



Office of the Director of Public Prosecutions
Government of Western Australia

DIRECTOR OF PUBLIC PROSECUTIONS

Policy and Guidelines for Victims of Crime 2018

Legislative Council

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From 1 September 2018

Director of Public Prosecutions Act 1991
Section 24

Policy and Guidelines for Victims of Crime 2018

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Policy and Guidelines for Victims of Crime 2018

MESSAGE FROM THE DIRECTOR OF PUBLIC PROSECUTIONS

The important role of victims of crime in the criminal justice process has not always been properly recognised. The Office of the Director of Public Prosecutions ('ODPP') acknowledges this, and has, since its commencement in 1992, developed and, over time, refined its policies and procedures to ensure that victims are appropriately acknowledged, informed and consulted and, most importantly, that their interest in the criminal justice process is taken into account at all times.

This is the first time that the ODPP has published separate Prosecution Policy and Guidelines for Victims of Crime. Until now, the policies and procedures for dealing with victims of crime have been included as part of the *DPP Statement of Prosecution Policy and Guidelines*. However, I believe that the publication of a separate document, containing all of the information relevant to the ODPP's policies and procedures for victims in one, comprehensive statement makes the information more accessible and understandable for victims and their advocates.

The publication of the separate Policy and Guidelines for Victims of Crime also emphasises the need for all employees of the ODPP to be conscious at all times of the unique position that victims of crime occupy in the criminal justice process. The fact that a victim of crime is not a party to the criminal proceedings, and is thus deprived of a direct representative during those proceedings, only heightens this need.

The ODPP will continue to work with victims to ensure that the impact of offending upon them is acknowledged, and to give effect to their rights to be treated with dignity and respect, to have as much information as possible to enable them to navigate the complexities of the criminal justice process, to be given an opportunity to express their views and to have them taken into account, and to understand the reasons for the ultimate outcome.

Amanda Forrester SC
Director of Public Prosecutions
for Western Australia

Director of Public Prosecutions Act 1991
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Policy and Guidelines for Victims of Crime 2018

INTRODUCTION

1. Victims of crime have an important place in the criminal justice system.
2. These guidelines set out how the Office of the Director of Public Prosecutions for Western Australia ("the ODPP") interacts with victims of crime during criminal prosecutions, and the rights that victims of crime have during the proceedings.
3. A victim of crime ("victim") is a person who suffers personal harm, loss or damage as a direct result of an alleged offence or, in the event of the death, incapacity, or young age of the victim, an immediate family member of, or other person responsible for, the victim.
4. Whether they are required to give evidence or not, the ODPP is committed to the welfare of victims and minimising the adverse impact of their involvement in the criminal justice process.

LEGISLATIVE FRAMEWORK

5. The ODPP's statutory responsibilities to victims are found in the ***Victims of Crime Act 1994 (WA)*** ("the Victims of Crime Act").
6. **Appendix 1** sets out the guidelines contained in Schedule 1 of the Victims of Crime Act.
7. Public officers and bodies are authorised to have regard to and apply the guidelines in Schedule 1 and should do so to the extent it is within or relevant to their functions to do so and it is practicable for them to do so.
8. If a particular agency fails to comply with the Victims of Crime Act, victims may contact the Commissioner for Victims of Crime, or make a complaint to the Western Australian Ombudsman.

INTERACTION WITH OTHER AGENCIES

9. The Victims of Crime Act allows certain information about victims to be shared between Western Australian public sector agencies.
10. The ODPP principally works with Western Australia Police, the Victim Support Service, the Child Witness Service, and/or the Criminal Injuries Compensation Assessor to assist victims.
11. During the conduct of a prosecution, Western Australia Police and the ODPP work together to provide support and information to victims about the criminal justice process.
12. The Victim Support Service and Child Witness Service also perform an important role in the criminal justice system by providing counselling, information and general support to victims. In addition, they assist victims with the preparation and submission of their victim impact statements.

13. The Prisoners Review Board, the Mentally Impaired Accused Review Board, the Victim Notification Registry and the Courts also work to assist victims in the criminal justice system.

