a harmless comment by professionals can cause

107 Holder, R., Payne, J. & Makkai, T. (2004), *Crime Victims and the Prevention of Residential Burglary*, ACT Department of Justice, Canberra, pp.32-35.

108 Urbis keys young (2001), *Evaluation of the ACT Family Violence Intervention Program Phase II*, Commonwealth of Australia, Canberra, pp74-76.

a great deal of anguish to victims. It is important to victims that their issues are taken seriously and an inappropriate comment can make a victim feel that their complaint is not being taken seriously.

Many victims also spoke of the frustration they felt at not being believed by police because of the lack of evidence. Some felt that the attitudes of justice practitioners related to whether they were a 'good' victim or a 'bad' victim.¹⁰⁹ A 'bad' victim being a person who made too many demands, who might have mental health or substance use problems, who might have complained previously, who had a prior criminal record, or who was not polite and respectful (all relate to cases brought to the VoCC).

CASE 13: Jacob had been in trouble with police before on a number of occasions over his drug use and petty offending. He was trying to turn his life around and had enrolled at CIT, and was accessing drug and alcohol services. When he was assaulted by an acquaintance he felt that the officers jumped to conclusions that he was at fault. "They spoke to me like I was a pig" he said. Jacob enlisted the support of the Office to make a full statement. This took some months. Eventually the matter resulted in a person being charged and convicted. Jacob remains 'clean' and is doing community work.

In addition, in myriad ways large and small, justice practitioners from constables to judges can act with courtesy or contempt, and can demonstrate professionalism or arrogance in their dealings with the people who come before them. In the majority of circumstances, proper conduct prevails. There are others, however, where practitioners and judicial officers overlook that what is their daily reality and familiarity with language and procedure, is an occasion of great stress and confusion for the average citizen – victim or offender.

CASE 14: When inviting a person to make their Victim Impact Statement, the judicial officer acknowledged the person by name, acknowledged the stress of the occasion, and ensured the person understood the nature of the proceeding and had a glass of water. The judicial officer listened attentively. On completion of the VIS the person was thanked for their contribution. The judicial officer made careful mention of key aspects of the VIS in sentencing remarks.

109 For a discussion on this issue see McFarlane, A. (1996), "Attitudes to Victims: Issues for Medicine, the Law and Society", in *International Victimology: selected papers from the 8th International Symposium*, Australian Institute of Criminology, Canberra.

CASE 15: A justice practitioner had assisted a child to make a Victim Impact Statement. The person was careful to use the words and phrasing that the child had chosen. The judicial officer declined to accept the VIS on the grounds that it was not comprehensible.

Governing Principle (b)

A victim should be informed at reasonable intervals (generally not exceeding 1 month) of the progress of police investigations concerning the relevant offence, except where such disclosure might jeopardise the investigation, and, in that case, the victim should be informed accordingly.

The VoCC report on *Police Responses to Sexual Offences* (2002), the evaluations of the FVIP (2000 and 2001) and the burglary victim research (2004) all included complaint regarding police follow-up of victims. Of those burglary victims dissatisfied with police response, 11% indicated that it was because outcomes were not conveyed to them.¹¹⁰ Of those family violence victims dissatisfied with police response, many were critical of the lack of information or follow-up.¹¹¹

The lack of follow-up on the investigation or charge proceedings is a most common issue raised with the Office of the VoCC Coordinator. This includes lack of information about the investigation itself, whether the offender had been identified or charged and the conditions of bail. In addition many clients are not advised of the date the offender was to appear in Court. This omission can effectively deny a victim the opportunity to submit a Victim Impact Statement or to seek financial restitution upon conviction.

CASE 16: Theresa is proprietor of a small suburban business. A person committed acts in relation to this business that constituted fraud. The defendant was charged with this and related offences. Contrary to the Victims of Crime Act 1994, the victim was not kept informed of the progress of investigations, was not advised that a person had been charged and only found out about the outcome of proceedings through newspaper reports. As a consequence, the proceedings finalised before Theresa could have a reparation request and a Victim Impact Statement considered by the sentencing Court. This matter was one of a number that raised systemic issues about procedures to notify multiple victims of one offender under a major

110 Holder, Payne and Makkai (2004), p.34.

111 Urbis keys young (2001), p.74.

police operation, and about the inadequacy of procedures for routine inclusion of information in relevant matters for court to do with material and other loss suffered by victims. Actions have been taken by the VoCC to seek changes to practice and procedure in both police and prosecution. In addition, submissions were made as part of the Government's Sentencing Reform. Nonetheless, the victim suffered significant loss through the failure to document that loss and to put that information to the court at sentencing.

The proviso "except where such disclosure might jeopardise the investigation" provides important protection to officers engaged in an active investigation. In some cases, it has transpired that a victim was themselves an offender in the matter alleged, or that both parties to an incident had been charged.

