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“THANKS FOR GIVING US A VOICE”

THE EXPERIENCE AND VIEWS OF VICTIMS OF CRIME WITH THEIR RIGHTS IN THE ACT JUSTICE SYSTEM

A Report of a Survey for the Review of the ACT *Victims of Crime Act 1994*

August 2008

“THANKS FOR GIVING US A VOICE”

The Experience and Views of Victims of Crime with their Rights in the ACT Justice System

EXECUTIVE SUMMARY

In common law systems such as in the United Kingdom and Australia, the role of victims of crime has, over the past 150 years, been progressively narrowed. The criminal justice system in particular has evolved as one where the main parties are the State (in the form of police and prosecution) and the accused. The victim, their experience, their interest and those issues and concerns important to them, has been marginalised.

Victims' rights legislation such as the *Victims of Crime Act 1994* has represented an attempt by governments to provide recognition of the importance of victims.

The survey described in this report is a measure to give voice to victims of crime in the ACT.

KEY FINDINGS

Fair Treatment

The experience of the majority of those victims of crime who participated in the survey with police, prosecution and courts was that they were dealt with in a sympathetic, constructive and reassuring way; with respect and dignity; and fairly.

Delivery of Rights

The majority of victims were not kept informed of the progress of police investigations, just over half were not told about charges or charge modifications, and about a quarter did not know if any legal proceeding took place upon their reporting to police.

The majority of victims were given information by police about how to protect themselves and their families, and the majority for whom it was relevant did have their property returned promptly.

The majority of victims were given information about how to contact the prosecutors' office and were given an opportunity to speak with someone in the prosecution office. A majority were told about the trial process and of the rights and responsibilities of witnesses, and were given an opportunity to do a Victim Impact Statement.

However, just half were told of a decision not to proceed with a charge against the accused, and slightly more than half were told about a decision to accept a plea to a lesser charge.

A substantial majority did not have information about their financial loss given to the court, and half were not told about being required at court.

A majority were protected from the accused at court and had their privacy protected at court.

A majority were given an explanation of the outcome of the criminal proceedings and, when they expressed a concern about protection from the offender, were told about his impending release.

A majority (57%) agreed and 43% disagreed that they felt supported through the justice process.

Confidence in the Justice System

An overwhelming majority of victims said that it was very likely that they would report to police a future incident of crime against them.

However, 44% indicated that they were not very confident in the fair administration of justice in the ACT.

Future Directions for Victims' Rights

There was near unanimous agreement that:

- Victims who report to police should be offered support services,
- Victims of crime should be able to expect protection from the justice system in the ACT,
- Prosecution lawyers should consult with victims prior to final decisions being made in relation to their case,
- Victims of crime should be allowed to claim any financial loss directly from the offender,
- The justice system should give victims of crime a right to speak directly with the person who committed an offence against them, and
- Victims of crime should be allowed to know more about the rehabilitation of the offender in their case.

Views were more mixed that:

- An equal proportion of victims agreed and disagreed with the statement that **there are adequate opportunities for victims' voices to be heard in the justice process in the ACT.**
- An equal proportion of victims agreed and disagreed with the statement that **courts in the ACT take adequate account of the impact of crime on victims.**

Protecting Victims' Rights

Victims of crime held strong views that:

- Victims of crime should have a lawyer to represent their interests in criminal proceedings,
- Victims of crime do need someone to stand up for their rights in the ACT justice system, and
- There should be some redress for victims if their rights are breached.

Two thirds of victims felt that they did not have enough rights in the ACT justice system.

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The Experience and Views of Victims of Crime with their Rights in the ACT Justice System

PREAMBLE

In common law systems such as in the United Kingdom and Australia, the role of victims of crime has, over the past 150 years, been progressively narrowed. The criminal justice system in particular has evolved as one where the main parties are the State (in the form of police and prosecution) and the accused. The victim, their experience, their interest and those issues and concerns important to them, has been marginalised.

Victims' rights legislation such as the *Victims of Crime Act 1994* has represented an attempt by governments to provide recognition of the importance of victims.

The survey described in this report is a measure to give voice to victims of crime in the ACT.

