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Evaluation of the ACT Sexual Assault Reform Program (SARP): Final report

Jessica Anderson
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Technical and
Background Paper **51**

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Acronyms

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AFP	Australian Federal Police
AIC	Australian Institute of Criminology
CARHU	Children at Risk Health Unit
CALD	Culturally and Linguistically diverse
CRCC	Canberra Rape Crisis Centre
JACS	Department of Justice and Community Safety/Justice and Community Safety Directorate
DPP	ACT Office of Director of Public Prosecutions
SACAT	Sexual Assault and Child Abuse Team
SARP	Sexual Assault Reform Program (note: this is distinct from the Sexual Assault Response Program)
SDP	Service delivery providers
VSACT	Victim Support ACT
WAS	Witness Assistance Service

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Executive summary

Background and context

In 2005 the Australian Capital Territory (ACT) Office of the Director of Public Prosecutions (DPP) and the Australian Federal Police (AFP) produced a report, *Responding to sexual assault: The challenge of change* (DPP & AFP 2005), which made 105 recommendations for reforming the way sexual offence cases are handled by the ACT's criminal justice system. The Sexual Assault Reform Program (SARP) is one key initiative developed in response to these recommendations. Managed by the ACT Justice and Community Safety Directorate (JACS), SARP's main objective is to improve aspects of the criminal justice system relating to:

- processes and support for victims of sexual offences as they progress through the system;
- attrition in sexual offence matters in the criminal justice system; and
- coordination and collaboration among the agencies involved.

In November 2007 the ACT Attorney-General announced \$4 million of funding for several SARP reforms. This funding provided for additional victim support staff; a dedicated additional police officer, prosecutor and legal policy officer; and an upgrade of equipment for the Supreme Court and Magistrates Court, including improvements in technology to assist witnesses in giving evidence, and the establishment of an off-site facility to allow witnesses to give evidence from a location outside of the court.

In addition, the reform agenda included a number of legislative amendments that changed how evidence can be given by victims of sexual and family violence offences, children and other vulnerable witnesses. The primary objectives of these legislative changes

are to provide an unthreatening, safe environment for vulnerable witnesses (including sexual offence complainants) to give evidence and to obtain prompt statements from witnesses to improve the quality of evidence captured (DPP 2009: 13).

The current evaluation

The funding for SARP reforms also provided for a preliminary evaluation of the reforms; this report outlines findings from the evaluation. The evaluation sought to address whether the program has met its key objectives: better support for victims, lower attrition rates and improved coordination and collaboration among agencies involved in administering SARP.

The evaluation was conducted in two stages and involved a mixed-methods approach. During stage 1 key indicators for the evaluation were developed with stakeholders. During stage 2 quantitative data were collected by stakeholders and provided to the AIC for analysis. Qualitative interviews were also conducted with service delivery providers, and with a small number (n=5) of victim/survivors of sexual offences whose cases had recently been resolved in the ACT criminal justice system.

The current evaluation is preliminary in nature. As the SARP reforms will take time to become entrenched within the ACT's criminal justice system, some of the impacts of the reforms may not yet be evident. Nonetheless, this evaluation provides an insight into how well the SARP reforms have been implemented to date, as well as key areas that could be addressed in the future. Key findings from the preliminary evaluation are outlined briefly below.

Improving processes and supports for victim/survivors of sexual offences

The SARP reforms appear to have been successful in improving the criminal justice process for victim/survivors of sexual offences in the ACT in a number of areas. Specifically, stakeholders felt strongly that legislative changes have improved the criminal justice process for sexual offence victim/survivors, and that support services available to victim/survivors improved across most stages of the criminal justice process.

In addition, stakeholders agreed that the new Wraparound process, under which representatives from all relevant law enforcement and service provider agencies in the ACT meet regularly to ensure 'joined-up' responses are offered to victim/survivors of sexual offences, has been a success. In particular, the Wraparound process has helped local agencies understand the roles of the agencies that provide services to victim/survivors of sexual offences in the ACT. Stakeholders therefore claimed that collaboration has improved between the local law enforcement sector and the victim support sector.

A number of key limitations of the Wraparound process have, however, been identified by this evaluation. Data on Wraparound indicate, for example, that not all victim/survivors were offered Wraparound and that of those offered Wraparound not all consented to participating. One stakeholder suggested that to improve the proportion of victim/survivors who consent to Wraparound, agencies need to better inform victim/survivors why entering the Wraparound process may be preferable to the alternative of not participating.

This evaluation has also identified that supporters of sexual offence victim/survivors, such as family members, are currently underserved and often not recognised in the process, although VSACT and CRCC currently provide support and services to the families of the primary victim/survivor. Adequately supporting those who support victim/survivors of sexual offences is important not only for the wellbeing of the support person but also to encourage and assist the victim/survivor to progress through the criminal justice system.

Perhaps SARP's main limitation in relation to improving the criminal justice process for victim/survivors has been its failure to reduce the time sexual offence cases take to be resolved. There is little evidence that the SARP reforms have made the criminal justice process shorter for victim/survivors; in fact, some sexual offence cases now take even longer to be finalised in court. However, it is recognised that trial delays are not unique to sexual offence cases in the ACT and are experienced broadly across criminal trials. In addition, the introduction of pre-trial hearings has allowed victim/survivors to give evidence substantially earlier in the process than was previously the case, potentially minimising their trauma during the trial process.

Nonetheless, given that the length of time sexual offence cases take to be resolved in court is a major factor in the attrition of sexual offence cases in the criminal justice system, future evaluations considering the longer term impacts of the SARP reforms should focus on what causes delays as well as whether court delays have been minimised.

Reducing attrition in sexual offence matters in the ACT criminal justice system

There is little evidence available at this stage about the effect the SARP reforms have had on the attrition of sexual offence cases. Accurate measurement of changes to the attrition rate requires data gathered over a number of years, so future evaluations of SARP should consider this issue in more detail.

Improving interagency coordination and processes

Key stakeholders who contributed to this research strongly believe that the SARP reforms have resulted in a substantial improvement in the working relationships of agencies that respond to and/or provide services to victim/survivors of sexual offences in the ACT. It appears these relationships have moved from coordination to

collaboration as agencies proactively liaise with each other as a result of the reforms. Importantly, this collaborative working environment appears to be having a beneficial impact on victim/survivors, both by increasing their confidence in the agencies and helping them to access appropriate services. Collaborating also helps agencies streamline their services and use time and resources more efficiently.

On the other hand, stakeholders also felt strongly that the governance of SARP lacks overall coordination and that one agency should be responsible for this coordination role. For example, many stakeholders argued that an implementation officer based at JACS should be an ongoing component of the SARP reforms.

Conclusions and future directions

As outlined above, the SARP reforms have provided a useful foundation on which to continue improving services and support for victims/survivors of sexual offences in the ACT. Despite the preliminary nature of the current evaluation, a number of key messages have emerged, as follows.

Interpreting the parameters of the legislation

Stakeholder consultations identified that there are still many aspects of the new legislation that need to be resolved and applied in practice. SARP agencies should therefore consider and respond to any issues concerning aspects of the new legislation as they become more widely implemented.

Reform is an ongoing process

Stakeholders agreed that the SARP reforms have facilitated better interagency collaboration and coordination of support provided to victim/survivors of sexual offences. However, it should be noted that the SARP reforms are part of an ongoing process to improve these services. It is therefore important that relevant agencies maintain their commitment to the reforms and to responding in a 'joined-up' manner to the needs of victim/survivors of sexual offences in the ACT. This could be facilitated with guidance from the SARP Reference Group or another governing body.

More efficient use of resources

Although Wraparound agencies have made considerable progress in achieving their aims of better collaboration and fewer victims 'falling through the cracks' of the criminal justice system, there remains an opportunity to use resources more efficiently. For example, stakeholders from one agency suggested that a common intake form could be developed to facilitate shared-care planning for victim/survivors to identify and minimise any service overlaps using already stretched resources.

In addition to examining the longer term impacts of the SARP reforms, future research on their effectiveness could also consider to what extent they have addressed the limitations identified in this report.



Background, context and literature

History of the Sexual Assault Reform Program (SARP)

Prior to the current reforms, the Australian Capital Territory Government established the Sexual Assault Response Program with the objective of identifying ways to improve the experiences of sexual offence victims entering the ACT criminal justice system (DPP & AFP 2005). Comprising a Senior Prosecutor from the Office of the Director of Public Prosecutions (DPP) and a specialist Sexual Assault and Child Abuse Team (SACAT) from the Australian Federal Police (AFP), the SARP team consulted broadly with prosecutors, investigators and service providers across Australia and overseas. The 2005 report *Responding to sexual assault: The challenge of change* (DPP & AFP 2005) documents the team's findings and its 105 proposed recommendations.

The Sexual Assault Reform Program (SARP) was developed as a direct response to the recommendations to reform the way sexual offence cases are handled by the ACT criminal justice system. Managed by the ACT's Justice and Community Safety Directorate (JACS), SARP has a number of key objectives, principally:

- improving the processes and support for victims of sexual offences as they progress through the criminal justice system;
- reducing attrition in sexual offence matters in the criminal justice system; and
- improving coordination and collaboration among agencies involved in the criminal justice system.

In November 2007 the ACT Attorney-General announced \$4 million of funding for several SARP reforms:

- three additional victim support positions;
- the establishment of an off-site witness facility to allow witnesses to give evidence away from the court precinct;
- an upgrade of equipment for the Supreme Court and Magistrates Court;
- development of a multimedia victim information package;
- additional staffing (one more police officer, prosecutor and legal policy officer);
- development of an accredited inter-agency training and evaluation initiative; and
- provision for an evaluation of the reforms.

In addition to these upgrades to SARP infrastructure, the reform agenda included a number of legislative

changes that came into effect on 30 May 2009. The legislative amendments changed how evidence can be given by victims of sexual and family violence offences, children and other vulnerable witnesses. There is no internationally agreed definition of 'vulnerable' witnesses. However, the following groups are often considered to require special protection: children and young people; Aborigines and Torres Strait Islanders; the mentally ill or disordered, and persons with developmental disabilities; and persons from culturally and linguistically diverse (CALD) communities. The primary objectives of this legislation are to provide an unthreatening, safe environment for vulnerable witnesses (including sexual offence complainants) to give evidence; and to obtain prompt statements from witnesses to best capture evidence (DPP 2009: 13).

The current SARP evaluation sought to address whether key program objectives have been met. Specific questions explored were:

- Have there been improvements in the processes and support for victims of sexual offences as they progress through the criminal justice system?
- Has attrition in sexual offence matters in the ACT's criminal justice system improved?
- Have there been improvements in the coordination and collaboration among agencies involved in administering SARP?

The objectives and corresponding reforms were developed to address the primary factors previously identified in research that influence a victim/survivor's decision to report a sexual offence and to pursue the matter in the criminal justice system.

Use of the terms 'sexual offence victim/survivor' and 'offender'

Throughout this report, the term 'victim/survivor' will be used for individuals who have reported a sexual offence to the police or sought counselling from the support services. 'Offender' is used to describe the individual(s) identified by the victim/survivor as having committed the offence. Although it is recognised that not all cases are proven and that in some cases the 'offenders' are in fact 'alleged offenders' who have not been convicted, the term 'offender' has been used for the sake of readability.

Barriers to reporting and prosecuting sexual offences

The 'dark figure' of sexual offences

It has been well documented that most sexual offences are not reported to the police (Bouhours & Daly 2008; Lievore 2003) and that sexual offences are underreported compared with other crimes. Research clearly demonstrates that reported sexual offences reflect only a minority of all crimes of this nature (Fitzgerald 2006). Self-report surveys, for example, demonstrate that many more sexual offences occur than are reported to police; the unreported offences constitute the 'dark figure' (Lievore 2003: 26) of sexual violence.

Furthermore, as Neame and Heenan (2003) argue, the methods adopted by these surveys (eg written questionnaires) can obscure the level of sexual violence against particular groups of victims, such as those from culturally and linguistically diverse (CALD) communities, young people, homeless people and sex workers. Research has also highlighted the greater levels of sexual offences experienced by women with disabilities, who often have very low reporting rates (Frohman 2011). This is compounded by the lack of support services available to these women (Frohman 2011).

Attrition of sexual offence cases in the criminal justice system

Existing research clearly shows that sexual offences have a very high rate of attrition (Kelly, Lovett & Regan 2005; Lievore 2003); sexual offences against children in particular have one of the highest rates of attrition of any offence (Eastwood, Kift & Grace 2006). Attrition in this context refers to sexual offence cases that have entered the criminal justice system (eg via a report to police) but 'drop out' before a criminal conviction is recorded (Kelly, Lovett & Regan 2005).

Attrition of sexual offence cases in the criminal justice system is one of the primary drivers of the SARP reforms. There can be numerous reasons why a case does not proceed to conviction, or 'drops out' of the criminal justice system. Attrition can occur at a number of stages or 'points' (Kelly, Lovett & Regan 2005): reporting, investigation, prosecution and adjudication. Each of these is discussed below.

Reporting

Not all victims of sexual offences report the offence to police. Self-report surveys consistently demonstrate that many more sexual offences take place than are reported (Neame & Heenan 2003). Common reasons for reporting a sexual offence to police were found by Kelly, Lovett & Regan (2005) to be:

- to sanction the offender;
- to protect others from the offender;
- fear of the offender; and
- because sexual offences ‘should’ be reported.

The study found non-reporting was commonly due to:

- the abuse having occurred some time ago;
- not wanting others to know what happened;
- the victim not being able to face the criminal justice system;
- concern about not being believed; and
- lack of faith in the police.

It was also found that a small proportion of reports are deemed by police to be false (Kelly, Lovett & Regan 2005; Triggs et al. 2009).

Reasons for not reporting and prosecuting sexual offences have been well documented in the research literature. Lievore (2003) found that there are two broad categories of barriers to reporting: personal barriers and barriers related to the criminal justice system. These are listed in Table 1.

There are also a range of barriers to reporting and prosecuting sexual offences that are unique to child

victims. Research has found that children often delay reporting sexual offences because of self-blame, shame, and threats by or fear of the offender, and/or other psychological effects of the abuse (Lewis 2006). Research has demonstrated that child witnesses are often perceived as unreliable (Sumner-Armstrong & Newcombe 2007). Delays in reporting sexual offences can further exacerbate this.

Importantly, a study by Taylor and Putt (2007) found that women from Aboriginal and/or Torres Strait Islander and CALD backgrounds list further barriers to reporting sexual violence. For example, Aboriginal and/or Torres Strait Islander women listed fear of being ostracised for bringing shame upon the family; fear of retaliatory violence from the offenders and their supporters; fear of having children removed by social welfare authorities; and reluctance to be responsible for the incarceration of an Aboriginal and/or Torres Strait Islander offender, given the high incarceration rate for these groups. CALD women in Taylor and Putt’s (2007) study also listed additional barriers: not considering sexual violence committed by a husband to be a crime; pressure to avoid shaming the whole community; fear of deportation; and fear resulting from adverse experiences with police in their home country.

Investigation

A proportion of cases reported to police are not subsequently investigated by police. Often, police do not proceed with the investigation of an offence due to evidentiary difficulties (Borzycki 2007)—for example, insufficient evidence of an offence, no

Table 1 Common barriers to reporting sexual offences

Personal barriers	Justice system barriers
<ul style="list-style-type: none"> • Perception that offence is too trivial or inappropriate to report to police • Perception that offence is not a ‘real’ crime • It not being clear that harm was intended • Wanting to deal with it themselves • Regarding it as a private matter • Shame or embarrassment • Not wanting family or others to know • Fear of reprisal by assailant • Blamed by self or others for the attack • Wanting to protect offender, relationship or children 	<ul style="list-style-type: none"> • Perception that police would not or could not do anything • Perception that police would not think it was serious enough, or would not want to be bothered with the incident • Fear of not being believed by police • Fear of being treated with hostility by police or others within the justice system • Fear or dislike of police • Fear of the legal process • Lack of proof that the incident happened • Not knowing how to report

Source: Lievore (2003: 28)

offender identified, or little prospect of a conviction (Kelly, Lovett & Regan 2005). The latter is particularly the case when the complainant has a mental illness or intellectual disability, and/or is a 'repeat complainant' (Kelly, Lovett & Regan 2005). It should be noted that people with mental health problems and/or intellectual disabilities are overrepresented as victim/survivors of sexual offences. Research has also indicated that some victims of sexual offences are targeted repeatedly, with offenders using knowledge of prior offences against victims as part of their modus operandi (Clark & Quadara 2010). 'Repeat complainants' or those with mental health or intellectual disability issues are therefore likely to form a substantial proportion of all sexual offence complainants. Evidentiary difficulties related to these issues are therefore likely to be common and may reduce the prospect of conviction.

Research shows that in many cases, complainants become unwilling to proceed to prosecution, which may result in the withdrawal of a case by prosecutors, for two main reasons. 'Decisions not to proceed when victims are reluctant may be based on a desire to minimise the risk of re-victimisation of those victims who have a pre-existing relationship with offenders, and/or because unwilling witnesses are likely to undermine a case' (Borzycki 2007: 25). Prosecutors may also be concerned that victims who do not have a pre-existing relationship with an offender will be re-traumatised by the criminal justice process.

Research indicates that complainants may be unable and/or unwilling to proceed with an investigation for a range of reasons, including:

- practical reasons (eg the complainant has moved away or police are unable to contact them) (Kelly, Lovett & Regan 2005);
- difficulties with the reporting process (eg being disbelieved by police; not wanting to have a forensic medical examination) (Kelly, Lovett & Regan 2005);
- not wanting others (eg family members, colleagues) to find out (Kelly, Lovett & Regan 2005; Triggs et al. 2009);
- wanting to deal with the offence in their own way (Kelly, Lovett & Regan 2005);
- fear of the court process (Lievore 2005a; Triggs et al. 2009);
- being harassed by the offender (Lievore 2005a);
- not being able to recall details of the offence (eg due to drink-spiking) (Lievore 2005a; Triggs et al. 2009); and
- wanting the offender to be warned only, or wanting to make a report but take no further action (Triggs et al. 2009).

A key finding of a number of previous studies is that complainants often withdraw from the process where a case of sexual violence has been made by another party. For example, Kelly, Lovett and Regan (2005) found that many complainants whose case had been reported to police by a health worker or in the context of a domestic violence investigation were unwilling to proceed (see also Lievore 2005a; Triggs et al. 2009).

These findings highlight that, although responses to reports of sexual violence by police and other criminal justice personnel are important in minimising attrition, the preferences of individual complainants also play a key role. As Kelly, Lovett and Regan (2005: 62) argue:

[that] some people decide a rape investigation is either not what they sought, or not what they can sustain, is likely to remain the case however much the services and responses of professionals become more attuned to the realities of rape.

Prosecution

The literature is largely silent on prosecutorial decision-making in sexual offence cases, and this has been identified as an important area for future research (Fitzgerald 2006; Lievore 2005b), particularly given that a high proportion of attrition occurs at this stage in the criminal justice system (Lievore 2005b). Research does indicate, however, that prosecutorial decisions about whether to proceed with sexual offence cases primarily relate to the quality of the evidence and the associated likelihood of conviction. Specifically, 'the likelihood of cases proceeding increases significantly where prosecutors are more certain about the prospects of success' (Lievore 2005b: 5; see also Du Mont & Myhr 2000).

The reluctance of some victims to proceed is again a key reason for the withdrawal of cases at this stage of the criminal justice system (Lievore 2005b). Lievore (2005b: 6) argues that there may be a relationship between prosecutors' beliefs about the likelihood of conviction and victims' decisions to withdraw:

a victim may perceive a prosecutor's advice that conviction is highly unlikely as an invitation not to proceed. This form of 'discouragement' may be intentional or unintentional and perhaps even altruistic in some instances (see also Du Mont & Myhr 2000).

Fitzgerald's (2006) study of the attrition of sexual offences in the New South Wales criminal justice system found that cases were more likely to proceed to prosecution if:

- the victim was aged over 10 years;
- the victim was female;
- the time elapsed between the offence and reporting of the offence was less than 10 years;
- the alleged offender was known to the victim; and/or
- the offence involved an aggravating factor.

Lievore (2005b) found that cases were most likely to proceed to prosecution if there was evidence of the use of force by the alleged offender and of non-consent on the part of the complainant. Du Mont and Myhr's (2000) Canadian research posited that, while this may be due to victims who physically or verbally resist a sexual attack being perceived as more credible witnesses, it may also be due to the individual psychological make-up of these victims. Previous research has indicated that women who avoided being sexually assaulted by vigorously resisting had 'high self-esteem and a sense of entitlement' (Bart & O'Brien cited in Du Mont & Myhr 2000: 1127). Du Mont and Myhr (2000: 1127) therefore surmise that 'a strong sense of esteem may help women who physically resist to assertively pursue their cases through a system criticized for being insensitive and traumatizing'.

Adjudication

Research indicates that many sexual offences that proceed to adjudication do not result in conviction. Fitzgerald's (2006) study of attrition in sexual offence

cases in the New South Wales criminal justice system found that 44 percent of individuals who appeared in court for a sexual offence against a child were found guilty of at least one sexual offence against a child, and 42 percent of individuals who appeared in court for a sexual offence against an adult were found guilty of at least one sexual offence of this type. This equates to approximately eight percent of all reported sexual offences against children and 10 percent of reported sexual offences against adults resulting in a conviction (Fitzgerald 2006).

Conviction rates for sexual offences are typically lower than for other offence types (see eg Fitzgerald 2006). Du Mont and Myhr's (2000) Canadian research found that the use of physical force was the only significant predictor of conviction in sexual offence matters. Reasons for the failure to secure convictions in sexual offence cases are 'complex and numerous' (Borzycki 2007: 26). For example, Fitzgerald (2006) found that individuals appearing in court for a sexual offence are less likely to plead guilty than other defendants. Triggs et al.'s (2009) research in New Zealand found that, while a small proportion of defendants may be unfit to stand trial or have passed away, a larger proportion of cases adjudicated were either withdrawn/discharged or resulted in an acquittal.

Information on the reason for cases being withdrawn (by police or Crown prosecutors) was not available for most cases in the study; where information was available, reasons included victims not wanting to proceed, defendants pleading guilty to another charge in the case, and new contrary evidence (Triggs et al. 2009). This suggests that some factors relating to attrition are common across the investigation, prosecution and adjudication stages of the criminal justice system—certainly, victims' reluctance to proceed can result in attrition at all of these stages.