An administrative proviso was agreed between the VoCC and ACT Policing in 1996 whereby if no suspect was identified in an incident then police would advise the victim of this, make a case note entry and finalise the matter.

Keeping victims informed can be particularly difficult where there is more than one victim in relation to a repeat offender. A number of such cases that fell under Operation Halite were raised with the Chief Police Officer in 2004.

CASE 17: The Smith family had their house broken into and some items stolen from them including sentimental items that could not be replaced. Police attended. Then they heard nothing until, over two years later, they were contacted by the Parole Board to invite them to make a submission on a prisoner's application for parole. It turned out that the investigation had become subsumed within Operation Halite. The offender had been found to have committed a number of offences against other households as well as the Smiths'. The main interest of the Smiths was to know where the offender might have disposed of the sentimental items so they could be recovered. The request was conveyed to the parole officer.

While monthly updates to victims may seem reasonable, some matters generate a higher level of contact. This is especially for major matters such as sexual assault and or serious assault. The more numerous contacts are for the *purpose of the investigation* rather than for the reassurance of the victim. Some research suggests that this follow-up contact by police results in more in-depth intelligence and higher detection rates.¹¹²

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Depending on the nature and consequences of a crime, some victims will need to be reassured about conditions of bail or other protections, need to clarify procedures and may feel a need to ask a lot of questions as issues arise, particularly in the early days after the incident has taken place. While many victims understand the pressures and constraints placed on police, they may perceive a lack of contact as if their complaint has not been taken seriously.

Many victims spoke of the lack of information in relation to their rights or of services available to victims of crime. However on making enquiries of the police, the Office was often advised that the victim had been informed. It is clear that people in a state of shock or confusion do not retain information provided verbally. Written information provided at the time or subsequently is critically important.¹¹³

The ACT legislation does not contain a provision relating to victims access to information about services and other entitlements. The NSW, New Zealand, and South Australian victims legislation all contain provisions relating to access to information and services. Canadian and UK research suggests that this information is highly valued by victims.¹¹⁴ However, of those UK victims who reported an incident to police and wanted information from them only one-fifth of incidents received it.¹¹⁵ In particular victims wanted information about how to protect themselves and did not receive it.

Governing Principle (c)

A victim should be informed of the charges laid against the accused and of any modification of the charges.

Complaints from victims that they were not informed about a charge are more likely to be made in relation to property offences. In one residential burglary, the victim found out that a person had been charged some two years after the incident when contacted by the ACT Sentence Administration Board Secretariat with an invitation to make a submission to the parole board.

The critical issue here is of course that a person is effectively denied their legal rights and avenues of legal redress. Approximately 90% of criminal matters are finalized in the ACT Magistrates Court, and the majority of

113 Victoria DoJ (2005), pp.17-18.

114 Department of Justice (2005), *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada*, DoJ, Canada sourced at www.canada-justice.ca/en/ps/rs/rep/2005/rr05vic-1/index.html; and Ringham, L. & Salisbury, H. (2003), *Support for Victims of Crime: findings of the 2002-2003 British Crime Survey*, Home Office, Online Report 31/04, London.

115 Ringham & Salisbury (2003), p.4.

these are finalized by way of an early plea of guilty.¹¹⁶ Therefore, notification by police of a charge is time-critical. Once a criminal charge is finalized at court, it will not be heard again simply because a victim was denied their participation rights. As shown by Case 16, the failure to notify can and does lead to significant loss and a restriction to a person's rights at law.

The 2003 UK research identified that in only 30% of incidents did victims know that an offender had been identified although this increased to 72% where the offence involved violence. In 43% of instances a victim was aware that someone had been charged or cautioned. In 57% of these matters victims were aware that an offender went to court, and in 61% of these victims were told of the date of the trial or hearing.¹¹⁷

Further UK research in 2004 into 'cracked' or ineffective trials showed that 15% were the result of witness problems. The resulting 'No Witness No Justice' Program has shown promising results in increased witness attendance and a reduction in ineffective trials.¹¹⁸

Case 17 provides an example where victims were not told that a person had been charged. As a consequence they were denied the opportunity to seek information from the offender about the disposal of the sentimental items stolen from them, and further denied an opportunity to engage with the NSW Corrective Services Restorative Justice Program with the prisoner.

Significant problems on this 'right' further arise if the accused is a juvenile. The *Children and Young People Act 1999* protect and uphold the rights of children and young people, and restrict information about and access to children's court proceedings. There are anomalies and omissions however. In family violence matters, the victim is often a person with parental responsibility as is required to attend. The Act also provides that information may be disclosed by police to enable victims to apply for 'criminal injuries compensation'. Further, a juvenile committed to the ACT Supreme Court will not find the same restrictions for a closed court.