STATEMENT OF PROSECUTION POLICY AND GUIDELINES

14. The ***DPP Statement of Prosecution Policy and Guidelines*** contains general provisions relating to the role of prosecutors in criminal proceedings.
15. The ODPP is not an investigative agency. It prosecutes alleged offenders in proceedings which are commenced by another investigative agency, usually WA Police.
16. Depending on the place where the proceedings are commenced, the ODPP takes over the conduct of a prosecution either shortly before, or upon, transfer of a prosecution to either the District Court or the Supreme Court. If the accused has pleaded guilty, the matter will proceed to sentence. If the accused has pleaded not guilty, the matter will be prepared for a criminal trial.
17. At the time it takes over the conduct of the proceedings, the ODPP makes an independent assessment of the evidence gathered by the investigative agency. The matters considered by the ODPP in making that independent assessment are set out in the ***DPP Statement of Prosecution Policy and Guidelines***.
18. While the decision whether to commence or continue a prosecution is fundamental to the interests of victims, there are many other factors which are required to be taken into account by the ODPP in arriving at that decision.
19. The evaluation of whether to proceed with some prosecutions is a difficult one and may, at times, appear to be inconsistent with the interests of victims. For example, if there are no reasonable prospects of conviction, a prosecution cannot proceed, regardless of the desire of the victim that it should do so. There are also occasions where the public interest conflicts with the interests of the victim, such as where the seriousness of the allegations require that the matter proceed, against the wishes of the victim.
20. As the ***DPP Statement of Prosecution Policy and Guidelines*** sets out, the view of the victim is a very important factor in the assessment of the public interest. However, it is not the only factor, and a victim's views are not determinative of the issue.
21. An ODPP prosecutor is not a victim's lawyer in criminal justice proceedings. A prosecutor represents the public interest, by presenting the prosecution case to the best of their ability, in accordance with the law.
22. In pursuit of these objectives, it is necessary to consider:
 - (a) the rights and interests of victims;
 - (b) the rights of the accused; and
 - (c) the public interest.

ODPP PROSECUTION PRACTICES

23. Consultation with victims is essential to the provision of a quality prosecution service to the Western Australian public.
24. The ODPP's primary means of communication with victims is by telephone and in writing (including by email). If these are not appropriate means of communication for a victim, alternative arrangements can be made on a case by case basis.
25. Upon receipt of a brief of evidence from the Western Australia Police that identifies a victim, the case is allocated within the ODPP and assessed by a State Prosecutor. Initial contact is then made with the victim by the State Prosecutor or the case paralegal. This contact may be by a combination of telephone calls and a letter or email. The primary purpose of this communication is to provide information to the victim about:
 - (a) the relevant contact people at the ODPP;
 - (b) the status of the case and the next court date; and
 - (c) their role in the prosecution process.
26. While it is always desirable that a victim deal with the same State Prosecutor and paralegal, this may not always be possible. The ODPP attempts to minimise the number of different people with whom a victim has communication over the course of a prosecution.
27. As soon as the ODPP receives a new case it ensures all victims have been referred to the Victim Support Service or Child Witness Service (as applicable). Those agencies are able to assist with support, information about the court process and preparation of victim impact statements.
28. The ODPP will also notify victims of their entitlements to seek restitution and compensation.
29. During the proceedings, ODPP paralegals send standard letters to victims which contain relevant information about the prosecution at the following critical stages:
 - Where the matter is being heard in the Perth metropolitan area, prior to a disclosure committal hearing (a hearing where, if appropriate, a matter will be transferred to the District or Supreme Court);
 - Prior to a sentencing hearing (if the accused pleaded guilty before or at the disclosure committal hearing);
 - Prior to a hearing to list the matter for trial (if the accused pleaded not guilty at the disclosure committal hearing);
 - Prior to the sentencing of an accused;
 - Following sentencing to notify the sentencing outcome;
 - In the event that an appeal is lodged by the offender against conviction or sentence, or the State against an acquittal or sentence; and
 - At the conclusion of any appeal proceedings.
30. Other correspondence may also be sent to a victim during the proceedings by the paralegal or the State Prosecutor responsible for the prosecution, as appropriate.

