

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**VICTIMS OF CRIME BILL 1994**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
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Attorney General**

**AUSTRALIAN CAPITAL TERRITORY****VICTIMS OF CRIME BILL 1994****OUTLINE**

This Bill, and the Acts Revision (Victims of Crime) Bill, implement a number of the key recommendations of the ACT Community Law Reform Committee to improve the delivery of justice to victims of crime within the ACT. In particular, the Bill will establish a number of governing principles for treatment of victims of crime. It will also provide for the appointment of a victims of crime coordinator, whose role will be to ensure that the needs of victims of crime are appropriately catered for by the agencies of the criminal justice system.

**Financial Considerations:**

The appointment of a coordinator will cost \$80,000 in the first financial year, and \$70,000 for each financial year thereafter.

**PART I - PRELIMINARY****Short title and  
Commencement  
Clauses 1 and 2**

These clauses are formal requirements. They refer to the short title of the Bill, and commencement of the Bill, which is to be on a day fixed by the Minister by notice in the Gazette, or in six months, whichever occurs first.

**Interpretation  
Clause 3**

Clause 3 is an interpretation clause.

'Administration of justice' is defined to include the provision of police services. This is to clarify that the Australian Federal Police, in the performance of their functions as defined by the *Australian Federal Police Act 1981*, come within the scope of this Bill.

'Coordinator' is a short form of reference to the Victims of Crime Coordinator, whose appointment is provided for by this Bill.

A 'victim' is defined in terms of his or her relationship to the offence. The victim will often be the person who suffers harm either as a direct result of the commission of the offence or through assisting a police officer in attempting to prevent the commission of the offence. If the person directly victimised dies as a result of the commission of the offence, a 'victim' for the purposes of this Part of the Bill is a person who was financially or psychologically dependant on the person who died. As this will be beneficial legislation, it is intended that the qualification of 'dependence' will be interpreted broadly. A person can also be a victim of an offence through witnessing (which is a broader notion than simply seeing or hearing) the offence being committed in circumstances in which it is probable that he or she would suffer harm. This might include, for example, a child who witnesses the assault of a friend.

The 'harm' suffered by the victim for these purposes is broadly defined in this section to include (and therefore not be limited to) physical injury, mental injury or emotional suffering (including grief), pregnancy, economic loss and substantial impairment of rights according to law.

The victim must have been the victim of an 'offence' against a law in force in the Australian Capital Territory.

Sub-clause 2 provides that a reference to 'function' should be read as including a reference to the performance of a duty or the exercise of a power. This clause is principally focussed on references to persons having a function in the administration of justice.

## PART II - TREATMENT OF VICTIMS OF CRIME

### Introduction

Part II establishes a standard for the proper treatment of victims of crime within the ACT criminal justice system. It also provides the mechanism by which the Coordinator can obtain information about whether that standard is being implemented by ensuring that officers of the criminal justice system are not subject to civil action for the provision of that information.

### Governing Principles Clause 4

The principles set out in this clause will be the governing principles for the treatment of victims of crime. They will apply as far as practicable and appropriate. They are designed to ensure that the needs of victims of crime are, as far as possible, factors in decision-making related to the administration of justice.

### Observance of Principles Clause 5

Clause 5 provides the means by which the principles listed in clause 4 will be given practical effect by imposing an obligation upon persons who perform a function in the administration of justice to have regard to the principles.

### Disclosures to Coordinator - legal immunity Clause 6

This clause makes it clear that where a person who performs, or has performed, a function directly related to the administration of justice, discloses information in good faith to the Coordinator to assist in the Coordinator's investigations, that person will not be liable to an action under, for example, the Commonwealth *Privacy Act 1988*. Sub-clause (2) will exclude the Territory from the operation of this clause.

**PART III - VICTIMS OF CRIME COORDINATOR****Introduction**

Part III provides for the creation of the statutory office of Victims of Crime Coordinator. The Coordinator will ensure that justice is delivered efficiently and effectively to victims of crime in the ACT and that the needs of victims of crime are appropriately catered for by the criminal justice process.

***Division 1 - Functions and Powers***

This division provides for the functions and powers of the Coordinator.