It is important to note that attrition in sexual offence matters does not occur evenly throughout the criminal justice process. That is, sexual offence cases 'fall out' of the criminal justice system at some stages more than others. Fitzgerald's (2006: 4) research found that:

the major points of attrition for sexual offences in the criminal justice system lie between reporting and clear up, and between clear up and the commencement of criminal proceedings.

Table 2 All sexual offences recorded by ACT Police, 2009–10, by offence type, clear-up rate and sex of person charged

	Offences reported	Offences cleared	Clear-up rate (%) ^a	Charges against males	Charges against females	Total charges
Sexual assault 1 st , 2 nd or 3 rd degree ^b	9	9	100.0	15	0	15
Sexual intercourse, no consent	81	91	112.3	17	0	17
Sexual intercourse with a person under 16 years	36	37	102.8	8	0	8
Indecent act, assault	29	20	69.0	2	0	2
Indecent act, no consent	41	33	80.5	26	0	26
Indecent act on person under 16 years	52	68	130.8	47	0	47
Incest	8	9	112.5	7	0	7
Indecent exposure	35	15	42.9	6	2	8
Abduction (sexual intent)	0	0	-	0	1	1
Total sexual offences	291	282	96.9	128	3	131

a: Clear-up rates reported by ACT Policing do not relate exclusively to offences that were reported during the 2009–10 period. As a result, clear-up rates can exceed 100 percent.

b: There are varying degrees of sexual assault, ranging from sexual misdemeanours through to more serious acts that are most commonly known by the public as 'rape'. Definitions for each of these are outlined in Part 3 of the *Crimes Act 1900*, an extract of which can be found at Appendix C in this report

Source: AFP (2010: 145).

This may vary according to a range of factors, including the relationship between the complainant and the defendant. Triggs et al. (2009: 65) found, for example, that:

current partners were more likely to be prosecuted, but, if prosecuted, were less likely to be convicted. Conversely, strangers were less likely to be prosecuted, but, if prosecuted, were more likely to be convicted.

Sexual offences in the Australian Capital Territory

Data on sexual offences in the ACT are available from a number of sources, including the AFP, JACS, and the Australian Bureau of Statistics (ABS). As each of these data sources has limitations, this section provides an overview of the latest recorded statistics on sexual offences from each of these sources.

Police data

In 2009–10 ACT Policing recorded 291 sexual offences (AFP 2010). Table 2 shows all sexual offences in the ACT during 2009–10 by offence type, offence clear-up rate and sex of the person charged with each offence. Sexual offences are defined under Part 3 of the *Crimes Act 1900* (ACT) (Appendix C). 'Cleared' offences are defined as those for which there is an outcome during the reporting period; 'outcomes' include identification of an alleged offender (eg through arrest, summons or other procedure, such as a police caution), withdrawal of the complaint or a determination that the offence was unsubstantiated (AFP 2010).

As Table 2 shows, clear-up rates for sexual offences varied substantially during 2009–10 according to the specific offence type. As clear-up rates do not relate exclusively to offences reported during the year, some clear-up rates appear to exceed 100 percent. This makes it difficult to determine with any accuracy the proportion of sexual offences that are cleared up in the ACT. JACS reports on these data each quarter (see eg JACS 2011c).

Table 3 Sexual assault complainants in the ACT, 2010, by sex and relationship to alleged offender

	Males	Females	Total
Known to complainant			
Family member			
Partner ^a	0 ^b	6	6
Other family member	6	10	15
Total ^c	6	21	26
Non-family member			
Ex-partner ^d	0 ^b	10	10
Other non-family member	3	7	11
Total ^e	10	69	80
Not known to complainant			
Stranger	0 ^b	37	37
Relationship not known ^f	0 ^b	16	17
Total ^g	16	143	160

a: 'Partner' includes boyfriend–girlfriend relationships

b: zero denotes no count or counts rounded to zero (including null cells)

c: Includes other related family member that were not elsewhere classified

d: 'Ex-partner' includes ex-boyfriend–ex-girlfriend relationships.

e: Includes other non-family members not further defined

f: Includes 'no offender identified' and 'not stated/inadequately described'. This denotes that the relationship of offender to victim has not been recorded or the information supplied is insufficient to classify elsewhere

g: Includes one complainant whose sex was not recorded

Source: Adapted from ABS (2011: 45)

According to the ABS (2011a), 55 offenders were proceeded against by ACT Policing for a principal offence of 'sexual assault and related offences' during 2009–10. This equates to 1.9 percent of all offenders proceeded against by police during the period. In other jurisdictions, the proportion of offenders proceeded against whose principal offence was sexual assault or a related offence ranged from 0.6 percent in Tasmania to 2.1 percent in both Queensland and Western Australia (ABS 2011a). As a rate per 100,000 population, however, the ACT had the lowest rate of sexual offenders, at 17.7 per 100,000. The Northern Territory had the highest rate, at 87.7 per 100,000, and the national rate was 33.0 per 100,000 population (ABS 2011a).

The ABS (2011b) reports that during the 2010 calendar year 160 victims of sexual assault (44.9 per 100,000 population) reported an offence to ACT Policing. Of these victims, 143 (89%) were female; 16 (10%) were male, and one (1%) did not have their

sex recorded (ABS 2011). The rate of reported sexual offences in the ACT during 2010 was lower than in all other jurisdictions except Tasmania (30.1 per 100,000) and substantially lower than the national average (79.5 per 100,000) (ABS 2011b).

Of the 160 victims who reported a sexual offence to police, 66 percent reported that the offender was known to them. As Table 3 shows, the relationship to the alleged offender varied according to the sex of the complainant. While all male complainants were known to their alleged offender, over one-quarter (26%) of female complainants reported being sexually assaulted by strangers (ABS 2011b).

Court data

According to the ABS (2011c), 41 defendants were adjudicated for sexual assault and related matters in all courts (Supreme Court, Magistrates Court and Children's Court) in the ACT during 2009–10. During

Table 4 Sexual assault and related offences adjudicated in the ACT, 2010–11, by quarter and court

	Magistrates Court	Children's Court	Supreme Court	Total
July–September 2010				
Sexual assault	0	0	0	0
Non-assaultive sexual offences	9	0	6	15
October–December 2010				
Sexual assault	0	0	0	0
Non-assaultive sexual offences	6	0	7	13
January–March 2011				
Sexual assault	2	0	1	3
Non-assaultive sexual offences	11	0	4	15
April–June 2011				
Sexual assault	10	1	5	16
Non-assaultive sexual offences	2	0	2	4
Total	40	1	25	66

Source: Adapted from ACT Department of Justice and Community Safety (2011a; 2011b; 2010a; 2010b)

2009–10, 32 defendants were adjudicated in relation to sexual assault and related matters in the ACT Supreme Court, and a further eight were adjudicated in the Magistrates Court. Three young people were adjudicated for sexual assault and related offences in the Children's Court during this period (ABS 2011c).

More recent data from JACS (2011c) indicate that during 2010–11, 66 sexual assault and related offences were adjudicated in the ACT courts (see Table 4).

JACS (2011a; 2011b; 2010a; 2010b) also reports on the pleading behaviours of defendants in all courts in the ACT. Table 5 shows pleas relating to sexual assault and related offences in all ACT courts during 2010–11.

As Table 5 indicates, nearly half (46%; n=33) of all cases in relation to sexual assault and related offences in the ACT during 2010–11 were defended, over one-third (35%; n=25) were not defended, and a further 15 percent (n=11) were withdrawn by the prosecution. Although the small numbers of total pleas make it difficult to draw meaningful comparisons between sexual assault and non-assaultive sexual offences, it is worth noting that a higher proportion of non-assaultive sexual offence matters were withdrawn by the prosecution (25%;

n=3) than was the case in sexual assault matters (14%; n=8).

As Table 6 indicates, over one-third (35%; n=25) of sexual assault and related matters were proven in the ACT during 2010–11. Most of these matters were finalised via a guilty plea by the defendant; only a small proportion were finalised via a finding of guilt by the court following a plea of not guilty (6% of all sexual assault and related matters; n=4). Only four percent (n=3) resulted in an acquittal. More commonly, matters were withdrawn by the prosecution (17%; n=12) or had an 'unknown' outcome (32%; n=23).

Improvements to data collection and reporting have resulted in the introduction of the outcome categories 'committed for trial' and 'committed for sentence'. According to JACS (2011b), these categories capture data that were previously recorded as 'unknown' outcomes. It may be the case, therefore, that some of the high proportion of matters with an 'unknown' outcome were in fact committed for trial or sentence to the Supreme Court during 2010–11. Only limited data are available on the sentencing outcomes for sexual assault and related matters in the ACT during the 2010–11 period. Data reported by JACS (2011a; 2011b; 2010a; 2010b) indicate that the sentencing outcome in the majority of these matters is

Table 5 Pleas in relation to sexual assault and related offences in the ACT, 2010–11

	June–September 2010		October–December 2010		January–March 2011		April–June 2011		Total
	Sexual assault	Non-assaultive sexual offences	Sexual assault	Non-assaultive sexual offences	Sexual assault	Non-assaultive sexual offences	Sexual assault	Non-assaultive sexual offences	
Undefended									
Ex parte and guilty plea	1	0	1	0	0	0	0	1	3
Guilty plea	5	1	7	2	3	1	2	1	22
Defended									
Defended (a)	4	1	3	0	5	0	6	0	19
Not guilty plea	2	1	1	0	6	0	3	1	14
No plea	0	0	0	0	0	0	0	0	0
Plea reserved	0	0	0	0	0	0	0	0	0
Other defended plea(b)	0	0	0	0	0	0	0	0	0
Not applicable									
Withdrawn by prosecution	2	0	0	1	1	1	5	1	11
Deceased/unfit to plead	1	0	1	0	0	0	0	0	2
Unknown									
Unknown	0	0	0	0	0	0	0	0	0
Total									
Total	15	3	13	3	15	2	16	4	71

a: Defended—Ex parte and not guilty plea, or plea not applicable and acquitted or found not guilty

b: Other defended plea—includes Demurrer, No Jurisdiction, Autrefois Conviction, Autrefois Acquittal

c: Not Applicable—Plea not applicable and non-adjudicated finalisation (e.g. deceased, unfit to plead, withdrawn by prosecution, and so on)

Source: Adapted from JACS (2011a, 2011b, 2010a, 2010b)

Table 6 Outcomes for all sexual assault and related offence matters in the ACT, 2010–11

	June–September 2010		October–December 2010		January–March 2011		April–June 2011		Total
	Sexual assault	Non-assaultive sexual offences	Sexual assault	Non-assaultive sexual offences	Sexual assault	Non-assaultive sexual offences	Sexual assault	Non-assaultive sexual offences	
Proven									
Guilty finding by court	0	1	0	0	1	0	1	1	4
Guilty plea by defendant	5	1	6	1	4	1	1	2	21
Guilty, ex-parte	0	0	0	0	0	0	0	0	0
Unproven									
Acquitted by court	0	0	1	0	0	0	2	0	3
Not guilty (mental illness)	0	0	0	0	0	0	0	0	0
No case to answer	0	0	0	0	0	0	0	0	0
Charge unproven	0	0	0	0	0	0	0	0	0
Transfer									
Transfer to another court	0	0	0	0	0	0	0	0	0
Non-adjudicated									
Defendant deceased	0	0	0	0	0	0	0	0	0
Unfit to plead	0	0	0	0	0	0	0	0	0
Withdrawn by prosecution	2	0	1	1	1	1	5	1	12
Transfer to non-court agency	0	0	0	0	0	0	0	0	0
Other non-adjudicated	1	0	0	0	0	0	0	0	1
Other									
Committed for trial ^a	N/A	N/A	N/A	N/A	N/A	N/A	7	0	7
Committed for sentence ^b	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0
Unknown	7	1	5	1	9	0	0	0	23
Total									
Total	15	3	13	3	15	2	16	4	71

a: The new outcome 'committed for trial' was added to the JACS quarterly crime statistics reports for the April–June 2011 quarter. The category reflects data previously recorded under 'unknown' and is for matters that have been committed for trial in the Supreme Court.

b: The new outcome 'committed for sentence' was added to the JACS quarterly crime statistics reports for the April–June 2011 quarter. The category reflects data previously recorded under 'unknown' and is for matters that have been committed for sentence in the Supreme Court.

Source: Adapted from ACT Department of Justice and Community Safety (2011a; 2011b; 2010a; 2010b).

'unknown' (70%; n=50). Thirteen percent of matters (n=9) resulted in a fixed term of full-time imprisonment. Small proportions resulted in a fully suspended sentence (7%; n=5), a partly suspended sentence (7%; n=5), a good behaviour bond (1%; n=1) and a term of periodic detention (1%; n=1).

Summary

As Australian and international literature highlights, attrition of sexual assault victim/survivors occurs at each stage of the criminal justice system. Barriers even exist prior to reporting the offence, which can ultimately affect the progression of the case throughout the criminal justice system. The ACT has the lowest rate of sexual offenders compared to other jurisdictions, and one of the lowest rates of reported sexual offences. However, clear-up rates vary substantially. Just over one-third of matters were proven in the courts; the majority were finalised by guilty pleas. Trial delays contribute to cases taking over two years to be finalised in the ACT Courts, and many cases still 'drop out' before being finalised in court.

The implementation of SARP is a critical step in addressing these key barriers. The ACT is not isolated in attempting to address these challenges. There is a broader shift both in Australia and overseas to improve the experiences of sexual offence victim/survivors in the criminal justice system and the outcomes of their cases. See, for example, Victoria's Sexual Assault Reform Strategy final evaluation report ([http://www.justice.vic.gov.au/home/the+justice+system/justice+sexual+assault+reform+strategy+-+final+evaluation+report+\(pdf\)](http://www.justice.vic.gov.au/home/the+justice+system/justice+sexual+assault+reform+strategy+-+final+evaluation+report+(pdf))) and New Zealand's Sexual Violence Research Project (<http://www.mwa.govt.nz/our-work/svrproject/index.html/?searchterm=denise>). Other reform projects and information can also be found on the Australian Centre for the Study of Sexual Assault website (<http://www.aifs.gov.au/acssa/research/lawpolicy.php>).

Evaluating the SARP reforms is an important step towards identifying what is working in the current approach and which areas could be modified or enhanced to improve the experience of victim/survivors entering the criminal justice system.

Method



The SARP evaluation was conducted in two stages. Stage 1 began in October 2009 and Stage 2 in July 2010. The two-stage process was necessary as the final proposed SARP reforms were introduced in May 2009. As such, a minimum of one year was needed to document changes resulting from these final reforms. Stage 1 was used to identify key indicators for the evaluation and to allow stakeholders providing the data, time to collect the data proposed. It also allowed the researchers the opportunity to ensure the indicator measures selected were feasible in terms of timelines and data extraction. Stage 2 was the key data collection and interview stage. Given the sensitivity of the data collection, particularly in regard to victim/survivor interviews, the proposed evaluation method was submitted to the AIC Human Research Ethics Committee, who approved it.

As discussed earlier, the SARP evaluation sought to address three key questions:

- Have there been improvements in the processes and support for victims of sexual offences as they progress through the criminal justice system?
- Has attrition in sexual offence matters in the ACT's criminal justice system improved?
- Have there been improvements in the coordination and collaboration among agencies involved in administering SARP?

A mixed-methods approach to the evaluation was adopted: data collected on key measures for each question were supplemented by interviews with both victim/survivors of sexual offences and selected service delivery providers from Wraparound. In planning the evaluation, a classic experimental design evaluation framework was considered unfeasible. Reasons for this include the absence of consistent data across the evaluation, the time parameters for conducting randomised controlled pre-and post-testing, the inability to randomly interview victims/survivors, and the lack of a comparable control site. A realist evaluation framework was consequently adapted and applied.

A realist framework has its advantages and complements other evaluation methods. Instead of focusing principally on what works (such as classic experimental design), realist evaluation looks at the various contexts and mechanisms that are required for a project/program to work (Pawson & Tilley 1997). In other words, the focus is not just on what works but also on how and in what context. Knowing these factors helps agencies determine not only how a project works but also what mechanisms can be altered that might improve service delivery in the future. It also aids greater knowledge transfer among agencies wishing to adopt successful processes from a project (Ekblom 2010) and can help them avoid replicating factors that influenced any negative outcomes (Ekblom 2010).

The realist approach can be applied even if a project has not been completely implemented. Its framework can be used for investigating the processes behind the reforms and what aspects of these appear to have helped (or hindered) furthering SARP in the ACT. The purpose of this evaluation is to give JACS, the SARP Reference Group and Wraparound agencies an insight into how well the reforms have been implemented to date to inform them of any preliminary outcomes. From this assessment, the key stakeholder agencies will be able to reflect on the current practices and identify any service delivery areas that need improving or updating.

Development of indicators

Prior to the AIC evaluation, JACS and Wraparound stakeholders developed a set of indicators for the SARP reforms based on the *Responding to sexual assault: The challenge of change* report (DPP & AFP 2005). Qualitative and quantitative indicators were identified to measure the success of the reforms according to each objective—for example, ‘number of sexual offence cases reported to police’ and ‘number and type of SARP training sessions delivered’. Indicators were selected on the basis of available data and how feasible these were to access, and on the basis of relevance to the SARP objectives. The preliminary indicator list was updated based on the outcomes of preliminary consultations with key stakeholder agencies, and the AIC then sought feedback on these revised draft indicators from Wraparound agencies. The draft indicator list was again amended based on this feedback and circulated to all Wraparound stakeholders for comment in late 2009. It was then revised and updated in April 2011 to reflect available resources and the feasibility of indicators that were not able to be identified earlier. The final list of indicators is available at Appendix A.

It must be noted that this evaluation has not collected data for each indicator identified, as data for some of the indicators are currently unavailable. Many SARP agencies were in the process of updating or modifying their data collection processes so were unable to provide the relevant information for the period required. However, it was raised

during the consultation that these indicators could be incorporated in future program evaluations. Where possible, if quantitative data were not available, qualitative information was sought via the consultations.

Victim/survivor interviews

Defining a victim/survivor

The term ‘victim/survivor’ is used in this report to describe a person who has been subjected to a sexual offence as defined by Part 3 of the *Crimes Act 1900* (ACT). This Act includes persons who are victims of:

- sexual assault in the first, second and third degrees;
- sexual intercourse without consent;
- sexual intercourse with a young person;
- maintaining a sexual relationship with young person;
- act of indecency in the first, second and third degrees;
- acts of indecency without consent;
- acts of indecency with young people;
- incest and similar offences; and
- abduction (see Appendix C for Part Three 3 of the *Crimes Act 1900* (ACT)).

Upon discussion with the DPP, it was determined that all offences under Part 3 of the Act, other than the pornography-related offences, should be included in the parameters of the research. It was noted in initial consultations that victim/survivors of indecent acts can often display as much distress following the offence as victim/survivors of sexual assault, and often require access to the same services.

Inclusion criteria for victims/survivor interviewees

Each service provider that recruited victim/survivors to be interviewed was asked to liaise with the other Wraparound agencies that were assisting the AIC to recruit victim/survivors for interviews. As the timeline and resources for conducting the research were limited, only five victim/survivors in total were interviewed for this study.

The following criteria applied to the victim/survivor selection:

- The participant must be a survivor of a sexual offence as outlined in Part 3 of the *Crimes Act 1900* (ACT) (see Appendix C). (The victim/survivor may have been under the age of consent when the sexual offence occurred, but they must be over the age of consent in order to be interviewed.)
- The participant must be able to understand the purpose and scope of the interview and provide informed consent. For this reason, survivors with intellectual disabilities were excluded.
- Survivors should no longer be 'in crisis' and should be able to cope with the demands of the interview with appropriate support mechanisms.

After further consultation with the DPP representative, the criteria for selecting victim/survivors were amended to exclude cases that were pending or had not been finalised in the court. This step was taken as interviewing a victim/survivor prior to the case being finalised could potentially have jeopardised their confidentiality.

CRCC, VSACT and the DPP liaised to determine the most appropriate victims/survivors to approach for the research as well as to avoid an individual being approached by more than one agency. Appropriate protocols protected the privacy of individuals being put forward for the consultations, and each agency reviewed its policies and procedures in relation to what information about each victim/survivor could be shared prior to the meeting. The process began in September 2010 and continued until September 2011. Victim/survivors were approached in October/November 2011 and were granted a three-week 'cooling-off period' to carefully consider if they wished to be interviewed.

Interview schedule, method and development

The SARP victim/survivor interview schedule and methodology were modelled on a format developed by a study conducted by the AIC in 2005 for the Office for Women on women's help-seeking decisions and service responses to sexual offences (see Lievore 2005a). This was done because the information sought in the 2005 study was similar to the information that was required for the SARP

evaluation. In addition, the 2005 interview schedule was rigorously developed in consultation with an expert in designing questionnaires that request information on sensitive issues, and with feedback from participating sexual offence services (Lievore 2005a). The schedule and methodology were also subjected to a rigorous ethics process.

Relevant questions were modified for the SARP evaluation to address the key research questions, and further questions were added as necessary. The interview schedule was then circulated to Wraparound stakeholders for comment. The final draft interview schedule, incorporating the stakeholder comment, was submitted to the AIC Research Human Ethics Committee for consideration.

The interviews with victim/survivors were conducted following a semi-structured format. Victim/survivors had the option to cease the interview at any time, and counselling services were available to them at any stage during and after the interview.

Sexual offence service delivery provider (SDP) interviews

Interviews with the various sexual offence SDPs in the ACT comprised a key component of this study. However, due to time and resource limitations it was not feasible to interview all agencies involved in the SARP reforms. In the end, five interviews were conducted with representatives of the following key Wraparound agencies: ACT Policing SACAT team, CRCC, VSACT, and the DPP. The ACT Courts (although not formally part of Wraparound) were also interviewed. These interviews were conducted using a semi-structured format and were based on the key objectives of the reforms. Questions for each agency varied slightly to reflect its role and level of involvement in Wraparound. Only one agency, JACS, was not interviewed face-to-face; at its own request it was sent out a modified questionnaire to complete.

Limitations of the study

The current SARP evaluation was very limited in both resources and time, so its scope was developed to reflect these restrictions. A key limitation in this

evaluation is that the data available were not able to be compared across agencies. Further limitations are listed below.

Different units of measurement used

When different units of measurement are used in various datasets, it is difficult to determine whether what is being analysed is comparing like with like. This can reduce confidence in the findings—particularly in the case of data collected from the different agencies participating in the SARP reforms. Wraparound data are *victim*-focused, in contrast to data collected from the ACT Courts and the DPP, which are *offender*-focused. This is problematic because an offender can have multiple victims and/or multiple offences and may therefore be counted numerous times in captured data. Similarly, victims can have multiple offenders. This limitation was identified in a previous study tracking sexual offenders in the ACT criminal justice system (see Borzycki 2007).