31. In some matters, the State Prosecutor with the conduct of the prosecution may seek to confer with a victim early in the proceedings, to ensure proper preparation of the prosecution. If that is required, the State Prosecutor will contact the victim and make the necessary arrangements.
32. Decisions which significantly alter or discontinue charges may only be made by authorised State Prosecutors. In cases involving the homicide or attempted homicide of a victim, only the Director of Public Prosecutions, the Deputy Director of Public Prosecutions, the Director Legal Services or a Consultant State Prosecutor may make such decisions.
33. Prior to making a decision to amend or discontinue a charge which significantly alters the prosecution case, a State Prosecutor must, if reasonably possible, discuss the potential decision with the victim.
34. If any decision to amend or discontinue a charge which significantly alters the prosecution case is made, the victim must, if reasonably possible, be informed. If sought, an explanation about a decision that has been made will be given to a victim in writing.
35. If there is to be a criminal trial, whether or not the victim is to be a witness, the State Prosecutor with the conduct of the trial will speak with the victim, preferably in person, shortly before the trial to explain how the trial will proceed, and to assist with any questions the victim may have about the proceedings. If the victim is to be a witness, this conference will also assist the State Prosecutor to ensure that the prosecution's obligations of disclosure have been complied with.
36. If a victim wishes to meet or speak to the relevant State Prosecutor prior to any sentencing proceeding, such a request will be accommodated if reasonably possible.

REVIEW OF ODPP DECISIONS

37. The ODPP understands that a victim may, on occasion, be dissatisfied with a decision made by a State Prosecutor in relation to a prosecution. In such a situation, a victim may seek a review be conducted by the ODPP.
38. Any victim who is directly affected by a decision made by a State Prosecutor may apply to have that decision reviewed in accordance with paragraphs [43] – [59]. Where the victim is under 18 years of age or has a disability, a parent, guardian or spokesperson for the victim may instead apply for the decision to be reviewed. Where the alleged criminal conduct has caused the death of a person, immediate family members of that person may apply for a decision to be reviewed.
39. State Prosecutors making a decision which affects a victim must, if possible, refrain from communicating that decision to the court or an accused until the victim has positively confirmed that they will not seek a review of the decision, or 7 days have elapsed since the victim was notified of the decision.
40. Where a trial date has been fixed, and the decision has been made close to the trial date, it may not be possible for a review to be sought or conducted before the decision must be communicated to the court. In such circumstances, a review can still be undertaken. However, in the event that the review determines that a different decision ought to have been made, the

fact that the original decision has been communicated to the court may prevent its impact being reversed.

41. If the decision of which a review is sought was made by the Director of Public Prosecutions, no review will be carried out. However, the Director of Public Prosecutions or the Deputy Director of Public Prosecutions will offer to meet with the victim to ensure that all relevant matters have been considered and the decision explained.
42. There are two kinds of review possible. The first is an "initial review". The second is an "internal independent review".

Initial Review

43. An initial review is available to a victim who is dissatisfied with an amendment or discontinuance of a charge or charges which significantly alters the prosecution case in relation to which they are the victim.
44. In the event that a victim seeks an initial review, they should write or verbally communicate to the State Prosecutor or paralegal with the conduct of the file, clearly stating that they seek an internal review, within 7 days of being notified of the decision. While it is not essential that reasons for seeking the review are given, they may be helpful to the reviewer, and are therefore encouraged.
45. An initial review of the decision will then be undertaken by a State Prosecutor who is senior to the State Prosecutor who made the original decision.
46. An initial review may involve consultation with the victim, if appropriate.
47. If the State Prosecutor conducting the initial review considers the original decision to have been incorrect, the decision should be overturned if it has not already been communicated to the Court. If the decision has been communicated to the Court, the matter will be escalated to the Director of Public Prosecutions or the Deputy Director of Public Prosecutions, who will offer to meet with the victim.
48. Unless there are exceptional circumstances, the initial review should be completed within 14 days of the original decision. The outcome will be communicated and explained to the victim, verbally and, if sought, in writing.
49. The reasons for the decision made as a result of the initial review must be recorded in writing on the ODPP file.

