

**Report on the
2011 Review of the
*Victims of Crime Act 1994***

Department of the Attorney General

November 2013

BACKGROUND	3
1. VICTIMS OF CRIME ACT 1994	3
2. TERMS OF REFERENCE	3
3. PROCESS OF THE REVIEW	3
4. SUMMARY OF FINDINGS	3
TERM OF REFERENCE 1 – PREVIOUS REVIEWS	4
1. GUIDELINES, COMPLAINTS AND COMPLIANCE	4
2. SERVICE PROVISION: IDENTIFYING GAPS AND COLLECTING DATA	4
3. THE JUSTICE SYSTEM, COURT PROCESS AND COURT DESIGN	5
4. TRAINING	5
5. INFORMATION SHARING AND COORDINATION	5
6. VICTIMS' AWARENESS OF PROCESS AND SERVICES	6
7. NOTIFYING VICTIMS ABOUT THE CASE	6
8. VICTIMS (IMPLEMENTATION) ADVISORY COMMITTEE	6
9. CRIMINAL INJURIES COMPENSATION	7
TERM OF REFERENCE 1 - SUMMARY AND RECOMMENDATIONS	7
TERM OF REFERENCE 2 – DEFINITIONS	8
1. DEFINITION OF VICTIM	8
<i>Children</i>	8
<i>Incapable persons</i>	9
<i>Death and incapacity</i>	9
<i>Immediate family</i>	9
TERM OF REFERENCE 2 - SUMMARY AND RECOMMENDATION	10
<i>Other legislation</i>	10

Background

1. *Victims of Crime Act 1994*

The *Victims of Crime Act 1994* (the Act) recognises the importance of acknowledging and supporting victims of crime in the criminal justice system. The Act acknowledges the impact of crime, including the impact on members of victims' families, and recognises that all persons adversely affected by crime should be treated with respect by public officers and bodies and offered information to enable them to access services to help with the recovery process.

Various legislative and policy reforms have worked to improve the experience of victims, including amendments to the *Evidence Act 1906*, the *Restraining Orders Act 1997*, the *Criminal Injuries Compensation Act 2003*, and the Act itself. These reforms recognise both the impact of crime and the secondary victimisation that victims may face in their interaction with the criminal justice system.

Formal reviews of the Act were conducted in 1997, 1999 and 2005. This review of the Act continues the consideration of reform options for the Act, and also meets the statutory obligation to conduct a review of the operation and effectiveness of the legislation as soon as is practicable after 1 January 2010.

2. *Terms of Reference*

The terms of reference for the statutory review were to inquire into and report on whether, and if so in what manner, the *Victims of Crime Act 1994* requires reform in order to optimise its effectiveness. In particular:

1. the extent to which issues raised in previous reviews have been addressed, the reason behind issues remaining unaddressed, and the extent to which any unaddressed issues remain relevant; and
2. the cultural and societal relevance of definitions and assumptions inherent in the Act, whether the Act requires amendment to ensure its relevance, and the effects of any such amendments.

3. *Process of the Review*

In June 2011, letters were sent to five key stakeholders inviting them to make submissions to the Review of the Act. The key stakeholders were identified as:

- the Victims of Crime Reference Group (VoCRG);¹
- Western Australia Police (WA Police);
- the Department of Corrective Services (DCS);
- the Director of Public Prosecutions (DPP); and
- Court Counselling and Support Services (CCSS) within the Department of the Attorney General (DotAG).

This report is based primarily on the stakeholder submissions. Information has also been derived from previous reviews and reports, parliamentary documents and departmental materials.

4. *Summary of Findings*

Overall, stakeholders found that the Act is operating effectively and is not in need of major reform. Previous reviews had highlighted a number of issues but these have largely been addressed, or made redundant by reforms in other areas.

The main area of potential reform for the Act is that of definitions, particularly the definition of 'victim', and this review recommends that the definition of victim be amended. Namely, it is recommended that the definition of 'victim' be expanded to include provisions for situations where the victim is a child or an incapable person, and that it also include a person's immediate family where an offence results in death or incapacity.

¹ The VoCRG declined to make a submission on the basis that it had been in abeyance for some time.

Additionally, this review found that there continues to be an issue where the victim is someone who has experienced genuine harm as a consequence of an offence against another person (for example, a family member of the primary victim). It is recommended that the Act be amended to include a hierarchy of family members to guide agencies' decisions in regard to who is a victim.

Whilst the amendments to definitions recommended by this review are important, they are not critical to the effective operation of the Act. It is noted that any amendments to the definition of 'victim' may require consequential amendments to the *Sentence Administration Act 2003*, the *Prisons Act 1981* and the *Sentencing Act 1995*.

