

2000

THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY

Victims of Crime Act 1994

Victims of Crime Regulations 2000
Subordinate Law No. 51 of 2000

EXPLANATORY STATEMENT

Circulated by the authority of Gary Humphries MLA
Attorney-General

VICTIMS OF CRIME REGULATIONS

Outline

The Victims of Crime Regulations 2000 have been developed in close consultation with the Victims Assistance Steering Committee and were circulated for public comment earlier this year. The Regulations deal with the composition, functions and powers of the Board; the objectives of the victims services schemes; the eligibility and entitlements of victims wishing to use the scheme; the levels of service and types of services to be available to victims; the operational functions and service obligations of the agency operating the victims services scheme and the administration of the scheme. The regulations are intended to provide a framework of core requirements, standards and elements under which the Victims Services Scheme will operate.

The day-to-day operations of the scheme will be governed in detail by guidelines issued by the Board and by the terms of the contract between the Government and ACT Community Care, which has been selected by open tender to operate the scheme. The guidelines and the contract will build upon the legislative framework set down by the regulations.

Financial Impact

The costs of the VSS and the Board are covered by an appropriation for the

Notes on Clauses

PART 1

This part contains formal clauses relating the name of the regulations, their commencement and interpretation.

PART 2 – Victims Assistance Board

This part contains the regulations which establish the Victims Assistance Board (the Board) and give it various functions. The Board's primary role is the supervision of the Victims Services Scheme (the VSS) and therefore many of its functions reflect this role. To ensure that the expertise of the members of the Board can be drawn on to formulate policy in relation to victims generally, Regulation 6 also gives the Board the functions of advising the Minister about the scheme and possible changes to it, and giving advice to the Victims of Crime Coordinator when requested to do so.

The membership of the Board is described in regulations 7 and 8. It will reflect a mix of government and non-government expertise. The Victims of Crime Coordinator will be a member and other government members will consist of representatives from the DPP, the Courts, the Australian Federal Police, the Department of Justice and Community Safety and the Department of Health and Community Care. The non-government members will include a lawyer and representatives from victims services groups, health care professions, a psychologist or psychiatrist, and the indigenous and migrant communities. The involvement of the latter communities is regarded as essential given that to date, these communities have disproportionately low usage rates for existing services despite having victimisation rates as high or higher than the general community.

The Government is mindful of the need to avoid compromising the Coordinator's performance of his or her other functions, while at the same time ensuring that the Coordinator's views and expertise can be drawn upon fully by the Board. A particular concern is the Coordinator's function in section 9 of the *Victims of Crime Act 1994* of investigating possible breaches of the governing principles set out in section 4 of that Act. It is conceivable that the Coordinator may be required to investigate the Board's actions or decisions, which could give rise to a conflict of interest if the Coordinator is a voting member of the Board. Therefore, in order to avoid such conflicts of interest it is proposed that the Coordinator be a non-voting member of the Board. As a non-voting member, the Coordinator will be able to do things such as develop agenda items for Board meetings, attend the meetings and participate actively in discussions, while not being responsible for voting on the Board's decisions or actions – in this way, the Coordinator will avoid having to investigate his or her decisions or conduct on the Board.

Regulations 9 to 16 deal with matters such as terms and conditions of appointment, meeting procedure, disclosure of interests and staffing for the Board.

Regulation 17 lists the matters about which the Board may issue guidelines. The guidelines are the principal mechanism by which the Board will be able to supervise

the operation of the VSS and ensure that eligible victims have access to quality services appropriate to their needs.

Regulation 18 requires the Board to maintain a list of professional service providers who can be appointed as independent arbitrators to resolve clinical disputes between a victim's case coordinator and the service providers who are providing services to that victim. The purpose of this regulation is to ensure that decisions about a victim's care needs can be based on an objective and professional assessment.

Part 3 – Victims Services Scheme

This part of the regulations contains the core provisions dealing with the VSS.

Establishment of VSS

Regulation 19 formally establishes the VSS. The objectives of the VSS are listed in regulation 20 and reflect the principles and priorities which are to govern the way the scheme operates.

Regulation 21 nominates the Australian Capital Territory Health and Community Care Service (ACT Community Care) to be the "responsible service agency" for the VSS. The responsible service agency is the body which operates the VSS.