Nature of available datasets

Although collation of the indicator data has been quite consistent in the last 12 months, available indicator data from before the 2009 legislative changes are limited across all agencies. Most of the indicator data identified as appropriate for the evaluation have not been collected in their present format for the period of data collection required. Indeed, as the SARP reforms have been implemented only recently, it is difficult at this stage to draw many conclusions from quantitative data. As a result, this preliminary evaluation has relied heavily on qualitative data collected from key stakeholder agencies and the small number of victim/survivors of sexual offences.

Delays in criminal justice system proceedings

Although it was suggested that many of the causes of delays in sexual offence cases pre SARP have been minimised by the new legislative changes (DPP 2009), delays still exist, and some sexual offence cases in the criminal justice system can take years to be resolved. As few complainants have progressed through the criminal justice system since

the reforms began, it is difficult to look at changes over time. This evaluation, as mentioned, has therefore relied heavily on qualitative data from stakeholders and victim/survivors. Future evaluations will be better placed to make more conclusive comments about the impacts of the SARP reforms.

Incremental implementation of SARP reforms

The suite of SARP reforms proposed in the DPP and AFP (2005) report has been implemented incrementally since 2007 and, of these, the most recent legislative changes occurred in May 2009. As there is no fixed date on which the legislative changes came into effect, no comparison can be made of the system pre and post reforms. In any case, the effect of the SARP reforms may have predated the data collected for this evaluation, but data for an earlier period would have been unreliable so was not collected.

Applicability to specific victim/survivors

The study excluded looking *specifically* at the effects of SARP on victim/survivors from CALD backgrounds, of Aboriginal and/or Torres Strait Islander descent, and/or with mental illness, intellectual disability or other disabilities, primarily because of the additional resources needed to cater for these groups in the interview process. However, victim/survivors from these backgrounds were not actively excluded from the interview process if they were able to satisfy the interview inclusion criteria.

The small ACT population and small number of victim/survivors who report sexual offences mean the sample of people identifying with one or more of these groups is very low. They are nonetheless recognised as a priority for future research into criminal justice responses to sexual offences, as it has been recognised that women from Aboriginal and/or Torres Strait Islander and CALD communities and/or those with a mental health issue or intellectual disability may be particularly at risk of sexual violence.

A national survey on violence against women conducted by Mouzos and Makkai (cited in Taylor

& Putt 2007) found that sexual violence against Aboriginal and/or Torres Strait Islander women was three times more common than against non-Aboriginal and/or Torres Strait Islander women. It was also found that CALD women were as much at risk of sexual violence as non-CALD women. In addition, a recent report on violence against women with disabilities highlighted that they often suffer higher levels of domestic/family violence and sexual offences than women without a disability, and that support services catering to these women are limited or not available (see Frohmader (2011) for an overview of these factors in more detail).

Bias in stakeholder and victim/survivor interviews

Stakeholders interviewed for the evaluation have a significant investment in the success of the SARP reforms. Many of the Wraparound agencies and SARP Reference Group members received funding to implement their part of the reforms. As such, there is a potential risk for stakeholders interviewed to describe the reforms in a favourable light. Key stakeholders interviewed for this research from Wraparound were self-selected. In addition, focus group attendees who were not part of the Wraparound/SARP Reference Group (eg police investigators) were selected by their agency's

Wraparound contact officer. Despite these risks to objectivity, the stakeholder interviews were an appropriate method to obtain information on the SARP reforms, as there are no others in the community who would be able to comment on these reform processes and their success. In addition, victim/survivor interviews have been used to balance the perception of stakeholder agencies.

Limited pool of suitable victim/survivors to interview

Many sexual offence cases are settled via a guilty plea (see Table 5 above), limiting the number of sexual offence cases defended in the courts since introduction of the SARP reforms. This substantially lowered the number of victim/survivors who could be recruited to comment on the support services provided and on aspects of the reforms throughout the whole process.

The small number of interviews conducted for this preliminary evaluation of the SARP reforms (n=5) cannot be considered representative of all sexual offence victim/survivors in the ACT. Nonetheless, the interview data that emerge provide an important insight into the experiences of a small number of victim/survivors, and a critical complement to the views of service delivery providers and other stakeholders.



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How the Sexual Assault Reform Program intends to effect change

The success of SARP depends on the context in which it operates. Key to understanding the effect of SARP on its objectives is to recognise that the reforms were not introduced in isolation but operate alongside other legislation, programs and competing resourcing requirements within the ACT criminal justice system, and are influenced by the broader environment. Indeed, it has been recognised that a program in and of itself cannot be the cause of change; rather, it is the action taken, decisions made and resources provided by various stakeholders that enable change (Pawson & Tilley 1997). It is therefore important to assess how well each reform implemented actually effected the intended change in the context in which it was introduced.

As previously mentioned, SARP has introduced, among other things, the following key reforms:

- three additional victim support positions (two positions specifically for victim support and one for witness assistance at the DPP);
- establishment of an off-site witness facility to allow witnesses to give evidence away from the court precinct;
- an upgrade of equipment for the Supreme Court and Magistrates Court;
- development of a multimedia victim information package; and

- development of an accredited inter-agency training and evaluation initiative.
- These reforms are expected to exert change via the following key mechanisms:
- reducing the length of time a victim/survivor spends in the criminal justice system,
- providing more support at the time of contact,
- improving coordination among agencies, and
- reducing the impact of reporting sexual offences on victim/survivors.

Reducing the length of time a victim/survivor needs to spend waiting for a court appearance—this is considered to contribute to the reduction of victim/survivor attrition throughout the criminal justice process. This is meant to occur by decreasing the amount of time the victim/survivor spends ‘in limbo’ waiting for a hearing or outcome. Being in limbo is considered to heighten the risk of distress and subsequent attrition in the criminal justice system.

Providing more support at the time of contact and improving coordination among agencies—this would occur through the streamlining of processes—that is, agencies collaborating to (1) see where delays might occur, (2) prevent delays and (3) reduce any overlap of services to a victim/survivor or identify any gaps in service provision to limit the chance of under- or over-servicing. The increased and more

targeted support is also expected to empower the victim/survivor to remain in the criminal justice system and thus could contribute to a reduction in attrition. Better training and development of stakeholder agency staff in regard to the reforms would make them aware of what changes have occurred and what services their agency and/or Wraparound can offer to victim/survivors. This should help victim/survivors have more positive contact with the criminal justice system, and ensure that they receive appropriate support.

Reducing the impact of reporting sexual offences—improving technology used during reporting and court (such as tape-recording and video equipment) should lessen the impact and intrusive nature of many reporting practices used in the criminal justice system. It can also help reduce the chance of equipment failure or poor recording, thereby limiting the need for victim/survivors to re-record or repeat their evidence and experiencing additional trauma. These changes should result in victim/survivors being less distressed and more comfortable when giving evidence and less likely to leave the criminal justice system. It could also mean that victim/survivors feel more supported and satisfied even if the outcome is not in their favour.

If the above mechanisms work as intended, the reforms should achieve their objectives—namely: an improvement in processes and support for victims of sexual offences as they progress through the criminal justice system, reduced attrition, and improved coordination and collaboration among agencies involved in administering SARP. On the other hand, if the reforms put in place are not operating as intended, it is important to know this and examine whether these reforms have any unintended effects (either positive or negative).

When reviewing the indicators for each objective, the contextual influences on the success of each indicator are discussed. Many of the indicators are in terms of outputs, such as the number of Wraparound meetings or number of cases that progress to the Supreme Court. Many of these outputs do not of themselves indicate positive outcomes for victim/survivors—nor whether the processes and coordination among service delivery providers have improved. For this reason this report discusses many indicators concurrently and, where

there is overlap in findings, describes them in detail only once, referring in subsequent sections to that detail to reduce repetition.

Wraparound

An integral part of SARP, Wraparound is the coordinated response to victim/survivors of sexual offences reporting to ACT Policing. The primary function of Wraparound is to provide a mobile counselling and support service that responds to the victim/survivors when they first present to police or forensic/medical services (<http://crcc.org.au/assistance/legal>). There are two components to Wraparound: the first is the MoU established between ACT Policing and CRCC that specifies that CRCC will be contacted when the police attend a sexual offence case; the second is the offer to the victim/survivor entry to the Wraparound process (see objectives of the Wraparound terms of reference in Appendix B).

The key mechanism behind Wraparound is for a victim/survivor to engage earlier with support services and thus be more likely to stay in the process and get a better outcome, leading to reduced attrition (Consultation with ACT Policing). Each organisation contributes to different aspects of the Wraparound process in an effort to deliver effective services to victim/survivors of sexual offences, and to reduce duplication of services. Wraparound also seeks to avoid overservicing some victim/survivors and conversely, to make sure that victim/survivors do not fall through any gaps in service delivery (underservicing).

Clients predominantly enter Wraparound via contact with police. Police seek victim/survivors' consent to be referred to Wraparound and, if obtained, victim/survivors are given a victim liaison officer (VLO) to be their primary support and contact. (Those who do not consent are still assigned a VLO, even if they do not access their support.) Not all victim/survivors enter Wraparound on first contact; clients can be engaged through other means (eg CRCC or VSACT referral). Although Wraparound is designed for victim/survivors who intend to progress through the criminal justice system, support is still provided to those who do not enter the system (Consultation with VSACT).

Wraparound meetings are held monthly, where cases are discussed in regards to any problems or issues arising, victim/survivor needs (eg whether they have support, who they will be referred to), and any developments in the case (eg status of investigation or trial). Support services such as CRCC and VSACT can maintain contact with victim/survivors for many years, even beyond a case being finalised. However, victims in the post-sentence stage do not generally continue to be involved with Wraparound, although they may still stay engaged with a support agency (Consultation with VSACT).

The following agencies are members of Wraparound:

- Canberra Rape Crisis Centre (CRCC);
- Service Assisting Male Survivors of Sexual Assault (SAMSSA) (this is a service run by CRCC);
- ACT Policing, Australian Federal Police (ACT Policing);
- Victim Support ACT (VSACT);

- Children at Risk Health Unit (CARHU);
- Care and Protection Services (CPS);
- Forensic and Medical Sexual Assault Care (FAMSAC); and
- Office of the Director of Public Prosecutions (DPP).

Wraparound is designed to:

- ensure appropriate and adequate support is provided to victims who report sexual offences to the police;
- provide a coordinated response to victims' case management; and
- provide information to, and communicate with, victims throughout their involvement with the criminal justice process (see <http://www.aifs.gov.au/acssa/ppdb/wraparound.html>).

The services provided by Wraparound are a central focus of this evaluation.



Improving processes and support for victims of sexual offences

As stated previously, one of the key objectives of the SARP reforms is to improve processes and support for victims of sexual offences throughout the criminal justice system. This chapter considers to what extent this objective has been met, based on quantitative data provided by Wraparound agencies and consultations conducted with representatives from these agencies.

Agency stakeholders agreed that the SARP reforms had, to varying degrees, improved the processes and support for victim/survivors as they progressed through the criminal justice system. However, because of the length of time it takes for many cases to be tried in court, it is difficult to assess the impact of the legislative changes. In general, agencies said they were positive about the reforms, although ‘time will tell’ (Consultation with ACT Policing) how they will affect victim/survivors in the long term once more cases progress through the courts.

Stakeholders commented that, when talking to their counterparts in other jurisdictions, it appeared the ACT is ‘dealing with victims better’ because it engaged CRCC throughout the process and used specialist sexual offence investigators (Consultation with ACT Policing). It was also noted that the type of services victim/survivors want can influence the experience they have within the criminal justice system (Consultation with ACT Policing).

Broadly speaking, the victim/survivors interviewed for this preliminary evaluation had positive experiences with the ACT criminal justice system. Where appropriate, comments from victim/survivors interviewed are included throughout the remainder of this report.

Reporting to police and Wraparound services offered to victim/survivors of sexual offences

Central to the reforms are the services provided by Wraparound agencies. Obtaining evidence via interviews soon after the offence was considered a critical part of the reforms, as this is important for the victim/survivor’s recollection and memory of the event (Consultation with CRCC). How and when Wraparound agencies contact victims can therefore affect the overall level of service and support that is provided.

First contact and referrals to Wraparound

The following information was obtained from the Wraparound database. Some of these data may not

capture whether Wraparound services were offered, as this would require data to be captured retrospectively, which is not currently possible. It should also be noted that individuals can consent to Wraparound in the first instance and subsequently withdraw from the process.

Wraparound referrals 2008–09

During the 2008–09 financial year, 245 individuals reported sexual offences to ACT Policing, of whom males comprised 11 percent (n=26) and children (individuals aged 17 years or less) comprised 41 percent (n=100)—including children on behalf of whom a report was made. Children ranged in age from three to 17 years: 43 percent were aged 10–14 years, 37 percent were aged 15–17 years and 20 percent were under 10 years.

Slightly more than two-thirds of all individuals who reported a sexual offence to ACT Policing (69%; n=168) were offered Wraparound during 2008–09. Of those offered Wraparound, 135 (80%) consented to the process.

Of the 100 children (aged 17 years or less) who reported a sexual offence to ACT Policing during 2008–09, 68 (68%) were offered Wraparound. Of those 68 children 51 (75%) consented to the process. Of the 145 adults who reported a sexual offence to ACT Policing during that period, 100 (69%) were offered Wraparound. Of the 100 adults offered Wraparound, 84 (84%) consented to the process.

Most of the 245 individuals had their cases finalised by police as at June 2009—that is, the police had completed investigations. For 15 individuals, cases were either continuing, or ACT Policing was unable to provide data to the AIC because the cases were highly sensitive.

Wraparound referrals 2009–10

During the 2009–10 financial year 280 individuals reported sexual offences to ACT Policing, of whom males comprised 14 percent (n=40). Of those individuals whose age is known (n=278) children (aged 17 years or less) comprised 48 percent (n=132). Children ranged in age from one to 17 years. Children aged 15–17 years comprised 37 percent of all children who reported an offence; children aged 10–14 years comprised 41 percent,

and children aged under ten years comprised 22 percent.

Slightly more than half of all individuals who reported a sexual offence to ACT Policing (54%; n=152) were offered Wraparound during 2009–10. Of those offered Wraparound, 115 (76%) consented to the process. Of the 132 children (aged 17 years or less) who reported a sexual offence to ACT Policing during 2009–10, 76 (58%) were offered Wraparound, and 62 (81%) of them consented to the process. Of the 146 adults who reported a sexual offence to ACT Policing during 2009–10, 76 (52%) were offered Wraparound, and 53 (70%) of them consented to the process.

Most of the 280 individuals had had their cases finalised by police as at June 2010 (ie police had completed investigations). For 37 individuals cases were either continuing or ACT Policing was unable to provide data to the AIC because the cases were highly sensitive.

In 2010–11, police referred 161 sexual offence victims to the Wraparound program (VSACT 2011). More detail about these cases is not available for inclusion in this report.

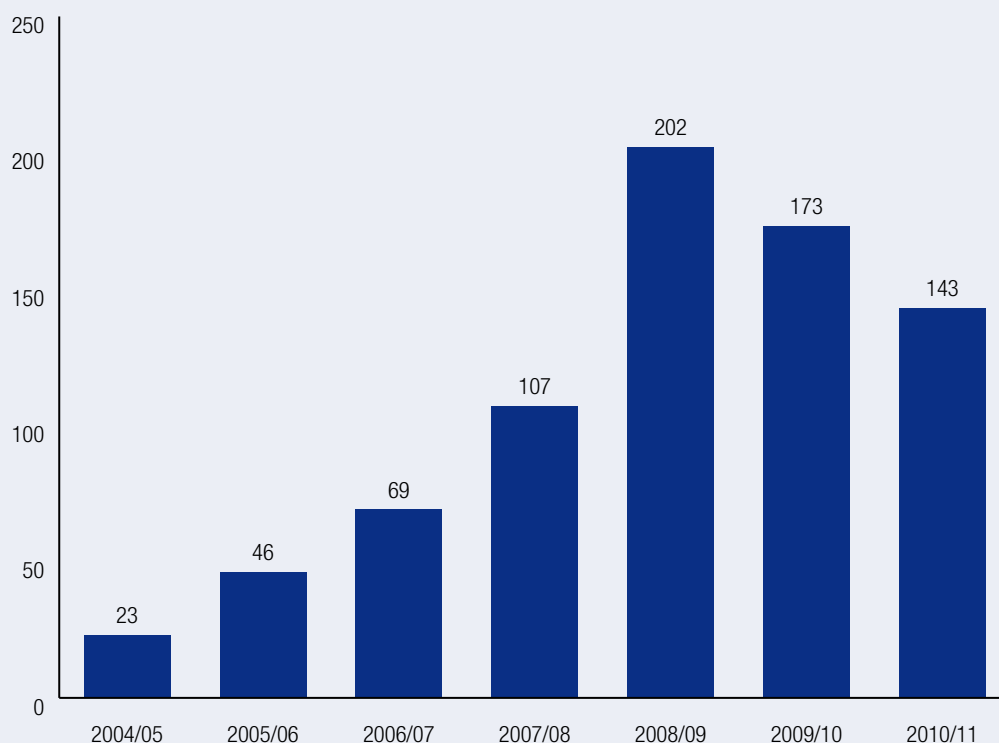
CRCC has noticed a marked increase in callouts since the establishment of a MoU in 2008 with ACT Policing and the Forensic and Medical Sexual Assault Care (FAMSAC) services (Figure 1). As Figure 1 illustrates, in 2004–05 only 23 callout requests were made by police or FAMSAC to CRCC. There have been over 100 callouts each year since the 2008 MoU, with a peak of 202 callouts in the 2008–09 financial year.

Identifying victim/survivor needs and providing appropriate support

The needs of victim/survivors are complex and may be influenced by many variables. Support services (eg CRCC, VSACT) have identified many challenges to providing appropriate support to victim/survivors of sexual offences.

Law enforcement, the DPP and the victim support agencies consulted for this study recognised that

Figure 1 CRCC callouts by ACT Policing and FAMSAC from 2004–05 to 2010–11 (n)



Source: Canberra Rape Crisis Centre annual reports (2011, 2010, 2009, 2008); consultations with CRCC.

the ways in which they attempt to assist victim/survivors can often conflict, even though these agencies all aim to give the victim/survivor the best outcome. One key area of divergence is that where police engage with the victim/survivor to obtain sufficient evidence to identify and pursue an offender and charge them for the offence, support services like CRCC and VSACT are more likely to promote exploration of the victim/survivors' feelings. Often the recollections the victim/survivor gives to the police focus on how the offence affected them rather than on the facts and details of the events, which is what is required for the police to pursue a case in court.

While one or two of the victim/survivors interviewed for this study felt that police could have been more emotionally supportive, others recognised that the police have a discrete role to play and 'are not social workers'. Since engaging in Wraparound, agencies have indicated that their understanding of these challenges has improved and that the Wraparound process provides an opportunity to discuss any potential issues.

Stakeholders also perceived that the SARP reforms have played an important role in improving victim/survivor access to immediate counselling services following a sexual offence. Prior to the reforms, it was at the victim/survivor's discretion to have a CRCC counsellor contacted to provide assistance. This was problematic as victim/survivors often declined the offer on the basis of not wanting to 'disturb' someone else, particularly if it was late at night or before dawn—times when many sexual offences are reported.

There was also concern about whether a victim/survivor has the capacity to give informed consent at the time of crisis. Since the SARP reforms, the current MoU between ACT Policing and CRCC states that CRCC will be contacted irrespective of victim/survivors' requests, although there is no requirement for the victim/survivor to engage with the counsellor. This removes the onus from victim/survivors to make a decision about counselling, enabling them to access support services immediately.

Since this was introduced, ACT Policing has reported that in the majority of cases the victim chooses to talk to CRCC, whereas prior to the reforms only approximately half agreed to speak to a counsellor (Consultation with ACT Policing). This is reflected in CRCC's callout figures (see Figure 1 above).

One victim/survivor interviewed for this research commented that she did not think to access support from a counsellor while reporting the offence to police. However, this victim/survivor had a counsellor made automatically available to her, according to Wraparound procedures, and the victim/survivor found this 'extremely helpful'. This demonstrates the importance of making access to a counsellor an automatic process.

Contact with victim

Some agencies, such as FAMSAC, have a short-term but essential role in the process (ie providing forensic examinations); others have much longer contact with a victim/survivor. Victim service agencies generally participate in every phase of the process. This might have commenced prior to a victim/survivor reporting to police and may continue for years after the case has been finalised. How Wraparound agencies contact victim/survivors is guided by service agreements and/or agency guidelines. These are outlined in Appendix B (Wraparound service terms of reference).

For example, once VSACT receives a Wraparound referral, it is required to establish contact with the victim/survivor within five working days—and will aim to do so as soon as possible (Consultation with VSACT). This contact must be followed up within seven days. However, it can be a struggle to meet such commitments as VSACT provides services to victims of all types of crime, not only sexual offences.

When the DPP receives a case, the Witness Assistance Service (WAS) initiates contact with the victim/survivor by issuing a letter detailing the type of support it offers and what to expect in the process. The DPP indicated that it tries to meet with victim/survivors at various stages of the criminal justice process to keep them informed. If an accused person enters a plea of not guilty, the DPP (via WAS) will usually meet with the victim/survivor before the

case management hearing. Not all cases proceed to case management hearing; if the accused pleads guilty, no case management hearing is needed; and the DPP will offer to meet with the victim before sentencing takes place.

The DPP's contact with victim/survivors is not restricted; it can meet with them at any time, in particular when the matter has been committed or when the trial date is close (Consultation with DPP). The timing of a meeting depends primarily on when the victim would like to meet with the prosecutor. Staff have found that victim/survivors sometimes do not want to meet with the prosecutor too many weeks before the trial, so as to limit the potential for re-traumatisation. This was considered particularly the case for children.

The DPP indicated that witnesses greatly appreciate WAS, as its staff often develop good relationships with victim/survivors. The DPP attributed this to the fact that WAS staff are not the prosecutors and can therefore appear 'more human' to them. For example, while the DPP has to be engaged with the evidence and details of the administration of the case, staff from WAS or one of the other support agencies are able to focus on addressing the emotional needs of victims.

As described above, CRCC can have contact with a victim/survivor at the time an offence is reported to police. The centre also provides support and counselling services through a crisis hotline and often has a long-term support role for victim/survivors. This also includes support for victim/survivors who have not entered the criminal justice system or who have already left but require ongoing assistance. Unlike VSACT, CRCC is not restricted in the number of counselling sessions it can offer to victim/survivors.