BACKGROUND

In November 2007 the ACT Government announced a review of the *Victims of Crime Act 1994*. The ACT Victims of Crime Coordinator, in a report called *The Quality of Justice* (June 2008), strongly supported this review and recommended that the views and experiences of victims of crime be actively sought to inform that review.

Victim Support ACT, as the ACT Government's integrated support and advocacy service for victims of crime, accepted this challenge. In July 2008, members of the ACT community who had been a victim of crime, who had reported the incident to police and who were a client of Victim Support ACT over 2007 were contacted with an invitation to participate in a survey.

This report comprises the feedback of victims of crime in the ACT to the Review of the *Victims of Crime Act 1994*.

METHODOLOGY

Surveys were despatched to 265 members of the community who had made contact with Victim Support ACT over a 12 month period. The clients were:

- Primary or related victims of crime where the incident had taken place in the ACT, and,
- Were adults over the age of 18 years, and
- The matter had been reported to police.

Fifty six (56) surveys were returned representing an 21% response rate. The response rate is consistent with those for postal surveys in general.

HOW MUCH WERE VICTIMS' RIGHTS RESPECTED & UPHeld BY ACT POLICE?

Respondents were asked about their rights as victims of crime. The statements were drawn specifically using the terminology in the legislation. The questions about the rights to be delivered by ACT Police relate to responsibilities designated in current administrative protocol. Respondents were asked if they agreed or disagreed with the statements.

Fair Treatment

Respondents' experience of fair and respectful treatment by police in the ACT was uniformly positive. One respondent commented that:

Our case is not yet finalised. So far we have received total support from the legal system, and the Police Department in all areas very professionally.

The majority agreed (37%) or strongly agreed (37%) that **I was dealt with in a sympathetic, constructive & reassuring way by police.**

However, one respondent commented about the restrictive interpretation of the definition of "victim" in the following manner:

It seems the ACT Police force are under resourced to follow through with statements/charges of offenders. In my husband's attack – my two year old son was seriously affected emotionally by the whole ordeal – however he was not considered to be a victim of crime. Additionally the vehicle damaged by the 6 offenders was owned by me. I had no re course against the offenders as I was not a victim either.

The majority agreed (40%) or strongly agreed (40%) that **I was treated with respect & dignity by police.**

The majority agreed (37%) or strongly agreed (39%) that **I was treated fairly by police.**

Delivery of Rights

Respondents' experience of police action on delivering rights was mixed.

A majority disagreed (37%) or strongly disagreed (21%) that **I was told at reasonable intervals (generally not more than 1 month) of the progress of police investigations.**

One respondent expressed frustration at not being kept informed about progress:

I was violently assaulted i.e. kicked repeatedly until unconscious, snapped upper arm, broken ribs, severe bruising all over my body. I needed a 6 hour operation to insert plates and pins in my arm, and it will never be the same again. Police know who did it but will do nothing about it. They told me that my statement does not agree with the offenders and that

'its just a civil case anyway!?!' I'm more than happy to take a lie detector test, but nothing happens. Police said they would get back to me a month ago – but nothing happens.

Another expressed frustration in the following manner:

My husband was assaulted by 2 men with axe in 2007 at Belconnen and with all the evidence they (Police) haven't caught the two men and they have closed my husband's case. My family is living in fear as we think they (2 men) know where we live and we are scared for our family's safety.

One respondent also commented about investigation follow-up:

I do not think domestic violence is handled very well. Often questions are ask by the police at the time if a DV was committed and victims are too scared to say and offenders say it did not happen. So the police believe the offender and do not go back and ask the victim at another time when the offender is not there. Some times offenders say they are the victim when they are not. Police need to do more interview.

Half of respondents were not told about charges and charge modifications, and half were. Twenty nine (29%) strongly disagreed and 24% disagreed with the statement that they were given this information by police. Thirty two (32%) strongly agreed and 16% agreed with the statement that they were given this information by police.

Between 16-28% of respondents did not know if any legal proceeding took place upon their reporting the incident to police.

A majority (61%) of respondents strongly agreed (22%) and agreed (39%) that police did give them **information about how to protect myself, my family and my property.**

Of the small number (12) of respondents for whom the return of property was relevant, 42% disagreed/strongly disagreed that it was returned promptly, and 58% agreed that the property was returned promptly.