Term of Reference 1 – Previous Reviews

Reviews of the Act were carried out in 1997, 1999 and 2005 (hereafter referred to as 'the 1997 Review', 'the 1999 Review', and 'the 2005 Review' respectively). The past three reviews made a total of 53 recommendations. Most of these recommendations can be grouped into 10 themes, namely:

1. Guidelines, complaints and compliance;
2. Service provision: identifying gaps and collecting data;
3. The justice system, court process and court design;
4. Training;
5. Information sharing and coordination;
6. Victims' awareness of process and services;
7. Notifying victims about the case;
8. Victims (Implementation) Advisory Committee; and
9. Criminal injuries compensation.

1. Guidelines, Complaints and Compliance

The 1999 Review recommended that the Act be strengthened by including 'a mechanism for dealing with victims' complaints, breach provisions and by changing the term "Guidelines" to a "Charter of Rights"'. This recommendation was not implemented and was not supported when revisited in the 2005 Review.

The 2005 Review noted that, notwithstanding the possible value in strengthening the guidelines, concern had been raised in relation to establishing an enforceable charter of rights. It concluded that 'a charter with enforceable rights creates expectations that could be an "over the top" approach.'² The 2005 Review went on to recommend that 'Public officers and bodies examine their obligations in relation to the *Victims of Crime Act 1994* and ensure the guidelines/objectives and procedures, which support the intent of the Act and meet standards of best practice, are in place and being met.'³

The Department of Corrective Services, in its submission to the current Review, stated that its business areas which have the most victim contact conform fully to the guidelines in the Act. The implementation of the Service Delivery Standards guidelines by WA Police has seen significant improvements in the standard of service provided by police to victims of crime, whilst Court Counselling and Support Services reported that, since the last review in 2005, there have been major operational achievements in DotAG's support services to victims of crime.

2. Service Provision: Identifying Gaps and Collecting Data

The 1997 and 1999 Reviews recommended that certain agencies and/or bodies collect data to identify deficits in service provision. In response to the 1997 Review recommendation, the DPP conducted an extensive survey to 'gather information from victims of crime who had contact with the DPP during the course of criminal prosecutions in the Supreme and District Courts'.⁴

The 1997 Review recommended that the then Ministry of Justice 'examine ways of collecting data on victim impact statements presented in all Western Australian courts in order to monitor their use and

² 2005 Review, p 13.

³ Recommendation 4.

⁴ Keating, N. (2001) Report on the Review of Services to Victims of Crime and Crown Witnesses Provided by the Office of the Director of Public Prosecutions for Western Australia, p 14.

to assist in future evaluations of their effectiveness.⁵ Since then, Victim Support Services (VSS) in DotAG has collected data on victim impact statements. Although this information is available for evaluation, it is primarily collected to monitor and ensure their presentation in court.

In response to identified gaps in service delivery in indigenous communities, the 2005 Review reported on the expansion of services in Kalgoorlie, Port Hedland and Broome and that 'additional funds were allocated to facilitate services to remote communities to provide community education and information to indigenous communities.'

3. The Justice System, Court Process and Court Design

The 1997 Review made a number of recommendations regarding court facilities and processes, particularly for certain classes of victims. The recommendations regarding hearing sexual assault matters in closed court, and the use of vulnerable witness mechanisms for sexual assault victims⁶ were implemented by the *Criminal Law Amendment (Sexual Assault and Other Matters) Act 2004*.

The 1997 Review recommended that 'where possible, improvements to court facilities include separation of victims and defendants and that courtroom layout be sensitive to victims' needs' and 'the provision of closed circuit television be extended to meet expected demand'.⁷ These issues have been considered in the ongoing process of improvements to court accommodation, and new court designs 'take into account the need for separate waiting areas and spaces for victims of crime'.⁸

The 1997 Review also made a number of recommendations regarding victim impact statements and, as a result, further information was made available on lodging victim impact statements, and VSS established a routine procedure for presenting statements to the Magistrates Court and Children's Court.

4. Training

The 1997 and 2005 Reviews both made recommendations regarding training for police and other public officers and bodies to whom the Act applies. In submissions to the present review, DCS and CCSS both mentioned victim awareness training. The Department of Corrective Services includes victim awareness training in foundation training for new Community and Youth Justice Division staff, and plans to extend the training to existing staff. Court Counselling and Support Services in DotAG continue to provide victim awareness training to the Police Academy and other key stakeholders.

