



Government of Western Australia
Department of Justice

Strategic Reform

A report on the statutory review of the *Victims of Crime Act 1994 (WA)*

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1 Executive Summary

- The *Victims of Crime Act 1994* (WA) (the Act) commenced operation on 20 January 1995. The Act was introduced to address the needs of victims and their potential alienation from the criminal justice process.
- The Act provides Guidelines for relevant Western Australian public officers and bodies to ‘have regard to’ in the treatment of victims of crime. The Act also prescribes that information may be shared between relevant public bodies so that victims may be offered State Government victim support services.
- Section 6(1) of the Act requires that, the Attorney General is to carry out a review of the operation and effectiveness of the Act as soon as is practicable after 1 January 2010, and every five years thereafter.
- The Department of Justice (the Department) has undertaken this statutory review (the Review) on behalf of the Attorney General. This Review report is prepared in accordance with section 6(2) of the Act, for the purpose of tabling in each House of Parliament as soon as practicable after it is prepared.
- In carrying out the Review, the Department consulted with pertinent stakeholders and considered arrangements in other jurisdictions. Appendix A of this report lists stakeholder submissions.
- This report makes a total of 17 recommendations, including amendment of a number of the Act’s provisions to improve overall operation and effectiveness.
- This includes that amendments are made to update the definition of the term “victim” in the Act, and to strengthen Schedule 1 of the Act (*Guidelines as to how victims should be treated* by relevant public officers and bodies).
- A number of the recommended amendments (as identified in the report) should be subject to further consultation with relevant public bodies and non-government stakeholders prior to implementation.

2 Recommendations

Recommendation 1.

Amend section 2 of the Act to expand the term 'victim' to include parents or guardians of a victim under the age of 18 years old, and parents or guardians or carers of a victim who is incapable of managing his or her affairs because of mental impairment.

Amend the Act to define the term 'mental impairment' to provide for consistency with the definition used in the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA).

Recommendation 2.

Prior to expanding the term 'victim' – to include parents or guardians of a victim under the age of 18 years old, and parents or guardians or carers of a victim who is incapable of managing his or her affairs because of mental impairment – investigate whether and how these categories of victim might be limited with reference to the seriousness of the act or offence committed by the offender and reflect this finding in the definition.

Recommendation 3.

Amend section 2 of the Act to expand the term 'victim' to include a member of a person's immediate family where an offence results in permanent incapacity of that person. However, in doing so consideration should be given to excluding circumstances where an immediate family member has caused the victim's incapacity.

Recommendation 4.

Amend section 2 of the Act to include a definition of 'permanent incapacity'.

Recommendation 5.

Amend section 2 of the Act to expand the term 'victim' to include persons witness to a 'serious offence', and children exposed to an offence under the *Criminal Code* (WA) committed in circumstances of family violence.

In developing this amendment, consideration should be given to what may constitute a serious offence taking into account other legislation such as the *High Risk Serious Offenders Act 2020* (WA) and to providing a clear definition as to 'family violence' such as under the *Restraining Orders Act 1997* (WA).

Recommendation 6.

Amend section 2 of the Act to include a definition of 'immediate family'.

The definition of 'immediate family' should include a person who is, under Aboriginal customary law or culture, regarded as equivalent to an immediate family member.

Any further amendments to the Act that refer to family members (such as Recommendation 1) should also recognise equivalent relationships under Aboriginal customary law or culture.

These amendments may be informed by the meaning of 'family member' in the Criminal Law (Unlawful Consorting) Bill 2020 (WA) including in relation to the inclusion of persons regarded as family members under the customary law and culture of the Aboriginal person's community.

Recommendation 7.

Develop educational guidelines, in consultation with Aboriginal people and organisations, that will assist State victim service providers to interpret and apply the Act to equivalent relationships under Aboriginal customary laws and culture.

Recommendation 8.

That in expanding the term 'victim' inclusive of Recommendations 1 to 6 above, amendments are developed in consultation with State victim service providers to ensure the definition is sufficiently clear to support their determination of victim eligibility and provision of services.

Recommendation 9.

Amend the definition of the term 'victim' in section 2 of the Act to remove the words 'whether or not that injury, loss or damage was reasonably foreseeable by the offender'.

Recommendation 10.

Evaluate whether the term 'victim' can be aligned across WA legislation, taking into account that statutory definitions must be fit-for-purpose.

Ensure that any new legislation intending to refer to the term 'victim' is consistent with the definition of 'victim' in the Act, where appropriate.

Recommendation 11.

Consider the benefits of moving away from 'Guidelines' towards a 'Victims Rights' based framework.

Recommendation 12.

Replace the term 'offender' in Guideline 7 of Schedule 1 of the Act with the term 'accused'.

Recommendation 13.

Amend the Guidelines in Schedule 1 of the Act to include the provision of assistance to a victim in preparing a Victim Impact Statement.

Recommendation 14.

Amend Schedule 1 of the Act to include an additional Guideline for public officers and bodies to treat victims in a way that is respectful of their particular needs inclusive of race or indigenous background, cultural diversity, age, sex, gender, sexual orientation and disability.

Recommendation 15.

Amend Guideline 11 in Schedule 1 of the Act so that the victim can request to be informed of the location of the offender's Community Justice Service reporting centre where the offender is released on a community based order or a similar order, unless the Department of Justice is legally prohibited from sharing this information.

Recommendation 16.

Amend Guideline 12 in Schedule 1 of the Act to provide that a victim 'who has so requested' should be informed of any escape from custody by the offender, except in circumstances where the provision of that information might jeopardise police investigations and/or place the victim at risk.

Recommendation 17.

Examine whether it would be appropriate and practicable to amend Guidelines 6, 7, 8, 11 and 12 in Schedule 1 of the Act to remove 'who has so requested' and include the flexibility to opt out (and opt back in) should the victim not wish to be informed. This should take into account possible resource and operational implications and whether this may impact on the ability of public officers and bodies to comply with the Guidelines.

In conjunction with this, consider whether there is merit in modifying Guideline 6 to provide for a victim to be informed about the name of the adult accused/offender taking into account legal, privacy and safety issues.

3 The *Victims of Crime Act 1994* (WA)

3.1 About the Act

The Act commenced operation on 20 January 1995 to address the needs of victims of crime and their potential alienation from the criminal justice process. In the second reading speech of the Victims of Crime Bill 1994, the Hon George Cash stated:

The Government believes there needs to be a balance and more attention should be focused on the victims and their families; the people who have had their property stolen and damaged, who have been assaulted and who have been abused. The Victims of Crime Bill is a significant initiative of the coalition Government to honour its pledge to victims. The needs of the victim are now a fundamental part of decision making when it comes to the justice system.¹

Guidelines are set out in the Act for Western Australian public officers and bodies to 'have regard to' in the treatment of victims of crime where 'relevant to their functions' and 'practicable' to do so.² Section 2 of the Act defines 'public officers and bodies'.