The question of modified charges is perhaps one of the most controversial areas for victims of crime. Many suspect this is where 'secret deals' with defense are made. This concern links with Principles (d) and (e).

Governing Principle (d)

A victim should be told 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 for leniency in sentencing.

¹¹⁶ Australian Bureau of Statistics, *Court Statistics*

¹¹⁷ Ringham & Salisbury (2003), p.10.

¹¹⁸ Home Office (2004), *No Witness No Justice: the national victims' and witness care program*, Cabinet Office, Office of Public Service Reform.

Governing Principle (e)

A victim should be told of any decision not to proceed with a charge against the accused.

It is the role of the prosecution to examine the brief of evidence provided by police and to review the charges laid.¹¹⁹ This review process is a critical element in the criminal justice system that provides a check on police authority, and ensures transparency and accountability. It is a very common and a usual aspect of criminal prosecution that defense counsel (or indeed a self-represented defendant) may make 'representations' to the prosecution that provides information on the allegations designed to throw doubt on the prosecution case. If the prosecutor, usually but not always in consultation with the investigator, forms the view that the representations are sufficient to undermine the prospect of conviction on one or more of the charges, then s/he is authorized to enter into communication with the defense.

The process known as 'charge negotiation' is widespread in all common law jurisdictions. Sometimes this is confused with the American term 'plea bargaining'. Certainly sentencing legislation and case law provide recognition to an accused who enters an early plea of guilty.

The prosecution and defense communication may result in one or more of the charges being dismissed or discontinued at Court with 'No Evidence to Offer' (NETO) or *nolle prosequi*¹²⁰, and a guilty plea to one or more of the remaining charges. Occasionally it may result in the whole matter being NETOed or discontinued.

The process is particularly troubling for victims because it can lead to perceptions that 'deals' are being done, and that the defendant can bargain his or her way out of full culpability. To the vast majority of victims the process is not transparent at all, and there is little or more usually no consultation with victims about it and its consequences.

The issue has been controversial in other jurisdictions notably NSW and South Australia where specific enquiries resulted from public and media controversy about certain cases. In NSW, the *Samuels Report* (2002) canvassed the practice and rationale for charge negotiation and, amongst others, recommended adequate prior consultation with victims.¹²¹

In South Australia, following controversy about the 2003 *Nemer* case, a report by Solicitor-General Chris Kourakis QC recommended, amongst

¹¹⁹ See Refshauge, op.cit.

¹²⁰ See for example, <http://www.lectlaw.com/def2/n061.htm>

¹²¹ Samuels, G. (2002), *Review of the NSW DPP Policy and Guidelines for Charge Bargaining and Tendering of Agreed Facts*, Sydney.

others, that there be “more prescriptive requirements as to consultations with victims and police and recording and reporting of negotiations should be adopted”.¹²²

The importance of independent prosecution decision-making cannot be overstated. It is, however, a decision-making process that has attracted its share of claims about the presence or absence of biases,¹²³ and perceptions about the pressure to negotiate a plea as a means of managing workload. The ACT Director of Public Prosecutions has been especially open to research designed to throw more light onto prosecution decision-making and to promote better understanding of its complexities.¹²⁴ He has also been firm in rejecting suggestions that prosecution decision-making on charge negotiations is influenced by resource constraints.¹²⁵ The controversy nonetheless continues.

Shapland (2000) has made the helpful distinction between victim involvement in the decision-making process as separate to the making of the decision itself. This is the point arrived at by Samuels and the NSW DPP. The NSW *Victims Rights Act 1996* was amended after the Samuels Enquiry to state that:

2. *A victim should be consulted before a decision any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm, mental illness or nervous shock to the victim, unless:*
 - (a) *the victim has indicated that he or she does not wish to be so consulted, or*
 - (b) *the whereabouts of the victim cannot be ascertained after reasonable inquiry.*

The NSW DPP Prosecution Guidelines were consequently amended to provide guidance to prosecutors.¹²⁶

Governing Principle (f)

If any victim's property is held by the Territory for the purposes of investigation or evidence-inconvenience to the victim should be minimized and the property returned promptly.

122 Attorney General's Press Release, 19 April 2004, Adelaide SA.

123 See, for example, Buzawa & Buzawa (1996).

124 See, for example Urbis keys young (2001) in relation to decision-making on family violence, and Leivore, D. (2004) on sexual offences.

125 Refshaug, R. comments to 2006 ACT Legislative Assembly Annual Report Hearings.

126 See <http://www.odpp.nsw.gov.au/guidelines/guidelines.html>

In a small number of cases brought to the attention of the VoCC this Principle has not been complied with. More frequently however, are frustrations that victims voice in having stolen property returned, or having stolen property returned that has been sold (presumably by the offender) to a second-hand dealers. Victims experience considerable difficulty in having such property returned.

