



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mrs Giulia Jones MLA (Chair), Ms Bec Cody MLA (Deputy Chair), Ms Elizabeth Lee MLA,
Mr Chris Steel MLA

Standing Committee on Justice and Community Safety

Inquiry into referred 2016–17 Annual reports

Responses to questions on notice following on from the public hearing of
8 November 2017

Statutory Officeholders
Justice, Consumer Affairs and Road Safety portfolio



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CHRIS STEEL MLA

**Inquiry into referred 2016–17 Annual and Financial Reports
ANSWER TO QUESTION ON NOTICE**



Asked by Caroline L Couteur MLA:

In relation to: Human Rights Commission Annual Report – Page 65
Justice and Community Safety Directorate Annual Report – Pp 345-350 and Table 66, Ref 14/83

In relation to claims of financial assistance under the *Victims of Crime (Financial Assistance) Act 1983* (and subsequently under the *Victims of Crime (Financial Assistance) Act 2016*) for victims of crime, noting that 22% of claims under the Act were made by Police Officers injured in the line of duty:

1. Are Police Officers injured in the line of duty entitled to claim assistance under this Act?
2. Why are Police Officers injured in the line of duty entitled to make claims under the Act?
3. Are these claims in addition to Workers Compensation or intended to replace or supplant Workers Compensation claims?
4. If they are entitled, why are Police Officers injured in the line of duty unable to make claims under the Workers Compensation Act 1951?
5. Are there any disqualifying factors or classes/categories of victim who are disqualified under either Act?
6. What will be the nexus between the Victims of Crime (Financial Assistance) Act 2016 and the proposed National Redress Scheme for Victims of Institutionalised Child Abuse?
7. Will victims disqualified under the proposed National Redress Scheme, for example individuals with a criminal history, be able to claim under the Victims of Crime (Financial Assistance) Act 2016?

The Minister for Justice, Consumer Affairs and Road Safety: The answer to the Member's question is as follows:–

The Human Rights Commission has provided the following response to the above questions:

1. Police Officers injured in the line of duty were entitled to claim assistance under the *Victims of Crime (Financial Assistance) Act 1983* (repealed). They are currently entitled to claim assistance under the *Victims of Crime (Financial Assistance) Act 2016*.
2. The *Victims of Crime (Financial Assistance) Act 2016* (the Act) does not exclude employees who are injured in the course of employment. This includes Police Officers injured in the line of duty.
3. Notwithstanding Police Officers' eligibility for the current Financial Assistance Scheme (FAS), the FAS is a scheme of last resort and is not intended to replace or supplant services provided or payments made through other sources including Workers Compensation.



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Section 46 of the Act requires the Commissioner take into consideration the extent to which other services are available to the applicant in deciding the amount of financial assistance to be given.

Section 47 of the Act states that where the applicant has received an associated payment covering the same harm or loss as the financial assistance is intended to cover, the Commissioner must reduce the amount of financial assistance to the applicant by an amount equal to the associated payment. Therefore, if a Police Officer receives a payment from Workers Compensation, their assistance will be reduced by that amount.

Section 64 of the Act requires an assisted person tell the Commissioner, in writing, about any associated payments covering the same harm or loss within 28 days after the associated payment is received. Failure to do so is an offence for which the maximum penalty is 50 penalty units, imprisonment for six months or both.

In practice, police officers injured as victims of an act of violence who make claims under the current Act are eligible for recognition payments only (intended to acknowledge the harmful effects of acts of violence). Workers Compensation is expected to cover any other expenses incurred including loss of wages and medical expenses.

4. Police Officers are entitled to make claims under the *Workers Compensation Act 1951*. The FAS will not duplicate payments made under the *Workers Compensation Act 1951*.
5. Section 45(1) of the Act lists a number of *disqualifying circumstances*. Where the Commissioner believes a disqualifying circumstance applies, financial assistance must not be given. The disqualifying circumstances are:
 - (a) the applicant is not eligible for the assistance;
 - (b) the applicant conspired with the person responsible for the act of violence that is the subject of the application for assistance;
 - (c) the applicant was involved in a serious crime when the act of violence that is the subject of the application occurred and the serious crime was the main reason that the act of violence occurred;
 - (d) the applicant is claiming financial assistance as a related victim for the act of violence that is the subject of the application that was related to a serious crime carried out by the primary victim;
 - (e) the applicant has unreasonably failed to give assistance to the police in relation to the act of violence that is the subject of the application.



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6. As with other victims eligible for the FAS, those eligible for the Commonwealth Redress Scheme would not receive payment that duplicates other services or payments.