The Act also allows for information to be shared between public bodies. This includes that the Director of Public Prosecutions (DPP) and the Western Australia Police Force (WA Police) may provide information 'in relation to a victim' so that a public sector agency can offer the services it has available to a victim.³

There are dedicated areas in the Department of Justice (the Department) responsible for assistance and support services to victims of crime. These victim service providers are guided by the definition of 'victim' in section 2 of the Act to determine persons eligible to receive services.

3.2 The Act's objectives

The Second Reading Speech and subsequent parliamentary debates identified that the Act's main objectives are to:

- recognise the impact of crime on victims, including the victims' families, and support victims of crime in the criminal justice system⁴;
- create a positive duty on public officers and bodies to be sensitive to victims needs by having regard to the Guidelines⁵; and

¹ The Hon. George Cash MLC, North Metropolitan Leader of the House, Legislative Council, Parliamentary Debates (Hansard), 1 December 1994, pp. 8246- 8248.

² *Victims of Crime Act 1994* (WA), s.3.

³ *Ibid*, s.4.

⁴ The Hon. George Cash MLC.

⁵ *Ibid*.

- facilitate appropriate information sharing to improve the level of information available to victims⁶.

4 Review requirements and method

4.1 The Review provisions

Section 6 of the Act provides as follows:

6. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after –
 - (a) 1 January 2010; and
 - (b) the expiry of each 5 year period after that day.
- (2) The Minister is to cause a report to be prepared on each review and is to cause the report to be tabled before each House of Parliament as soon as practicable after it is prepared.

Reviews of the Act were undertaken in 1999 and 2005. The last review of the Act was tabled in Parliament in November 2013 (the 2011 Review).⁷

In accordance with section 6 of the Act, a further review was to be carried out ‘as soon as is practicable’ after 1 January 2015. However, the Review was deferred to allow time for the Office of the Commissioner for Victims of Crime to become established and obtain operational experience in relation to the treatment of victims of crime.

The Department has conducted the current Review on the Attorney General’s behalf, the results of which are set out below.

4.2 Terms of reference

In accordance with section 6(1) of the Act, the Review has examined the operation and effectiveness of the provisions in the Act, with a focus on the achievement of the identified objectives.

The Review has been undertaken in respect of the operation and effectiveness of:

- Section 2 – Terms used;

⁶ The Hon Michael Mischin, Attorney General, Legislative Council. Parliamentary Debates (Hansard), 26 November 2013, pp. 6502b-6503a.

⁷ Department of the Attorney General, *Report on the 2011 Review of the Victims of Crime Act 1994*, November 2013. Tabled in Parliament of Western Australia: Legislative Assembly, Paper no.1146, 13 November 2013; and Legislative Council, Paper no.1044, 26 November 2013.

- Section 3 – Guidelines about treatment of victims;
- Section 4 – Information about victims, provision of by WA Police and DPP; and
- Schedule 1 – Guidelines as to how victims should be treated (the Guidelines).

4.3 Activities undertaken

In carrying out the Review, the Department:

- reviewed relevant literature and reports;
- developed and distributed a discussion paper; and
- consulted with relevant Western Australian public officers and bodies, non-government organisations, and relevant persons.

4.3.1 Stakeholder consultation and submissions

The Department initiated stakeholder consultation by inviting submissions to a discussion paper.⁸ This was done via advertising on the Department's website, in *The West Australian* newspaper and on ABC Radio Perth.

During the discussion paper consultation period, the Department also held a Public Forum (the Forum) at the Perth Town Hall. Ten people attended the Forum. Three submissions from members of the public were received after the Forum.

Targeted consultation was also undertaken with pertinent stakeholders including public bodies with justice functions and those that provide services to victims, other relevant public authorities, community legal organisations, organisations that assist victims, relevant experts, and victim representatives.

Stakeholders who made submissions to the Review are listed at Appendix A of this report.

⁸ Government of Western Australia, Department of Justice, Commissioner for Victims of Crime, *Statutory Review of the Victims of Crime Act 1994 – Discussion Paper*, August 2018.

5 Review of the operation and effectiveness of the Act

5.1 Section 2 – Terms Used

Section 2 currently defines four terms for the purpose of the Act: 'guidelines', 'offence', 'public officers and bodies', and 'victim'.

With the exception of the terms 'victim' and 'guidelines', the terms listed under section 2 of the Act were found to be effective and appropriate.

5.1.1 The term 'victim' is limited and should be expanded to recognise a more contemporary understanding of the impact of crime on victims

The definition of 'victim' helps determine the applicability of the Act's information sharing provisions and Guidelines, and is also used by State victim service providers to determine who may access services.

This Review has considered whether the term 'victim' satisfactorily recognises the impact of crime on victims, including victims' families, and appropriately supports victims of crime in the criminal justice system.

The term 'victim' under the Act states:

victim means -

- (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 death, any member of the immediate family of the deceased.

A number of stakeholder submissions identified that the current definition of 'victim' in section 2 of the Act is limited and should be expanded to include broader categories of victims of crime.

The 2011 Review of the Act recommended that the definition of 'victim' be expanded to include the parent and/or guardian of a child and the carer of a person who is incapable of managing his or her affairs because of mental impairment and who has been the victim of an offence.

It is acknowledged that, if the term 'victim' is expanded and there is no corresponding increase in resources available to victim support services, the same fixed resources will then be applied to a larger pool of victims. This may result in a reduction in services provided to victims and the need to prioritise certain categories of victims.

Based on the submissions from stakeholders and findings of the 2011 Review, the following (three) categories of 'victim' were considered for inclusion in the Act:

- parents, guardians or carers of a victim under the age of 18 years or a victim who is incapable of managing his or her affairs;
- immediate family where an offence results in permanent incapacity of a person; and
- persons witness to a violent offence.

Detailed consideration of the above categories of victim is set out below.

Parents, guardians or carers of a victim under the age of 18 years or a victim who is incapable of managing his or her affairs

The 2011 Review recommended that consideration should be given to expanding the definition of a victim under the Act to cover parents and guardians of children and incapable persons who are direct victims of crimes.

Submissions to the Review from the Office of the Commissioner for Victims of Crime (OCVoC), the Department of Communities (Communities) and the public supported expanding the definition to include this category of victim. WA Police also advised that it was amenable to this proposed change.

While specific to family and domestic violence, Recommendation 64(1) of the Law Reform Commission of Western Australia's (LRCWA) report titled *Project 104 - Enhancing Family and Domestic Violence Laws* (the LRCWA Report) reiterated this view in recommending that:

64(1)(a) That the Department of the Attorney General consider expanding the definition of a victim of crime under the *Victims of Crime Act 1994* (WA) to include the following categories:

- (a) A parent, guardian or carer (including equivalent relationships under Aboriginal customary law) of a child (a person under the age of 18 years) who is a victim of a family and domestic violence related offence.⁹

Victims of crime legislation in most other Australian jurisdictions recognise the parent or guardian of a victim who was under the age of 18 years at the time the criminal act was committed. The Australian Capital Territory (ACT) specifically recognise guardians or carers of a legally incompetent person as a victim of crime.¹⁰

Research literature indicates that family members and social support circles are central to supporting the victim, regardless of age, in their recovery process.¹¹ Parents, guardians or carers are likely to experience their own intense distress about what has

⁹ Law Reform Commission of Western Australia, *Project 104 - Enhancing Family and Domestic Violence Laws: Final Report*, June 2014.