Stakeholders consulted for this study also noted that victim/survivors enter the services of support agencies such as VSACT and CRCC at a faster rate than they exit them. Victim/survivors considered ongoing contact to be an important part of the services they received—one victim/survivor noted that she had called CRCC 68 times since her contact with the service began. A number of the victim/survivors interviewed for this research also sought counselling for members of their families (eg parents, siblings, children) in the aftermath of

the offence. Thus an additional onus is placed on these agencies to provide support to a growing number of clients without a corresponding increase in resources. Despite this, all agencies believe they are adhering to the requirements set out in the service charter.

Reasons that support is not accessed

As outlined above, not every victim/survivor who accesses support or reports a sexual offence consents to the Wraparound process. Some victim/survivors withdraw from the process after commencing. Reasons for withdrawing include:

- deciding, on reflection, that they are not yet ready for help; and/or
- genuinely not having understood what they were consenting to (Consultation with VSACT).

Although stakeholders considered it important for victim/survivors to have access to the appropriate support services as soon as they reported an offence to police, they recognised that victim/survivors did not always want them. However, it is not uncommon for victim/survivors to change their minds regarding contact with support services, and this can occur at any stage of the criminal justice process, or even years after the event.

One agency commented that ‘a lot of people don’t realise the importance of victim support until they are in it or through it and don’t understand the importance of an advocate’ (Consultation with VSACT). In addition, many victim/survivors were unaware of the importance of a ‘champion’ until the court case drew closer, believing that having a supportive family member or friend would be sufficient support. However, support services are still available at any time throughout the process, even if an individual previously declined an offer of support.

Stakeholders also indicated that victim/survivors do not often realise that court support may be useful not only during court hearings but also during the lead-up to hearings (eg with preparing victim impact statements and/or preparing for other aspects of the hearing). Different agencies can provide support to an individual at various times, depending on need. For example, VSACT and WAS will often liaise with

each other prior to a court case to determine who will support the victim/survivor if s/he is attending court. This is done in consultation with the victim/survivor.

Victim/survivors do not always have the same supporter each time. One client requested the WAS representative when giving pre-trial evidence, and was supported by their case worker for cross-examination. The decision is made on a case-by-case basis. The improved collaboration promoted by the SARP reforms has enabled this cooperation among agencies, giving victim/survivors more options to suit their needs at each stage of the process (Consultation with VSACT).

Each agency has a different protocol for contacting victim/survivors who withdraw from Wraparound or who did not consent to the process when first approached. Some victim/survivors are referred to agencies at a later stage in the process if they have declined Wraparound (Consultation with VSACT). If victims have not consented to the process or have withdrawn, VSACT lets them know that it will recontact them in approximately one month to see if they feel the same way. This follow-up is done with the client’s consent and at a time agreed with the client. It was pointed out that this was done because there is often a big difference between what they might think they need initially and what they might need in the longer term. One agency noted that demonstrating what support services provide rather than just asking if the victim/survivor wishes to talk to a counsellor can be a key factor in an individual consenting to support.

Flow of information to victim/survivors

Most information on court processes and the criminal justice system is provided to victim/survivors by VSACT and WAS. VSACT will talk through what they are participating in well before the trial, including a discussion of support options available during the process and preparing the victim/survivor for both good and bad outcomes. This is considered an important strategy to ensure that the victim/survivor has enough information about the criminal justice process and what they are participating in—including defendants’ rights—to make an informed

judgement about their participation in the process (Consultation with VSACT).

WAS is the 'first port of call' in a victim/survivor's contact with the DPP (Consultation with DPP). WAS assists victims to take part in, and navigate their way through, the prosecution process without causing unnecessary distress. Within reason, this includes many things, such as:

- providing information on the court process and the progress of criminal matters (usually calling or writing to the victim/survivor after every court appearance to let them know the result and next court date);
- providing information on the victim/survivor's rights and responsibilities;
- arranging for the victim/survivor to visit the courtroom before the hearing date;
- sitting with and providing support for victim/survivors when they meet with prosecutors and while giving evidence;
- providing referrals to support agencies for counselling and other assistance;
- assisting the victim/survivor with writing a victim impact statement;
- consulting with the victim/survivor on the defendant's bail applications;
- providing support letters where requested; and
- generally advocating on behalf of victims around the court process (Consultation with DPP).

The DPP noted that by providing these services WAS takes the pressure off prosecutors and allows them to focus on the trial and 'what they do best' (Consultation with DPP).

VSACT hosts the Wraparound website, which was developed in consultation with the other Wraparound agencies. Established in 2007, the website offers information to victim/survivors and their families about the criminal justice process, victims' rights, and support and assistance available to the victim (see <http://wraparound.victimsupport.act.gov.au/category.php?id=1>). VSACT has expanded the website to include resources for both sexual offence victim/survivors and victim/survivors of other offences.

A booklet was initially developed that outlined VSACT's services, but this has since been replaced by a set of factsheets (Consultation with VSACT)

titled *Understanding the criminal justice system*. The factsheets outline the different stages of the criminal justice system and were developed in collaboration with other Wraparound agencies. VSACT indicated that it was better to provide victim/survivors with a great deal of information at the start rather than leave them 'in the dark' later on (Consultation with VSACT).

The victim/survivors interviewed for this research had varied views about the level and content of the information provided to them before their trials. While they were all given information about the court process, most felt unprepared in some way and/or that the provision of information could be improved—as one commented, because victim/survivors 'need to be able to make informed decisions' as they progress through the criminal justice system. A number of the victim/survivors found out details of their court cases in the media rather than from criminal justice system staff. One described this as 'pretty disheartening'. Another was informed very late in the process that she was only one of a number of victim/survivors giving evidence against an offender. This was a vital piece of information for this victim/survivor, as she had very nearly decided to withdraw from the case, but would not have considered doing so had she known there were other victim/survivors.

Victim/survivors also felt that the information provided to them should not be 'paternalistic' or 'sugar-coated'. For example, most felt insufficiently informed about the probability of delays in the trial process. This suggests that, while service providers try to balance the information they provide to victim/survivors by ensuring it is adequate without alarming victim/survivors unnecessarily or causing them to withdraw from the process—victim/survivors made the point that they greatly appreciate honest and realistic information.

Some gaps in the provision of information were also identified by stakeholders. For example, when court delays occur, it is not always known if the victim/survivor is made aware of or consulted about why they occur (Consultation with DPP). One agency indicated that victims should be kept informed throughout the process beyond the minimal standard specified in the *ACT Victims of Crime Act 1994* (Consultation with VSACT). It was suggested

that to increase the likelihood of a victim/survivor consenting to the Wraparound process, agencies need to demonstrate why it is preferable to the alternative option of not participating.

Determining the level of information provided to guardians of victim/survivors under 18 years of age has also been problematic. Technically, everyone aged under 18 years is deemed legally incompetent and his/her guardian has a right to access relevant records (such as medical records), but this does not always occur in practice (Consultation with VSACT). In some cases, parents might also control access to the young person, and it can therefore be unclear who is being served—the victim/survivor or the parent(s) (Consultation with VSACT).

It was proposed that parents also need an information guide, because they too can have difficulty understanding and participating in the criminal justice process. This should, however, be balanced against maintaining the dignity of the young person who was offended against. VSACT indicated that it can be complicated when the young person and parent/guardian have different views about whether to proceed with a prosecution, and balancing the needs of both can be difficult. To overcome this, it was proposed that there needs to be a legal framework about informing parents and what information parents can receive (Consultation with VSACT).

Factors that influence the length of time cases spend in the criminal justice system

Reducing the length of time sexual offence cases spend in the criminal justice system was considered by stakeholders to be an essential part of providing better services to victim/survivors. However, it was universally acknowledged that evidence of SARP reforms making the process shorter for victim/survivors appears to be limited. Instead, stakeholders believe that the process now takes as long, if not longer, to be finalised. Due to the data limitations described above, however, this was not able to be examined empirically.

It was estimated that the time between a complaint and finalisation of a case in court is on average approximately two years, and it is rare for cases to be resolved within a shorter time (Consultation with ACT Policing). Although no data were available to review the average time for a matter to be heard in court, the DPP estimated the following timeframes:

- **Magistrates Court:**
 - from first appearance to committal: three to four months
- **Supreme Court:**
 - from post-committal to delivering pre-trial evidence: six to 12 months
 - from post-committal to trial date: 18 to 24 months (note that the six to 12 months for pre-trial evidence is included in this estimation).

The time it takes for a case to be finalised is influenced by contextual factors such as whether the offender is a stranger or is known to the victim, whether the victim is a child and how long ago the offence occurred. The stakeholder consultations revealed that the following factors had a direct influence on the length of time a case spends in the criminal justice system:

- the age of victim/survivor (ie whether child or adult);
- whether the victim/survivor lives in the ACT (this can affect access to support and reporting to police);
- when the offence occurred (ie whether a historical or recent offence);
- whether the offence occurred over a long period or was a 'one-off';
- when support is wanted and/or accessed; and
- court processes.

These factors are considered in detail below.

Age of victim/survivors

Some agency stakeholders noted that the age of victim/survivors when they were offended against could affect their experience of the criminal justice system and could also influence the expediency of the process. Given the differences noted among children, teenagers and adults, the SARP reforms are unlikely to have an equal impact on every victim/survivor.

Adults

Police processes for adult victim/survivors of sexual offences are determined on a case-by-case basis. Police have contact when victim/survivors report to them directly or are referred by CRCC or FAMSAC. In general, the process involves talking to and explaining the process to the victim/survivor.

Children

The majority of reported sexual offences against children are family related. The police process for interviewing and dealing with child victims of sexual offences differs slightly from that for adults. For instance, it is unlikely that children themselves will approach the police or counselling services; police usually receive reports from family members, Care and Protection Services or the school. Who the offender is and how the interview is conducted can influence the eventual progression of a case through the criminal justice system.

Police action and response to a complaint can be influenced by any possible contact a child may have with the alleged offender. In cases that involve children being exposed to family violence, protocols allow processes to move much faster, given the risk posed to the child (Consultation with ACT Policing). For example, in cases in which there is a high likelihood of contact (eg father to child), police require an immediate response. However, an offender is almost always restricted from having contact with the victim via bail conditions.

The interview process also depends on the incident. It may be easier to interview a victim/survivor who has been offended against once by a stranger than a victim/survivor of continual sexual abuse, as children who have suffered repeated abuse may 'shut down' emotionally (Consultation with ACT Policing).

How children are interviewed

Interviewing children can be a multistage process involving many meetings to develop rapport between the child and police officer. This can include play-based interactions prior to discussing the offence. Sessions are taped using video and audio and then transcribed. However, in the event of a

victim/survivor 'shutting down' emotionally, numerous attempts at recording an interview can transpire. This can be problematic as each interview can have slight variations and SACAT is unsure how these will be interpreted when heard in court and whether the variation will affect the credibility of the interview (Consultation with ACT Policing).

Teenagers

Teenage victim/survivors were considered by stakeholders to often fall through the gaps that exist in sexual offence services and also to be vulnerable to the ambiguity in sexual offence legislation and reforms. The level of disclosure by teenagers can be influenced by who is present when they are being interviewed. Police indicated that, whereas young children usually talk openly with a parent in the room, teenagers can become embarrassed if they had been engaged in activities prior to the offence that the parents may not approve of (eg smoking marijuana). This can affect the length of time it takes to conduct an interview and potentially the credibility of the victim/survivor's story if there have been inconsistencies in their story during the report to police. Thus, one-on-one interviews are preferable in these circumstances (Consultation with ACT Policing).

Defining age and its impact on available services

The age of victim/survivors can be problematic in applying and interpreting various aspects of the SARP reforms. SACAT points out that there are definitional issues in how to proceed with cases. For example, the age of sexual consent in the ACT is 16 years, yet legally a child is classified as being anyone younger than 18 years. Consequently, in cases of sexual offences, the *Crimes Act 1900* considers a young person to be under 16 years and the offence is classed differently from similar offences against victims aged between 16 and 18 years who in other legal matters are considered legally a child. However, 16 to 18-year-olds may still make video recordings of their evidence-in-chief.

This definitional issue can make it difficult to refer victim/survivors to the appropriate support services—particularly, as was raised by some stakeholders (Consultation with CRCC, ACT Policing),

available services tend not to cater for victim/survivors in this 'in-between' age group. This has the potential to affect attrition rates and the victim/survivor's overall satisfaction with the process—given the importance of appropriate support to victim/survivors remaining in the criminal justice system (Consultation with CRCC, VSACT). It is also yet to be resolved whether a victim/survivor who turns 18 during the trial may use recordings of evidence-in-chief made when they were under 18 or whether they are required to go before court (this issue will be explored in more depth later in this report).

Historical compared with recent sexual offences

Agency stakeholders pointed out that historical offences often take much longer to be resolved in the criminal justice system than recent offences. As explained earlier, sexual offences are often not reported to the police immediately. To reiterate, some factors that can affect reporting include fear of reprisal, not knowing how to report, considering the matter 'too trivial' and protecting the offender (see Table 1 for other identified factors). Due to the comparative lack of urgency of these cases with recent offences, they may not be addressed immediately and may not be followed up until an investigator is made available (Consultation with ACT Policing).

A key problem with historical sexual offences is determining when the offences occurred. ACT Policing indicated that it is difficult to get information on events that have gone on for years, as investigators need timeframes to interview alleged offenders. Police also noted that child victim/survivors of ongoing sexual abuse often remember the first time and the last time and 'something in the middle'. This is often also true of adults reporting historical abuse.

It is difficult to report specific events and their dates if the abuse happened on many occasions. This can make a case difficult to pursue and can increase the time it takes to develop a case against an offender (or offenders) (Consultation with ACT Policing). In addition, it is common for victims of long-term offending to talk to the police about how this affected them but not the actual event(s) (Consultation with

ACT Policing). Despite the extra time it can take to investigate these cases compared to recent sexual offences, there is no difference in delays or processes between the two once they proceed to court (Consultation with DPP).

Agency stakeholders (CRCC) also noted that it is not uncommon for victim/survivors of sexual offences to not identify as having been raped. As a result, they may not seek counselling or wish to pursue the matter via the criminal justice system. As described above, it can take years before the victim/survivor seeks out professional counselling or police assistance, and this can affect the length of time it takes to investigate and pursue a matter in the courts.

Offences that occurred over a long period compared with 'one-off' incidents

As mentioned, victim/survivors who have been offended against once by a stranger can be much easier to interview than victim/survivors who have suffered repeated abuse over a long period (Consultation with ACT Policing). Children who have suffered long-term sexual abuse are considered to be more likely to emotionally 'shut down' and may not have the communication skills or support mechanisms in place to make a statement (Consultation with ACT Policing). As with historical offences, it can be difficult to determine dates of the offences (see above) (Consultation with ACT Policing).

The police interview process

Interviewing victim/survivors is often a long and complicated process. ACT Policing indicated that, when an individual reports a sexual offence to the police, as a rule they consider the report to be genuine. One of the more difficult aspects of the process is when the investigator starts 'testing' the story. Maintaining a rapport with a victim/survivor becomes difficult, as police questioning can be viewed by the victim/survivor as a cross-examination, particularly as the police, in the course of trying to establish what happened, 'start picking the story to pieces' (Consultation with ACT Policing).

If inconsistencies exist, it can take hours or days before investigators are able to identify them. In

some cases a victim/survivor may have lied about one part of the story to protect another person. This can become problematic and reduce the credibility of the victim/survivor, which may result in their story not standing up in court. With the improved relationship between the police and CRCC, the police stakeholders consulted for this research noted that they have scope to discuss openly with CRCC counsellors any concerns they or CRCC may have about any inconsistencies in a client's story and to negotiate the best path forward with that client.

Trial processes

Stakeholders unanimously agreed that most delays are the result of trial processes. It is important to note that the court cannot always influence the reasons behind delays, as these are often directly related to trial processes. Agencies identified the following factors as some of the key reasons behind delays:

- The time it takes to set a trial date—This is influenced by many factors, including (but not limited to) the defence or prosecution not filing the correct documents on time; negotiations between the prosecution and defence over charges and possible pleas; delays in a defendant obtaining representation, particularly if legal aid entitlement is a factor; and pre-trial application matters (eg applications by co-defendants for separate trials, or the defendant applying to have separate trials for multiple matters).
 - Judge-alone trials—the delay in judge-alone trials is the result of many verdicts being reserved, which can sometimes take months. Nonetheless, the courts indicate that jury trials appear to run longer than judge-alone trials.
 - Trial dates are vacated (ie original date has changed).
 - Numerous adjournments can be requested by the defence.
 - Verdicts are delayed in being handed down.
 - Documents are subpoenaed by the defence team immediately before the trial date set (thus postponing the hearing date).
 - Counsel and witnesses are not always immediately available.
- Split cases—two or more charges are being contested where the more serious charge progresses to the Supreme Court and the other/s remain in the Magistrates Court. (This is the result of current sentencing law and not current court processes).
 - There are case backlogs in the Magistrates and Supreme Courts (which will be explored in more depth in the subsequent section). and
 - Judges call in sick (although this is not common).

Even if an offender has been convicted, aspects of the trial process may still affect the victim/survivor, particularly if an appeal is lodged or a judgement is reserved (Consultation with VSACT). These can lengthen delays in justice faced by victim/survivors, even when cases appear to have been finalised in court.

ACT Human Rights Act 2004 (ACT)

A few respondents indicated that the ACT's *Human Rights Act 2004* can contribute to more lengthy delays in sexual offence cases. In 2004 the ACT was the first Australian jurisdiction to legislate on human rights, basing its Act on United Nations guidelines. The Act covers 17 rights, outlined in Table 7.

There is a perception that the human rights of victim/survivors are being superseded by the rights of the offender in ACT sexual offence trials (Consultation with ACT Policing, VSACT). Police representatives explained that the legislation itself is not the problem; rather, it is the way defence lawyers and other court representatives have applied the Act. Stakeholders perceived that for sexual offence cases the Act has been an advantage primarily for the defendants and is seen to be worded in favour of defendants (Consultation with ACT Policing).

Another agency was concerned about whether the human rights of a victim (eg speedy, impartial processes) are considered when the court is deciding whether to allow an adjournment. The DPP reported that it would strenuously oppose any application for adjournment made by the defence unless there was a valid reason based in law. Overall, it was observed that the number of adjournments in sexual offence cases was comparable to other case types, although

Table 7 Rights covered under the ACT *Human Rights Act 2004*

Recognition and equality before the law	Freedom of expression
The right to life	The right to participate in public life
The right not to be subject to torture and cruel, inhuman or degrading treatment	The right to a fair trial and rights in criminal proceedings
The right not to be subject to medical treatment or experimentation without consent	The right to compensation for wrongful conviction
The right to privacy and reputation	Protection against double jeopardy
Rights of the family and children	Protection against retrospective criminal laws
Freedom of movement	Freedom from forced work
Freedom of thought, conscience and religious belief	Rights of minorities to enjoy their culture.
Freedom of peaceful assembly and association	

adjournment delays can often have a more negative effect on sexual offence victim/survivors than on victims of less serious crimes (Consultation with DPP).

Delays a global, not SARP-specific problem

Delays were not considered unique to sexual offences, as other cases in the criminal justice system are similarly affected (Consultation with Courts). Therefore, it was proposed that procedural and legislative changes are required across the court system within the ACT to address the underlying causes of the delays. Until this occurs the SARP reforms will have only a modest impact on the length of time sexual offence cases spend in court (Consultation with Courts). The process of change has already commenced, with the introduction of a number of strategies, including:

- the appointment of acting judges in the 2010–11 financial year for nine months to assist in clearing the backlog of cases in the Supreme Court;
- changes to legislation (eg civil matters legislation and bail laws) to streamline court processes and minimise delays where possible;
- a review of case listings; and
- building an additional jury courtroom in the Supreme Court (now totalling three) so that more cases can be heard.

More recently, following a review of case management and listing practices in the ACT, a ‘Supreme Court Blitz’ was announced (on 16 December 2011) to

clear case backlogs in the Supreme Court. Short-term additional resources will be used for the ‘blitz’ on current trial listings, which should result in earlier hearing dates for most trials scheduled from mid-2012. (http://cdn.justice.act.gov.au/resources/uploads/Supreme/Practice_Direction_Docket_System.pdf). The docket system will subsequently be introduced and matters not addressed by the ‘blitz’ will become part of the judges’ dockets. The long-term impact of these actions and any court reform has yet to be established. It was noted that the appointment of acting judges was effective in increasing the clearance rates for new cases during this time, but not the current backlog of cases in court (Consultation with Courts).

While it is not possible for the victim/survivors interviewed for this research to comment on overall delays in sexual offences progressing through the ACT criminal justice system, it is important to note that delays were a key concern for all victim/survivors interviewed.

Court and legislative reforms

Although the reforms delivered by the courts are perceived to have only limited impact on court delay, they are perceived to have had a positive influence on the victim/survivor experience of providing evidence both to the police and when a case goes to trial.

On 30 May 2009, new SARP legislation came into force via the *Sexual and Violent Offences Legislation Amendment Act 2008* (ACT). These reforms altered how evidence can be given by children, victims of sexual and family violence and other vulnerable witnesses. The primary objectives of this legislation are to provide an unthreatening, safe environment for vulnerable witnesses (including sexual offence complainants) in which to give evidence and to obtain prompt statements from witnesses to best capture evidence (DPP 2009: 13). The legislation incorporated the following changes, accompanied by equipment upgrades to facilitate them:

- a broader range of witnesses being allowed to use remote witness facilities;
- pre-trial recording of evidence given by children, intellectually impaired witnesses and other vulnerable complainants in sexual offence proceedings;
- use of police interviews as evidence-in-chief for child complainants in a range of sexual and personal violence offences;
- prohibition on cross-examination of a range of prosecution witnesses by unrepresented defendants;
- permission for certain groups of witnesses (eg children and witnesses with a disability) to have a support person with them while they are giving evidence (see Part 48, 81C); and
- complainants in sexual offences no longer being required to give evidence at committal hearings.

In March 2012, further amendments were made to the *Evidence (Miscellaneous Provisions) Act 1991* (ACT). In particular, amendments have been made to insert existing provisions of the *Evidence Act 1971*, into the *Evidence (Miscellaneous Provisions) Act 1991*, which need to be saved when it is repealed. Amendments have also been made to provide that the court is not bound by the rules of evidence and may inform itself as it considers appropriate when making certain determinations. An overview of the key SARP changes are summarised in Box 1. Not all victim/survivors are entitled to all three provisions (Consultation with DPP).