In a smaller number of cases involving violence, it can be distressing for victims to have property returned that is in the same damaged state as at the time of the offence. That is, torn and bloody. Where a person has died as the result of the commission of an offence, the return of all property can be especially critical for surviving family and friends. In both types of circumstance, it is important for police to first discuss with the victim and relatives the state of the property and the impact of its return.

Governing Principle (g)

A victim should be told about the trial process and of the rights and responsibilities of witnesses.

Most victims of crime derive their impression about the trial process from TV shows that portray the American system of justice. Some common misconceptions include that:

- The victim is responsible for charging an offender or for withdrawing a charge;
- Victims in the witness box are commonly physically approached and hectorred by defense counsel;
- Juries exist in all courts; and that
- Certain evidence especially forensic or DNA evidence is routinely and rapidly available and, moreover, is infallible.

The first misconception in particular causes all manner of confusion and aggravation especially if the prosecution is minded to take a course of action that the victim disagrees with.

In the main, victims are not familiar with the process and the different methods of bringing a person to Court. Victims often do not understand why an offender has been summonsed to appear in court rather than being arrested. Nor are victims particularly familiar with the often-complex process once a matter is before the court.

Victims of crime may come into contact with many agencies after an incident has occurred including the police, prosecution, the Courts and various victim services. One of the issues often raised by victims is that of different advice received by them from different agencies. This can cause great confusion for a victim who already has to manage a variety of issues.

The lack of clear, plain English information hampers victims' access to justice in both the criminal and civil legal systems. Certainly victims who are vulnerable by reason of their age, cultural background, language ability, mental capacity or the circumstances of the offence itself need more than just general information. As stated above, the most rudimentary information about court dates, location and the name of the accused can be withheld from victims and thereby restrict the exercise of their rights and responsibilities.

The UK's £36 million investment in the national *No Witness No Justice* Program follows a number of experiments with different models of victim inclusion (see Appendix E). The program establishes new Witness Care Units to manage the care of victims and witnesses from the point of charge through to the conclusion of a case and to provide an enhanced service to victims and witnesses including:

- A single point of contact for victims and witnesses, communicating with them through their preferred means of contact where possible,
- A full needs assessment for all victims and witnesses in cases where defendants have pleaded not guilty, to identify specific support requirements, such as child care, transport, language difficulties and medical issues and to highlight areas of concern, including intimidation,
- Dedicated witness care officers to steer individuals through the criminal justice process and to co-ordinate support and services,
- Continuous review of victim and witness needs throughout the case by the prosecution and police, and
- Greater communication and contact with witnesses about cases including informing them of the case outcome or trial result, thanking them for their contribution to the case and offering post case support from the relevant support agency.¹²⁷

Governing Principle (h)

A victim should be protected from unnecessary contact with the accused and defense witnesses during the course of the trial.

Managing victim protection from an accused and defense witnesses in both the Magistrates and Supreme Courts can be challenging, in the latter more so. Staff, security and bailiffs at both Courts are routinely responsive to requests for assistance in locating waiting space for victims and their families.

Some victims welcome the opportunity to see and look at the accused inside the courtroom, and others seek protections, where available, provided by CCTV. The discretionary nature of the latter has resulted in

¹²⁷ Sourced at www.cps.gov.uk

instances where judicial officers have declined to concur with prosecution requests for the victim to give their evidence by remote. For example, in one case of historical child sexual abuse where the victim/witness was now adult, the judicial officer commented that she was old enough to confront the accused.

However, it is clear that the availability, workability and comfort of CCTV in both Courts are routinely below acceptable standard. Developments in other jurisdictions with more up-to-date technology suggest that a review and upgrade of ACT facilities is overdue.

Governing Principle (i)

A victim's residential address should be withheld unless the court directs otherwise.

It is now standard practice that a victims' address is withheld from the statement they make to police. Police and prosecution briefs also secure personal details of victims and witnesses. However, there is nothing that prevents a magistrate or judicial officer from saying the address in open court.

CASE 18: Daniel had his mobile phone stolen by youths who jostled and pushed him during the incident. The youths went to the same school as Daniel. His mother contacted the Office to express her concern about possible retaliation, and about seeking a reparation order for the loss of the phone. The Office contacted both the investigator and the prosecutor to ensure Daniel's home address was not on any documents that might be seen by defense. As only one defendant out of the group was convicted, the Magistrate determined that a pro rata amount could be paid in reparation, but declined to determine a repayment schedule. The prosecutor, in reading the statement of facts, read out the victim's full name and home address in open Court.

In some other jurisdictions, the privacy provision in victims' legislation extends to phone numbers.

More problematic has been that victim personal details have not been recorded by police and are not made available to others engaged in the administration of justice. In essence, this has generated considerable practical difficulties. The VoCC has pressed the AFP and the Attorney General on this issue for the past ten or so years. Indeed, the ACT Police Board also took up the issue. Since 2005, enhancements to the AFP computer, PROMIS, have commenced that at least provide a module for the information to be recorded.