¹⁰ *Victims of Crime Act 1994* (ACT), s 6(1)(e).

¹¹ Fuller G, 'Non-offending parents as secondary victims of child sexual assault', *Trends and Issues in Crime and Criminal Justice*, No.500, March 2016, Australian Institute of Criminology.

happened and can be significantly impacted. The research literature also highlights that parents and guardians/carers should be appropriately supported both emotionally and practically so they can sufficiently support the primary victim.¹²

Having considered the above, it is recommended that parents, guardians or carers of a victim under the age of 18 years old or a victim incapable of managing his or her own affairs should be recognised as victims of crime under the Act.

Moreover, in the NT parents and guardians are eligible for assistance where a child is the primary victim of a violent act.¹³

In Victoria (VIC), to be eligible for assistance under any of the above-mentioned three victim categories, legislation requires that there must have been an 'act of violence'.¹⁴ An 'act of violence' is defined under the *Victims of Crime Assistance Act 1996* (VIC) (VCAA) as a 'criminal act' or 'a series of related criminal acts' that occurred in VIC and that 'directly resulted in injury or death to one or more persons'. The VCAA defines a 'criminal act' as an act or omission that is a 'relevant offence'. The term 'relevant offence' is also defined in the VCAA as the following:

- an offence that involves an assault, an injury or a threat of injury to a person and which is punishable by imprisonment;
- sexual offences;
- the offences of stalking, child stealing and kidnapping; and
- conspiracy, incitement or an attempt to commit any of the offences listed above.¹⁵

This Review recommends that there is investigation as to whether and how an expanded definition of 'victim' – pertaining to parents and/or guardians of a victim under the age of 18 years old, and carers of a victim who is incapable of managing his or her affairs – might be limited with reference to the seriousness of the act committed by the offender or accused.

It is also recommended that the category of 'persons incapable of managing his or her own affairs' is limited to 'persons incapable or managing his or her own affairs because of mental impairment'. It is recommended that the Act define the term 'mental impairment' to provide for consistency with the definition used in the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA).¹⁶

¹² Davis, R, Taylor, B and Bench S, 'Impact of sexual and nonsexual assault on secondary victims.' *Violence Vict.* 1995 Spring, 10(1), 73-84.

¹³ *Victims of Crime Assistance Act 2006* (NT), s 11 – Secondary victim.

¹⁴ *Victims of Crime Charter Act 2006* (VIC), s 3(1).

¹⁵ *Ibid.*

¹⁶ *Criminal Law (Mentally Impaired Accused) Act 1996* (WA), s.8 – Terms used.

Recommendation 1.

Amend section 2 of the Act to expand the term ‘victim’ to include parents or guardians of a victim under the age of 18 years old, and parents or guardians or carers of a victim who is incapable of managing his or her affairs because of mental impairment.

Amend the Act to define the term ‘mental impairment’ to provide for consistency with the definition used in the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA).

Recommendation 2.

Prior to expanding the term ‘victim’ – to include parents or guardians of a victim under the age of 18 years old, and parents or guardians or carers of a victim who is incapable of managing his or her affairs because of mental impairment – investigate whether and how these categories of victim might be limited with reference to the seriousness of the act or offence committed by the offender and reflect this finding in the definition.

Immediate family where an offence results in permanent incapacity of a person

The Act provides that a victim includes a member of a person's immediate family where the offence causes the death of that person.

The 2011 Review recommended that this category of victim be expanded to include a member of a person's immediate family if the offence results in the death or incapacity of that person. The review also recommended that a definition of incapacity should be included in the Act to assist in interpretation.

This approach was supported in submissions to this Review from OCVoC, WA Police, the Department’s Court and Tribunal Services (CTS) Division, Communities and the North Metropolitan Health Service (NMHS). CTS submitted that family members are impacted by crime, particularly when the direct or primary victim suffers lifelong injury that means they require 24 hour care.

Further, the LRCWA Report found that the definition of victim should extend to where a victim of crime has been permanently incapacitated.¹⁷

Legislation in some other jurisdictions provides scope to recognise immediate family of persons who have suffered various levels of harm as victims of crime. For example, in the *Victims of Crime Act 1994* (ACT) the term victim includes ‘a family member, of

¹⁷ Law Reform Commission of Western Australia (2014), p. 169.

the primary victim, who suffers harm because of the harm to the primary victim'¹⁸ and 'a person who is financially or psychologically dependent on the primary victim and who suffers harm because of the harm to the primary victim'.¹⁹

The *Victims of Crime Assistance Act 2009* (QLD) includes as a victim 'the family member or dependant of a person who has died or suffered harm because a crime is committed against that person'.²⁰ The term 'harm' is defined in that legislation as 'physical, mental or emotional harm'.²¹

It is also noted that there may be circumstances where an immediate family member has caused the victim's incapacity. In such circumstances, it would not be appropriate for the family member to be afforded victim status.

Taking into consideration the recommendations of the 2011 Review, submissions to the Review, the LRCWA's finding and arrangements in other jurisdictions, it is recommended that section 2 of the Act expand the term 'victim' to include a member of a person's immediate family where an offence results in permanent incapacity of a person. Consideration should also be given to circumstances where an immediate family member has caused the victim's incapacity.

Further, it is also recommended that section 2 of the Act include a definition of 'permanent incapacity' to assist in the interpretation of the Act.

Recommendation 3.

Amend section 2 of the Act to expand the term 'victim' to include a member of a person's immediate family where an offence results in permanent incapacity of that person. However, in doing so consideration should be given to excluding circumstances where an immediate family member has caused the victim's incapacity.

Recommendation 4.

Amend section 2 of the Act to include a definition of 'permanent incapacity'.

¹⁸ *Victims of Crime Act 1994* (ACT), Part 2A, s.6(1)(b).

¹⁹ *Victims of Crime Act 1994* (ACT), Part 2A, s.6(1)(c).

²⁰ *Victims of Crime Assistance Act 2009* (QLD), s.5(1)(b).

²¹ *Victims of Crime Assistance Act 2009* (QLD), Schedule 3 – Dictionary.

Witness to an offence

The term 'victim' in section 2 of the Act does not recognise persons witness to a crime.

OCVoC submitted that the definition of 'victim' should be broadened to include people who are present at the scene of a crime. WA Police supported the expansion of the definition of victim to include a witness to a violent offence.

Recommendation 64(1) of the LRCWA Report states:

1. That the Department of the Attorney General consider expanding the definition of a victim of crime under the *Victims of Crime Act 1994* (WA) to include the following categories:

...

(b) A child who has been exposed to a family and domestic violence related offence committed against a person with whom that child is in a family and domestic relationship.