5. Information Sharing and Coordination

Previous reviews of the Act recommended improvements to information sharing and coordination between the agencies that provide services to victims of crime. The need for inter-agency coordination among agencies providing services to victims of crime was noted in the 1997 and 1999 Reviews. Legislative amendments to support the referral process and enable information sharing were implemented in 2004 with the enactment of the *Victims of Crime Amendment Act 2004*.

The 1997 and 1999 Reviews made recommendations about the system of Police referral of victims of crime to VSS. In its submission to the current review, CCSS reported that 'VSS and [the Child Witness Service (CWS)] have worked closely with Police and the DPP to improve their referral rates and thereby enable access to support for victims of crime. New approaches address the shortcomings of the automated referral system particularly for victims of serious sexual assault and the low referral rates of children required to give evidence in court.'

The 1999 Review also recommended that 'the Office of the Director of Public Prosecutions and the Victim Support Service establish a formal liaison process'⁹ and that VSS 'work with the Domestic Violence Prevention Unit on matters relating to family violence.'¹⁰ A formal liaison process has been established between the Office of the Director of Public Prosecutions and VSS, and VSS is currently

⁵ Recommendation 22.

⁶ Recommendations 4 and 5, respectively.

⁷ Recommendations 6 and 7, respectively.

⁸ CCSS submission to present review.

involved in the implementation of an integrated response to family and domestic violence as part of the *WA Strategic Plan for Family and Domestic Violence 2009-2013*.¹¹

6. Victims' Awareness of Process and Services

The 1997 and 1999 Reviews made a number of recommendations regarding the provision of information about processes and services to victims. These recommendations aimed to improve the information provided to victims of crime, increase the access to this information and also increase the profile of VSS. Most of these recommendations have been implemented, with considerable improvements made over the years to the information and services available to victims of crime.

7. Notifying Victims about the Case

The 1997 Review recommended that WA Police adopt uniform procedures to 'record those victims who wish to be kept informed of progress of investigations and to ensure victims receive the information they request'.¹² Standard 10 of WA Police's Service Delivery Standards addresses this concern and outlines the procedures for notifying victims of crime on the progress or outcome of incidents and police action.¹³ WA Police reported that investigators comply with the guidelines in the Act on most occasions but acknowledged that in the case of lower level offences they are not always able to comply when dealing with property and volume crime.

One of the main recommendations in the 1997 Review regarded arrangements to ensure a prison notified a victim of any prisoner escape.¹⁴ The intent of this recommendation was satisfied by the establishment of the Victim Notification Register (VNR) which allows victims to receive information about the perpetrator of the crime against them for as long as that person is under the supervision of DCS. The VNR does not solely provide information about escapes, but may also provide details about the offender's sentence, impending release dates and the results of any appeals against the sentence.

8. Victims (Implementation) Advisory Committee

The 1997 Review recommended that 'the Victims of Crime Working Party and the Victims Advisory Committee be replaced by a committee similar in structure to the Domestic Violence Implementation Advisory Committee but which includes the Victim Support Service and other sections of the Ministry of Justice as appropriate'.¹⁵ Consequently, the Victims Implementation and Advisory Committee (VIAC) was set up to monitor the Act and to provide advice and recommendations to the Attorney General on the rights and needs of victims. Membership of the VIAC included government officers and community members (including a victim representative) and it was chaired by a District Court Judge. As per the recommendation of the 1997 Review, it replaced the Victims of Crime Working Party and the Victims Advisory Committee.

When the Act was reviewed two years later, it was recommended that 'victim representation on the Victims [Implementation] Advisory Committee be increased ... that a full-time executive officer or project officer be appointed to the Victims Implementation and Advisory Committee and that the Committee has its own budget'.¹⁶ Neither of these recommendations were implemented before the VIAC was disbanded in July 2001. However, the Victims of Crime Reference Group, which was established in 2007 and reconstituted in 2011, has greater victim representation than the VIAC did, and also its own part time executive support.

⁹ Recommendation 5.

¹⁰ Recommendation 11.

¹¹ VSS is involved by way of the Family and Domestic Violence Coordination Group. The Department of the Attorney General is also represented on the Family and Domestic Violence Senior Officers' Group which plans, manages, and monitors a strategic across-government response to the issue of family and domestic violence.

¹² Recommendation 16.

¹³ Western Australia Police Reform and Strategic Coordination (September 2006) Service Delivery Standards, p 9.

¹⁴ 1997 Review, Recommendation 21.

¹⁵ Recommendation 26.

¹⁶ Recommendations 13 and 14, respectively.