Following on from the need to record certain information is the exchange and sharing of that information. This is an area of considerable complexity. Information disclosure is generally guided by the National Privacy Principles (2000) and other legislation. Section 136 of the *Crimes (Sentencing) Act 2005* provides authority to enable certain victim information to be exchanged. This is limited to agencies' responsibilities in relation to an offence including an alleged offence and does not cover all information for any purpose. Section 136(2) provides that a criminal justice entity may give the information to another criminal justice entity for the purposes of the other entity. However, there remains a policy and procedural vacuum to this information exchange around victims that limit the usefulness of these provisions.

Governing Principle (j)

A victim should not have to appear at preliminary hearings or committal proceedings unless the court directs the victim to appear.

The question of committal proceedings is controversial in some victim of crime literature, notably that for child sexual offences.¹²⁸ However, no cases have been brought to the VoCC attention in this regard. The 2005 joint report by the ACT DPP and ACT Policing into sexual assault and the response of the legal system did, however, identify some areas for reform of procedure.¹²⁹

Governing Principle (k)

A victim should be given an explanation of the outcome of criminal proceedings unless the court directs otherwise.

Governing Principle (l)

A victim who is known to have expressed concern about the need for protection from an offender should be informed of the offender's impending release from custody.

For many victims the matter is not finished at the time that court proceedings are concluded. They may still have an interest in the nature of the sentence and its administration, and may still have concerns about their safety. There is a pervasive perception amongst many practitioners in the justice system that victims of crime who do express an interest in the administration of the sentence are somehow automatically suspect. The presumptions are that victims are punitive, vengeful and retributive,

¹²⁸ See for example, Parkinson et.al ((2002) and Gregory & Lees (1999).

¹²⁹ DPP & AFP (2005), *Sexual Assault: the challenge of change*, Canberra can be found at www.dpp.act.gov.au

and that somehow their interest is 'unhealthy' and affecting 'closure'. The empirical research on both counts says entirely the opposite.¹³⁰

CASE 19: Sara had her car broken into and her suitcase stolen. The suitcase contained special dance slippers and costumes. A young adult was apprehended and convicted of the offence. He was given a community-based sentence to accept the supervision of Corrective Services. Sara approached the Office to ask for an opportunity to explain to the person that, as a direct consequence of his actions, she lost the chance to appear for an audition for a performance in a neighbouring town and would anyhow struggle financially to purchase the special dance slippers. She said she just wanted the opportunity for the offender to see real impact on a real person. The Corrective Services officer regretfully declined stating that there was no legislative basis to enable them to facilitate this communication.¹³¹

The Principles contained in sections 7(k) and (l) have not been sufficient to allow victims to access information about the administration and management of a sentence where a person has been given a non-custodial sentence, or a custodial sentence that does not have a non-parole period.¹³²

Commonly, victims in contact with the VoCC Office did not know about the ACT Corrective Services' Victims' Register where they could place their name in order for them to receive information about a sentenced offender that is serving a custodial or non-custodial sentence and to ensure that they are informed of any application by the offender for release to parole or license. As ACT prisoners are usually located in NSW, victims may also need to register with both the ACT and NSW Parole Boards. For many years the arrangements between the jurisdictions were not rigorous as they could have been resulting in inaccurate or untimely notifications. This situation has largely been rectified in recent times.

130 See for example the International Crime Victim Survey results contained in Holder, Payne and Makkai (2003), 'Crime Victims and the Prevention of Residential Burglary', Canberra.

131 The *Crimes (Restorative Justice) Act 2004* now provides legislative framework to enable this type of communication to take place although that aspect relating to adults has not yet commenced.

132 The *Crimes (Sentence Administration) Act 2005* now provides that victims whose offender has received a community-based sentence may apply to be on the Victims Register and be provided with certain information.

CASE 20: The person convicted of physical and sexual offences against Jessica was sentenced to a period of custody and was placed in a prison in NSW. Jessica was initially informed that the prisoner was to be located at a particular institution. However, it transpired that he was taken to another location and that this had occurred prior to Jessica being given the wrong information.

Information about sentence administration, release and escape is very important to victims as in many cases it can assist them and their families who need to make future plans for their safety or need to relocate.

The legislation requires that a victim “*to have expressed a concern about the need for protection*”. However, victims often exist in a vacuum after the sentencing of an offender. There are no routine or rigorous mechanisms in place to enable victims to be informed about their rights, about the availability of a register exists, and assistance to enable victims to discuss the implications of the administration of a sentence.¹³³ Since the implementation of the *Crimes (Sentence Administration) Act 2005* there has been improvement in this area.