OCVoC, WA Police, Communities and NMHS submitted support for amending the Act to recognise a child exposed to a family and domestic violence related offence committed against a person with whom that child is in a family and domestic relationship as a category of victim.

Legislation in NSW recognises (as a secondary victim) persons who witness an act of violence resulting in injury or death to the primary victim.²² The ACT recognises as (a primary victim) a person who suffers harm as a result of witnessing an offence.²³ The NT provides for 'secondary victims' witness to a violent act²⁴ and a child who becomes aware of a violent act against their parent²⁵ to be eligible for counselling. VIC legislation recognises a witness to a criminal offence as a 'person adversely affected by crime'.²⁶

Agencies in some other jurisdictions including NSW²⁷ and VIC²⁸ indicate that the provision of victim services is limited to witnesses of serious or violent crimes.

OCVoC's website highlights that being witness to a 'traumatic or violent event' can have a very deep impact on people, especially children. Even if a witness was not

²² *Victims Rights and Support Act 2013* (NSW), s 21(1).

²³ *Victims of Crime Act 1994* (ACT), s 6(1)(a)(ii).

²⁴ *Victims of Crime Assistance Act 2006* (NT), Part 2, s 11(1).

²⁵ *Victims of Crime Assistance Act 2006* (NT), Part 2, s 11(2).

²⁶ *Victims' Charter Act 2006* (VIC), s 3.

²⁷ NSW Government, Community & Justice. Victim Services. <https://www.facs.nsw.gov.au/families/legal/victims-of-violent-crimes/victim-services> (accessed August 2020).

²⁸ Office of Public Prosecutions Victoria, Victims and Witness Assistance Service Brochure, available at: <https://victimsandwitnesses.opp.vic.gov.au/witnesses/witness-assistance-service> (August 2020).

physically hurt or involved in the event, they can still be psychologically affected by what they have seen or heard.²⁹

Research literature also highlights that children 'witnessing' or being exposed to family and domestic violence has been increasingly recognised as a form of child abuse, both in Australia and internationally.³⁰ Children who are exposed to family and domestic violence can be negatively affected psychologically and behaviourally, although impacts may be managed by the provision of holistic and multidisciplinary services.³¹

However, concerns were raised by Department victim service providers about expanding the term 'victim' to include any witness of an offence and all children exposed to family and domestic violence. Should the term victim be expanded in this regard, there would need to be clear definitions regarding what constitutes a family and domestic violence related offence or a serious offence. It is noted that section 221(1) of the *Criminal Code* includes that where a child was present when an assault or other violence was committed as a circumstance of aggravation. Section 5A of the *Restraining Orders Act 1997* (WA) defines the term 'family violence'.

Based on submissions to the Review, research literature and arrangements in other jurisdictions, it is recommended that the term victim is expanded to include persons witness to a criminal offence. However, this category should be limited to persons witness to a serious offence, with consideration given to definitions of serious offence used in other legislation such as the *High Risk Serious Offenders Act 2020* (WA). Further, the Act should also be amended to include children exposed to an offence under the *Criminal Code* (WA) committed in circumstances of family violence.

²⁹ Government of Western Australia, Victims of Crime, 'Coping with trauma'. https://www.victimsofcrime.wa.gov.au/C/coping_with_trauma.aspx?uid=9377-6464-1429-2208 (accessed August 2020).

³⁰ Richards K, 'Children's exposure to domestic violence in Australia', *Trends and Issues in Crime and Criminal Justice*, No.419, June 2011, Australian Institute of Criminology.

³¹ Australian Government, Australian Institute of Family Studies, 'Children's exposure to domestic and family violence'. <https://aifs.gov.au/cfca/publications/childrens-exposure-domestic-and-family-violence/export> (accessed September 2020).

Recommendation 5.

Amend section 2 of the Act to expand the term 'victim' to include persons witness to a 'serious offence', and children exposed to an offence under the *Criminal Code* (WA) committed in circumstances of family violence.

In developing this amendment, consideration should be given to what may constitute a serious offence taking into account other legislation such as the *High Risk Serious Offenders Act 2020* (WA) and to providing a clear definition as to 'family violence' such as under the *Restraining Orders Act 1997* (WA).

5.1.2 The term 'victim' does not recognise equivalent family relationships under Aboriginal customary law and culture

As stated above, the term 'victim' in section 2 of the Act includes a 'member' of the 'immediate family' of the deceased where an offence results in death.

However, the Act does not provide a definition of 'immediate family' member.

Nor does the Act specifically recognise equivalent family relationships under Aboriginal³² customary law and culture. This is despite Aboriginal people being significantly overrepresented as victims in the criminal justice system.³³

The 2011 Review recommended that a definition of 'immediate family' be inserted into the Act. The review also recommended that the definition of 'victim' should recognise equivalent family relationships under Aboriginal customary law or tradition.

For this Review, the Aboriginal Legal Service of Western Australia submitted that section 2 of the Act could be amended to include that where the deceased is an Aboriginal or Torres Strait Islander person, an immediate family member includes a family member who is, under Aboriginal customary law or culture, regarded as equivalent to an immediate family member.

In conjunction with these comments, support was provided for there to be consultation with Aboriginal people and relevant organisations to develop guidelines that will assist victim service providers to interpret and apply definitions in the Act to equivalent relationships under Aboriginal customary law or culture.

Aboriginal Family Law Service WA (AFLSWA) submitted that there is a strong need for Aboriginal people who are often victims of crime due to disadvantage, to be acknowledged and their cultural identity taken into account in the current legislative

³² Reference to Aboriginal persons and culture in this Report is inclusive of Aboriginal and Torres Strait Islanders.

³³ Wundersitz J, 'Indigenous perpetrators of violence – prevalence and risk factors for offending', *Research and Public Policy series*, No.105, 2010, Australian Institute of Criminology.

framework. In addition, Aboriginal people should be consulted and consideration given to diverse Aboriginal cultures and practices rather than a 'one size fits all approach' in developing legislative changes. These remarks were supported by the Department of the Premier and Cabinet.

Recognition of equivalent family relationships under Aboriginal customary law and culture has been included in the Criminal Law (Unlawful Consorting) Bill 2020 (WA) under clause 5(2) which states:

1. Meaning of family member

...

(2) Without limiting subsection (1), a person is a **family member** of another person who is an Aboriginal person or a Torres Strait Islander (an **Indigenous person**) if, under the customary law and culture of the Indigenous person's community, the person is regarded as a member of the extended family or kinship group of the Indigenous person.³⁴

Findings from the LRCWA Report indicated that 'rather than including an inflexible list of persons for this purpose, guidelines should be developed to assist in interpretation of who falls within the meaning of immediate family'.³⁵ Recommendation 64(2) of the LRCWA Report went on to recommend:

That the Department of the Attorney General in consultation with other relevant agencies develop guidelines to assist agencies in the interpretation of the meaning of the term 'immediate family' under s 2 of the *Victims of Crime Act 1994* (WA) to ensure that significant relationships under Aboriginal customary law are recognised.³⁶

Having regard to submissions, recommendations from past reviews, and the LRCWA Report it is recommended that section 2 of the Act is amended to include a definition of 'immediate family' member. Where the deceased is an Aboriginal or Torres Strait Islander person, an 'immediate family' member should include a person who is, under Aboriginal customary law or culture, regarded as equivalent to an immediate family member. Any further amendments to the Act, as identified in this report that refer to family members (such as in Recommendation 1) should also recognise equivalent relationships under Aboriginal customary law or culture.