9. Criminal Injuries Compensation

The 1997 Review made two recommendations regarding criminal injuries compensation. Most of the concerns about criminal injuries compensation referred to in the review related to the time taken to settle a claim, the cost of making claims, and the upper limit for awards (\$50 000). These issues were addressed by the *Criminal Injuries Compensation Act 2003* which came into effect in January 2003. It replaced the previous Act and set a new maximum award of \$75,000 for victims of crime. It also allowed victims to apply for interim and future payments, enabling those who would eventually have their award granted to have access to instant medical attention and counselling.

Term of Reference 1 - Summary and Recommendations

As discussed above, the 53 recommendations made across the previous three reviews have largely been implemented, either in direct response to the relevant review, or through separate processes of operational reform or legislative amendment.

Where recommendations have not been implemented, this review did not find any evidence to suggest that the issues are still pertinent to the effective operation of the Act. Further, many of the recommendations that have not been implemented relate to process and procedure rather than the Act itself and do not fit within the ambit of this review. In addition, stakeholders did not raise any issues that should be addressed through amendment to the Act. Consequently, no recommendations have been identified under this Term of Reference for reform to the *Victims of Crime Act 1994*.

Term of Reference 2 – Definitions

The second term of reference required DotAG to inquire into the cultural and societal relevance of definitions and assumptions inherent in the Act, whether the Act required amendment to ensure its relevance, and the effects of any such amendments. Section 2 of the Act – terms used – currently defines four terms for the purpose of the Act: 'guidelines', 'offence', 'public officers and bodies', and 'victim'. Section 4 – information about victims, provision of by police and DPP – also defines a number of terms for the purpose of that section.

For the purposes of this review, the main item of consideration was the relevance of the definition of 'victim' in the Act.

1. Definition of Victim

The Act currently defines 'victim' to mean:

- (a) a person who has suffered injury, loss or damage as a direct result of an offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender; or
- (b) where an offence results in a death, any member of the immediate family of the deceased.

The 2005 Review recommended the establishment of an interdepartmental working party 'to investigate and report on the practical implications of expanding the definition of "victim"'.¹⁷ The resulting inter-agency working group (IAWG) suggested that the definition be amended to return to the original intent of the Act¹⁸ to include not just the primary or immediate victim (that is, the victim who suffers injury, loss or damage as a direct result of the offence) but others who are able to demonstrate genuine harm as a consequence of the offence. It also proposed that the Act differentiate between an immediate victim and a victim, with more onerous standards applying only to an immediate victim.

The IAWG recommended that the definition of immediate victim be widened to include parents or guardians (where an offence was committed against a child), guardians or carers (where an offence was committed against an incapable person) and immediate family (where an offence resulted in a death or incapacity). The IAWG was clear that any amended definition should not include a person who was a party to the commission of the offence.

The IAWG's proposed definitions provided for two categories of victim ('immediate victim' and 'victim') with the intention that agencies only be subject to the more onerous responsibilities in respect of immediate victims.

This review of the Act has taken the position that there seems to be little benefit in having two categories of victim defined for the purpose of the Act, noting that agency guidelines and professional assessment are more appropriate mechanisms for determining the level of support provided to victims of crime. However, elements of the IAWG's proposed definition of 'immediate victim' relating to children, incapable persons and immediate family remain relevant.

Children

The IAWG proposed that the definition of victim be amended to ensure that, if the offence was committed against a child, 'victim' include a parent or guardian of the child, including a foster parent and a step-parent. In the case of an Aboriginal child, the IAWG recommended that the definition

¹⁷ Recommendation 1.

¹⁸ The IAWG proposal document refers to the second reading debate on the Victims of Crime Bill 1994 in which the then Attorney General, Cheryl Edwardes, stated 'The definition of 'victim' is cast in wide terms so as to include not just the primary victim but others who are able to demonstrate genuine harm suffered as a consequence of the offence. Such other persons could be family members who are traumatised by witnessing the incident; family members who suffer mental pain or economic loss by incapacitation of the primary caregiver; customers in cases of bank robbery; and onlookers of violent crimes, such as a murder in a schoolyard. They are some examples of persons who are entitled to be treated as victims pursuant to the Bill.'

include a person regarded under the customary law or tradition of the child's community as the equivalent of a parent or guardian. In the case of a Torres Strait Islander child, this is to include a person regarded under the customary law or tradition of the Torres Strait Islands as the equivalent of a parent or guardian.

In its submission to the current review, the DPP supported the expansion of the definition of victim to include a parent or guardian of a child, noting that consideration would need to be given to complex parenting arrangements.