Effectiveness of the legislative changes

The changes to the legislation were considered of benefit to victim/survivors of sexual offences and vulnerable victims of other offences. The evidence-in-chief provisions allow a police interview to be tendered in a trial as a witness's evidence-in-chief so that the time a vulnerable witness spends giving evidence is limited. However, even where evidence-in-chief recordings are used in a trial, the witness can give further evidence-in-chief and will usually still be cross-examined by the defence during the trial or pre-trial hearing (Consultation with DPP).

In addition, judges have the authority to order recorded pre-trial evidence to be edited before it goes to trial to remove any information a judge deems is not relevant (Consultation with Courts). In 2011, there were 175 requests to use the CCTV equipment. Of these requests, 10 were granted for a pre-trial hearing and 77 for the trial (Courts data). The remaining applications did not result in the use of the CCTV equipment for a number of reasons, including:

- The CCTV equipment and facilities were booked for other cases. In some instances, the equipment is booked for longer than the period for which it is ultimately needed as it is difficult to predict the length of trials;
- Matters were adjourned; and
- Defendants changed their plea to guilty on the day of the pre-trial hearing.

It was noted that not every victim/survivor wishes to use the CCTV facilities at trial (Consultation with VSACT), although it is still very rare in the ACT for a victim/survivor to appear in the courtroom as opposed to the remote witness facility (Consultation with DPP). The DPP will let the victim/survivor decide whether they wish to use the CCTV (Consultation with DPP). One concern with the changes in the laws was whether victim/survivors are able to give evidence at the pre-trial stage, as the legislation imposes restrictions on this entitlement. Clarifying issues such as these was considered best achieved by a revived SARP Reference Group.

Box 1 Summary of provisions under the Sexual Assault Reform Program

Closed-circuit television (CCTV)

What is it?	Some people are entitled to give their evidence using closed-circuit television, which will link them to the courtroom using cameras and television screens. They will be able to hear, see and speak to the Judge/Magistrate, Prosecutor and defence lawyer but will not see or hear the defendant. (CCTV was already used for children and victim/survivors of sexual offences before the change in legislation but now extends to others, listed below).
Who is entitled to it?	<ul style="list-style-type: none">• Children under 18 (both witnesses and victim/survivors);• Victim/survivors of a sexual offence (regardless of age);• Victim/survivors of serious violence offences; and• Victim/survivors of less serious violent offences where there is a relevant relationship (eg in family violence cases) or a disability affecting the ability to give evidence.

Pre-trial evidence (PTE)

What is it?	A person has their evidence recorded early and this recording is then played at the trial to minimise the risk of trauma to the victim/survivor. The evidence is still given using CCTV and the person still gives evidence-in-chief and is cross-examined. All participants are present in the courtroom except for the jury.
Who is entitled to it?	<ul style="list-style-type: none">• Child victims (under 18);• Victims of a sexual offence who the court decides must give evidence early to minimise trauma, intimidation or distress (has to be applied for by the prosecutor);• Intellectually impaired victims in a sexual offence (the prosecution may have to prove intellectual impairment); and• Intellectually impaired witnesses in a sexual offence (the prosecution may have to prove intellectual impairment).

Evidence-in-chief interview (EIC)

What is it?	A person (usually a child under 18) gives an interview to police that is video recorded. This is then played in court (and to the witness in the remote room) as their EIC to remove the need to give evidence on multiple occasions. The person may still have to answer additional questions from the prosecution, and will still be cross-examined by the defence. The majority of people entitled to an EIC interview are also entitled to CCTV (with the exception of intellectually impaired witnesses in a sexual offence). Similarly, some people giving evidence using an EIC interview do this by using pre-trial evidence.
Who is entitled to it?	<ul style="list-style-type: none">• Child (under 18) victims in sexual offences;• Child (under 18) victims in both serious and less serious violent offences;• Intellectually impaired victims in sexual offences (prosecution may have to prove intellectual impairment); and• Intellectually impaired victims in serious and less serious violent offences (prosecution may have to prove intellectual impairment).

Only child witnesses and victim/survivors in sexual offences and intellectually impaired victims in sexual offences are entitled to all three provisions.

Source: Personal communication with ACT DPP, January 2012.

There was also criticism about victim/survivors being able to elect to use pre-trial evidence rather than having to prove to the courts that they are vulnerable (Consultation with VSACT). In addition, ACT Policing indicated that the legislation still has gaps regarding children (eg age disparities) and intellectually impaired witnesses. Despite these concerns, all agencies interviewed indicated that the legislative changes were an improvement for sexual offence victims/survivors.

Pre-trial hearings

Pre-trial hearings are used to enable child witnesses and vulnerable witnesses in sexual offence matters to give their evidence prior to the trial date proper. It is recorded and then played back at trial (which may be held some months later) (Consultation with the DPP). Pre-recorded evidence and the increased number of witnesses who are able to give their evidence via CCTV have been supported by two

additional remote witness rooms (one situated on the court premises, and the other at an offsite location).

The experience of using the pre-trial hearings so far has been considered beneficial for victim/survivors, as it allows them to give evidence earlier in the process than was previously the case, thereby minimising potential trauma. However, the DPP, pointing out that this option is limited to children, intellectually impaired witnesses, and witnesses who could become distressed by the delay, has proposed expanding the provision to allow all victims of sexual offences to give evidence prior to the trial if they wish.

Currently, adult victims have to make a special application to the court, which can be stressful. It should also be noted that not all eligible victim/survivors would opt to have their evidence recorded at a pre-trial hearing. One of the victim/survivors interviewed for this research was given the option of a pre-trial hearing but opted instead to give evidence in court via CCTV, as she felt this would give her 'more control'. This victim/survivor felt that police supported her decision to do so as it may have made her evidence appear more valid.

Remote witness facilities

The remote witness facility was singled out as being a very positive aspect of the SARP reforms (Consultation with DPP, VSACT). One of the advantages of the facility is that it is located offsite. Not being in the same building as the courts (Consultation with VSACT) reduces the chance of the victim/survivor encountering the offender during the trial. Victim/survivors of a sexual offence also do not need to ask to use the remote witness facility, as it is automatically made available to them (Consultation with VSACT). Most victim/survivors use the offsite facility rather than the witness rooms located onsite. The only time this would not occur automatically is if the room is already booked for another case, although this has not happened to date (Consultation with Courts).

The remote witness facility room is equipped with a hearing loop for people with auditory disabilities and is considered comfortable to use. In particular, it is large enough to have a support person and the

SARP technology officer present during the pre-trial hearing (Consultation with Courts). Having the SARP technology officer on hand during the trial in case any technological difficulties arise also streamlines the process. During pre-trial recording, the victim/survivor's image is projected into the courtroom via audiovisual link to enable the jury and defendant to see the witness while s/he gives evidence. The victim/survivor sees the judge and the bar table on a split screen, but not the defendant (Consultation with Courts). This technology also allows the defence or prosecutor to display evidence to the victim via a 'document camera', which is considered an essential part of the court process. The document camera technology was funded outside of the SARP reforms, but has nevertheless contributed to the improved remote witness room facilities the reforms introduced.

Both stakeholders and victim/survivors suggested that some aspects of the remote witness facilities could be refined. Victim/survivors were generally supportive of the remote witness facilities and the option of giving evidence and being cross-examined via CCTV instead of in the courtroom. Nonetheless, some issues remain. For example, one victim/survivor was pleased she could give evidence via CCTV but was disappointed that this meant she could not follow (or even hear) the rest of the case. Another victim/survivor commented that, as it was not made clear to her when the audiovisual equipment would be switched on, she was unable to prepare herself to be seen in the courtroom. In general, victim/survivors felt that more information about, and perhaps even practice with, the audiovisual equipment would have been helpful.

Similarly, stakeholders supported the remote witness facility and audiovisual equipment but reported a number of remaining issues. For example, the connection between the court and the witness room sometimes drops out, and this can disrupt the flow of evidence being given by the witness (Consultation with DPP). In addition, sometimes the view that the victim sees in the remote witness room is not the correct view (eg only the judge is visible and not the lawyers). Sometimes there is concern that attempting to change the view will result in losing it altogether (Consultation with DPP).

The DPP noted that, even though the judge's associates are trained in the use of the SARP equipment, there can still be difficulties—equipment malfunction has led to some trials being delayed by a few hours (Consultation with DPP). The DPP recognised the important role that the SARP technology officer plays in ensuring that the equipment functions but noted that it can be difficult for that officer to provide expertise when cases are being heard in separate courtrooms (or a courtroom and the remote witness room) at the same time. The DPP therefore advocates having additional trained SARP technology officers skilled in Information Technology to be on hand to offer the technological expertise that judges' associates are not always able to provide (Consultation with DPP).

It was suggested that training on the SARP equipment should extend to teaching users of the remote witness rooms how to handle the equipment, including how to adjust the view displayed on the audiovisual equipment, and what the most acceptable view is.

Functional issues with the remote witness facilities have also been identified. It was reported that family or supporters sitting in the waiting room to the offsite witness room could clearly hear the entirety of the evidence given by the victim/supporter. This can jeopardise the case if the family member or supporter is also a witness, apart from the fact that many victims do not want their family members to hear their evidence (Consultation with DPP).

While both stakeholders and victim/survivors believe the new physical and audiovisual facilities leave room for improvement, it should be noted that views about the facilities are largely subjective, and in some cases those consulted for this research made somewhat contradictory comments. For example, while one victim/survivor felt that having the toilet facilities inside the onsite witness facility was convenient and reduced the potential of seeing the defendant or the defendants' supporters, another commented that it was inappropriate given the small size of the room and non-soundproof toilet doors.

Pre-trial delays

While it was considered positive that the SARP reforms have reduced the number of victims being

cross-examined in the witness box (Consultation with ACT Policing), police reported that pre-trial hearings are also becoming increasingly delayed. In one instance a child waited more than 15 months to get a pre-trial hearing set. This is problematic as the delays can be traumatic for a child. Police also noticed that, if pre-trial hearings occur two to three years after the event, children can 'lose interest', which can have a negative impact on the case outcome. Again, however, quantitative data were not available to further examine the issue of pre-trial delays.

Whereas ACT Policing noted that giving pre-trial evidence can be beneficial for younger children so that they can have it over with and try to 'move on with their lives', VSACT commented that this is not always the case. Instead of being 'free to go' and moving on, some child victims often still 'live in limbo', the offence having had, and continuing to have, a significant impact on their lives. This is particularly the case if the accused person is still in the community or in the child's life (VSACT).

Trial delays

Following the reforms to the committal process, many stakeholders perceived a reduction in the time cases spent in the Magistrates Court. However, those reforms had no application to the Supreme Court, where delays continued—although the DPP believes that the 2012 'blitz' has the capacity to significantly reduce them (Consultation with DPP).

The purpose of committal hearings is to determine whether there is enough evidence for a case to go to trial. In a magistrate committal hearing, this could be decided over a day or a few weeks and may require witnesses to attend and give evidence. In contrast, paper committal hearings only require the prosecutor to tender statements on which the magistrate makes a decision to commit the matter—with no need to call witnesses to testify. The benefit is that matters can be committed for trial more quickly; where the evidence needs to be tested in more depth, this now occurs during the trial in the Supreme Court.

Paper committal hearings are now in place for all matters in the ACT, but the prosecution or defence can make an application to have some witnesses give evidence at magistrate committal hearings.

However, there is a prohibition on requiring victim/survivors of sexual offences to give evidence at this stage. It is now uncommon for the defence to apply for any evidence to be heard at a committal hearing. Consequently, these cases are moving to the Supreme Court faster, thus providing a superficial change in where trial delays occur, even though the overall delay is approximately the same (Consultation with DPP). Currently, cases are being issued trial dates for mid-2013, although pre-trial hearings can occur a year or so earlier. The proposed Supreme Court 'blitz' is expected to have a positive impact on trial delays (Consultation with DPP). A large number of matters are now listed for April to May 2012 and July to August 2012.

Evidence-in-chief provisions

The use of pre-recorded evidence is also seen as a key step in providing more of a voice to vulnerable victim/survivors, especially those who have minimal verbal communication. For example, victim/survivors with intellectual and/or sensory disabilities are unlikely to give evidence in court, so the capacity to pre-record evidence is an important tool for them (Consultation with CRCC).

Children's reactions to recording interviews can vary. Some like the idea and think it is 'cool'; others find the process very uncomfortable (Consultation with ACT Policing). Stakeholders noted that any type of victim, and regardless of age, can be uncomfortable with this process. A major issue with conducting pre-recorded interviews with victim/survivors—especially if they have suffered long-term abuse—is getting them to explain the events chronologically and in detail (Consultation with ACT Policing). Police will often record multiple times in order to obtain a usable recording but are then concerned that this could be misconstrued as 'coaching' the witness. At the time of the evaluation, this concern had yet to be tested in court.

Number of pre-recorded evidence-in-chief interviews conducted and number of evidence-in-chief interviews used in court

The police do not currently have the means to determine how many children have been interviewed in accordance with the legislation on use of

pre-recorded evidence-in-chief. These numbers are not easily captured or monitored, especially since child victims of other offences can also be interviewed according to the same process.

Practical considerations when applying the evidence-in-chief provisions

In practice, there have been some hindrances to applying the provisions of the new legislation for the recording and use of evidence-in-chief provisions. For example, the terminology used in the legislation has made it difficult to adhere to the changes introduced (Consultation with ACT Policing). Other issues include:

- *Sharing information with ACT Care and Protection Services.*

The reforms have made it more difficult to provide information to other related services, in particular the ACT Government's Care and Protection Services (CPS) (a service provided by the ACT Office for Children, Youth and Family Support). Prior to the SARP reforms, CPS staff were able to obtain a copy of a young person's interview from police; under the new legislation, police may no longer provide CPS with a recording of an interview, even if a CPS representative had been present during the interview.

- *Interstate interviews.*

Interviews conducted with children or vulnerable witnesses interstate often cannot be used as evidence—either because the law requires the interview to be conducted by a 'prescribed person' (see below) or because other jurisdictions may not provide copies of the interviews. This could require a child to 'go into the witness box again' (Consultation with ACT Policing). If a child is interviewed interstate there might be duplication as the reporting individual might disclose offences in both NSW and the ACT. Police noted that it is common in cases of long-term sexual abuse that some of the incidents will have taken place in the ACT and some in NSW. Best practice would be to get the whole story off the child on tape so that, even if a child makes a report at an ACT police station about events that happened in NSW, ACT Policing can provide the relevant details to NSW Police.

- *Prescribed person division.*

The legislation requires interviews for evidence-in-chief to be conducted by someone trained in the legislative requirements. Consequently, although an experienced officer 'on the road' might complete a very good interview, this cannot be used if the officer is not appropriately recognised as a 'prescribed person'. This could mean that a child or vulnerable witness may need to have more than one interview.

- *Length of time between reporting to police and case being finalised in court*

At the time of the evaluation, there were no data available to measure the length of time between reporting to police and cases being finalised in court. Data were also not available to measure the length of time each case spent in the Magistrates Court and Supreme Court respectively. This was due to different reporting practices and agency representatives not having sufficient time and/or resources to dedicate to the task. However, the importance of this information was recognised by most agencies; any further monitoring of court delays should investigate these data if practicable. As noted earlier, agency stakeholders commented that it can take at least two years for a case to be heard in court. This does not include the time it takes for victim/survivors to report an offence in the first instance.

Improved court services

Numerous changes have been introduced to support the legislative changes and additional services proposed as part of the reforms. As raised earlier, this included access to a remote witness facility and an additional court person. However, the success of these reforms was considered underpinned by what technology and technical support is available (Consultation with Courts, ACT Policing). In particular, the presence of the SARP technical officer was considered essential to making sure the rooms and equipment run smoothly (Consultation with Courts). The SARP technical officer attends each pre-trial recording to ensure all equipment is working correctly. If the officer is unavailable, a back-up officer is used (Consultation with Courts). This service is also perceived to be facilitated by the good relationship that the SARP

technical officer has with the court equipment technicians (Consultation with Courts).

SARP funding was initially provided to fit out two courts with equipment upgrades and provide two remote witness facilities connected by CCTV (Consultation with Courts). At the same time the courts received additional funding from the Court Improvement Project to upgrade facilities in the Magistrates and Supreme Courts. As a result, six courts now have technology upgrades and improved facilities, and there are now four remote witness rooms: two are located in the Magistrates Court building, one is on the Supreme Court premises and the fourth is the offsite witness facility. The combination of these two funding sources means there is now more scope for victim/survivors to access these services than was initially set out in the SARP reforms.

Improved technology and equipment

Agencies recognised that there has been a vast improvement in available technology, resulting in clearer recordings of victim/survivor evidence and greater visual and audio capability. This is due to not only the better audio and visual quality of the equipment but also the support provided onsite by the SARP technology officer if required. This improvement has benefited victims of a broad range of crime, including victim/survivors of serious crimes other than sexual offences (Consultation with ACT Policing).

Before the equipment was upgraded agencies remarked that the sound quality was low and that the victim/survivor would often have to lean into the microphone when giving evidence and speak up to enable the audio equipment to make a coherent recording of the evidence (Consultation with ACT Policing, DPP, Courts). It was also difficult to see the person giving the testimony, as the picture was often blurred. Some stakeholders reported that these issues are no longer present due to the upgrades, whereas others still reported difficulties. In general, victim/survivors felt that equipment worked well.

In a number of cases the equipment has failed or not recorded as a result of a technological or human error (Consultation with Courts). There have been occasions when a victim is ready to give evidence but the technology has failed, and the victim has had to wait hours to begin giving evidence (Consultation

with DPP). To reduce the likelihood of this occurring again, the courts have installed a back-up system that records a second copy of pre-trial evidence on a hard drive. This system was funded outside of the SARP reforms (Consultation with Courts). Minor adjournments are also allowed if there is equipment failure, including the capacity for equipment to be moved between courtrooms if necessary (Consultation with Courts).

Availability of equipment and number of people who chose not to use the video equipment

The equipment and witness rooms have been available for all relevant sexual offence cases (Consultations with Courts). It is difficult to determine how many victim/survivors of sexual offences chose to use the video equipment. While the courts do collect information on who uses the equipment, these data include child witnesses, who are entitled to give evidence via an audiovisual link in any matter before the courts—that is, for offences other than sexual offences. However, there have been no recorded sexual offence matters where the victim/survivor has chosen not to use the video equipment.

Number of people who choose to use the one-way screen

To date there is no record of anyone using or requesting to use the one-way screen (Consultation with Courts). As almost all victim/survivors give evidence via CCTV and as the legislation prohibits the accused being in view of the victim/survivor in the CCTV room, the use of the screen was considered by some stakeholders to be relatively redundant (Consultation with DPP). However, others considered it important for victim/survivors to have the option available if required.

Additional support staff in DDP

As part of broader reforms by the DPP independent of the SARP reforms, a new section with specialist prosecutors to deal with sexual offence cases has been created. This has appeared to have a positive effect on SARP processes in a number of ways:

- Since its appointment in December 2009, the section has been in monthly meetings with police. The meetings are thought to be of high quality and usefulness.

- The introduction of the DPP's new data collection system was considered the result of the Senior Prosecutor having time to develop it due to increased staff capacity (Consultation with DPP).

Specialist prosecutors can build expertise in sexual offence matters, which has resulted in the DPP and other Wraparound agencies developing better and more stable working relationships, which may ultimately benefit victim/survivors (Consultation with CRCC).

Who provides support to victim/survivors?

Besides accessing the support of agencies such as CRCC, VSACT and WAS, victim/survivors also obtain support from friends and family throughout the criminal justice process. Who the supporters are can vary, and this often depends on the relationship between the victim/survivor and offender (Consultation with CRCC). However, it was raised that the supporters of victim/survivors also need to have access to appropriate support networks, as their capacity to deal with the offence and criminal justice processes can have an impact on the victim/survivor's wellbeing and hence the attrition rate (Consultation with CRCC).

For victim/survivors who have contact with CRCC, supporters are predominantly non-offending mothers. The fact that parent supporters may also be victim/survivors of sexual offending (Consultation with CRCC) limits their capacity to make judgements about what is safe or 'normal' for their child.

Supporting the supporters

How supporters react throughout the criminal justice process can also depend on their relationship with the victim/survivor. The low incarceration rates for offenders can be traumatic for the supporters (especially parents) as much as for the victim/survivors, as they often perceive that 'justice has not been done' (Consultation with CRCC). It was reported that parents often suffer self-blame for the events, and can have both an offending child and a victimised child, thus further complicating the support needs for both offender and victim/survivor.

Although they might encourage reporting the offence, it was mentioned that sometimes non-offending parents feel excluded from the criminal justice process. Moreover, parents can often feel they have failed to protect their child, especially if the offender accessed the child via his/her relationship with them (Consultation with CRCC).

Service gaps

Despite the improvements in providing support to sexual offence victim/survivors, Wraparound agencies identified key gaps in the services that could influence their capacity to remain in the criminal justice system. Some of these gaps have been raised earlier in this report, such as the limited nature of services for victim/survivors who are considered neither children nor adults. ACT Policing identified that male counsellors for young male children are not readily available, which they discovered after a request to access a male counsellor was not able to be accommodated. One male victim/survivor interviewed for this research also commented that, in general, services to support those affected by sexual violence assume the victim/survivor is female. There is also a lack of available Aboriginal and/or Torres Strait Islander counsellors (Consultation with ACT Policing).

Services for victim/survivors with a disability

A key gap in services not addressed by the reforms is the experience of victim/survivors with a disability (Consultation with ACT Policing, CRCC). These individuals were considered 'very vulnerable' and often do not progress far through the criminal justice system. (Consultation with CRCC). This was attributed to their being assessed as a potential 'unreliable witness' by the police or the DPP, particularly if they are children (Consultation with CRCC).

However, stakeholders noted that these assessments are not necessarily a reflection of police and/or the DPP's belief in the credibility of victim/survivors with disabilities; they are often based on the likelihood of the evidence not being accepted within the courts. There is also an acute lack of services available to disabled victims/survivors, particularly if they are children (Consultation with ACT Policing). The use of pre-recorded evidence-in-chief is a key step to overcoming some issues, and it

was suggested that it could be worthwhile training SACAT staff on how to interview intellectually disabled victim/survivors, particularly in relation to their use of body language to communicate (Consultation with CRCC).