**Functions****Clause 7**

This clause provides that the Coordinator will have certain functions in the connection with the administration of justice. These functions are aimed at enabling the Coordinator to ensure that all victims are made aware of the services available and that those services adequately and efficiently assist all victims; to ensure that the needs of victims, particularly with regard to information, are met by the criminal justice system; to ensure that the principles of the treatment of victims of crime set out in this Bill are promulgated and adhered to by those who deal with victims; and to ensure that awareness of the needs of victims of crime is promoted both within the general community and within Government.

**Attendance at criminal proceedings****Clause 8**

The right of the Coordinator to be present in a court, even if the court is closed to members of the public, which is provided by clause 8, will enable the Coordinator to ensure that victims are receiving the information and assistance (including support) that they require. It will also enable the Coordinator to fully exercise the power of investigation and fulfil the practical requirement of monitoring the response of the criminal justice system to victims of crime.

**Investigations****Clause 9**

When the Coordinator has reasonable grounds to believe that a victim is not being treated according to the principles for the treatment of victims of crime, clause 9 provides the Coordinator with the power to investigate, to determine whether the system's response to victims needs to be improved and the means by which that improvement can be brought about. Where the Coordinator is conducting an investigation, there is a duty on persons who perform or who have performed a function in the administration of justice to assist in the conduct of the investigation. The findings of the Coordinator are to be reported to the Minister.

**Powers****Clause 10**

Clause 10 provides the Coordinator with the powers necessary and convenient to enable the performance of the functions listed in clause 7.

**Secrecy****Clause 11**

When the Coordinator is given personal information in the context of an investigation, for example, clause 11 ensures that the Coordinator, or those who have worked for the Coordinator, cannot reveal, or be made to reveal, that information without the consent of that victim unless that divulgence is necessary for the purposes of this Act or another law. This prohibition includes the divulging of that information to a court, unless it is necessary for the purposes of this Act or another law.

**Disclosure of information concerning investigations****Clause 12**

Clause 12 is designed to ensure that the duty of secrecy imposed upon the Coordinator does not hinder the Coordinator from undertaking an investigation or hamper publicising in an appropriate manner the results of an investigation. Therefore, where a matter is or has been under investigation and the Coordinator is satisfied that disclosure is necessary and reasonable in the discharge of the functions, or the exercise of the powers, of that office, clause 12 generally allows such disclosure. There are, however, two conditions which must be met before disclosure can occur. Firstly, the Coordinator cannot make any express or implied criticism of a person without that person having the opportunity to answer the criticism. Secondly, the disclosure must not identify a person unless that identification is necessary and reasonable.

**Legal Immunity****Clause 13**

Clause 13 provides protection for the Coordinator from civil proceedings where the Coordinator has acted in good faith in the exercise (or, if the Coordinator has been mistakenly been acting beyond the power granted to that office, the purported exercise) of a power or performance or a function or duty under this Act. This clause will not affect any liability of the Territory.

***Division 2 - Office of the Coordinator***

This division provides the mechanics for the creation of the office of the Coordinator. Many of the provisions are standard to the creation of a statutory office.

**Appointment****Clause 14**

Clause 14 provides for the creation of the office of Victims of Crime Coordinator. The office holder will be appointed by the Minister. This provision is subject to the Statutory Appointments Act 1994. Therefore, certain consultation regarding the appointment and gazettal of the notice of the appointment will be

required. The notice will be a disallowable instrument, so must be laid before the Legislative Assembly, and can be disallowed by the Legislative Assembly, within a certain period of time.

**Terms of Office****Clause 15**

Clause 15 provides that the Coordinator can be appointed for up to 3 years (although the appointee will be eligible for reappointment on expiration of that period), subject to the conditions specified in the instrument of appointment.

**Resignation****Clause 16**

Clause 16 provides that the Coordinator may resign by giving a signed notice of resignation to the Minister.

**Termination of Appointment****Clause 17**

Clause 17 lists certain circumstances in which the Minister has the discretion to terminate the appointment of the Coordinator, and circumstances in which that appointment must be terminated.

**Acting Coordinator****Clause 18**

Clause 18 provides for the appointment of an acting Coordinator so long as that appointment does not run continuously for longer than 12 months. The clause also saves the validity of acts done by or in relation to a person purporting to act as Coordinator in the mistaken belief of a valid appointment.

**PART IV - MISCELLANEOUS****Regulations****Clause 19**

Clause 19 provides for the making of regulations under this Act.