Internal Independent Review

50. An internal independent review is only available to a victim where the decision with which they are dissatisfied is one in which the result is that there is to be no prosecution of any charge relating to that victim.
51. A victim to whom this section applies is not obliged to seek an internal independent review, but may elect to seek an initial review. In such a case, the victim may seek an internal independent review if dissatisfied with the outcome of the initial review. However, the victim should take into account fixed court dates in determining the type of review sought.

52. In the event that a victim seeks an internal independent review, they should write or verbally communicate to the State Prosecutor or paralegal with the conduct of the file, clearly stating that they seek an internal review, within 7 days of being notified of the decision to be reviewed. While it is not essential that reasons for seeking the review are given, they may be helpful to the reviewer, and are therefore encouraged.
53. An internal independent review will be conducted by a State Prosecutor of equal to, or higher, seniority than the State Prosecutor who authorised the decision being reviewed.
54. The State Prosecutor undertaking the internal independent review will, as much as possible, have had no involvement in the matter prior to the review. In some cases, it may not be possible to avoid the State Prosecutor having had incidental involvement (such as attending an administrative court appearance), but they will still be regarded as independent for the purposes of the review.
55. An internal independent review will involve a critical examination of the evidence, and the original decision. It may involve consultation with the victim.
56. If the State Prosecutor conducting the initial review considers the original decision to have been incorrect, the matter will be escalated to the Director of Public Prosecutions or the Deputy Director of Public Prosecutions for final determination.
57. If the Director of Public Prosecutions or Deputy Director of Public Prosecutions considers the decision should be overturned, and the decision has not already been communicated to the Court, the decision will be overturned. However, if the decision has already been communicated to the Court, the Director of Public Prosecutions or the Deputy Director of Public Prosecutions will offer to meet with the victim to ensure a full explanation is provided.
58. Unless there are exceptional circumstances, an internal independent review should be completed within 28 days of the decision being reviewed. The outcome will be communicated and explained to the victim, verbally and, if sought, in writing.
59. The reasons for the decision made as a result of an internal independent review must be recorded in writing on the ODPP file.

VICTIM IMPACT STATEMENTS

60. The impact of a crime on a victim is able to be assessed by the Court in criminal proceedings, prior to the sentencing of an offender, as a result of the legislative framework in relation to victim impact statements set out in sections 23A, 24, 25 and 26 of the ***Sentencing Act 1995 (WA)***.
61. People who are entitled to submit victim impact statement are listed in section 23A of the ***Sentencing Act 1995 (WA)***.
62. A victim impact statement is a statement containing particulars of personal harm suffered by a victim as a direct result of the offence, or, in the case of a family victim, the impact of the primary victim's personal harm on the members of the primary victim's immediate family. "Personal harm" means bodily harm or psychological or psychiatric harm.