133 By the time a matter passes to sentence administration, a victim may have relocated. In the absence of centralised and comprehensive victim database this situation is likely to continue.

20. CONCLUSIONS AND RECOMMENDATIONS

20.1 The ACT *Victims of Crime Act 1994* has provided a framework through which members of the community and justice practitioners can consider the rights and responsibilities of victims of crime. The legislation has provided a vehicle to enable reforms relating to victims of crime in certain aspects of agency practice and in criminal procedure. It has also provided a backdrop to stimulate discussion and debate about the role of victims in the criminal justice system.

20.2 Since 1994 a considerable number and range of law and service reforms relevant to victim interests have been implemented in the ACT and elsewhere. Agencies engaged in the administration of justice have initiated a range of responses to assist and support victims, and in recognition of their importance to the delivery of justice in the ACT.

20.3 However, it is not possible to say whether the legislation has comprehensively addressed the problem of victim alienation from the fair administration of justice. Neither is it possible to say that a majority of victims in the criminal justice system receive their rights in a consistent and reliable manner.

20.4 Citizens of the ACT are expected to perform a function critical to the maintenance of our society. The concerns brought to the attention of the Victims of Crime Coordinator since 1996 are one important measure of how well and how routinely citizens feel they are supported and assisted to perform this function. On the basis of this report alone, many citizens unfortunately find their very interest in participating in the administration of justice treated with deep suspicion and subject to hostile questioning as to motive.

20.5 There are many problems—not least sufficient resources—that undermine the ability and capacity of justice agencies and the VoCC to respond effectively to victims.

20.6 It is now clear that the ACT *Victims of Crime Act 1994* is out-of-date. Reforms in other Australian and overseas jurisdictions have moved far beyond those in the ACT. The ACT Government's commitment to a public and comprehensive reform of the Act is very welcome.

20.7 Victims' inherent respect as citizens for the legitimacy of the justice system can be stabilised through consistent and dynamic procedural recognition and inclusion that is not mediated solely through their roles as a complainant or as a witness—so long as sufficient practical and other assistance is provided as a matter of course.

20.8 There are many deep and significant challenges facing the justice system in the 21st century in the ACT and in other Australian jurisdictions. A sophisticated and mature community is right to expect a justice system that is similarly mature and robust enough to rise to recognise victims as a legitimate party afforded all the rights and protections of other citizens, including the accused, in their access to justice and respect for their human rights.

20.9 The recommendations to this report are that:

- (a) The review of the Victims of Crime Act 1994 that has been announced by the ACT Government be a wide-ranging and thorough consideration of the attributes essential to enable members of the community who are victims of crime to engage with and participate effectively in the administration of justice, the extent to which victims' 'rights' can be strengthened and universally applied, and how these rights can best be protected and promoted.
- (b) The review should actively seek the views of victims of crime about their experiences in the administration of justice in the ACT.
- (c) The review of the Act should also include a review of the role, functions and powers of the Victims of Crime Coordinator, and of the investigation, reporting & consequential procedures following an allegation of a breach of the Act.
- (d) An independent evaluation of the effectiveness of the legislation in meeting the interests of victims of crime in all their diversity should be conducted.
- (e) Concrete and inclusive measures be implemented across all agencies in the administration of justice to ensure that all victims 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.
- (f) All agencies in the administration of justice develop and implement policies and procedures outlining these measures as service deliverables to victims of crime. The policy framework should state standards to the timeliness and quality of the service to be provided and should state performance measures.
- (g) All agencies in the administration of justice should develop training modules on victims of crime and their interests, and the particular policy & procedural framework of that agency and other relevant agencies. The training should be delivered regularly as part of the core and in-service professional development for new staff and for existing staff.

- (h) All agencies in the administration of justice should regularly make available to staff attendance at conferences, workshops and other activities relevant to the involvement of victims of crime in the administration of justice.
- (i) All agencies in the administration of justice should collaborate on implementing an evaluation every five years of their responses to victims of crime.
- (j) ACT Government should support these agency-based developments within a whole-of-justice strategic plan to be coordinated and resourced by an effective and central governance framework. The strategic plan should focus on ensuring that all victims of crime receive the information and assistance they need in connection with their involvement in the administration of justice.