These amendments may be informed by the meaning of 'family member' in the Criminal Law (Unlawful Consorting) Bill 2020 (WA).

It is also recommended that educational guidelines are developed with Aboriginal people and organisations to assist State victim service providers to interpret and apply

³⁴ Parliament of Western Australia, Criminal Law (Unlawful Consorting) Bill 2020, as passed in the Legislative Assembly 23 June 2020.

³⁵ Law Reform Commission of Western Australia (2014), p 168.

³⁶ Law Reform Commission of Western Australia (2014), p.169.

the Act to equivalent relationships under relevant Aboriginal customary law and culture.

Recommendation 6.

Amend section 2 of the Act to include a definition of 'immediate family'.

The definition of 'immediate family' should include a person who is, under Aboriginal customary law or culture, regarded as equivalent to an immediate family member.

Any further amendments to the Act that refer to family members (such as Recommendation 1) should also recognise equivalent relationships under Aboriginal customary law or culture.

These amendments may be informed by the meaning of 'family member' in the Criminal Law (Unlawful Consorting) Bill 2020 (WA) including in relation to the inclusion of persons regarded as family members under the customary law and culture of the Aboriginal person's community.

Recommendation 7.

Develop educational guidelines, in consultation with Aboriginal people and organisations, that will assist State victim service providers to interpret and apply the Act to equivalent relationships under Aboriginal customary laws and culture.

5.1.3 Victim service agencies sought greater clarity in interpreting and applying the term ‘victim’

Although not specified or enforceable under the Act, State victim service providers may rely on the definition of ‘victim’ to determine who is entitled to services.

The Department’s Victim Support Service provides a range of service to victims of crime, which are voluntary and free of charge.³⁷

OCVoC submitted that the definition of ‘victim’ could be amended to reflect a tiered approach. OCVoC advised that a benefit of utilising a tiered approach is that different services may be provided according to whether the person is a primary victim, related/family victim, or secondary victim. As a victim service provider, the Department’s CTS Division has commented that the definition of ‘victim’ should be clear, precise and workable.

Other jurisdictions including NSW³⁸, VIC³⁹, the ACT⁴⁰, TAS⁴¹ and the NT⁴² have adopted a tiered approach in relation to the definition of ‘victim’. Victims are defined under tiered categories including ‘Primary Victim’, ‘Secondary Victim’ and ‘Related/Family Victim’.

According to the categories used elsewhere, a tiered definition may be generally summarised as comprising:

- Primary Victim – the person against whom an offence has been committed within that jurisdiction;
- Related/Family Victim – a spouse, child, stepchild, brother, sister, stepmother, stepsister of the primary victim, or parent or stepparent of the primary victim, or a person in a personal relationship with the primary victim, including equivalent relationships under Aboriginal customary law; and
- Secondary Victim – a witness to an offence or a person who is injured as a direct result of witnessing the act of violence that resulted in injury to, or death of, the primary victim.

This report recommends (above) that the term ‘victim’ is expanded to include additional categories of victim, which may reflect a more tiered approach to determining eligibility for victim services. It is recommended that there is consultation

³⁷ Government of Western Australia. Victims of Crime, *Victim support service*. https://www.victimsofcrime.wa.gov.au/V/victim_support_services.aspx?uid=6434-5121-4723-5876 (accessed August 2020).

³⁸ *Victims’ Rights and Support Act 2013* (NSW) – Victims Support Scheme.

³⁹ *Victims of Crime Assistance Act 1996* (VIC).

⁴⁰ *Victims of Crime (Financial Assistance) Act 2016* (ACT).

⁴¹ *Victims of Crime Assistance Act 1976* (TAS).

⁴² *Victims of Crime Assistance Act 2006* (NT).

with State victim service providers to ensure that any changes in the Act to the definition of victim are sufficiently clear to support the determination of victim eligibility and provision of services.

Recommendation 8.

That in expanding the term ‘victim’ inclusive of Recommendations 1 to 6 above, amendments are developed in consultation with State victim service providers to ensure the definition is sufficiently clear to support their determination of victim eligibility and provision of services.

5.1.4 The term ‘victim’ unnecessarily refers to the offender

Subsection (a) of the definition of ‘victim’ refers to ‘a person who has suffered injury, loss or damage as a direct result of an offence’. This is followed by the statement ‘whether or not that injury, loss or damage was reasonably foreseeable by the offender’. However, the second part of this definition appears logically superfluous.

In other legislation, the term ‘offender’ refers to a person convicted of a crime.⁴³ Whereas, the Act recognises a ‘victim’ of crime regardless of whether the person who has committed the offence has been charged or convicted.⁴⁴

Victims of crime legislation in most other states and territories does not refer to the person who is accused of, or has committed, the offence in the definition of ‘victim’.⁴⁵ Rather, a victim is generally defined as someone who has suffered harm due to the commission of an offence.⁴⁶

Having considered the above, it is recommended that to improve with interpretation the phrase “whether or not that injury, loss or damage was reasonably foreseeable by the offender” should be removed from the definition of ‘victim’ in section 2 of the Act.

⁴³ For example: *Criminal Code Act Compilation Act 1913* (WA), s.1 defines the terms *adult offender* in respect of ‘a person convicted of an offence’.

⁴⁴ For example: *Victims of Crime Act 1994* (WA), s.4 relates to information provision by police and the prosecution regarding an offender or ‘alleged’ offender.

⁴⁵ However, the *Victims Rights and Support Act 2013* (NSW), s.5(1) provides that a victim of crime ‘is a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence’

⁴⁶ *Victims of Crime Charter Act 2006* (VIC) s.3(1), def. of *victim* means – (a) a natural person who has suffered injury as a direct result of a criminal offence, whether or not that injury was reasonably foreseeable.

Recommendation 9.

Amend the definition of the term ‘victim’ in section 2 of the Act to remove the words ‘whether or not that injury, loss or damage was reasonably foreseeable by the offender’.

5.1.5 Multiple definitions of victim across Western Australian legislation

OCVoC submitted support for a uniform and consistent definition of the term ‘victim’ across all legislation in WA. OCVoC commented that the lack of a uniform definition can negatively impact victims of crime when navigating the criminal justice system.

WA statutes that define the term ‘victim’ include the *Sentencing Act 1995* (WA), *Sentence Administration Act 2003* (WA), *High Risk Serious Offenders Act 2020* (WA), *Young Offenders Act 1994* (WA), *Criminal Law (Mentally Impaired Accused) Act 1996* (WA), *Prisons Act 1981* (WA) and the *Criminal Injuries Compensation Act 2003* (WA).