Regulations 22 and 23 set out the functions and obligations of the responsible service agency under the regulations. Key functions include service provision (directly or by referral) to eligible victims of crime, the establishment of a victim support network, the development and supervision of a volunteer program, the provision of information about the scheme and the criminal justice system generally. These functions reflect the recommendations of the Victim Support Working Party in its May 1998 report. Other important functions include maintaining a database about the scheme, evaluating the scheme and reporting to the Board. The responsible service agency will be obliged to employ persons with appropriate training and expertise and to comply with Board guidelines about staffing.

It should be noted that the responsible service agency and its staff are subject to obligations of confidentiality under the *Health Records (Privacy and Access) Act 1997*. That Act is specifically applied to the VSS by the *Victims of Crime Act 1994*.

Eligibility of victims

Regulations 24 to 32 deal with deciding whether a person is eligible to use the VSS and the way in which decisions about eligibility can be reviewed. Subregulation 24(1) states that eligible victims may use the VSS. The definition of "eligible victim" is in subregulation 24(2). In brief, most persons (including witness and family members of direct victims) who are harmed by an offence are eligible, except where:

- the relevant offence involved a motor vehicle (this is because there are other schemes for assisting these people, including compulsory third party insurance);
- or

- the person was adversely affected because he or she committed an offence.

If the responsible service agency decides that a person is not an eligible victim, that person can seek internal review of that decision, and if not satisfied with the internal review, can ask the Eligibility Review Committee of the Board to consider the matter. The Committee is made up of the representatives from the DPP, the Courts and the private legal profession. A decision of the Committee can be reviewed by the Administrative Appeals Committee.

Entitlements and levels of service

Regulations 33 to 35 explain the levels of service available to particular types of victims. These levels of service are substantially the same as under the interim scheme. It should be noted that under regulation 44 all eligible victims may also access to the new volunteer program.

There are three levels of service and entitlements are cumulative. This means that if a person is eligible for level 2 service, that entitlement is in addition to the person's entitlement to level 1 service; if a person is entitled to level 3 service, that entitlement is in addition to the person's entitlements to level 1 and level 2 services.

In summary, all eligible victims are entitled to level 1 service, which consists of 2 hours of service.

Regulation 34 deals with level 2 service. In effect, this level is available to most persons adversely affected by "violent crimes" – that term is defined in the *Victims of Crime (Financial Assistance) Act 1983* and includes most offences against the person including sex offences and stalking. This level of service consists of up to 6 hours of service, to be given according to a care plan developed between the victim and the care coordinator for that victim. The care plan identifies the rehabilitation goals for each victim and a strategy to achieve them.

After level 2 service hours are completed, the eligible victim will be assessed to decide whether further hours of service would be beneficial. If so, the victim will move on to level 3 service. If not, the case coordinator will initiate case closure, which includes evaluations by the victim and by the care-coordinator of the services provided to the victim and the progress towards the rehabilitation goals. The case closure processes is set out in regulation 39.

Regulation 35 explains that level 3 service consists of up to 12 contact hours (as explained earlier, these hours are in addition to the levels 1 and 2 hours). For victims moving on to level 3, the care plan for the victim will be revised at the end of level 2 and the level 3 contact hours will be given in accordance with the revised care plan.

At the end of the level 3 contact hours, there will be case closure. However, case closure will not occur at this point for "exceptional cases" covered by regulation 36, which is described below.

Exceptional cases

Regulation 36 contains a mechanism which can be used in exceptional cases so that victims who are about to achieve their rehabilitation goals when their level 3 hours finish can receive the additional services required to achieve the goals. This mechanism recognises that in such cases it makes sense to spend a little more time and money to achieve the rehabilitation goals rather than leaving the victim just short of reaching those goals.

Under the mechanism, the case coordinator for a victim can recommend to the manager of the responsible service agency that further contact hours be provided as they would give substantial therapeutic benefit to the victim and are not available under any other program or scheme.

The manager will then decide whether or not to refer the recommendation to the chief executive of the Department of Justice and Community Safety for decision.

If the decision is to agree to the recommendation, the responsible service agency will arrange for the further contact hours to be provided to the victim in accordance with the decision of the chief executive's decision. Case closure will occur when those contact hours have been completed.

Victim choice principle

Regulation 37 deals with how contact hours are provided and subregulation 37(3) enshrines the principle of victim choice – it ensures that victims who are eligible for level 2 or level 3 service can, where practicable, choose whether the contact hours are provided “in house” by the responsible service agency or by an approved service provider on the list of approved service providers. That list is maintained by the Board as part of its functions under regulation 6. The approval process is described in regulations 40 to 43.