Needs of CALD victim/survivors

The impact of the reforms on CALD victim/survivors was difficult to determine. CRCC noted that few CALD victim/survivors become clients or report a sexual offence. However, they have observed that a lot of young international students, predominantly women, are sexually assaulted on or around the Australian National University campus. Anecdotally, it appears that CALD victim/survivors are usually concerned about their family's response to the incident as they are ashamed of the attack (Consultation with CRCC). There can also be language and cultural barriers when providing services to CALD victim/survivors. For example, some may need to use a translator to pursue the complaint. VSACT noted that some CALD victim/survivors may need the support service to help them develop a reason for trusting the processes available to victim/survivors, particularly if they have come from a culture where there is a lack of trust in the police and criminal justice system (see Taylor & Putt 2007).

Services for offenders of sexual violence

It was raised that there needs to also be a focus on offenders of sexual violence, particularly when the offender is a child. It was specifically mentioned that parents of children who offend are the 'forgotten victims' (Consultation with CRCC). In addition, there are few agencies that support children who are sex offenders in the ACT after they turn 10 years old (children aged under 10 years can be referred to CARHU). CRCC noted that they do not provide services if the victim/survivor is also an offender unless they are working with families that include both the victim/survivor and offender.

Need for continuity in services provided to victim/survivors

Continuity for victim/survivors was considered an important factor in supporting them throughout the criminal justice processes. Both CRCC and ACT Policing conceded that a key limitation is the

turnover of staff in SACAT due to officers being rotated out of the team after three years. Although the possibility of an extension to four years exists, in practice officers are usually moved after two years (Consultation with ACT Policing). This practice is designed to encourage career development across multiple policing areas.

It is recognised that in the area of sexual offending it can take a long time to build up expertise, and that officers often want to stay in the area but are required to rotate to another. As sexual offence cases can sometimes last more than three years, victim/survivors may have to deal with more than one officer in succession, which is not considered ideal (Consultation with CRCC). CRCC and ACT Policing also noted that they have often built a good rapport and collaborative relationship with members of SACAT, and this process has to recommence with each new SACAT member. However, rotation of officers is recognised as being part of ACT Policing's broader policy and not limited to SACAT.

Victim/survivors stressed the importance of having continuity in the law enforcement and support personnel they deal with. For example, one victim/survivor had the same police officer throughout her case, but three prosecutors in quick succession, which she 'hated'. Another victim/survivor 'felt abandoned' when her VSACT counsellor retired, especially given that she had disclosed so much personal information to that counsellor. Two of the victim/survivors interviewed reported that their detectives maintained contact with them even after being rotated out of SACAT. One victim/survivor saw the detective working on her case as 'my detective' and said 'his case is my case and that is a huge comfort to me'.

Victim/survivor satisfaction with the process/outcomes

Gauging victim/survivor satisfaction with the criminal justice process is essential to any meaningful evaluation of the SARP reforms. As CRCC pointed out, a victim/survivor's wishes are paramount, but it can be difficult to determine the extent to which these are met. The success of an outcome can be different when measured against the goals of the various parts of the criminal justice system and a victim/survivor's needs. For example, the primary

goal of ACT Policing is to investigate the offence, arrest the offender and collect enough evidence to prosecute the offender in court, while the DPP aims to obtain a conviction against the offender. On the other hand, victim/survivors may only want to report the offence for 'closure' or to focus on their own 'healing' rather than to pursue the case (often for years) in the courts.

ACT Policing indicated that responses from victims regarding their satisfaction with the outcome of cases are mixed. Police pointed out that the victim/survivor's satisfaction may depend on their expectations prior to disclosing the offence to police. In other words, did they expect a conviction or did they just want their story to be heard and believed? CRCC noted that many victims—both adults and children—want 'their day in court' and 'to be heard'. However, reporting can be a double-edged sword: while many victim/survivors want legal validation of their experience, the court process may involve delays and uncertainty, even if a conviction is eventually recorded (Consultation with CRCC).

There have been a number of cases in which victim/survivors and their supporters have not been satisfied with the process. In one example the police gained a successful prosecution of an offender, but the family of the victim/survivor were extremely unhappy, as they did not want the case to go to court in the first place. On the other hand, police have engaged in cases in which victim/survivors indicated that the response of investigators and the CRCC went well beyond what they expected (Consultation with ACT Policing). Conversely, CRCC clients often wanted the DPP to proceed with a case, but this was not always followed through.

Police and the DPP indicated that sometimes the victim/survivor may not provide enough information to prosecute or may not understand why a case is discontinued. The DPP indicated that it meets with victim/survivors prior to any decision to discontinue a prosecution (Consultation with DPP). If at this meeting a decision is made not to proceed to prosecution, the victim/survivor is able to ask the prosecutor to explain the decision-making process and to give them the opportunity to ask questions about it (Consultation with DPP).

Overall, key stakeholder agencies found the SARP reforms to be beneficial for victim/survivors because it brought them additional choices for pursuing their cases through the criminal justice system

(Consultation with CRCC). The low level of complaints against police from victim/survivors was seen to indicate victim/survivor satisfaction with the process (Consultation with ACT Policing). However, it is unclear how this compares with the level of complaints prior to the SARP reforms.

In general, and as indicated throughout this report, the victim/survivors interviewed were satisfied with the criminal justice process. Indeed, while the victim/survivors had suggestions on how the process could be further improved (as detailed elsewhere in this report), many of their key concerns were not about the criminal justice process per se but about the broader experience of being a ‘complainant’ in a sexual offence trial.

For example, in high-profile cases, some victim/survivors found the presence of the media, and the detailed media reports of their cases, difficult to contend with. Furthermore, coping with social pressure, including from friends, family members and the broader community, was considered by some to be one of the most difficult aspects of the experience. One victim/survivor was physically assaulted by supporters of the offender, and two were pressured not to pursue their cases. One victim/survivor even expressed the new-age sentiment among friends that she subconsciously ‘drew the offence to herself’.

Some victim/survivors reported feeling ‘dropped’ or ‘cut off’ after their trial, particularly by prosecutors.

One felt that, particularly in very complex and/or intrafamilial sexual offence matters, guidance from service providers about strategies for managing after the trial would have been helpful. Finally, victim/survivors reported feeling that they lacked control over their cases, and the outcomes of cases. For some, the motivation for pursuing the case (ie wanting the offender to get help) was at odds with the primary purpose of the criminal justice system (ie to secure a conviction). As one victim/survivor commented, a sense of control is critical for victim/survivors of sexual offences, as ‘victims have already had control taken away from them’.

Despite the perceived shortcomings of the current criminal justice process for victim/survivors of sexual offences in the ACT, and the broader pressures placed on victim/survivors who participate in the criminal justice system, all those interviewed for this study (including those whose cases resulted in a verdict of not guilty) said they would report the offence again and would advise others to report sexual offences to police. In line with previous research, victim/survivors said that, despite the delays and difficulties encountered, they would report again because ‘it is the right thing to do’ to ensure that others are not victimised in the future, and/or to ensure the offender is held accountable or receives help. Victim/survivors’ reasons for choosing to stay in the criminal justice process are discussed in more detail below.

Key points—Victim/survivor support

- Changes to legislation seem to have improved the criminal justice process for victim/survivors.
- The Wraparound process has helped law enforcement and victim support agencies understand the role and needs of other agencies providing services to victim/survivors of sexual offences in the ACT; collaboration has therefore improved between the two sectors.
- Not all victim/survivors are offered the opportunity to enter the Wraparound process. During 2008–09 slightly more than two-thirds of victim/survivors were offered Wraparound; during 2009–10 it was slightly more than half.
- Approximately three-quarters of all victim/survivors offered Wraparound consented to the process.
- To increase the likelihood of victim/survivors consenting to this process, agencies may need to discuss with victim/survivors why entering the Wraparound process may be preferable to the alternative of not participating in it.
- Providing detailed information about the services that each agency can provide to victim/survivors can be a key factor in their decision to access support.
- Supporters of victim/survivors such as family members are currently underserved and often not recognised in the process. Supporting the supporters is important not only for the wellbeing of the support person but to encourage and assist the victim/survivor to progress through the criminal justice system.
- Support and services available to victim/survivors were considered much improved at all stages of the criminal justice process, with the exception of some court processes (setting trial and pre-trial hearing dates, defence delaying tactics, and delays in the Supreme Court).
- There is little evidence that the SARP reforms have made the criminal justice process shorter for victim/survivors. In fact, some sexual offence cases appear to now take even longer to be finalised in court. Future research is needed to further examine this perception.

Key points—Victim/survivor satisfaction

- Victim/survivors' motivations to report sexual offences to police and/or support agencies and their initial expectations may shape their satisfaction with the criminal justice process.
- Expectations and perceptions of a successful outcome in sexual offence cases can differ among police, support agencies and victim/survivors.
- Some of the victims/survivors' interviews reported negative experiences during the trial in relation to media, friends and the broader society.

Reducing attrition in sexual offence matters in the ACT criminal justice system

As outlined above, a detailed quantitative analysis of attrition rates of sexual offences in the ACT criminal justice system was not possible as part of this preliminary evaluation of the SARP reforms. Preliminary quantitative and qualitative data on the attrition of sexual offence victim/survivors in the ACT criminal justice system were, however, collected from key stakeholders. This chapter describes the qualitative data.

Wraparound agencies were unanimous in reporting that it was too soon to tell whether SARP reforms have had a significant impact on reducing attrition. (The reasons for this are outlined in detail above.) Chiefly, the long time it takes for sexual offence cases to progress through the criminal justice system has resulted in only a small number of cases being finalised since the reforms were introduced.

ACT Policing indicated that reasons for attrition can be subjective, and a victim/survivor may interpret the reasons why their case does not progress in a different way from the police and prosecutors.

Common reasons for the attrition of sexual offence cases include:

- insufficient evidence (eg the victim gave no statement, or the offender could not be located);
- disrespectful/discourteous treatment of victim/survivors (by police, courts, and/or support service providers);

- intrusiveness and trauma arising from cross-examinations;
- victim/survivors not being kept informed of the process; and
- trial delays.

As described in detail earlier in this report, attrition can occur at various 'points' in the criminal justice process. VSACT staff highlighted that court delays can contribute heavily to attrition rates. As one representative pointed out, 'We can do all this fantastic work but, until we address court delay, people will still drop out.'

Attrition after reporting to police but prior to court

Attrition in sexual offence cases is not necessarily due to the process becoming too hard for the victim/survivor once the offender has been charged (Consultation with ACT Policing). The age of the victim/survivor, a lack of corroborating evidence (eg physical evidence) and the timing of the offence can all have a significant influence on attrition rates (Consultation with ACT Policing, CRCC). Cases of long-term sexual abuse usually take longer to investigate than one-off incidents of sexual violence, and this can also affect attrition (Consultation with ACT Policing).

Table 8 Outcome of finalised sexual offence cases reported to ACT Policing, 2008–09 (n=230)

Outcome	Number	Percent of finalised cases (n=230)	Percent of all cases (n=245) ^a
Complaint withdrawn	60	26.1	24.5
Insufficient evidence	64	27.8	26.1
Before court	29	12.6	11.8
Unidentified offender	41	17.8	16.7
Enquiries continuing	7	3.0	2.9
False allegation	1	0.4	0.4
Transfer to other police service or other agency	6	2.6	2.4
No response from victim	6	2.6	2.4
Legislation issues	1	0.4	0.4
Subject to appeal	2	0.8	0.8
Criminal caution issued	2	0.8	0.8
Matter finalised in court	10	4.3	4.1
Diplomatic status	1	0.4	0.4
Total	230	99.60	93.7

a: Total does not add up to 100 due to rounding

Source: Wraparound data file

Table 9 Outcome of finalised sexual offence cases reported to ACT Policing, 2009–10 (n=243)

Outcome	Number	Percent of finalised cases (n=243)	Percent of all cases (n=280) ^a
Complaint withdrawn	66	27.2	23.6
Insufficient evidence	83	34.2	29.6
Before court	27	11.1	9.6
Unidentified offender	27	11.1	9.6
Enquiries continuing	0	0.0	0.0
False allegation	6	2.5	2.1
Transfer to other police service or other agency	7	2.9	2.5
No response from victim	13	5.3	4.6
Legislation issues	2	0.8	0.7
Subject to appeal	0	0.0	0.0
Criminal caution issued	6	2.5	2.1
Matter finalised in court	6	2.5	2.1
Diplomatic status	0	0.0	0.0
Total	243	100	86.5

a: Total does not add up to 100 due to rounding

Source: Wraparound data file

Tables 8 and 9 illustrate the outcomes of sexual offence cases reported to ACT Policing in 2008–09 and 2009–10 respectively. The most common causes of attrition in the criminal justice system at the point of police investigation during the two-year period from 1 July 2008 to 30 June 2010 were:

- insufficient evidence (31.1% of finalised cases);
- the victim/survivor withdrawing the complaint (26.6%); and
- inability to identify the offender (14.4%).

Although previous research has found that cases of sexual offence against children have one of the highest rates of attrition of any offence (Eastwood, Kift & Grace 2006), police in the present study indicated that in their experience these cases are more likely to progress. It is likely that while these cases may progress in the criminal justice system, they may still result in a finding of not guilty. However, police stakeholders reported that they often dealt with females in late adolescence who were involved in consensual sexual incidents that they tended to later regret, and that there is high attrition among this group.

The Wraparound data outlined in Tables 8 and 9, however, indicate that false allegations were rarely made (or recorded) by police during 2008–09 and 2009–10. In 2008–09 one false allegation was recorded (0.4% of all finalised cases), and in 2009–10 six false allegations were recorded (2.1% of all finalised cases). In addition, it should be noted that such incidents would not explain the high attrition rates recorded at later stages of the criminal justice process because they do not make it to court.

Evidentiary attrition is also common. This is when an offence has occurred but there is insufficient evidence to prove it. There are also victim/survivors who may report an offence to police but do not want it to progress further. Determining consent is also influenced by age. When victim/survivors are adults, the prosecution must prove beyond reasonable doubt that the offender knew or was reckless that s/he did not have the consent of the other person.

It was hypothesised that if a reverse onus was placed on the offender (ie an offender being required to prove that s/he did have consent) the attrition rate would be lower, although this is not able to be tested. For cases involving children, consent is not

taken into account because all sexual incidents involving children less than 16 years of age are illegal, making it easier to present a case in court (Consultation with ACT Policing).

Attrition when the matter has been referred to the DPP

The DPP representatives observed that by the time a case reaches court few victim/survivors ‘pull out’ of the criminal justice process. This is in line with international research, which indicates that most victim/survivors pull out at the investigation stage. However, some attrition still occurs at this stage, and it was conceded that the key factor in attrition prior to SARP was trial delay. As described above, this continues to be the case, and delays can occur for numerous reasons.

Delays can create additional trauma for the victim (Consultation with CRCC) and can influence the decision to leave the criminal justice system. In addition, the prospect of lengthy delays were thought to make victims reluctant to go through the process if the sentence given to the offender is comparable to the time they wait before the trial begins and they give evidence (Consultation with ACT Policing). It was therefore suggested that the case management process ‘needs to be sharper and...held to greater accountability’ (Consultation with VSACT).

Reasons that victim/survivors choose to stay in the criminal justice system

Given the high degree of attrition of sexual offence cases, victim/survivors who stayed in the criminal justice system were asked why they chose to stay. One commented that, despite the continuous and unwelcome media and social pressure, the key motivations for pursuing the case remained—for example, seeking recognition that the offence was ‘not right’ and preventing the same thing happening to someone else.

There was also a sense of going ‘too far down the path to turn back now’, particularly as a lot of

damage had already been done and ‘enemies had already been made’ (being physically assaulted by supporters of the offender, accused of being ‘in it for the money’ and extensive publicity about the case). The victim/survivor indicated that during this time there was little that the police or support agencies could do to address the societal pressures, as this was out of their control.

Other victim/survivors chose to stay in the criminal justice system to ensure the offender would not be able to victimise others and/or to ensure the offender received help with issues related to their offending (eg drug and alcohol addictions).

Key points

- There is little evidence available at this stage about the effect the SARP reforms have had on the attrition of sexual offence cases in the ACT criminal justice system.
- Attrition rates can be influenced by a wide range of factors, including the age of the victim/survivor and whether the offence is historical or recent.
- The length of time it takes for cases to be resolved in court, and other delays associated with the court process, are considered major factors in the attrition of sexual offence cases from the criminal justice system.

Interagency coordination and processes

Stakeholders unanimously agreed that a key strength of the SARP reform process was the positive effect on interagency coordination. Underpinning the success of the Wraparound collaboration and implementation of the SARP reforms are dedicated staff from each agency (Consultation with CRCC). Leadership within each agency was also considered essential.

Establishing interagency coordination and processes

Agencies have engaged in the reform process in various ways. In 2007–08, funding was allocated to JACS for a full-time SARP officer to monitor the reforms, collaborate with and inform key stakeholders on the progress of the reforms, and provide a coordination role (Consultation with JACS). A one-off SARP forum was conducted in March 2009 that was designed to bring relevant agencies together to discuss how they could collaborate to improve services to victim/survivors of sexual offences. (See <http://www.justice.act.gov.au/page/view/375>.)

Two reference groups were established to implement the reforms—the SARP Reference Group and the Wraparound Reference Group—with different but related objectives. The SARP group focused

primarily on governance issues, while the Wraparound group was oriented towards victim/survivors and service delivery (Consultation with VSACT). The Wraparound process is the primary vehicle for coordinating key stakeholder agencies.

Engaging stakeholder agencies

Some relationships, such as between ACT Policing and the DPP, were already established prior to the reforms. However, others, such as between CRCC and ACT Policing, required a new approach. Not every agency participated extensively in the reference groups and/or Wraparound meetings, and the level of their engagement in the Wraparound process varied. It was noted that some agencies' non-engagement in the Wraparound process (eg DPP) appeared related to staff and/or management factors and that, when management changed, there was much greater engagement—often also facilitated by many meetings between the heads of the key agencies (Consultation with VSACT). Strong leadership from team leaders was also seen as a driver of the police's improved relationship with CRCC (Consultation with ACT Policing).

An agency's engagement could also be influenced by the benefit it sees in the meetings. For example, the DPP's experience of the new SARP reforms has been only minimally affected by Wraparound. The

DPP stakeholders felt that the introduction of Wraparound was of more benefit to the other agencies, such as CRCC and VSACT, because even before the reforms they essentially had access to all victims/survivors of sexual offences who were going to court. In addition, the email contact about cases it had with other agencies in Wraparound existed prior to the establishment of Wraparound. They also highlighted that Wraparound was more about discussing new cases being presented, while the DPP often deals with cases that are not as recent and would not be raised in the Wraparound process.

SARP Reference Group

The SARP Reference Group consisted of JACS, ACT Policing, DPP, VSACT, CRCC, FAMSAC, CARHU, the Law Society, the Bar Association, Legal Aid ACT, ACT Corrective Services, the Children and Young People's Commissioner, and the courts. It was established in 2008 by JACS. An implementation reference group was set up as a subgroup (Consultation with JACS).

Regular meetings with the DPP were a useful vehicle for discussing details of the legislation in the lead-up to the reforms. There have been fewer meetings since the reforms were implemented (Consultation with DPP). The meetings are conducted on an ad hoc basis, and three to five months often pass between them (Consultation with Courts). It was noted that the time passing between meetings did not reflect poor coordination among agencies; rather, the reforms were working well and did not require meetings to be held more regularly (Consultation with Courts).

Nonetheless, stakeholder agencies (CRCC, VSACT, DPP and ACT Policing) were keen to formally reconvene the SARP Reference Group as they wanted to discuss the practical implications of the reforms and any unanticipated outcomes. Presently, there is no oversight group to report gaps in and issues with the reforms, or to devise ways to address them. The reference group was officially reconvened in March 2011 and meets on a quarterly basis.

For example, police said that it would have been useful earlier to alert other stakeholders of the technical problems they had had with using some of the new equipment to make them aware of the

implications of this for trials. The DPP mentioned that it would have been useful to use the group to discuss an issue that arose from using pre-recorded evidence-in-chief. On this occasion evidence recorded when the victim/survivor was 17-years-old is to be used in court after her 18th birthday.

As this situation has not been addressed in the legislation, it would need to be argued in court to be settled, which could take a number of months. As such, there is no certainty for the victim/survivor or the DPP—although the DPP reported feeling confident that the pre-recorded evidence-in-chief will eventually be allowed. The DPP noted, however, that such things should not be left to chance and that this case highlighted the importance of the reforms and the need to constantly assess their impact.

Information sharing

Information sharing among Wraparound agencies was at times particularly difficult to negotiate, yet it has become a positive outcome of the reforms. Delays in the information sharing process were often related to determining what information could be shared. Other information-sharing issues involving the DPP that were yet to be resolved include client confidentiality, conflict of interest and client privilege concerns (Consultation with ACT Policing).

VSACT noted that victim agencies can be hesitant to share information, as some previous initiatives required them to share too much. As a VSACT representative commented, 'There has to be a need to know and you need to be clear about the purpose of information-sharing.' To overcome these difficulties, a staff member from the ACT Privacy Commission was used to assist with the process, which was perceived to give more legitimacy to information-sharing arrangements, thus helping streamline the process (Consultation with ACT Policing).

Memoranda of Understanding

The establishment of Memoranda of Understanding (MoUs) among agencies was also perceived to facilitate information sharing. For example, the 2008 MoU among CRCC, FAMSAC and ACT Policing was considered beneficial not only to define the

parameters of information that could be shared but also as a document for refocusing priorities if agencies felt they were going 'off track' (Consultation with ACT Policing). MoUs have also resulted in tangible changes in the number of first response callouts that CRCC attend (see 'Improved processes' section above). This process allowed CRCC to be recognised as a criminal justice agency (it was gazetted as one in 2009), legitimising its access to certain criminal justice information. This was considered a critical step in improving the level of information shared and the ease in accessing relevant information.

Information sharing between ACT Policing and the DPP

A working relationship between the DPP and ACT Policing existed prior to the reforms, as the DPP relies on the police to provide the evidence to prosecute each case. This relationship is crucial to the effective prosecution of sexual offence offenders. Since the reforms, one key performance indicator has been the number of meetings held between police and the DPP on sexual offence matters and the WAS role in supporting the victim/survivor. However, the DPP indicated that this indicator cannot be measured because it has not always been timely or practicable to meet formally to discuss cases. Instead, the DPP and police discuss matters nearly every day on a needs basis. This is in addition to meetings held between the DPP's Sexual Offence Unit and SACAT every few months (Consultation with DPP).

Distribution of the SARP newsletter

A SARP newsletter was developed to inform stakeholders and the wider public of the progress and outcome of the proposed reforms. This newsletter was intended to be distributed quarterly.