While consistency across WA legislation may be desirable, it is acknowledged that the various statutory definitions of ‘victim’ apply to a range of different contexts and purposes, to effect the intent of the legislation in which it is contained.

Should the term ‘victim’ in section 2 of the Act be amended, this may also introduce additional differences with definitions of victim under other statutes. For example, the *Prisons Act 1981* (WA) section 113B(1)(a) provides that a ‘victim’ of a prisoner means ‘a person who has suffered injury, loss or damage as a direct result of an offence for which the prisoner is in custody, whether or not that injury, loss or damage was reasonably foreseeable by the prisoner’.

It is recommended that, in conjunction with progressing recommended amendments to the definition of ‘victim’ under section 2 of the Act, there is evaluation of whether the definition of victim can be aligned across other WA legislation.

Recommendation 10.

Evaluate whether the term ‘victim’ can be aligned across WA legislation, taking into account that statutory definitions must be fit-for-purpose.

Ensure that any new legislation intending to refer to the term ‘victim’ is consistent with the definition of ‘victim’ in the Act, where appropriate.

5.2 Section 3 - Guidelines about treatment of victims

Section 3 of the Act specifies that public officers and bodies are authorised to have regard to and apply the Guidelines in Schedule 1, and should do so to the extent that is relevant and practicable to do so.

The intent of section 3 of the Act is to create a positive duty on public officers and bodies to be sensitive to victims needs by having regard to the Guidelines.⁴⁷

5.2.1 The operation and effectiveness of the Guidelines could be strengthened

Most stakeholders considered that the Guidelines remained valid and were appropriate in securing the Act's objectives. The Department's victim service providers advised they take steps to ensure the Guidelines, which support the intent of the Act and meet standards of best practice, are being met.

OCVoC and attendees at the public forum supported that the Guidelines be replaced with the term 'Victims' Rights' to elevate existing victim entitlements, encourage greater compliance by public bodies and officers, and create an enforceable remedy.

The Department sought stakeholder views on replacing the Guidelines with 'Victims' Rights'. There was some support by State victim service providers for converting the Guidelines to 'Rights', provided this does not create an enforceable remedy where a 'right' is breached.

In WA, victims of crime who have a complaint regarding their treatment are advised to contact the public body the matter is about in the first instance. If a victim remains dissatisfied with how the complaint has been dealt with by the relevant agency, they may be able to lodge their complaint with the Ombudsman Western Australia.⁴⁸

In a number of other Australian jurisdictions, victim 'rights' do not constitute enforceable legal rights, but non-compliance is a grounds for complaint.⁴⁹ NSW⁵⁰ and QLD⁵¹ have legislated a Charter of Victims' Rights, and VIC has Charter principles⁵².

⁴⁷ The Hon. George Cash MLC, North Metropolitan Leader of the House, Legislative Council, Parliamentary Debates (Hansard), 1 December 1994, pp. 8246-8248.

⁴⁸ With some exceptions, the Ombudsman Western Australia may investigate complaints about public authorities inclusive of Western Australian State Government departments and statutory authorities, WA Police, and many other public sector bodies and office holders.
<https://www.ombudsman.wa.gov.au/Complaints/What.htm> (accessed August 2020).

⁴⁹ Government of Western Australia, Department of Justice, Commissioner for Victims of Crime, *Statutory Review of the Victims of Crime Act 1994 – Discussion Paper*, August 2018, p.5.

⁵⁰ *Victims Rights and Support Act 2013* (NSW), Part 1, Division 2

⁵¹ *Victims of Crime Assistance Act 2009* (QLD), Chapter 2 and Schedule 1AA.

⁵² *Victims' Charter Act 2006* (VIC), Part 2.

The ACT⁵³ and SA⁵⁴ have statutory principles governing the treatment of victims. The NT⁵⁵ and Tasmania⁵⁶ have non-statutory Victims' Rights Charters.

Previous reviews of the Act have examined the question of whether the Guidelines should be strengthened and whether they should be reframed as 'rights'. 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 as 'a charter with enforceable rights creates expectations that could be an "over the top" approach'.⁵⁷

In 2018, the WA Government re-endorsed the National Framework of Rights and Services for Victims of Crime (the Framework). The purpose of the Framework is to:

- support a coordinated approach to providing services to victims of crime in Australia;
- identify principles underpinning national approaches to supporting the rights of victims and delivering services through a national framework; and
- promote an improved level of collaboration between jurisdictions in addressing the needs of victims of crime including priority areas for future work and identification of gaps.⁵⁸

Having considered the above information, it is recommended that there is more detailed consideration of the benefits of moving away from 'Guidelines' towards a 'Victims' Rights' based framework. This may elevate existing victim entitlements and bring the Act into closer alignment with other jurisdictions in Australia.

Recommendation 11.

Consider the benefits of moving away from 'Guidelines' towards a 'Victim's Rights' based framework.

⁵³ *Victims of Crime Act 1994* (ACT), Part 2.

⁵⁴ *Victims of Crime Act 2001* (SA), s.5.

⁵⁵ *Northern Territory Charter of Victims Rights* (August 2019).

⁵⁶ Government of Tasmania, Charter of Rights for Victims of Crime, website: https://www.justice.tas.gov.au/victims/charter_of_rights_for_victims_of_crime

⁵⁷ 2005 Review, p.13.

⁵⁸ Standing Council on Law and Justice, *National Framework of Rights and Services for Victims 2013-2016*, accessed at: <https://www.victimsclearinghouse.nsw.gov.au/Pages/Service%20providers/National-Framework.aspx>

5.2.2 Guideline 7 does not reflect appropriate legal terminology

Guideline 7 states that ‘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’.

Prior to conviction, a person who has been accused of the crime is legally referred to as the ‘accused’.⁵⁹

To ensure the Act is consistent with appropriate legal terminology, the term ‘offender’ in Guideline 7 should be replaced with the term ‘accused’.

Recommendation 12.

Replace the term ‘offender’ in Guideline 7 of Schedule 1 of the Act with the term ‘accused’.

5.2.3 The Guidelines are silent on the provision of assistance to enable a victim to make a victim impact statement

The impact of a crime on a victim is able to be considered by the court in criminal proceedings, prior to the sentencing of an offender. Persons entitled to submit a victim impact statement (VIS) are listed in section 23A of the *Sentencing Act 1995* (WA).⁶⁰

A function of the Department’s Victim Support Service is to assist victims with preparing a VIS should they wish to make one.⁶¹

WA Police submitted to the Review that some victims may have special needs including in relation to literacy, language barriers, cultural factors, intellectual capacity or disability. It was highlighted that assistance with VIS preparation should be provided by appropriately trained persons.

The Review notes that Guideline 10 provides that 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)’. However, the Guidelines do not explicitly recognise the provision of assistance to enable a victim to prepare and provide a VIS.