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APPENDIX A

Victims of Crime Act (ACT) 1994

Part 2 Treatment of victims of crime

4 Governing principles

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

- (a) a victim should be dealt with at all times in a sympathetic, constructive and reassuring way and with appropriate regard to his or her personal situation, rights and dignity;
- (b) a victim should be told at reasonable intervals (generally not more than 1 month) of the progress of police investigations about the relevant offence, except if the disclosure might jeopardise the investigation, and, in that case, the victim should be told accordingly;
- (c) a victim should be told about the charges laid against the accused and of any modification of the charges;
- (d) a victim should be told about any decision concerning the accused to accept a plea of guilty to a lesser charge or a guilty plea in return for a recommendation of leniency in sentencing;
- (e) a victim should be told about any decision not to proceed with a charge against the accused;
- (f) if any victim's property is held by the Territory for the purposes of investigation or evidence—inconvenience to the victim should be minimised and the property returned promptly;
- (g) a victim should be told about the trial process and of the rights and responsibilities of witnesses;
- (h) a victim should be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;
- (i) a victim's residential address should be withheld unless the court directs otherwise;
- (j) a victim should not have to appear at preliminary hearings or committal proceedings unless the court directs the victim to appear;

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

APPENDIX B

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

Adopted by General Assembly resolution 40/34 of 29 November 1985

A. Victims of crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose

authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

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

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

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

Assistance

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

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

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

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

B. Victims of abuse of power

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

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

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

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

APPENDIX C

National Charter for Victims' Rights in Australia 1996

See Standing Committee of Attorneys-General, Item 19, Documents and Summary Matters, Taupo, New Zealand, 14 October, 1992, Volume 2.

1. Victims of crime should be treated with courtesy, compassion, and respect for their dignity.
2. Victims of crime and their families should have access to welfare, health, counselling, medical and legal assistance responsive to their needs.
3. Inconvenience to victims of crime should be minimised and their privacy respected.
4. A victim of crime should be afforded all necessary protection from violence and intimidation by the accused.
5. Victims of crime, who so request, should be kept informed about the progress of the investigation of the crime and the prosecution of the offence.
6. The views and concerns of victims of crime should be considered at all appropriate stages of the investigation and prosecution of the offence.
7. A victim of crime who is a witness in the trial should be informed about the trial process and the role of the victim as a witness in the prosecution of the offence.
8. The effects of the crime upon the victim should be placed before the court, particularly where the offence involves sexual or other personal violence.
9. Victims of crime, who so request, should be kept informed about the disposition of the offender.
10. Where compensation is not available from the offender the victim of crime involving sexual or other personal violence should have recourse to a criminal injuries compensation scheme provided by the state.

APPENDIX D

Commonwealth Statement of Basic Principles of Justice for Victims of Crimes 2005

Commonwealth Law Ministers recall the adoption by the United Nations General Assembly of Resolution 40/34 which recognised “that the victims of crime and the victims of abuse of power, and also frequently their families, and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders”, and the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the Basic Principles).

Commonwealth Law Ministers reaffirm the principle that victims must be treated with courtesy, compassion and respect for personal dignity.

To express their commitment to the Basic Principles, Ministers agree that member countries would give consideration to the national implementation of measures designed to give practical effect to these Principles, in particular for serious crime. They believe that:-

1. Guidelines and training programmes should be developed to ensure that Police:-

- are sensitive to the needs of victims;
- are informed, knowledgeable, and supportive of existing social services and programmes for victims;
- introduce, to the extent possible, procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of alternative methods of retaining and introducing evidence such as the use of photographs; and
- establish procedures to ensure that, to the extent possible, victims of crime requiring information are periodically informed of the general status of investigations, taking into consideration the need to ensure the proper administration of justice.

2. Prosecutors, in the exercise of their powers and performance of their duties should:-

- be sensitised to the fact that public interest should specifically take into consideration the views of victims, including consideration of pre-trial

sessions with victims for this purpose, if possible and appropriate;

- endeavour to provide information to victims – either directly or through another authority - about the status of the case such as scheduling, progress, final outcomes and general reasons for those outcomes;
- to the extent possible and appropriate taking into account all of the relevant fair trial interests, bring to the attention of the court the impact of the offence, investigation and the trial process on the victim, the better to inform the court's decisions on bail, adjournments, sentencing, compensation and restitution;
- take appropriate action with respect to any persons who harass, threaten, injure or otherwise attempt to intimidate or retaliate against victims or witnesses, including referring the matter to the police or an application for bail variation, the withdrawal of bail, or the revocation of parole;
- use a victim and witness on-call system, where practicable, to ensure that victims do not waste time unnecessarily in court;
- to the extent possible, introduce procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of alternative methods of retaining and introducing evidence such as the use of photographs;
- establish and maintain liaison with victim support structures; and
- be sensitised to the trauma and well being of victims of serious crimes.