HOW MUCH WERE VICTIMS' RIGHTS RESPECTED & UPHELD BY THE OFFICE OF THE ACT DIRECTOR OF PUBLIC PROSECUTIONS?

Respondents were asked about their experience as it related to prosecution authorities in the ACT. The statements were drawn specifically using the terminology in the legislation. The questions about the rights to be delivered by the Office of the ACT Director of Public Prosecutions relate to responsibilities designated in current administrative protocol. Respondents were asked if they agreed or disagreed with the statements.

Fair Treatment

Just over half of respondents (30) answered questions in relation to prosecution. Their experience of fair, respectful and accessible treatment by prosecution in the ACT was uniformly positive. One respondent commented that:

I am very happy with the way the DPP treated me during my father's murder trial, upset about court's decision on the accused but. Many thanks to my coordinator from DPP [...] for her help and support through this terrible time.

A significant majority (84%) of respondents agreed (40% strongly agreed or agreed 44%) with the statement that **I was dealt with in a sympathetic, constructive & reassuring way by the people in the prosecution office.**

A significant majority (75%) of respondents agreed (42% strongly agreed or agreed 33%) with the statement that **I was treated with respect & dignity by the people in the prosecution office.**

A majority (66%) of respondents agreed or strongly agreed that they were given information about how to contact the prosecution office. A further majority (75%) agreed or strongly agreed that they were given an opportunity to speak with someone in the prosecutor's office.

Delivery of Rights

Respondents' experience of prosecution action on delivering rights was less strongly positive. One respondent commented extensively thus:

As a victim of crime, on reflection of my experiences with the justice system,

- *Prosecutors should **properly** inform victims to their rights and access to support, services and resources.*
- *Prosecutors should identify that the experience can be traumatic and emotional for the victim and they should be mindful and empathic to the needs of the victim and that "it's not just about a legal process and prosecuting the offender."*
- *Victims should be **properly** informed of the charges and court proceedings.*
- *Prosecutors/police should be mindful not to intimidate, patronise or threaten the victim.*

A majority (50%) of respondents agreed but 20% strongly disagreed with the statement that **I was told about any decision not to proceed with a charge against the accused.**

A substantial majority (77%) agreed (46%) or strongly agreed (31%) with the statement that **I was told about the trial process and of the rights and responsibilities of witnesses.**

A substantial minority (46%) strongly disagreed (27%) or disagreed (18%) while 37% agreed and 16% strongly agreed with the statement that **I was 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.**

A majority (67%) agreed or strongly agreed with the statement that **I was given an opportunity to do a Victim Impact Statement for the court.**

One respondent commented that:

Victims of crime are affected in many ways – economic, physical, psychological – all on a very personal level. However, more often than not, these aspects are not taken into account judged on the person's character and their ability/inability to cope with the situation.

Of the number where the issue was relevant (19), a third agreed or strongly agreed while 68% disagreed or strongly disagreed (42%) with the statement that **Information about my financial losses were given to the court.**

An equal proportion of people agreed or disagreed with the statement that **I was told that I was not required at court.**

A quarter (25%) strongly disagreed/disagreed with the statement that **I was protected from unnecessary contact with the accused and defence witnesses during the course of the trial.**

A majority (62%) agreed/strongly agreed with the statement that **my residential address and personal privacy was protected at court.**

A majority (70%) agreed/strongly agreed while 30% disagreed/strongly disagreed with the statement that **I was given an explanation of the outcome of criminal proceedings and any sentence implications.**

A majority (62%) agreed/strongly agreed while 38% disagreed/strongly disagreed with the statement that **when I expressed concern about protection from the offender, I was told about the offender's impending release from custody.**

In conclusion, 57% of respondents agreed/strongly agreed while 43% disagreed/strongly disagreed with the statement that **I felt supported through the justice process in the ACT.**

HOW MUCH WERE VICTIMS' RIGHTS RESPECTED & UPHELD BY THE COURTS IN THE ACT?

Just under a half (26) of respondents answered questions in relation to their experience of the courts. Their experience of fair and respectful treatment was uniformly positive. One respondent commented positively that:

The offender in my case was dealt with in a fair and reasonable way, and I received excellent support from everyone involved in the case from the Police right through to the magistrate's court and staff.