⁵⁹ For example: *Criminal Procedure Act 2004* (WA), s.3 ‘accused means a person alleged in a prosecution notice or indictment to have committed an offence’.

⁶⁰ *Sentencing Act 1995* (WA), s.23A provides for a ‘primary’ or ‘family’ victim to make a *victim impact statement*.

⁶¹ https://www.victimsofcrime.wa.gov.au/V/victim_support_services.aspx

Research literature recognises the importance of supporting victims in the provision of a VIS to minimise and prevent confusion, manage expectations and prevent traumatisation.⁶²

Legislation in NSW⁶³ and VIC⁶⁴ explicitly provides that victims of crime have the right to assistance in making a VIS.

Having regard to the above, it is recommended that Schedule 1 of the Act is amended to include an additional Guideline for the provision of assistance to a victim in preparing a VIS.

Recommendation 13.

Amend the Guidelines in Schedule 1 of the Act to include the provision of assistance to a victim in preparing a Victim Impact Statement.

5.2.4 The Guidelines are silent on treating and supporting victims in a way which is respectful to their particular needs

Guideline 1 states that 'a victim should be treated with courtesy and compassion and with respect for the victim's dignity.'

The Department of the Premier and Cabinet commented that the Guidelines should be amended to create a positive duty on public officers to treat Aboriginal and Torres Strait Islander victims, and people from diverse backgrounds, in a way which is respectful to their particular needs.

In addition, the Commissioner for Children and Young People submitted that it would be preferable if children and young people were identified as a specific group in the Guidelines.

Research literature highlights the importance of ensuring the unique needs of victims of crime are considered by service providers.⁶⁵ Systemic barriers to accessing support for victims from diverse backgrounds can include discrimination and prejudice, language barriers, poor access to culturally or age appropriate information, and some

⁶² The University of Sydney, *Victim impact statements need reform*, <https://sydney.edu.au/news-opinion/news/2015/12/02/victim-impact-statements-need-reform.html> (assessed September 2019).

⁶³ *Victims Rights and Support Act 2013* (NSW), s 6.14.

⁶⁴ *Victims' Charter Act 2006* (VIC), Part 2, s 13.

⁶⁵ Allimant A & Ostapiej-Piatkowski, B, 'Supporting women from CALD backgrounds who are victim/survivors of sexual violence', *ACSAA Wrap*, No.9, 2011, Australian Institute of Family Studies. https://aifs.gov.au/publications/archived/4004?_ga=2.36553568.1382068025.1599624257-1390006575.1599624257 (accessed September 2020).

victims having a limited understanding of the criminal justice process.⁶⁶

Legislation in VIC⁶⁷ and SA⁶⁸ require public agencies to have due regard to victim needs such as race or indigenous background, cultural or linguistic diversity, age, sex, gender, sexual orientation and disability. NSW refers to treating victims with ‘cultural sensitivity’ within its Charter of Victim Rights.⁶⁹

State victim service providers have advised this Review that they have policies and procedures that place a positive duty on their respective public officers to treat and support Aboriginal and Torres Strait Islander victims and victims from diverse backgrounds in a way which is respectful and responsive to their particular needs.

The Review also observes that section 3(2) of the Act provides that if ‘because of age, disability or any other reason it is not practicable for a victim to receive counselling or other information, make requests or express views or concerns’ under the Guidelines, ‘another person may do those things on the victim’s behalf’. This may occur if the ‘public officer or body’ is ‘satisfied that it is appropriate for that other person to do so’.

Having taken these matters into consideration, the Review recommends that Schedule 1 is amended to include an additional Guideline to treat victims, in particular Aboriginal and Torres Strait Islander victims and those from diverse backgrounds, in a way that is respectful of their particular needs. This may also encourage awareness and practices that may reduce barriers (e.g. linguistic, literacy, physical or intellectual disability) to communication with some victims. This could potentially lessen requirements for nominations of proxies as suggested by section 3(2) of the Act.

Recommendation 14.

Amend Schedule 1 of the Act to include an additional Guideline for public officers and bodies to treat victims in a way that is respectful of their particular needs inclusive of race or indigenous background, cultural diversity, age, sex, gender, sexual orientation and disability.

⁶⁶ Bartels L, ‘Crime prevention programs for culturally and linguistically diverse communities in Australia’, *Research in Practice*, Report No.18, June 2011, Australian Institute of Criminology.

⁶⁷ *Victims’ Charter Act 2006* (VIC), Part 2, s 6(2).

⁶⁸ *Victims of Crime Act 2001* (SA), Division 2, s 6.

⁶⁹ *Victims Rights and Support Act 2013* (NSW), s 6(6.1).

5.2.5 Guideline 11 may present a risk to the welfare of the offender and the security of the public

Guideline 11 states that 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.

While acknowledging the victim's right to feel safe, the Department's Victim Notification Registry (VNR) indicated that the current drafting of Guideline 11 may present as a risk to the welfare of the offender and those who reside with the offender, and to the security of the public.

Where a person is under the supervision of the Department, regulation 88(i) of the Prison Regulations Act 1982 (WA) and regulation 23B(2) of the Sentence Administration Regulations 2003 (WA) only provide for the region, city, town or suburb in which the offender is residing, or the location of the community corrections centre the offender is attending, to be provided to the victim.

The VNR has advised that in practice, it only provides victims (when requested) with the location of the Community Justice Service reporting centre upon release of an offender to a community based order. The VNR does not provide any further personal information about the offender to the victim.

Having considered the intent of the Guidelines to support victims of crime and the concerns raised by the VNR, it is recommended that Guideline 11 is amended so that a victim can request to be informed of the location of the offender's Community Justice Service reporting centre. This is unless the Department is legally prohibited from sharing this information.

Recommendation 15.

Amend Guideline 11 in Schedule 1 of the Act so that the victim can request to be informed of the location of the offender's Community Justice Service reporting centre where the offender is released on a community based order or a similar order, unless the Department of Justice is legally prohibited from sharing this information.

5.2.6 Guideline 12 may jeopardise police investigation

Guideline 12 states that a 'victim who has so requested should be informed of any escape from custody by the offender'.

While the VNR stated support for appropriate notification to a victim about an offender, reservations were expressed regarding the obligation under Guideline 12 to advise the victim of an escape. The VNR referred to the possibility that this may place the victim at further risk and compromise a police investigation.

In practice, VNR advised that where an offender escapes from custody it liaises directly with WA Police to ascertain if the victim is to be immediately advised.

The VNR proposed that Guideline 12 is amended to allow that in some instances, at the discretion of the WA Police, a victim may not be notified. WA Police stated that while escape from prison custody is a matter for the Department, this should only be disclosed in consultation with WA Police. For example, there may be circumstances where police intelligence indicates that the victim may assist the offender to avoid apprehension or that notification may jeopardise police investigation.

The Review observes that Guideline 6(a) provides for a victim to be informed about the progress of the investigation into the offence against the victim, 'except where to do so may jeopardise the investigation'.