63. Victims are entitled to make a victim impact statement. Victim impact statements are not, however, compulsory.
64. The Victim Support Service and Child Witness Service will assist a victim to prepare a victim impact statement should they wish to make one. The statement should not be prepared until the accused has pleaded guilty or is found guilty after trial.
65. If a victim impact statement is prepared prior to the accused pleading guilty or being found guilty after trial, the victim impact statement may need to be disclosed to the defence at that time. In such circumstances, the victim may be cross-examined as to its contents during the trial proceeding.
66. A copy of the victim impact statement must be provided to the defence prior to it being presented at the sentencing hearing. If an offender is legally represented, copies are provided to their defence practitioners on the basis that they:
 - will take appropriate steps to ensure that the contents of the victim impact statement remains confidential;
 - will not disclose the contents of the victim impact statement to any person other than the offender; and
 - will not use the statement for any purpose other than the purpose of making submissions at the sentencing of the offender.
67. Further, at the conclusion of the sentencing or their involvement in it, a defence practitioner is to:
 - deliver to the court the hard copy of the victim impact statement; and
 - delete any electronic copies of the victim impact statement.
68. If an offender is not legally represented, the victim impact will be shown to them prior to the sentencing hearing, but they will not be provided with a copy.
69. Victims may seek to have their victim impact statement presented to the court in writing, or to read it aloud during the sentencing hearing. The State Prosecutor will assist to facilitate the victim's request in this regard. However, the manner in which a victim may present their victim impact statement is ultimately a matter for the judicial officer presiding over the sentencing hearing.
70. The extent to which a victim impact statement is taken into account in sentencing ultimately remains a matter in the discretion of the judicial officer, who may rule the whole or any part of the statement inadmissible.
71. In rare circumstances, defence may seek to cross-examine a victim as to the content of their victim impact statement during the sentencing hearing. If this occurs, the ODPP will discuss the process with the victim.
72. From 1 October 2017, in all cases in which a sentence of imprisonment is imposed on an offender, the court must make a copy of any victim impact statement available to the Prisoners Review Board.

RESTRAINING ORDERS

73. The ODPP will generally only make an application for a restraining order if that application is directly associated with sentencing proceedings of which the ODPP has conduct. Until the conclusion of criminal proceedings, protective bail conditions are usually imposed, if necessary, to ensure the protection of the victim and/or witnesses.
74. Otherwise, applications for restraining orders are civil proceedings in which the ODPP has no involvement. Assistance for victims of crime in relation to restraining orders is available at www.police.wa.gov.au and www.legalaid.wa.gov.au. Information as to how to apply for a restraining order in the Magistrates Court of Western Australia is available at www.magistratescourt.wa.gov.au/R/restraining_orders.aspx.
75. If an accused is found guilty of certain sexual or other violent offences, the Court must make a lifetime restraining order against that accused, unless the victim objects to the making of that order. **Appendix 2** sets out the offences which, in the absence of objection, a lifetime restraining order must be made.
76. Where the safety of a victim is clearly in issue, the ODPP may, in its discretion, accede to a request by a victim to seek a violence restraining order or family violence restraining order in circumstances other than those provided in this Guideline. The request should preferably be made in writing, but can be made verbally to the State Prosecutor or paralegal with the conduct of the prosecution.
77. If an accused is convicted of certain sexual or other violent offences against a family member, a victim may state in their victim impact statement that they want to be protected by a family violence restraining order. In the absence of exceptional circumstances, this will be taken to be grounds for making a family violence restraining order against the offender and the court may make a family violence restraining order of 2 years' duration without the need for the victim to make a separate application in the Magistrate's Court. **Appendix 2** sets out the offences which, on conviction, allow a victim to apply for a restraining order in their victim impact statement.
78. Where applicable, the ODPP will endeavour to communicate with a victim prior to the sentencing hearing to ascertain their attitude towards the imposition of a mandatory lifetime restraining order and any appropriate conditions of such an order.
79. Where the making of a restraining order on conviction is not mandatory, but may be made on application to the court, the ODPP will advise victims of their entitlement to seek the imposition of a restraining order against the offender as part of the sentencing proceedings. A victim should advise the ODPP, preferably in writing, if they seek the imposition of a restraining order and the conditions sought as part of that order. If possible and appropriate, the ODPP will then make an application for a restraining order to be imposed against the offender for the protection of the victim.
80. The ODPP is unable to provide guarantees as to the whether a restraining order will be imposed or, if imposed, what conditions will be made part of such an order, as these are ultimately matters for the court to determine.

81. If possible, the ODPP will advise a victim, in writing, of any restraining order imposed by the court for their protection, and the conditions of any such order.