3. Law Ministers may propose for the consideration of the Chief Justices and other members of the Judiciary of their respective jurisdictions, the following suggestions that they believe will assist in the achievement of national adherence to the Basic Principles:-

- encouraging participation in a training programme sensitising judges to the needs and interests of victims of crime in relation to the judicial process;
- allowing victims and witnesses to be on-call for court proceedings where practicable;
- in so far as possible, ensuring that their court officials establish separate waiting rooms for prosecution and defence witnesses;
- means by which members of the judiciary can bear their share of responsibility for reducing court congestion by ensuring that all participants fully and responsibly utilise court time;
- to allow, to the extent possible and appropriate taking into account all of the relevant fair trial interests, the views, if any, of victims to be made known to the court at bail hearings, postponements, sentencing and restitution or any compensation hearings;
- sensitising judges, where applicable, to consider ordering restitution to

the victim in appropriate cases where such orders are possible;

- ensuring that, after having given any evidence, the victim's attendance at the trial is facilitated if he or she so wishes and, as requested, a member of the victim's family as well; and
- giving substantial weight to the victim's interest in the speedy return of property before trial in ruling on the admissibility of photographs of that property as being sufficient evidence.

4. Ministers also agree that they will give consideration to the passage, where necessary or appropriate, of legislation that will assist in the realisation of adherence to the Basic Principles. They further agreed that national consideration should be given to the development of appropriate mechanisms designed to provide assistance to the victims. They recognise that the precise form that such mechanisms could take must remain a matter for national decision, taking into account economic, social and cultural norms of each member country.

Approved at the Commonwealth Law Ministers' Meeting from
17-20 October 2005.

APPENDIX E

UK No Witness No Justice Program¹³⁴

The UK reform strongly relates to public confidence in the system and focus solely on cross-criminal justice agency performance objectives. The Office of Criminal Justice Reform's (OCJR) goal is to deliver the National Criminal Justice Board's vision that by 2008:¹³⁵

- Victims and witnesses will receive a consistent high standard of service from all criminal justice agencies,
- We will bring more offences to justice through a more modern and efficient justice process,
- Rigorous enforcement will revolutionise compliance with sentences and orders of the court,
- The public will have confidence that the CJS is effective and it serves all communities fairly, and
- The Criminal Justice System will be a joined up, modern and well run service, and an excellent place to work for people from all backgrounds.

The 'No Witness, No Justice' project is introducing dedicated Witness Care Units across England and Wales, bringing police and the Crown Prosecution Service together for the first time to jointly meet the individual needs of victims and witnesses in criminal court cases. Commissioned by the Prime Minister and the Attorney General, Lord Goldsmith, the project is a joint initiative between the CPS, the Association of Chief Police Officers (ACPO), the Home Office and the Cabinet Office's Office of Public Service Reform/ Office for Criminal Justice Reform.

It is a £36 million project of which £27.1 million funding was awarded in February 2004 from the Treasury's Invest to Save programme. The project partners are providing the remaining funding

¹³⁴ Derived from http://www.cps.gov.uk/news/factsheets/fs_nwnj.html and www.homeoffice.gov.uk

¹³⁵ See www.homeoffice.gov.uk/about-us/organisation/directorate-search/ocjr/

Witness Care Units

The new Witness Care Units will manage the care of victims and witnesses from the point of charge through to the conclusion of a case and will provide an enhanced service to victims and witnesses including:

- A single point of contact for victims and witnesses, communicating with them through their preferred means of contact where possible
- A full needs assessment for all victims and witnesses in cases where defendants have pleaded not guilty, to identify specific support requirements, such as child care, transport, language difficulties and medical issues and to highlight areas of concern, including intimidation
- Dedicated witness care officers to steer individuals through the criminal justice process and to co-ordinate support and services
- Continuous review of victim and witness needs throughout the case by the CPS and police
- Greater communication and contact with witnesses about cases including informing them of the case outcome or trial result, thanking them for their contribution to the case and offering post case support from the relevant support agency.

Links to other criminal justice projects

No Witness No Justice forms part of a wider reform programme to bring about improvements to the criminal justice system from arrest to sentencing. The Criminal Case Management Programme links No Witness No Justice with two other projects: the new statutory charging arrangements which, under the Criminal Justice Act, transfer the responsibility for decisions about charging from the police to the CPS; and the Effective Trial Management Project, a project to improve case management through the courts. The Criminal Case Management Programme was announced in November 2003 and is championed at ministerial level by the Attorney General.

Results from the pilots sites

In 2003 pilot witness care units were set up in five criminal justice areas: Gwent, Essex, South Yorkshire, West Midlands and North Wales. The impact of the units was measured over a six month period. The independent evaluation reported:

- Witness attendance at court up nearly 20 percent
- The number of trials which had to be adjourned to a later date as a result of witness difficulties down 27 percent
- A 17 percent drop in 'cracked' trials where the witness withdrew their statement or didn't attend
- A 10 percent increase in the number of 'positive cracked' trials due to late guilty pleas

- A seven fold increase in the take up of victim personal statements
- More victims and witnesses attending pre-trial court visits.

National roll-out of No Witness No Justice

No Witness No Justice is on target to reach the key milestone of each of the 42 areas having one witness care unit open by the end of March 2005. All areas aim to have all witness care units, approximately 165 in total, operational by the end of December 2005.