Wraparound processes

One agency indicated that Wraparound has evolved since its implementation. Although its primary function is the provision of services to victim/survivors of sexual offences, it has broadened its scope over time (Consultation with VSACT).

Wraparound initially served to ensure that victim/survivors who reported to police were put in contact with a support agency. Now it also incorporates ongoing updates on these individuals and the services they need (Consultation with VSACT). In general, stakeholders consulted for this research believe that the Wraparound process is achieving what it set out to accomplish: link victim/survivors with the appropriate support services when they enter the criminal justice system.

Wraparound Charter

The Wraparound Charter (the Charter) was signed in late 2010 by each agency involved with and/or responsible for sexual offence complainants. The agencies include the DPP, VSACT, ACT Policing/AFP and CRCC. The service standards of each agency involved in the process were developed in a separate document. A benefit of the service standards documentation is that it outlines how each agency is accountable to the others, and it does this by detailing precisely the role of each agency (Consultation with VSACT). Further, the Charter clarifies which Wraparound agency is accountable for each service/client (Consultation with VSACT). This is seen as a distinct benefit not only for the victim/survivor being serviced by Wraparound but also for the collaboration of partner agencies.

Delays that meant the Charter was not signed until late 2010 were attributed to changing personnel, absence of a key agency driving the process, and absence of an overarching governance framework that would shape discussions about the Charter (Consultation with VSACT). Changes were also made to the terms of reference, but this was done in consultation with other Wraparound members (Consultation with VSACT). Although many changes and actions have taken a long time to negotiate or implement (eg the Wraparound Charter), it is important to recognise that these are often negotiated alongside other core business priorities.

Wraparound meetings

Wraparound meetings have been held monthly since the inception of the Wraparound process. At these meetings there are discussions about new referrals, including which support agency is best placed to

take on each referral. The meetings have mostly focused on the original objectives of Wraparound. However, as raised earlier, Wraparound members have recognised the need to re-establish the SARP Reference Group, which they have done informally (Consultation with VSACT). This group was formed as an 'in-between' response to agencies' desire to discuss issues broader than the provision of victim/survivor services. This resulted in a forum to progress service standards and the Wraparound Charter, and to discuss issues the agencies have encountered. One possible issue with the reference group is that it needs a governance framework that accommodates all the different objectives of the agencies involved in the SARP reforms. For example, the Wraparound process is very focused on victim/survivors, while agencies point out that there are other objectives to be considered. These include:

- new technology and its implications;
- protection of the accused person's rights;
- treatment of convicted persons; and
- legislative changes.

It was acknowledged that the Wraparound process has improved communication among involved agencies regarding who should make contact with the victim/survivor and what services are to be offered (Consultation with ACT Policing).

ACT Policing suggested that additional monthly meetings they hold with the DPP since December 2009 have been quite successful, attributing this to the appointment of the specialist sexual offence case workers at the DPP.

Coordination among agencies

Stakeholder agencies commented that the Wraparound process has helped streamline the services they provide to victim/survivors, enabling them to use their time more efficiently. In particular, it was noted that now agency staff 'know who to go to' if they need to contact someone about a case (Consultation with Courts). Agencies agreed that, as a result of this collaboration, fewer victim/survivors are being under- or overserved. Improved information sharing among agencies has enabled them to track victim/survivors as they progress through the criminal justice system. However, it is noted that this ceases once a case has left Wraparound, although

an agency still involved with a victim/survivor can still access information about the case.

There is also a perception that more victim/survivors are now accessing services more appropriate to their needs. Prior to Wraparound, ACT Policing indicated that they would receive calls from victim/survivors needing to talk about the case that would be more appropriate for a counsellor. This was problematic as police are not trained as counsellors. The Wraparound process has allowed victim/survivors to be linked to a counsellor (from CRCC or VSACT, for example) who is trained to assist them, and this eases the pressure on police so that they can concentrate their resources on the investigation (Consultation with ACT Policing). In addition, instead of CRCC employees obtaining information from ACT Policing via a complicated process, they can now contact the relevant police officer directly.

Coordination between ACT Policing and victim support agencies, particularly CRCC, was singled out by the majority of stakeholders as a key success of the SARP reforms (Consultation with ACT Policing, VSACT, CRCC). Apart from agencies having a greater understanding of the different functions of police and victim service agencies, stakeholders also reported greater appreciation of how each Wraparound agency can assist the others to achieve a common goal. CRCC noted that a detective who worked with them on sexual offence cases commented to them that they 'couldn't imagine doing the job without us'. This was considered very different to attitudes in the years prior to the reforms (Consultation with CRCC).

The joint response of ACT Policing and CRCC at the time of crisis has helped free police up to focus on investigating while the CRCC counsellor focuses on the needs of the victim/survivor (such as emotional support or other practical matters that may be affected by the offence). The collaborative working relationship of ACT Policing, CRCC and other Wraparound agencies is also perceived to have had a positive effect on clients. CRCC indicated that the good relationship and rapport they now have with the police and other support agencies, showing they are all working towards the same goals, can build confidence in the victim/survivor and help develop trust. This positive response at the time of crisis is considered a crucial step in providing long-term support for victim/survivors (Consultation with CRCC).

Need for a key driver in Wraparound and SARP reforms

The lack of a key driving agency was considered one of the weaknesses in the coordination of the SARP reforms, which also influences Wraparound coordination. Although this did not have a great impact on the level of coordination among agencies, it was conceded that a key driver is needed to assist with the continued implementation of the reforms and to streamline related processes. In the initial implementation phase, the presence of a funded SARP implementation officer from JACS was considered extremely useful and important, particularly in relation to coordinating meetings and making sure that the processes were running smoothly. However, this position was non-ongoing. The Wraparound agencies were unanimous in wanting this position to be made ongoing, and they considered JACS the best agency to drive the reform agenda. However, the position depends ultimately on resources being made available.

Training

Various training activities have been developed to educate key personnel on the reforms and the implications of these changes. Training has been specifically developed in the following areas:

- the use of new equipment used in the court and in the remote witness facility for relevant court personnel;
- development of a support DVD on the SARP reforms; and
- evidence-in-chief provisions for police.

In March 2009 there was a two-day SARP forum where all the relevant agencies gave presentations on how Wraparound works and the issues related to the reforms. Training on the SARP reforms was also delivered by the DPP to prosecutors and the AFP on a needs basis when the reforms were first introduced and has continued on this basis, however, these sessions are not formally recorded.

Training on the use of equipment in the courts

The SARP technology officer has been funded on an ongoing basis by the courts to provide monitoring

and assistance with the technology that has been introduced and to train relevant personnel in the use of the equipment (Consultation with Courts). This position is considered an essential component of effective use of the equipment. The technology officer also trains every relevant judge's associate on how the equipment works. The SARP technology officer is now also available during court sessions, and will often attend trials to ensure that equipment is working correctly. In addition to this training, a procedure manual was also developed.

Police training materials

Three types of training material were developed for police as part of the SARP reforms: training on evidence-in-chief provisions; training by the DPP to SACAT on SARP provisions (including training AFP on sex offence prosecutions that include SARP) and a support DVD. ACT Policing reported that police are made aware of the sections of the reforms that are relevant to policing, particularly in relation to the qualifications needed to perform evidence-in-chief interviews (as only police accredited in conducting evidence-in-chief interviews can be used). There were mixed opinions on the quality of training delivered to the police, with one participant perceiving it as being slow to be established, providing inadequate information and being delivered in an ad hoc fashion. This was because there was no specific Wraparound training, and the training centred on watching a DVD. It was also noted that the training 'doesn't sink in' until police have to deal with a victim/survivor of a sexual offence.

However, some investigators indicated that the DVD was adequate, and that it is a requirement for officers of a particular rank to participate in the training sessions as part of their performance development assessment.

Evidence-in-chief provisions training

This was considered a big commitment and in the earlier stages involved a mentoring component. Although the mentoring element is not so common now, the training has evolved to include developing skills for engaging with sexual offence victims, interview techniques, information on the overall reforms, court process information, and details on Wraparound.

SARP training DVD

Although the production of a seven-minute SARP training DVD was behind schedule (by six to eight months), it is now readily available to all ACT police officers on their intranet. This DVD is also discussed at recruitment training and sessions have been completed with officers, although there is still a gap in coverage as many officers missed the training on Wraparound. SACAT officers in the consultation found the training video to be adequate; however, they are unsure of whether this is also the case for general first response officers.

It was noted that the delay in producing the DVD resulted in some police not being provided with training. In addition, there were variations in the number of police officers who had used the resources, depending on the station. One police station (Tuggeranong), whose Officer in Charge (OIC) appeared to be very supportive of Wraparound, had a very high take-up rate of the training. This contrasted with other stations with less supportive OICs and correspondingly lower take-up rates of training.

Despite this, police reported that senior management is very supportive of SARP and Wraparound and are keen to progress the reforms. It was noted that the Chief Police Officer had great interest in the reforms: officers reported that when they made suggestions on the reforms to the Chief Police Officer, they were confident they would be considered. As a result, they felt they had the opportunity to make positive changes.

Victim/survivor perceptions of collaboration among criminal justice agencies

Overall, the victim/survivors interviewed for this study reported that criminal justice agencies collaborated well. Victim/survivors described services as 'pretty streamlined' and felt there was little duplication among the services. One victim/survivor commented that this collaboration was critical as it meant she could avoid having to repeat her story to multiple service providers.

Two of the victim/survivors commented, however, that there remains some lack of collaboration between police and support services. One victim/survivor felt that police were somewhat derisive about counselling services and considered them 'a bit fluffy'. In another case, a support agency staff member made derisive comments about a particular police officer. Another victim/survivor considered collaboration between police officers and the support agencies as personality driven, claiming that, while some police officers seemed to collaborate well with support services, others did not.

Key points

- There has been a great improvement in coordination and collaboration among relevant agencies, particularly between ACT Policing and CRCC since Wraparound started.
- Relationships among agencies have moved from coordination to collaboration, with agencies proactively liaising with each other as a result of the SARP reforms.
- This collaborative working environment is considered to be having a beneficial impact on victim/survivors, by both increasing victim/survivors' confidence in the agencies and by assisting victim/survivors to access appropriate services.
- Collaboration among agencies is also helping them streamline services and use time and resources more efficiently.
- Wraparound is continuously evolving in its purpose and activities to reflect the reality of implementing and sustaining the SARP reforms.
- Training on the reforms has been promoted in ACT Policing, with mixed opinion on its success, but it was recognised that it is only when police are confronted with a victim/survivor of a sexual offence that the training 'sinks in'.
- Stakeholders felt strongly that one agency should play a coordination role, and that an implementation officer based at JACS should be an ongoing component of the SARP reforms.

Conclusions, recommendations and future directions

This report has outlined findings from a preliminary evaluation of the ACT's Sexual Assault Reform Program (SARP). Given its infancy, it is not possible at this stage to draw concrete conclusions about the efficacy of the SARP reforms. The preliminary evaluation nonetheless raises some key points about the successes and shortcomings of the reforms to date. The remainder of this section summarises these and provides some recommendations for both the future of SARP and future evaluations of its reforms.

SARP's main objectives are reiterated as follows:

- improving the processes and support for victims of sexual offences as they progress through the criminal justice system;
- reducing attrition in sexual offence matters in the criminal justice system; and
- improving coordination and collaboration of agencies involved in the criminal justice system.

By implementing these reforms, change is expected to occur via the following key mechanisms:

- reducing the length of time a victim/survivor spends in the criminal justice system;
- providing more support at the time of contact;
- improving coordination among agencies; and
- reducing the impact on victim/survivors of reporting sexual offences.

Key successes of the reforms to date

Overall, it appears that the more successful elements of SARP relate to the coordination among agencies that administer SARP and participate in Wraparound. This success is underpinned by the willingness of agency staff to engage in the process. The proactiveness of many of the Wraparound agencies in re-engaging in a reference group (albeit at this stage informally) in order to work through issues related to the reforms is indicative of the level of collaboration and trust among the agencies and their commitment to work together to improve the implementation of the reforms beyond minimum obligations.

As a result, the agencies have moved from an arrangement of simple *coordination* to one of proactive *collaboration*. This has enabled them to avoid under- or over-servicing victim/survivors and focus on their specific roles in the ACT criminal justice system. The increased collaboration among agencies appears to have resulted in a 'joined up' process for victim/survivors, as well as a more efficient use of resources.

In addition, the upgrading of technology and equipment (eg SARP remote witness facilities, better audiovisual and recording systems) has made the

criminal justice process less prone to equipment failure and has helped create a more supportive context for victim/survivors giving evidence. This is underpinned by the presence of the SARP technology officer. The remote witness room has also had positive consequences for victim/survivors, allowing them to give evidence away from the accused and outside of the courtroom. This is also the case for the evidence-in-chief provisions. Although simple changes, they have brought about significant improvements in services to victim/survivors of sexual offences.

Importantly, the SARP reforms appear to have improved the criminal justice process for victim/survivors of sexual offences in the ACT. Stakeholders consulted for this study felt strongly that their increased collaboration has resulted in fewer victim/survivors ‘falling through the cracks’ of the criminal justice system. In addition, specific legislative changes, such as allowing victim/survivors to give evidence at pre-trial hearings, are considered by stakeholders to have improved the criminal justice process for victim/survivors.

Although only a small number of victim/survivors were able to be interviewed for this study (n=5), all made positive comments about elements of the SARP reforms. In particular, victim/survivors appreciated:

- collaboration among agencies, which meant they did not have to repeatedly tell their story;
- technological advances, like CCTV, which meant they did not have to face the offender in the courtroom;
- the remote witness facility, as this reduced the likelihood of seeing the offender during the trial; and
- ongoing support and assistance provided by law enforcement and service delivery providers.

Importantly, victim/survivors were largely satisfied with the criminal justice process and claimed they would report an offence again, even in cases where a verdict of not guilty was handed down.

As noted throughout this report, however, victim/survivors had a range of suggestions as to how the criminal justice process in the ACT could be further improved for them. It should also be noted that victim/survivors’ motivations for pursuing their cases

(and claiming they would do so again) often stemmed from factors unrelated to the criminal justice system per se (eg because ‘it is the right thing to do’).

Key areas for future improvements

Despite these successes, a number of areas for improvement remain. As outlined in more detail in the recommendations below, not all of these are within the control of the SARP agencies. They are nonetheless issues that SARP agencies, the broader criminal justice system and the community as a whole should be aware of if criminal justice responses to sexual offending are to improve.

Attrition in the criminal justice system

As described earlier in this report, the SARP reforms have not been in place for long enough to assess their impact on rates of attrition of sexual offence cases in the criminal justice system. However, this preliminary evaluation suggests that as a result of the reforms victim/survivor experiences through the criminal justice system has improved. This should encourage victim/survivors to remain in the criminal justice system, which in turn will contribute to a reduction in rates of attrition in the future. The capacity of the reforms to reduce attrition should nonetheless comprise a key component of future evaluations of SARP.

Trial delays

Although preliminary, this evaluation suggests that the SARP reforms have not yet had an impact on reducing the time it takes for sexual offences to progress through the court system. In particular, the legislative changes to committal hearings that have allowed cases to move through the Magistrates Court more swiftly did not appear to reduce the time it takes for cases to be finalised in the Supreme Court. The persistence of delays must be carefully monitored to ensure it does not have a detrimental impact on the victim/survivors or on overall attrition rates.

However, court delays are not isolated to sexual offence cases but are considered a 'global' problem affecting every type of case that progresses to the Supreme Court. Consequently, the SARP reforms alone are unlikely to have a significant effect on the length of time it takes for cases to be finalised in the Supreme Court. This issue therefore needs to be considered in relation to other criminal proceedings in the ACT judicial system (Consultation with Courts). It is important for local agencies that provide services to victim/survivors of sexual offences to focus on the elements of the criminal justice process that they have some control over; in most cases this does not include court delays.

Broader social pressure on victims

One of the more striking perceptions of the victim/survivors was that public responses to their cases (including responses of family, friends and acquaintances), and in some cases media coverage, were a greater source of stress than the criminal justice process. This suggests that improving victim/survivor perceptions of justice should not be solely reliant on the actions of traditional criminal justice agencies such as the police, courts and the DPP; it should be broadened to other sectors that could provide victims 'a menu of options' (Daly 2011: 26) that do not necessarily sit within formal criminal justice channels.

This is not to suggest that further initiatives that aim to reduce trial delays and improve the experience of victim/survivors within the criminal justice system are not worth exploring. Rather, future approaches specific to criminal justice should be considered in concert with less traditional, more victim-focused responses.

The 'forgotten victims' of sexual offences

Consultations with stakeholders and interviews with victim/survivors revealed that, although processes appear to have improved for primary victim/survivors of sexual offences, secondary victims (ie close family members) could be better supported in the ACT. This is critical not only for the wellbeing of secondary victims but also because these individuals provide a key source of support to the primary victim/survivors

of sexual offences. Providing enhanced services to these 'forgotten victims' should therefore both improve criminal justice processes for victim/survivors and contribute towards reducing attrition in the system in the longer term.

This preliminary evaluation has further identified that, while the SARP reforms may have improved criminal justice processes for child and adult victim/survivors, adolescent victim/survivors could be better supported with more appropriate measures to assist them through the criminal justice process.

Recommendations

Ultimately, the SARP reforms have provided a useful foundation on which to continue improving service provision to victim/survivors of sexual offences in the ACT. As highlighted earlier in this report, in some instances successes have not been achieved in isolation, and a number of other strategies implemented alongside the SARP reforms (eg the Court Improvement Project) have contributed to current improvements.

Nonetheless, this report makes a number of recommendations related to meeting the objectives of the SARP reforms. These are outlined below.

- As lengthy trial delays can still affect sexual offence cases in the criminal justice system, the ACT may consider introducing a time limit for sexual offence cases. Time limits have been legislated in other Australian jurisdictions specifically for sexual offences. For example, in Victoria, section 99(2) of its *Criminal Procedure Act 2009* has specified that committal proceedings should be determined within two months of the committal mention hearing ([http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/LTObjSt6.nsf/DDE300B846EED9C7CA257616000A3571/7CC40F6124771AF0CA257981000F95DE/\\$FILE/09-7aa19B%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/LTObjSt6.nsf/DDE300B846EED9C7CA257616000A3571/7CC40F6124771AF0CA257981000F95DE/$FILE/09-7aa19B%20authorised.pdf)). The Northern Territory's Sexual Offences (Evidence and Procedure) Act, section 3A also imposes time limits, namely:
 1. If a person is to be tried summarily for a sexual offence, the trial must be commenced within 3 months of the matter being first mentioned in court.

2. If a person is charged with an indictable offence that is a sexual offence, a preliminary investigation under Part V, Division 1 of the Justices Act must be commenced within 3 months of the matter being first mentioned in court.
3. If a person is to be tried on indictment for a sexual offence, the trial must be commenced within 3 months of the person being committed for trial.
4. The court in which the person is to be tried, or which is to conduct a preliminary examination (as the case may be) may, if it thinks fit, at any time and despite that the period fixed by subsection (1), (2) or (3) (as the case may be) has expired, grant an extension, not exceeding 3 months, of the period.
5. More than one extension may be granted under subsection (4).

The effectiveness of these and similar provisions could be reviewed and, if determined effective in reducing trial delays in the ACT, adapted to suit the needs of ACT stakeholders.

- A key agency driver is required to ensure the SARP reforms continue to be implemented appropriately, and to monitor any changes or developments that require Wraparound attention. This could also involve formalising the Wraparound and/or SARP development groups. JACS has been identified as the agency best placed to provide this support, and JACS has indicated that it is committed to providing a continuing monitoring role and to helping facilitate SARP Reference Group meetings on a needs basis.
- Fuller explanations of the Wraparound process should to be provided to victim/survivors of sexual offences. As the take-up of Wraparound could be increased, clearer explanations of what participating in Wraparound would mean for victim/survivors and how they could benefit need to be delivered to those reporting sexual offences in the Australian Capital Territory.
- An increased focus on assisting and supporting the ‘forgotten victims’ of sexual offences, primarily family members who support victim/survivors through the criminal justice process, should be a key consideration of future SARP developments.

- More appropriate service provision to adolescent victim/survivors should also be a future priority, as this preliminary evaluation has identified that criminal justice measures are often most appropriate for young children or adults.
- As continuity for victim/survivors was highlighted by both service delivery providers and victim/survivors as a critical aspect of the criminal justice process, ACT Policing could consider allowing SACAT officers to remain involved in sexual offence cases even after they have been rotated out of SACAT. Although officers are rotated for occupational health and safety and career development reasons, stakeholders reported that some officers want to remain involved in sexual offence cases.
- Community education, while clearly outside the domain of SARP agencies, is nonetheless an important objective. For victim/survivors interviewed for this study, social pressure was often the worst aspect of progressing through the criminal justice system.

As stressed above, it is recognised that these are not all within the direct control of SARP agencies, and should be addressed by criminal and social justice agencies more broadly.

Future evaluation of the Sexual Assault Reform Program

It is recommended that the SARP reforms are evaluated more fully once they are further embedded in the ACT criminal justice system. In particular, future evaluations should consider the views of a much larger number of victim/survivors of sexual offences than were able to be interviewed for this preliminary evaluation. As outlined above, future research should consider in particular whether and why trial delays continue and the effects of the SARP reforms on levels of attrition.

Further, the researchers recognise the ongoing importance of investigating service delivery to victims/survivors of sexual offences who are from CALD backgrounds, who have mental illness problems and/or a disabilities, and who are of

Aboriginal and/or Torres Strait Islander descent. The effect (if any) of the reforms on these groups should be explored where possible. It was also raised that for future evaluations carers of victim/survivors with a disability could be consulted. Of particular concern was the potential for victim/survivors with disabilities

to experience credibility issues when pursuing cases within the criminal justice system. More targeted training for police officers and other professionals on responding to victim/survivors of sexual offences who have disabilities (eg in non-verbal ways of communicating) would be beneficial in this regard.