COURT ORDERED RESTITUTION AND COMPENSATION

82. In sentencing proceedings, the ODPP may seek an order for restitution or compensation on behalf of victims when requested to do so and where the victim is entitled to such an order. Such an order is called a "reparation order" under the ***Sentencing Act 1995 (WA)***.
83. The ODPP will generally only seek a reparation order be made in sentencing proceedings when the loss is quantifiable by documentary evidence which has been provided to the ODPP. Documentary evidence should be provided to the ODPP at least 14 days before the sentencing hearing.
84. The ODPP is not able to provide legal advice to victims in relation to reparation orders. A victim should consider obtaining independent legal advice before requesting the ODPP to apply to the court for a reparation order, particularly if the victim has suffered significant injuries or financial loss.
85. If a victim of crime thinks that any property loss and/or damage may be covered by an insurance policy, then the victim should talk to their insurance company before seeking a reparation order as part of sentencing proceedings.
86. Factors which will be considered by the ODPP when determining whether to seek a reparation order include:
- (a) whether sufficient documentary evidence has been produced which justifies the making of a reparation order in the amount sought;
 - (b) the attitude of the accused to the making of the reparation order; and
 - (c) whether civil proceedings have already been commenced.
87. The financial circumstances of the offender are not a consideration relevant to the making of a reparation order.
88. An application for reparation will only be made by the ODPP after an offender is convicted and as part of the sentencing proceedings.
89. In proceedings in the District Court and Supreme Court, if the ODPP does not seek a reparation order during the sentencing proceedings, the victim retains the right to personally seek such an order within 12 months after the date when the offender was sentenced. If the proceedings are in the Children's Court, an application must be made by the prosecutor during the proceedings.
90. If a reparation order is made by the court, but the offender does not comply with it, it is a matter for the victim to personally take any enforcement action by way of civil proceedings. The ODPP is not able to commence any such proceedings, or act for a victim in them.

91. After an offender has been prosecuted for an offence, WA Police may sometimes still hold personal property of a victim or victims. Victims should contact the investigating officer or their local Police Station to find out whether the Police have possession of any of the victim's property. If so, arrangements can be made with WA Police for the return of any such property.

CRIMINAL INJURIES COMPENSATION

92. If a victim of crime has suffered an injury or loss, they may be able to make a claim for criminal injuries compensation. An application for criminal injuries compensation is made to the Assessor of Criminal Injuries Compensation and is separate from a compensation order made by the court.
93. Information about criminal injuries compensation, including application forms and guidelines for victims is available at <http://www.courts.dotag.wa.gov.au/C/compensation.aspx>.
94. The ODPP is unable to make an application for criminal injuries compensation on behalf of a victim of crime, and is unable to provide legal advice about making such an application. However, subject to the ODPP Release of Materials Policy, the ODPP may be able to provide documents or information to a victim to enable them to complete a criminal injuries compensation application.

RELEASE OF DOCUMENTS TO VICTIMS

95. In the course of their duties, ODPP staff have access to a range of confidential and sensitive information. The release and use of such information is restricted.
96. Victims may wish to obtain information or copies of documents relating to a criminal prosecution from the ODPP.
97. The approach of the ODPP to the release or disclosure of documents or other information to victims is set out in the ODPP's Release of Materials Policy. **Appendix 3** contains an extract of the relevant provisions of the Release of Materials Policy.

ADDITIONAL INFORMATION

98. In addition to providing information to victims by letter and telephone, the ODPP has the following pamphlets available to assist witnesses:
- *About the DPP;*
 - *Information for Victims of Crime;*
 - *Information for Witnesses;*
 - *Compensation for Victims of Crime;*
 - *Court Support;*
 - *Victim Support Service;*
 - *Child Witness Service;*
 - *Information for parents or guardians of child victims or witnesses.*

99. Electronic copies of these pamphlets are available on the ODPP website homepage at <http://www.dpp.wa.gov.au>. This website also contains a dedicated page for Victims of Crime that includes links to other useful websites, including information on the following:

• Prosecution process	• Compensation and Restitution
• Keeping informed	• Criminal Injuries Compensation
• Input into the prosecution process	• Child Victims
• Victim Impact Statements	• Vulnerable Witnesses
• Special Needs	• Services for Victims of Crime