Incapable persons

The IAWG also proposed that the definition of victim be amended to ensure that, if the offence was committed against a person who is incapable of managing his or her affairs because of mental impairment, 'victim' include a guardian or a carer of that person. Similar to the proposals regarding children, the IAWG recommended that, in the case of an Aboriginal person, the definition include a person regarded under the customary law or tradition of the person's community as the equivalent of a guardian or carer. In the case of a Torres Strait Islander person, this is to include a person regarded under the customary law or tradition of the Torres Strait Islands as the equivalent of a guardian or carer.

It was also recommended that, where a guardian has been appointed under the *Guardianship and Administration Act 1990*, that person be treated as a victim for the purpose of the Act. However, the wording of the definition should remain broad enough to encompass other guardians or carers where a guardian has not been formally appointed.

Death and incapacity

The IAWG proposed that the definition of victim be amended to include a member of a person's immediate family if the offence results in the death or incapacity of that person. This is a modification of the existing definition in the Act, which provides that the victim is a member of a person's immediate family where the offence caused the death of that person.

In connection with the proposal to include incapacity as well as death, the IAWG recommended that definitions of 'incapacity' and 'immediate family' be inserted into the Act. In consultation conducted by the IAWG, WA Police and the DPP indicated support for the proposal.

Immediate family

Although the current definition of victim uses the term 'immediate family', there is no definition of that term in the Act. This has been previously raised as an issue, with the 2005 Review reporting that 'the definition in relation to victims where an offence results in death was thought to be non-contemporary and out of touch with today's multicultural society and the Aboriginal concept of an extended family.'¹⁹ The IAWG proposed that a definition of immediate family be inserted into the Act.

Information gathered during consultation by the IAWG found that the proposal to allow a court to rule that a person is or is not a member of a deceased or incapable person's family was not supported. Instead, agencies indicated a preference for such decisions to be left to the agency (supported by internal guidelines).

This review suggests that, instead of requiring the court to make a decision as to who is or is not a victim, a hierarchy of family members should be developed to guide agencies. The hierarchy could be based on the definition of 'nearest relative' in s 3 of the *Guardianship and Administration Act 1990*.

¹⁹ p 11.

Term of Reference 2 - Summary and Recommendation

Many of the aspects of definitional reform recommended in response to the 2005 Review of the Act remain relevant today. In particular, consideration should be given to widening the definition of 'victim' in the Act to ensure that:

1. If an offence is committed against a child, 'victim' includes a parent or guardian of the child, including a foster parent and a step parent. In the case of an Aboriginal child, this would include a person regarded under the customary law or tradition of the child's community as the equivalent of a parent or guardian. In the case of a Torres Strait Islander child, this is to include a person regarded under the customary law or tradition of the Torres Strait Islands as the equivalent of a parent or guardian.
2. If the offence is committed against a person who is incapable of managing his or her affairs because of mental impairment, 'victim' includes a guardian or a carer of that person. In the case where the offence is committed against an Aboriginal person, this includes a person regarded under the customary law or tradition of the child's community as the equivalent of a guardian or carer. In the case where the offence is committed against a Torres Strait Islander person, a person regarded under the customary law or tradition of the Torres Strait Islands as the equivalent of a guardian or carer.

It is further recommended that the definition of 'victim' in the Act be amended to convey the inclusion of a person's immediate family where an offence results in death or incapacity. A definition of 'incapacity' should also be included in the Act.

In terms of resolving the issues around the definition of 'immediate family', this Review recommends that a hierarchy of family members be developed, for inclusion in the Act, to guide agencies' decisions in regard to who is a victim.

Other legislation

The proposed changes to the definition of victim and the inclusion of additional definitions will clearly impact on the interpretation of the Act. However, the term 'victim' is also defined in other legislation which facilitates the provision of services and treatment of victims as required by the guidelines.

The *Sentence Administration Act 2003* and the *Prisons Act 1981* both utilise similar definitions of 'victim' as in the *Victims of Crime Act 1994*. The *Sentencing Act 1995* contains three definitions of 'victim'; one of which is similar to that in the Act, and two relating to reparation orders that differ significantly.

Analysis of the provisions of these Acts was conducted and concluded that, if the definition of victim in the *Victims of Crime Act 1994* is amended, corresponding amendments should be made to the definition of 'victim' in:

1. sections 4 and 97D of the *Sentence Administration Act 2003*, to ensure that public officers and bodies are able to have regard to the broader category of victims as defined by the Act;
2. section 113B of the *Prisons Act 1981*, to ensure the continued operation of the VNR; and
3. section 13 of the *Sentencing Act 1995*, to ensure the appropriate operation of provisions regarding victim impact statements and mediation.

Changes to the definition of 'victim' relating to reparation orders (in sections 116 and 120(1) of the *Sentencing Act 1995*) would not be necessary.