A substantial majority (80%) agreed or strongly agreed with the statement that **I was dealt with in a sympathetic, constructive and reassuring way by the court.**

A further substantial majority (85%) agreed or strongly agreed with the statement that **I was treated with respect and dignity by the court.**

A third (33%) strongly agreed, a third (33%) agreed and a third (33%) strongly disagreed/disagreed with the statement that **I was treated fairly by the court.**

Some respondents commented positively on their treatment but adversely on the result. One person commented that:

It seems that criminals can commit the most serious crimes and they only get a slap on the wrist or weekend detention. Judges are out of reality/touch with what the general population

want or expect. Every criminal has an excuse bit it drugs or mental condition – they knew what they were doing. They just have smart lawyers.

And another that:

Judges and Magistrates in the ACT Courts rely too much on “the benchmark theory” when handing down sentences. There far too out of touch, far too many light sentences for a lot of heavy crimes.

And one further that:

Victims need to be heard more and it should be taken into account the fear and suffering that they encountered during the crime when the offender is being prosecuted. Victims suffer for their lifetime whilst offenders get off scott free. This is wrong.

A majority (58%) strongly agreed while 37% disagreed/strongly disagreed with the statement that **I would have liked to have been more involved in the justice process about my case.**

One respondent commented strongly that:

I would like to of been kept in the loop about what was going on with the case! I had no idea if the person was punished for what was done to me!

FUTURE COOPERATION WITH & CONFIDENCE IN THE JUSTICE SYSTEM

When asked how likely they would be to report any future incidents of crime to police, only 10% indicated that this would be very unlikely or unlikely. An overwhelming 90% said that it would be very likely or likely that they would report future incidents.

However, when asked how confident they felt in the fair administration of justice in the ACT given their experience as a victim of crime 56% indicated that they were confident or very confident, with 44% indicating that they were not very confident or not confident. As one respondent commented:

What Justice System?

Where is the Justice System?

What does “JUSTICE” mean?

And how long would this “JUSTICE” take to get?

VIEWS ABOUT VICTIMS’ RIGHTS IN THE FUTURE

Respondents were asked to consider what changes they might like to see for victims’ participation in the justice process in the future.

There was near unanimous agreement that:

- Victims who report to police should be offered support services (99%)
- Victims of crime should be able to expect protection from the justice system in the ACT (93%)
- Prosecution lawyers should consult with victims prior to final decisions being made in relation to their case (98%)
- Victims of crime should be allowed to claim any financial loss directly from the offender (96%)

- The justice system should give victims of crime any right to speak directly with the person who committed an offence against them (66%).
- Victims of crime should be allowed to know more about the rehabilitation of the offender in their case (84%).

Victims suggested better access to information and support including that:

[It is a] Bit daunting, provide more services to make it easier, update victim on situation, legal advice whether justice system or civil system.

My son was assaulted in 2005 and could not have gone through the legal process without my help because of his injuries. I don't know what people without family do if they are injured. I lost significant wages looking after him and was not compensated because he was an adult even though he was so incapacitated he couldn't have cared for himself. I found Victims of Crime the most useful organisation throughout this whole process and we wouldn't have been able to navigate the whole process without [...]'s help. I think they need more funding to be able to provide such a valuable service. I believe that laws relating to offenders under the Mental Health Tribunal need to be modified ...

Views were more mixed that:

- An equal proportion of victims agreed and disagreed with the statement that **there are adequate opportunities for victims' voices to be heard in the justice process in the ACT.**
- An equal proportion of victims agreed and disagreed with the statement that **courts in the ACT take adequate account of the impact of crime on victims.**

Some of the respondents made comments that expressed a sense of unfairness between the weight given to offender interests and the weight given to victim interests.

The interests and privacy of the juvenile offenders seemed to be given a higher priority than my interests. 4+ offenders conducted multiple assaults over a few nights and subjected to 'low' level sanctions. They stole a car for the purpose of committing the assaults. Victims should have opportunity to make a statement to the court.

I think once the offender has been sentenced, they should not be allowed to appeal their sentence. If the judge has made the decision and there was a lot of evidence that should be it.

Proceeds of crime laws should permit confiscation of family assets used to perpetrate offences.

Respondents were also asked their views on victims' rights. That is, whether 'the system' for victims of crime in the ACT was 'about right' or 'could be better'.