Appendix 1

Guidelines as to how victims should be treated

Schedule 1 of the *Victims of Crime Act 1994 (WA)*

1. A victim should be treated with courtesy and compassion and with respect for the victim's dignity.
2. A victim should be given access to counselling about the availability of welfare, health, medical and legal assistance services and criminal injuries compensation.
3. A victim should be informed about the availability of lawful protection against violence and intimidation by the offender.
4. Inconvenience to a victim should be minimized.
5. The privacy of a victim should be protected.
6. A victim who has so requested should be kept informed about —
 - (a) the progress of the investigation into the offence (except where to do so may jeopardize the investigation); and
 - (b) charges laid; and
 - (c) any bail application made by the offender; and
 - (d) variations to the charges and the reasons for variations.
7. A victim who is a witness in the trial of the offender and has so requested should be informed about the trial process and the role of the victim as a witness in the prosecution of the offence.
8. A victim who has so requested should be informed about any sentence imposed on the offender, or any other order made in respect of the offender, as a result of the trial and about any appeal and the result of any appeal.
9. A victim's property held by the Crown or the police for the purposes of investigation or evidence should be returned as soon as possible.
10. Arrangements should be made so that a victim's views and concerns can be considered when a decision is being made about whether or not to release the offender from custody (otherwise than at the completion of a term of imprisonment or detention).
11. A victim who has so requested should be informed about the impending release of the offender from custody and, where appropriate, about the proposed residential address of the offender after release.
12. A victim who has so requested should be informed of any escape from custody by the offender.

Appendix 2

Mandatory Restraining Orders and Applications for Restraining Orders in Victim Impact Statements

Restraining Orders Act 1997

FVRO - Family Violence Restraining Order

VRO - Violence Restraining Order (for people not related to each other)

"family relationship" - a relationship between 2 persons :

- (a) who are, or were, married to each other; or
- (b) who are, or were, in a de facto relationship with each other; or
- (c) who are, or were, related to each other; or
- (d) one of whom is a child who —
 - i. ordinarily resides, or resided, with the other person; or
 - ii. regularly resides or stays, or resided or stayed, with the other person; or
- (e) one of whom is, or was, a child of whom the other person is a guardian; or
- (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.

<i>Criminal Code provision</i>	Family member can indicate they want FVRO in Victim Impact Statement s63(4AA) Restraining Orders Act 1997	Mandatory VRO/FVRO s63A Restraining Orders Act 1997
s 279 (Murder)		
s 280 (Manslaughter)		
s 281 (Unlawful assault causing death)		
s 283 (Attempt to unlawfully kill)		✓
s 292 (Disabling to commit Offence)		✓ if in "family relationship"
s 293 (Stupefying to commit offence)		✓ if in "family relationship"
s 294 (Act intended to cause GBH)		✓ if in "family relationship"
s 297 (GBH)		✓
s 301 (Wounding)	✓	
s 304(1) (Act or Omission causing harm/danger)	✓	

<i>Criminal Code provision</i>	Family member can indicate they want FVRO in Victim Impact Statement s63(4AA) Restraining Orders Act 1997	Mandatory VRO/FVRO s63A Restraining Orders Act 1997
s 304(2) (Intent to harm/endanger)		✓ if in "family relationship"
s 313 (Assault)	✓	
s 317 (Assault causing bodily harm)	✓	
s 317A (Assault with intent)	✓	
s 320 (Sexual offences – Child u/13)		✓ if in "family relationship"
s 321 (Sexual offences – Child o/13 u/16)		✓ if in "family relationship"
s 321A (Persistent sexual conduct – child u/16)		✓ if in "family relationship"
s 323 (Indecent assault)	✓	
s 324 (Aggravated indecent assault)	✓	
s 325 (Sexual penetration without consent)		✓
s 326 (Aggravated sexual penetration without consent)		✓
s 327 (Sexual coercion)		✓
s 328 (Aggravated sexual coercion)		✓
s 329 (Sexual offences by relatives)		✓ if in "family relationship"
s 332 (Kidnapping)		✓ if in "family relationship"
s 333 (Deprivation of Liberty)	✓	
s 338A (Threat to gain)	✓	
s 338B (Threats)	✓	
s 338C (Creating false apprehension)	✓	