A number of other jurisdictions provide victims with the option to be informed if the offender escapes from custody. The *Victims of Crime Act 2001* (SA) specifies that a victim should be informed, on request, if the offender escapes from custody, except where this might jeopardise the investigation of an offence.⁷⁰

Having considered the information above, it is recommended that Guideline 12 is amended to provide that a victim should be informed of any escape from custody by the offender, except in circumstances where the provision of that information might jeopardise police investigations, and provided the victim is not placed at risk. This would provide for consistency with existing practices by the VNR and WA Police.

Recommendation 16.

Amend Guideline 12 in Schedule 1 of the Act to provide that a victim 'who has so requested' should be informed of any escape from custody by the offender, except in circumstances where the provision of that information might jeopardise police investigations and/or place the victim at risk.

⁷⁰ *Victims of Crime Act 2001* (SA), Part 2, Division 2, s 8(2)-(3).

5.2.7 The Guidelines require that victims request to be informed about a range of matters relating to the offender

Guidelines 6, 7, 8, 11 and 12 place an onus on the victim to request to be informed about a range of matters relating to the offender. This includes matters such as the investigation into the offence, bail application, trial process, sentencing and release, and any escape from custody.

The Department's CTS Division raised concerns about the onus being on the victim and submitted that victims of crime should be entitled to this information whether or not they have requested it. The NMHS submitted that victims of crime may lack the knowledge that they can request information or how to do so.

Legislation in the ACT⁷¹, NSW⁷², QLD⁷³ and VIC⁷⁴ places the onus on relevant agencies to provide information to victims of crime. SA⁷⁵, TAS⁷⁶ and the NT⁷⁷ require that the victim requests to be informed about matters relating to the offender.

It is also acknowledged that, in some instances, victims of crime do not want to be provided with information on matters relating to the offender.

The Review considers that there may be merit in examining whether it would be appropriate and practicable to remove the words 'who has so requested' from Guidelines 6, 7, 8, 11 and 12. This may need to be balanced by an obligation on State victim service providers to provide victims with the flexibility to opt-out of receiving information and to opt back-in at any point should they change their mind.

The DPP commented that obligating the provision of offender information to victims by default may have operational and resource implications, and impact on the ability of public agencies to comply with the Guidelines. Additionally, there may be practical considerations that limit the utility of a mechanism for victims to opt-out and opt back-in. For example, where a victim cannot be located. These matters would need to be addressed so that the relevant public bodies can ensure victims are informed in a timely and consistent manner.

CTS also suggested that if Guideline 6 is amended, it be modified to provide for a victim to be kept informed about the name of an adult accused. It is recommended that this matter is further considered in conjunction with consideration of other amendments proposed under recommendation 17. This should take into account

⁷¹ *Victims of Crime Act 1994* (ACT) Part 2, ss 4(b)-(e), (g) and (k).

⁷² *Victims Rights and Support Act 2013* (NSW), s 6.2.

⁷³ *Victims of Crime Assistance Act 2009* (QLD), Schedule 1AA, Division 2.

⁷⁴ *Victims' Charter Act 2006* (VIC), Part 2, s 7.

⁷⁵ *Victims of Crime Act 2001* (SA), Part 2, Division 2, s 8.

⁷⁶ *Charter of Rights for Victims of Crime* (TAS), point 2.

⁷⁷ *Northern Territory Charter of Victims Rights* (August 2019), p 3.

privacy considerations and issues of public safety as noted elsewhere in this report, and any other relevant matters.

Recommendation 17.

Examine whether it would be appropriate and practicable to amend Guidelines 6, 7, 8, 11 and 12 in Schedule 1 of the Act to remove 'who has so requested' and include the flexibility to opt out (and opt back in) should the victim not wish to be informed. This should take into account possible resource and operational implications and whether this may impact on the ability of public officers and bodies to comply with the Guidelines.

In conjunction with this, consider whether there is merit in modifying Guideline 6 to provide for a victim to be informed about the name of the adult accused/offender taking into account legal, privacy and safety issues.

5.3 Section 4 – Information about victims, provision of by WA Police and DPP

As indicated earlier in this report (section 3.2) the intent of section 4 of the Act is to facilitate appropriate information sharing between agencies so that relevant agencies can offer victims the services they have available.

5.3.1 The existing information sharing provisions are effective in facilitating information sharing between agencies

Submissions to the Review did not cite material concerns regarding the operation and effectiveness of section 4 of the Act. This may indicate that the existing provisions in the Act effectively facilitate information sharing between agencies for the purpose of services being provided to victims.

However, some issues were noted in respect of victim consent.

The information sharing provisions in section 4 of the Act provide for relevant bodies including the Commissioner of Police and the DPP to give information in relation to a victim to the chief executive officer of a relevant public sector agency, so that the agency can offer the victim services it has available.

This includes the provision of 'prescribed information' in relation to a victim by Police to a public agency. Prescribed information is inclusive of the name, address, telephone number, age and ethnicity of the victim; information regarding the offence, the name

of the (alleged) offender; and details regarding the investigation and prosecution of the offence.⁷⁸

The Department's CTS Division and WA Police highlighted that the victim's consent should be obtained before prescribed information is provided to a victim service agency. WA Police also noted other legislative requirements regarding information disclosure such as the *Freedom of Information Act 1992* (WA).

Legislation in NSW⁷⁹ and Qld⁸⁰ provides that a victim has a right to be informed at the earliest opportunity about available services and remedies, and that a victim's personal information will not be disclosed unless authorised by law.

The Review observes that while section 4 of the Act does not direct public bodies to obtain victim consent in disclosing prescribed information to victim service agencies, Guideline 5 (in Schedule 1 of the Act) provides that public officers and bodies 'must have regard to protecting the privacy of a victim'.

Comments by CTS that victim confidentiality may need to be framed as a 'right' rather than a guideline are also acknowledged. It is noted in this regard that, Recommendation 11 (above) provides for future consideration of the benefits of moving away from the present approach of Guidelines towards a Victims Rights based framework. The adequacy of provisions regarding victim consent to information disclosure and privacy could be further considered at that time.

⁷⁸ *Victims of Crime Act 1994* (WA), *prescribed information* is defined in s 4(1).

⁷⁹ *Victims Rights and Support Act 2013* (NSW), Part 2, Division 2, ss 6.2 and 6.8.

⁸⁰ *Victims of Crime Assistance Act 2009* (Qld), Schedule 1AA, Part 1, Division 1.

6 Appendix A – Submissions received

The Review received submissions from the following stakeholders:

- Office of the Commissioner for Victims of Crime
- Chief Justice of the Supreme Court
- Court Counselling and Support Services, Court and Tribunal Services Division, Department of Justice
- Victim Mediation Unit and Victim Notification Registry, Department of Justice
- Director of Public Prosecutions
- Western Australia Police Force
- Aboriginal Family Law Services
- Aboriginal Legal Service of Western Australia Limited
- The Commissioner for Children and Young People
- The Department of Communities
- The Department of the Premier and Cabinet
- North Metropolitan Health Service; and
- Three members of the public.