Section 46 of the *Victims of Crime (Financial Assistance) Act 2016* requires the Commissioner take into consideration the extent to which other services are available to the applicant in deciding the amount of financial assistance to be given.

Under section 64 of the Act a recipient of financial assistance would be obligated to tell the Commissioner, in writing, about any associated payment made under the Commonwealth Redress Scheme within 28 days after the associated payment is received. Failure to do so would be an offence for which the maximum penalty is 50 penalty units, imprisonment for six months or both.

Upon receiving notification of an associated payment made under the Redress Scheme, the Commissioner may reduce the amount of financial assistance to the extent that it covers the same harm or loss covered by the financial assistance, and make arrangements for repayment accordingly.

The policy issues around eligibility for the Redress Scheme are still under consideration. Payments received under the FAS will be taken into account when applying for redress. The Redress Scheme has three components:

- direct personal response;
- counselling and psychological care; and
- monetary payments.

If an applicant has previously received a monetary payment they may still be able to access a direct personal response and counselling and psychological care under the Scheme. They may also receive a monetary payment, however the monetary payment may be discounted by the amount of any financial assistance previously received, including assistance received through the FAS.

The details of the Redress Scheme are currently under negotiation with the Commonwealth, and the precise nexus between the two schemes is dependent upon the final shape of the Redress Scheme.

7. Victims with a criminal history are not excluded from claiming financial assistance under the FAS, unless the offending falls within the ambit of the disqualifying circumstance under section 45(1) of the Act – namely “*that the applicant was involved in a serious crime when the act of violence that is the subject of the application occurred and the serious crime was the main reason that the act of violence occurred.*” Where the criminal history of the victim did not contribute to the crime, they remain eligible for assistance.

Therefore, victims of sexual assault excluded from the Redress Scheme on the basis of a criminal history unrelated to the sexual assault they experienced will remain eligible for the FAS, provided all other criteria are met.



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CHRIS STEEL MLA

Approved for circulation to the Standing Committee Justice and Community Safety

Signature:

A handwritten signature in black ink, appearing to read "Shane Rattenbury", written over a faint circular stamp.

Date:

22/1/18

By the Minister for Justice, Consumer Affairs and Road Safety, Shane Rattenbury



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Inquiry into referred 2016–17 Annual and Financial Reports
ANSWER TO QUESTION ON NOTICE



Asked by Caroline Le Couteur MLA:

In relation to: Annual Reports – Human Rights Commission – Page 31. In relation to transitioning young people out of detention:

1. Does Section 712A of the Criminal Code hinder young people exiting youth detention, including Bimberi, from accessing supported training or job placements?
2. How many complaints have you received that Section 712A of the Criminal Code hinders young people exiting youth detention, including Bimberi, from accessing supported training or job placements?
3. How does Section 712A of the Criminal Code interact with the Charter of Rights for Young People in Detention, and in particular, the right to access education and programs?
4. Is Section 712A of the Criminal Code repugnant to that right?

The Minister for Justice, Consumer Affairs and Road Safety: The answer to the Member's question is as follows:–

The Human Rights Commission has provided the following response to the above questions:

1. This issue was brought to the attention of the Public Advocate and Children and Young People Commissioner by a community agency raising concerns about the effect of restrictions on sharing information about a young person under section 712A of the Criminal Code.

However, we have been informed by the Community Services Directorate that employers and training organisations involved in supporting placements for young people exiting detention are made members of a declared care team under s 863 of the *Children and Young People Act 2008*. This enables relevant safety and wellbeing information to be shared by members of the declared care team.

This appears to be an appropriate solution to allow safety and wellbeing information about a young person to be shared where necessary and relevant to a supported training or job placement.



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It is important that only information that is relevant to a placement (for example, about particular support needs of a young person, or risks that need to be addressed to ensure the success of a placement) be shared with an employer or training organisation, and that employers or training organisations are not given access to all information that might be shared within a declared care team.

The Public Advocate and Children and Young People Commissioner will continue to monitor this issue through her involvement in the Blueprint for Youth Justice Taskforce.

2. The ACT Human Rights Commission has not received any formal complaints about this issue and the matter has only been raised informally by one agency. We understand that to date Bimberi Youth Justice Centre has not received any complaints about this issue.
3. The Charter of Rights for Young People in Bimberi Youth Justice Centre provides a right to *Access to education and programs*, including training and education programs. As outlined in response to question one, the use of Declared Care Teams appears to be an appropriate response to ensure that information can be shared where relevant and necessary to support a young person's transition into training and education on exit from detention.
4. No.