Arbitration – care plans

Regulation 38 is a dispute resolution mechanism which can be used if there is a divergence of views between a care coordinator and a service provider for a victim about the victim's treatment. The Board will maintain a list of independent arbitrators drawn from the list of approved service providers. The purpose is to ensure that what are essentially “clinical disputes” are resolved by persons who are appropriately qualified and who can bring an impartial perspective to the matter.

Approved service providers

In order to ensure that a wide range of services are available to victims using the VSS and (as noted above) that as far as possible victims have a choice as to the people treating them, the regulations enable services for victims to be delivered by approved service providers.

The purpose of the approval process is to ensure that victims are treated by people who meet applicable professional standards and who also have appropriate training and skills for dealing with victims from a diversity of backgrounds.

Only approved service providers will be paid to deliver services under the scheme to eligible victims living in the ACT, however, it should be noted that under regulation 37 there is scope for the services to be provided to a victim who lives outside the ACT by a person who is not on the list of approved providers.

The criteria for approval are set out in regulation 41. Training and experience are key criteria. If a provider works in a health profession which requires registration under ACT law, the provider must be registered as a health professional under the relevant law regulating that profession. Providers who have been convicted of certain types of offence cannot be approved.

The Board will be able to issue guidelines about criteria for approval which providers must satisfy. For example, these guidelines might deal with the training or educational standards for providers who are not required to be registered by ACT law, such as massage therapists or social workers.

Providers are also required to satisfy the Board that they will: undergo continuing education; assess and monitor the quality of their work; deal with victims sensitively and appropriately; provide services of appropriate quality and consistently with best practice; establish codes of conduct for staff; have secure premises, provide victims with privacy and comply with occupational health and safety requirement; and ensure staff are familiar with the *Community and Health Services Complaints Act 1993*.

The criterion in paragraph 41(1)(g) is intended to prevent contact hours from being used to prepare medico-legal reports for use in litigation. The purpose of the provision is to ensure that contact hours are used to achieve the rehabilitation goals of the victim in accordance with the care plan.

Regulations 42 and 43 deal with suspension and cancellation of approval, respectively. The purpose of these provisions is to ensure that providers dealing with victims maintain their standards at all times so that victims receive quality services at all times.

Volunteer program

Regulation 44 provides that all eligible victims may use the volunteer program. Access to the volunteer program is open-ended – eligible victims can use it for as long or short a period of time as they wish.

Statements about use of VSS

Under the *Victims of Crime (Financial Assistance) Act 1983*, certain applicants are required to provide a statement about services received by them from the VSS. Regulation 45 obliges the responsible service agency to provide such statements for that purpose when requested by a victim.

Notice of decisions and review

Regulation 46 ensures that the Board provides written notice to service providers about decisions relating to approval under the scheme. Regulation 47 provides a right of review by the Administrative Appeals Tribunal of decisions by the Board to refuse approval to a service provider or to suspend or cancel an approved service provider's approval.

Part 4 – Miscellaneous

Guidelines for Volunteers

The Government agrees with the view that volunteer and peer support programs for victims of crime are an important part of the healing process for many victims, particularly in restoring a victim's sense of integration in the community. The inclusion of a volunteer program as part of the VSS to be funded by the Government will ensure that the volunteer program has a solid basis, including administrative and technical support and appropriate training and supervision of volunteers.

Regulation 48 enables the Board to make guidelines about volunteers, to cover matters including qualifications, experience, continuing education, diversity awareness training, supervision, occupational health and safety and debriefing of volunteers.

Annual Reports

Under regulation 49, the Victims of Crime Coordinator will be responsible for the annual report for the VSS. Giving this function to the Coordinator will ensure that an objective perspective on the operation of the VSS is provided. Consistently with the functions of the Coordinator under the *Victims of Crime Act 1994* of encouraging the provision of efficient and effective services for victims and promoting reforms to meet the needs of victims, the annual report will also provide the Coordinator with an opportunity to comment to the Government and the Legislative Assembly on the performance of the VSS on a yearly basis.

Fees and approved forms

Regulations 50 and 51 give the Minister the power to set fees and approve forms for the purposes of the regulations. It should be noted that under regulation 6 the Board has the function of making recommendations to the Minister about fees.

Part 5 - Transitional

This part deals with the transition from the interim scheme (established under the Victims of Crime Regulations 1999) to the permanent scheme.

Dictionary

The dictionary for the regulations is located at the end of the Exposure Draft and defines key terms used the regulations.