<i>Criminal Code provision</i>	Family member can indicate they want FVRO in Victim Impact Statement s63(4AA) Restraining Orders Act 1997	Mandatory VRO/FVRO s63A Restraining Orders Act 1997
s 338E (Stalking)	✓	
s 444 (Criminal Damage)	✓ (if Summary)	✓ (if Indictable)

Appendix 3

Documents which may be provided to Victims of Crime

ODPP RELEASE OF MATERIALS POLICY (EXTRACT)

When permitting inspection of, or providing a copy of, transcript, the ODPP must not disclose the fact of a dismissal of a charge against a child or the conviction or finding of guilt against a child in a manner that would identify or be likely to identify the child (section 36(1) *Children's Court of Western Australia Act 1988*).

Further, in accordance with the spirit of sections 35(1) and (3) of the *Children's Court of Western Australia Act 1988*, when permitting inspection of, or providing a copy of, transcript, care should be taken to delete any particulars likely to lead to the identification of any child concerned in the proceedings.

The following provisions of the ODPP Release of Materials Policy are relevant to victims:

TRANSCRIPT

17. Subject to paragraph [18], a copy of the transcript of the sentencing proceedings will be provided, at no cost, to a victim of crime. The sentencing proceedings means the Judge's comments, which usually include a statement of the facts. If, in a particular case, the Judge has not recited the facts the State's statement of facts can be provided.
18. The name of, or any reference which may identify:
 - (a) any accused who is a child, or was a child at the time the offence was committed;
 - (b) any complainant in a sex related offence except the victim who has requested the transcript; and
 - (c) any complainant who is a child except the victim who has requested the transcript;must be deleted from the copy of sentencing transcript before it is provided to the victim or to their legal representative.
19. Victims of crime, including insurance companies pursuant to a right of subrogation, may have a legitimate interest in the whole of the transcript of the prosecution of the offence relevant to that victim.
20. A victim of crime has a legitimate interest in the transcript if it is required:
 - (a) in relation to an application for criminal injuries compensation;
 - (b) in relation to civil litigation; or
 - (c) to assist in the counselling or rehabilitation of the victim.
21. Where a victim of crime has a legitimate interest in the transcript, as provided by paragraph [20], then, subject to the conditions specified in paragraph [22], the following persons may, by prior arrangement, inspect the transcript at the office of the DPP:
 - (a) the victim;
 - (b) the victim's legal representative; and/or
 - (c) a qualified medical adviser or qualified counsellor assisting the victim.

22. The transcript will be available for inspection only if:
- (a) each person who inspects the transcript provides a written undertaking that the transcript will be used solely for the specified purpose for which it will be inspected; and
 - (b) in relation to persons referred to in paragraph [21(c)], the victim, or if a child, their parent/guardian, provides written approval for the transcript to be inspected.

THE INDICTMENT

45. Subject to paragraph [46], a victim of crime or their legal representative will be provided, at no cost, with a copy of:
- (a) the whole of the indictment, excluding the list of witnesses, if all counts relate to that victim; and
 - (b) only that portion of the indictment disclosing those counts which relate to that victim, if there are additional complaints, and excluding the list of witnesses.
46. The name of any accused who is a child, or was a child at the time the offence was committed must be deleted from the copy of the indictment before it is provided to the victim of crime or to their legal representative.

WITNESS STATEMENTS

50. A State witness will be provided, at no cost, with a copy of their statement.

DOCUMENTARY EVIDENCE

72. Where a victim of crime has a legitimate interest in the transcript, as provided by paragraph [20], then, except as provided in paragraph [73], a victim of crime will be provided, at no cost, with a copy of documentary exhibits.
73. A copy of documentary exhibits will not be provided where the volume of documentary exhibits and the relevance of that evidence is such that it would be unreasonable to produce a copy of all documents and there are other means available for the documents to be inspected or provided.