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Appendices

Appendix A:

Indicator document

SARP evaluation indicators (updated 29 April 2011)

Objective 1:

Improve processes and support for victims of sexual offences as they progress through the criminal justice system

Number of sexual offence cases reported to police

Number of victim/survivors offered support in the criminal justice system

Type of support taken up by victim/survivor

How many victim/survivors consent to Wraparound process

How many victim/survivors consent to CRCC support at the time

Timing of first contact with victim/survivor

Number of victim/survivors who do not take up Wraparound service and why

Number of times victim/survivor offered support

Time of consent to entering Wraparound (eg immediately after, other contact times etc)

Quality and timeliness of support offered to victim/survivors

Number of pre-trial applications

Number of pre trials that proceed

Availability of equipment

Number of people who choose not to use the video equipment

Number of people who choose to use the one-way screen

Number of key reforms completed

Number of children interviewed in accordance with the legislation (division 4.2a: use of pre-recorded evidence-in-chief)

Number of these interviews used in court

Number of proposed legislation changes that have been implemented

Who goes to court with the victims? (friend/family, CRCC, Victim Support, DPP)

Court processes that are available and/or effective

Victim satisfaction at court or in Court processes

Flow of information to victims

Objective 2: Reduce attrition in sexual offence matters in the criminal justice system

Number of sexual offence cases reported to police

Cases that progress to DPP stage of process

Cases that progress to the Magistrates Court

Number of cases that do not progress within the Magistrates Court

Cases that progress to the Supreme Court

Cases that progress to sentencing/court outcome

SARP evaluation indicators (updated 29 April 2011) (continued)

Cases that comply with/breach the sentence order

Length of time from reporting to police to case finalised in court

Duration of the case in the courts:

– → Magistrates

– → Supreme

Reasons why some victims choose to stay in the criminal justice system

Objective 3: Improve coordination and collaboration of agencies involved in the criminal justice system

Number of SARP meetings

Nature and quality of SARP meetings

Number of Wraparound meetings, signings of Charter and service standards developed

Nature and quality of Wraparound meetings

(CRCC) First Response team interaction with police, FAMSAC and CARHU

Nature and quality of First Response team interaction with police, FAMSAC and CARHU

Number of DPP—police meetings focusing on sexual offence matters and WAS role in supporting victim

Nature and quality of DPP—police meetings focusing on sexual offence matters and WAS role in supporting victim/survivor

Attendance number and range of attendees at SARP forum

Number of attendees at SARP meetings

Number and type of SARP training sessions delivered

Quality and timeliness of SARP training sessions delivered

Development and signing of MOUs

Number and nature of seminars conducted with service providers on the implementation of SARP legislation

Quality and timeliness of seminars conducted with service providers on the implementation of SARP legislation

Number of training on the use of equipment

Quarterly distribution of SARP newsletters

Appendix B: Wraparound terms of reference

SEXUAL ASSAULT REFORM PROGRAM WRAPAROUND SUPPORT MEETINGS Terms of reference
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The interagency WRAPAROUND Support meetings were established as part of the Sexual Assault Reform Program and to meet the objectives of the Wraparound Charter.

1. Purpose of WRAPAROUND Support meetings

The purpose of the WRAPAROUND Support meetings is to ensure that victims of sexual offences that have reported the incident/s to police are supported throughout the criminal justice process.

2. Agencies participating in the meetings

WRAPAROUND Support meetings will be attended by named representatives of the:

- Australian Federal Police (AFP)
- Canberra Rape Crisis Centre (CRCC)
- Office of the Director of Public Prosecutions (ODPP)
- Victim Support ACT (VSACT)
- Other agencies as required however noting that the need to ensure that section 136 of the *Crimes (Sentencing) Act 2004* is complied with.

3. Governance, Management & Administration

WRAPAROUND Support meetings are convened monthly. Meetings will be chaired by each agency on a rotating basis. The chair of the meeting will also be responsible for any secretariat duties with the exception of agencies who do not attend for the whole meeting.

Strategic or policy issues identified within meetings may be raised by participating agencies with the Wraparound Program Development sub-committee and/or the SARP Coordinating Committee.¹

Agencies will, where appropriate, develop and implement internally and with each other, service standards to underpin these terms of reference.

¹ As at May 2010, the SARP Coordinating Committee has not met for a number of months. Agency representatives within the Wraparound Program Development sub-committee may agree the most appropriate & effective way of dealing with the particular issue on a case-by-case basis and as endorsed by their Head of Agency or delegate.

Participating agency representatives are responsible for ensuring that they are aware of their responsibilities for the management and security of information flow.

The participating agencies acknowledge:

- WRAPAROUND Support meetings do not replace the statutory and professional duties and responsibilities of practitioners in the administration of justice or delegated under a Territory law.
- the meetings are not intended to bring about a consensus of approach in all cases as it is recognised that the participating agencies have different roles and responsibilities relating to victim/witnesses and to alleged offenders.
- the differing roles of the agencies as follows:
 - the role of CRCC and VS ACT is to provide services to victims of sexual offences involved in the criminal justice system who choose to utilise their services
 - the ODPP has contact with *all* victims of sexual offences where offences are before the court. The ODPP will maintain the role of contacting all victims in relation to the court process. The ODPP has no involvement with victims in matters that are not before the court.

4. Information disclosure & exchange

Participating agencies acknowledge that the WRAPAROUND Support meetings take place as part of the administration of justice in the ACT. As such, agency representatives will be aware that case information that may be exchanged, recorded and stored may be subject to the normal rules of disclosure and/or subpoena in legal proceedings. As such agency representatives will be aware of the importance of the credibility and continuity of evidence.

Agency representatives will adhere to the relevant legal, policy and ethical frameworks for information disclosure, and are responsible for decisions for what, how and to whom they disclose case information. As a general rule, release of information from one agency representative to another or to the WRAPAROUND Support meeting as a whole can only take place with the consent of the victim. This relates to particular information if, without access to the information, that person [*the agency representative*] would be hindered in the proper and efficient performance of his or her duties in relation to achieving the objectives of the SARP.

Section 40 of the *Evidence (Miscellaneous Provisions) Act 1991* prohibits the publishing in sexual offence proceedings of a complainant's name or information tending to identify the complainant. To do so is a criminal

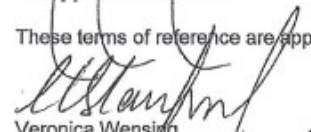
8. Data collection & reporting

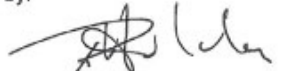
To assist the SARP Coordinating Committee to meet its objectives under SARP and for agency quality assurance purposes, the agencies involved in the Wraparound meetings are committed to collecting and providing de-identified data in accordance with Attachment "B".


Data may be collated on an annual basis in a single report.

9. Approval & Review

These terms of reference are approved by:


Veronica Wensing
Canberra Rape Crisis Centre
on behalf of V.C.C.


Robyn Holder
Victims of Crime Coordinator


Roman Quaedvlieg
Chief Police Officer
Dated 22 / 12 / 10


Jon White
Director of Public Prosecutions
23/11/10

These terms of reference will be reviewed 12 months of signing.

CASE INFORMATION FOR WRAPAROUND SUPPORT MEETINGS

Case Information (supplied with client consent)	Initiating Agency
Name, DOB, address & contact numbers of victim	ACT Policing
Gender, ATSI & disability status ³	ACT Policing
Brief details of incident (ASOC Code to be applied)	ACT Policing
Date of incident	ACT Policing
Date reported to police	ACT Policing
Agency client status ⁴	VSACT/CRCC/FAMSAC/CARHU/CPS
(which agency a client is 'registered' to)	
Identify relationship of victim to offender:	ACT Policing
<ul style="list-style-type: none"> • family member • person known to victim • person unknown to victim 	
Name, DOB ⁵ of accused	ACT Policing
Initial charges laid	ODPP

³ Where information is available

⁴ May include the name of the case manager and may include when contact with the client has ceased or been disrupted

⁵ Where information is available

Reasons for not proceeding to charge: <ul style="list-style-type: none"> • no offender identified • insufficient evidence • complainant withdrew 	ACT Policing
Court (which)	ODPP
Charges Proceeding or charges to charges Y/N	ODPP
Court dates	
Bail/ Remanded in custody Y/N	ODPP
Charges finalised & how finalised	
Victim registration with SAB	
Parole dates	

DE-IDENTIFIED WRAPAROUND CASE DATA FOR STATISTICAL MONITORING
TO BE DRAWN FROM CASE INFORMATION AT ATTACHMENT A

Data #	Data to be collected	Initiating Agency
1	TOTAL VICTIMS REPORTING TO POLICE Number of victims that reported to police	ACT Policing
2 (a) 2 (b)	Age of victims that reported to police <ul style="list-style-type: none"> • adults • children 	ACT Policing
3 (a) 3 (b)	Gender of victims that reported to police <ul style="list-style-type: none"> • male • female 	ACT Policing
4	Number of victims that identified as Aboriginal or Torres Strait Islander*	VSACT/CRCC/FAMSAC/CARHU
5	# and Type of incident (ASOC code) TOTAL VICTIMS REFERRED TO WRAPAROUND	ACT Policing
6 (a)	Number of victims referred to Wraparound Program (and demographics)	ACT Policing/ VSACT/CRCC/FAMSAC/CARHU

	<ul style="list-style-type: none"> • # offenders • Personal demographics 	
	TOTAL VICTIMS PROCEEDING TO PROSECUTION	
10 (a)	Number of victims referred to Wraparound where the accused proceeded to prosecution	ODPP
10 (b)	Number of victims not referred to Wraparound where the accused proceeded to prosecution	ODPP
10 (c)	Disposition of matters (pleas of guilty, found guilty/not guilty)	ODPP/Court

Appendix C: Part 3

Crimes Act (1900)

- (10) The reasonable cost of complying with an order under subsection (7) is a debt owing to the Territory by the corporation against which the order was made.

Part 3 Sexual offences

50 Meaning of *sexual intercourse* in pt 3

- (1) In this part:

sexual intercourse means—

- (a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or
 - (b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or
 - (c) the introduction of any part of the penis of a person into the mouth of another person; or
 - (d) cunnilingus; or
 - (e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d).
- (2) In this section:
object includes an animal.

51 Sexual assault in the first degree

- (1) A person who inflicts grievous bodily harm on another person with intent to engage in sexual intercourse with that other person, or with

a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

- (2) A person who, acting in company with any other person, inflicts, or assists in inflicting, grievous bodily harm on a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

52 Sexual assault in the second degree

- (1) A person who inflicts actual bodily harm on another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.
- (2) A person who, acting in company with any other person, inflicts, or assists in inflicting, actual bodily harm on a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

53 Sexual assault in the third degree

- (1) A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

- (2) A person who, acting in company with any other person, unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

54 Sexual intercourse without consent

- (1) A person who engages in sexual intercourse with another person without the consent of that other person and who is reckless as to whether that other person consents to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 12 years.
- (2) A person who, acting in company with any other person, engages in sexual intercourse with another person without the consent of that other person and who is reckless as to whether that other person consents to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 14 years.
- (3) For this section, proof of knowledge or recklessness is sufficient to establish the element of recklessness.

55 Sexual intercourse with young person

- (1) A person who engages in sexual intercourse with another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 17 years.
- (2) A person who engages in sexual intercourse with another person who is under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that—
- (a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or
 - (b) at the time of the alleged offence—
 - (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
 - (ii) the defendant was not more than 2 years older;
- and that that person consented to the sexual intercourse.

56 Maintaining a sexual relationship with young person

- (1) In this section:

sexual act means an act that constitutes an offence against this part, but does not include an act referred to in section 55 (2) or 61 (2) if the person who committed the act establishes the matters referred to in section 55 (3) or 61 (3), as the case may be, that would be a defence if the person had been charged with an offence against section 55 (2) or 61 (2), as the case may be.

young person means a person who is under the age of 16 years.

- (2) A person who, being an adult, maintains a sexual relationship with a young person is guilty of an offence.
- (3) For subsection (2), an adult shall be taken to have maintained a sexual relationship with a young person if the adult has engaged in a sexual act in relation to the young person on 3 or more occasions.
- (4) In proceedings for an offence against subsection (2), evidence of a sexual act is not inadmissible by reason only that it does not disclose the date or the exact circumstances in which the act occurred.

- (5) Subject to subsection (6), a person who is convicted of an offence against subsection (2) is liable to imprisonment for 7 years.
- (6) If a person convicted under subsection (2) is found, during the course of the relationship, to have committed another offence against this part in relation to the young person (whether or not the person has been convicted of that offence), the offence against subsection (2) is punishable by imprisonment—
 - (a) if the other offence is punishable by imprisonment for less than 14 years—for 14 years; or
 - (b) if the other offence is punishable by imprisonment for a period of 14 years or more—for life.
- (7) Subject to subsection (8), a person may be charged in 1 indictment with an offence against subsection (2) and with another offence against this part alleged to have been committed by the person during the course of the alleged relationship and may be convicted of and punished for any or all of the offences so charged.
- (8) Notwithstanding section 354 (1), where a person convicted of an offence against subsection (2) is sentenced to a term of imprisonment for that offence and a term of imprisonment for another offence against this part committed during the course of the relationship, the court shall not direct that those sentences be cumulative.
- (9) A prosecution for an offence against subsection (2) shall not be commenced except by, or with the consent of, the director of public prosecutions.

57 Act of indecency in the first degree

A person who inflicts grievous bodily harm on another person with intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

58 Act of indecency in the second degree

A person who inflicts actual bodily harm on another person with intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

59 Act of indecency in the third degree

A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, another person with intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

60 Act of indecency without consent

- (1) A person who commits an act of indecency on, or in the presence of, another person without the consent of that person and who is reckless as to whether that other person consents to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 7 years.
- (2) A person who, acting in company with any other person, commits an act of indecency on, or in the presence of, another person without the consent of that other person and who is reckless as to whether that other person consents to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 9 years.
- (3) For this section, proof of knowledge or recklessness is sufficient to establish the element of recklessness.

61 Acts of indecency with young people

- (1) A person who commits an act of indecency on, or in the presence of, another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

- (2) A person who commits an act of indecency on, or in the presence of, another person who is under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 10 years.
- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that—
- (a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or
 - (b) at the time of the alleged offence—
 - (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
 - (ii) the defendant was not more than 2 years older;
- and that that person consented to the committing of the act of indecency.

62 Incest and similar offences

- (1) A person who engages in sexual intercourse with another person, being a person who is under the age of 10 years and who is, to the knowledge of the firstmentioned person, his or her lineal descendant, sister, half-sister, brother, half-brother or stepchild, is guilty of an offence punishable, on conviction, by imprisonment for 20 years.
- (2) A person who engages in sexual intercourse with another person, being a person who is under the age of 16 years and who is, to the knowledge of the firstmentioned person, his or her lineal descendant, sister, half-sister, brother, half-brother or stepchild, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

- (3) A person who engages in sexual intercourse with another person, being a person who is of or above the age of 16 years and who is, to the knowledge of the firstmentioned person, his or her lineal ancestor, lineal descendant, sister, half-sister, brother or half-brother, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.
- (4) A person shall not be convicted of an offence against subsection (2) or (3) if there is evidence that he or she engaged in the act alleged to constitute the offence under the coercion of the person with whom the offence is alleged to have been committed unless the evidence is rebutted by the prosecution.
- (5) A person charged with an offence against this section shall, unless there is evidence to the contrary, be presumed to have known at the time of the alleged offence that he or she and the person with whom the offence is alleged to have been committed were related in the way charged.
- (6) In this section:
stepchild, in relation to a person, means a person in relation to whom the firstmentioned person stands in place of a parent.

63 Abduction

A person who abducts another person by force or by any other means or who unlawfully detains another person with the intent that the other person should engage in sexual intercourse with the firstmentioned person or with a third person (whether within the ACT or otherwise) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

63A Bestiality

A person commits an offence if the person engages in a sexual activity of any kind with an animal.

Maximum penalty: imprisonment for 10 years.

Note A reference to an offence includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

64 Using child for production of child pornography etc

- (1) A person commits an offence if—
- (a) the person uses, offers or procures a child—
 - (i) for the production of child pornography; or
 - (ii) for a pornographic performance; and
 - (b) the child is under 12 years old.

Maximum penalty: 1 500 penalty units, imprisonment for 15 years or both.

- (2) Absolute liability applies to subsection (1) (b).
- (3) A person commits an offence if—
- (a) the person uses, offers or procures a child—
 - (i) for the production of child pornography; or
 - (ii) for a pornographic performance; and
 - (b) the child is 12 years old or older.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

- (4) Strict liability applies to subsection (3) (b).

(5) In this section:

child pornography means anything that represents—

- (a) the sexual parts of a child; or
- (b) a child engaged in an activity of a sexual nature; or
- (c) someone else engaged in an activity of a sexual nature in the presence of a child;

substantially for the sexual arousal or sexual gratification of someone other than the child.

pornographic performance means—

- (a) a performance by a child engaged in an activity of a sexual nature; or
- (b) a performance by someone else engaged in an activity of a sexual nature in the presence of a child;

substantially for the sexual arousal or sexual gratification of someone other than the child.

Examples of activity of a sexual nature

- 1 sexual intercourse or other explicit sexual activity (whether real or simulated)
- 2 a striptease

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

represent means depict or otherwise represent on or in a film, photograph, drawing, audiotape, videotape, computer game, the internet or anything else.

64A Trading in child pornography

- (1) A person commits an offence if the person produces, publishes, offers or sells child pornography.

Maximum penalty: 1 200 penalty units, imprisonment for 12 years or both.

- (2) In this section:

child pornography—see section 64 (5).

65 Possessing child pornography

- (1) A person commits an offence if—

- (a) the person intentionally possesses pornography; and
- (b) the pornography is child pornography.

Maximum penalty: 700 penalty units, imprisonment for 7 years or both.

- (2) Absolute liability applies to subsection (1) (b).

- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant had no reasonable grounds for suspecting that the pornography concerned was child pornography.

- (4) In this section:

child pornography—see section 64 (5).

66 Using the Internet etc to deprave young people

- (1) A person must not, using electronic means, suggest to a young person that the young person commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature.

Maximum penalty:

- (a) for a 1st offence—imprisonment for 7 years; or
- (b) for a 2nd or subsequent offence—imprisonment for 10 years.

- (2) A person must not, using electronic means, send or make available pornographic material to a young person.

Maximum penalty: 700 penalty units, imprisonment for 7 years or both.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant—

- (a) is an Internet service provider; and
- (b) had no knowledge that the defendant's facilities were used to commit the offence.

- (4) It is not a defence to a prosecution for an offence against this section that the young person had consented to—

- (a) the suggestion being made; or
- (b) the material being sent or made available.

- (5) However, it is a defence to a prosecution for an offence against this section if the defendant proves that the defendant believed on reasonable grounds that the young person to whom the suggestion was made, or the material was sent or made available, was at least 16 years old.

- (6) In this section:

act of a sexual nature means sexual intercourse or an act of indecency.

classified—see the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*, dictionary.

pornographic material means—

- (a) material of a sexual nature that has been, or is likely to be, classified R 18+, RC, category 1 restricted or category 2 restricted; or
- (b) material that has been, or is likely to be, classified X 18+.

using electronic means means using email, Internet chat rooms, SMS messages and real time audio/video.

young person means a person under 16 years old.

67 Consent

- (1) For sections 54, 55 (3) (b), 60 and 61 (3) (b) and without limiting the grounds on which it may be established that consent is negated, the consent of a person to sexual intercourse with another person, or to the committing of an act of indecency by or with another person, is negated if that consent is caused—
 - (a) by the infliction of violence or force on the person, or on a third person who is present or nearby; or
 - (b) by a threat to inflict violence or force on the person, or on a third person who is present or nearby; or
 - (c) by a threat to inflict violence or force on, or to use extortion against, the person or another person; or
 - (d) by a threat to publicly humiliate or disgrace, or to physically or mentally harass, the person or another person; or
 - (e) by the effect of intoxicating liquor, a drug or an anaesthetic; or
 - (f) by a mistaken belief as to the identity of that other person; or

- (g) by a fraudulent misrepresentation of any fact made by the other person, or by a third person to the knowledge of the other person; or
 - (h) by the abuse by the other person of his or her position of authority over, or professional or other trust in relation to, the person; or
 - (i) by the person's physical helplessness or mental incapacity to understand the nature of the act in relation to which the consent is given; or
 - (j) by the unlawful detention of the person.
- (2) A person who does not offer actual physical resistance to sexual intercourse shall not, by reason only of that fact, be regarded as consenting to the sexual intercourse.
- (3) If it is established that a person who knows the consent of another person to sexual intercourse or the committing of an act of indecency has been caused by any of the means set out in subsection (1) (a) to (j), the person shall be deemed to know that the other person does not consent to the sexual intercourse or the act of indecency, as the case may be.

68 Sexual intercourse—people not to be presumed incapable by reason of age

- (1) For this part, a person shall not, by reason only of his or her age, be presumed to be incapable of engaging in sexual intercourse with another person.
- (2) Subsection (1) shall not be construed so as to affect the operation of any law relating to the age when a child can be found guilty of an offence.

69 Marriage no bar to conviction

The fact that a person is married to a person on whom an offence against section 54 is alleged to have been committed shall be no bar to the conviction of the firstmentioned person for the offence.

70 Alternative verdicts for certain sexual offences

- (1) If, on the trial of a person for an offence against section 51 (1) or (2) or 57, the jury is satisfied that the accused inflicted actual bodily harm with the intent charged but is not satisfied that the harm was grievous bodily harm, it may find the accused not guilty of the offence charged but guilty of an offence against section 52 (1) or (2) or 58, as the case requires.
- (2) If, on the trial of a person for an offence against section 51 (2), 52 (2), 53 (2), 54 (2) or 60 (2), the jury is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence against section 51 (1), 52 (1), 53 (1), 54 (1) or 60 (1), it may find the accused not guilty of the offence charged but guilty of an offence against section 51 (1), 52 (1), 53 (1), 54 (1) or 60 (1), as the case requires.
- (3) If, on the trial of a person for an offence against section 51 (1) or (2) or 57, the jury is satisfied that the accused inflicted grievous bodily harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence against section 19, 20 or 25.
- (4) If, on the trial of a person for an offence against section 52 (1) or (2) or 58, the jury is satisfied that the accused inflicted actual bodily harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence against section 24.
- (5) If, on the trial of a person for an offence against section 55 (1), 61 (1) or 62 (1), the jury—

- (a) is not satisfied that the person in relation to whom the offence is alleged to have been committed was under 10 years of age when the offence is alleged to have been committed; but
- (b) is satisfied that the accused is guilty of an offence against section 55 (2), 61 (2) or 62 (2), respectively;

the jury may find the accused not guilty of the offence charged but guilty of an offence against section 55 (2), 61 (2) or 62 (2), respectively.

71 Adding count for act of indecency

In an indictment for an offence against section 54 a count may be added for an offence against section 60.

72 Indictment for act of indecency

In an indictment for an offence against section 60 or 61 it shall not be necessary to describe the act constituting the act of indecency with which the accused is charged.