An equal proportion agreed and disagreed that *victims of crime receive adequate support within the ACT justice system.*

Comments included:

Listen to the victims and evidence a bit more.

There was a similar split between those who feel that victims of crime do receive adequate information about their case (35%) and those who do not feel they receive adequate information about their case (35%).

Respondents held strong views that:

- Victims of crime should have a lawyer to represent their interests in criminal proceedings (88%)
- Victims of crime do need someone to stand up for their rights in the ACT justice system (96%)
- There should be some redress for victims if their rights are breached (100%)

Asked whether they thought victims of crime have enough rights in the ACT justice system, 68% disagreed or strongly disagreed with the statement, while 32% agreed or strongly agreed that they did.

MOTIVATIONS FOR REPORTING CRIME

People report crime to police for a range of reasons. Respondents were asked to consider statements that may reflect why they reported the incident affecting them and/or their family to police. They were asked to nominate if they strongly agreed or disagreed, or agreed/disagreed.¹

Overwhelmingly, respondents had altruistic motivations for reporting being:

- **In the hope that I or someone else will not be a victim again** (98%)

Other motivations reflected the impact of the incident, with respondents strongly agreeing that:

- **Because it was a serious/upsetting crime** (96%)
- **In the hope that the offenders/s will be caught** (95%)
- **To protect myself/my family** (91%)

Respondents also indicated a strong sense of civic duty by strongly agreeing that:

- **Reporting crime is the right thing to do** (96%)
- **Because the police are the right people to help with the problem** (95%)

Less people agreed that reporting was for the purpose of an insurance claim (29%).

Respondents were relatively evenly split in seeking to have property recovered by reporting to police. 25% strongly agreed and 28% agreed that they were seeking a return of their property. 28% strongly disagreed and 19% disagreed that this is what they were seeking.

For 23% of respondents police were “already there”, and for 40% another person reported the crime.

REPORTING CRIME

The vast majority of all incidents were reported to police.² For those incidents involving them and/or a member of their immediate family, under a third (29%) of respondents

¹ Respondents could also nominate that the statement was “not applicable”.

² This is unsurprising as reporting to police was part of the selection criteria for receipt of the survey.

indicated that they had made the report to police less than 6 months ago, with 34% indicating that the report was made between 7 to 12 months ago.

When asked if they had received information from ACT Police about services that support and assist victims of crime, 41% said “yes, every time”, and a further 21% said “yes, once or twice”. Four percent (4%) of respondents had never received information from police about support services.

RESPONDENT DEMOGRAPHICS

The majority of the respondents were female 76% and just under a quarter were aged 41-50 years. A further 11 were aged 18-30 years and 10 were aged 31-40 years. 66% of respondents identified as single (including divorced, separated and widowed).

Two-thirds (74%) of respondents identified as non-Indigenous Australians and were born in Australia. An overwhelming majority (90%) spoke English at home.

Over a quarter (27%) were working full time, with 23% doing home duties and 17% working part-time. The majority (46%) identified their occupation as manager or administrator with 18% stating their occupation as clerical, sales or service worker. The majority (40%) stated that the highest level of education they had completed was secondary school with a further 29% stating that they had completed college/TAFE, and 22% stating that they had completed a bachelors degree/diploma.

41% of respondents owned their own home and another 48% rented their home. About half of respondents (53%) indicated that they received under \$20,000 income in the past 12 months with 24% receiving between \$41,000-\$60,000.

EXPERIENCE OF CRIME

The majority of respondents (41%) identified that they and/or a member of their immediate family had been a victim of crime once, with 23% identifying that they and/or a member of their immediate family had been a victim of crime between 1 and 5 times. 18% stated that they and/or a member of their immediate family had been a victim of crime more than 5 times.

Respondents were asked to focus on incidents involving them and/or a member of their immediate family. They identified that they had experienced multiple types of incidents. The majority (61%) of respondents identified that the last incident involving them and/or a member of their immediate family had been physical assault. Under a quarter (23%) identified that they had experienced a property offence.

A slight majority reported that the person who offended against them was a stranger (31%) with 29% identifying the offender as a partner/spouse/ex-partner/ex-spouse. 21% identified the offender as being an acquaintance.