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Inquiry into referred 2016–17 Annual and Financial Reports
ANSWER TO QUESTION ON NOTICE



Asked by Caroline Le Couteur MLA:

In relation to: Annual Reports – Human Rights Commission – Page 27. In relation to the National Code of Conduct for Unregistered Health Workers:

1. What is the current status of the implementation of the National Code of Conduct in the ACT?
2. What is the timeline for completion of the implementation?
3. Are there any specific exclusions or additions unique to the ACT?
4. Are there any professions or sections that are related to the purpose or objectives of the Code that would not be covered by the Code in the ACT?

The Minister for Justice, Consumer Affairs and Road Safety: The answer to the Member's question is as follows:–

The Human Rights Commission has provided the following response to the above questions:

1. The ACT Health Services Commissioner (HSC) participates in a national working group of Health complaints entities working on the implementation of the national code of conduct for health care workers (the Code). The purpose of the Code is to protect the public by setting minimum standards of conduct and practice for all unregistered health care workers who provide a health service. The HSC, ACT Health and Justice and Community Safety Directorate are working together regarding implementation of the Code, which will involve amending the *ACT Human Rights Commission Act 2005*. The HSC will administer the code and the complaint handling process after it has been enacted in the ACT.
2. ACT Health have advised the HSC that subject to relevant approvals, it is anticipated that implementation of the Code will be completed in 2018.
3. At this stage there are no proposals for specific exclusions or additions to the Code that are unique to the ACT.
4. The HSC has been liaising with other state and territory Health complaints entities where the Code has been implemented or which are operating under a code that was already in force in their jurisdiction (NSW, Qld, Vic, South Australia) regarding the scope of the Code. At this stage no limitations with respect to the coverage of the Code on professions or sections have been identified



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by those Health complaints entities, although the HSC will scrutinise the legislation enacting the Code to ensure the objectives of the Code are achieved.

Approved for circulation to the Standing Committee Justice and Community Safety

Signature:

Date:

10/2/18

By the Minister for Justice, Consumer Affairs and Road Safety, Shane Rattenbury



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ANSWER TO QUESTION ON NOTICE**



Asked by Elizabeth Kikkert MLA:

In relation to: The Public Advocate's capacity to oversee child protection.

One of the Community Services Directorate's future priorities for 2017-2018 is 'increasing the capacity of the Public Advocate to better support children and young people (Annual Report, p. 19). The Glanfield Inquiry recommended that the resourcing of your office be reviewed, and I understand that this review is either in process or about to start.

- a. Can you please share what constraints your office is currently facing when it comes to oversight of child protection issues?
- b. In your opinion, what would be necessary for your office to be able to completely fulfil your oversight role regarding child protection?

The Minister for Justice, Consumer Affairs and Road Safety: The answer to the Member's question is as follows:—

The Human Rights Commission has provided the following response to the above questions:

- a. The Public Advocate currently has two (2) FTE Senior Advocates for children and young people, with the addition of a new advocate position in the 2017-18 Budget. However, in the 2016-17 reporting period, the Public Advocate received 893 documents in accordance with statutory reporting requirements for children and young people in care and protection, and up to 20% of documents were unable to be reviewed due to resourcing constraints.

The Public Advocate has to prioritise the way in which its resources are used such that activities in respect of children and young people are primarily reactive and centred on addressing issues for those already engaged with the care and protection system (despite the Public Advocate's remit extending to all children and young people).

The Public Advocate's ability to proactively identify and respond to emerging concerns is limited. Children and young people in the ACT access supports across multiple service systems, including both mainstream and specialist services, and would potentially benefit from the systemic improvements likely to be generated if the Public Advocate had increased capacity.

There are also legislative constraints in that while the Children and Young People Act 2008 enables the Public Advocate to monitor specific areas of the care and protection system, there are a number of areas that fall outside statutory reporting requirements. For example, the Public Advocate has limited oversight of the number and nature of child concern reports received by



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CYPS, with the exception of child concern reports that lead to appraisal for children and young people for whom an abuse in care is alleged. There is also no legislative requirement for the Public Advocate to be advised about children and young people in voluntary care arrangements, young people known to government who are 'couch surfing' but not on Orders, and critical incidents involving children and young people under care and protection that do not constitute abuse in care.

- b. A review of the Public Advocate's and Children and Young People Commissioner's resourcing commenced in early 2018 by Hoff Law and Spring Green Consulting. The review will consider both resourcing and legislative constraints, and consider opportunities to enhance operational efficiency in the interface between the Public Advocate and ACT Government. The review is expected to be completed by 30 March 2018.

Approved for circulation to the Standing Committee Justice and Community Safety

Signature:

Date:

15/2/18

By the Minister for Justice, Consumer Affairs and Road Safety, Shane Rattenbury