

May 2024

ACT Policing Submission Inquiry into Justice Responses to Sexual Violence

Australian Law Reform Commission



**ACT
Policing**

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Introduction

ACT Policing welcomes the opportunity to make a submission to the Australian Law Reform Commission inquiry into justice responses to sexual violence.

Community policing in the Australian Capital Territory (ACT) is delivered by the Australian Federal Police (AFP) in accordance with three principal direction setting mechanisms that drive ACT Policing's planning frameworks. These include the Policing Arrangement, Purchase Agreement and Ministerial Direction.

The Policing Arrangement allows the ACT Minister for Police and Crime Prevention to provide general directions to ACT Policing (in writing) through a Ministerial Direction. The Ministerial Direction gives guidance on specific areas of focus relating to policy, priorities and goals for the provision of police services, without issuing directions on operational matters.

As outlined in the Ministerial Direction, one of ACT Policing's expected focuses is effectively responding to sexual violence against children and adults as a strategic crime type. ACT Policing is committed to working together with the Coordinator-General for Family Safety to implement the ACT Government's response to the Sexual Assault Prevention and Response Steering Committee's recommendations in the *Listen, Take Action to Prevent, Believe and Heal* report (Terms of Reference at Appendix 1).

The Chief Police Officer for the ACT's Statement of Intent reiterates the priority for ACT Policing to implement measures that effectively prevent and respond to sexual violence. ACT Policing has specialist investigators in the Sexual Assault and Child Abuse Teams (SACAT) who guide victim survivors through each step of the criminal justice process. The SACAT's primary focus is providing a victim-centric police response to sexual violence in our community.

ACT Policing acknowledge the individual experiences of victim survivors and recognise police can always do better – especially when dealing with crimes such as these. ACT Policing regret that some victim survivors are unhappy with the police responses they received. In April 2024, the Chief Police Officer for the ACT publicly apologised to victim survivors and committed on behalf of the organisation to better support victims.

This submission outlines the significant improvements to processes, systems and training that have resulted in improved responses to these serious crimes and better support for victim survivors.

ACT Policing's role

Our Structure

The primary objectives of ACT Policing's investigations into sexual offences is to lawfully gather evidence, identify and charge the offender/s, and achieve a successful prosecution.

ACT Policing's response to sexual violence includes three Sexual Assault and Child Abuse Teams (SACAT), one Joint Anti Child Exploitation Team (JACET), one Child Sex Offender Registry Team (CSORT) and Operation FOSTER (the Process Review Team). These teams sit within the Sexual Offence and Child Abuse (SOCA) portfolio of Criminal Investigations.

The SACAT are primarily responsible for investigating a sexual act committed against a person without that person's consent.

The JACET is responsible for investigating offences relating to internet crime, in particular child abuse material and grooming offences, the dissemination of Child Abuse Material (CAM)/Child Exploitation Material (CEM) by adults over internet-based platforms and the production and capture of CAM/CEM.

The Child Sex Offender Register is run and managed by ACT Policing's CSORT. The register was established by the *Crimes (Child Sex Offender) Act 2005* (the Act). The Act requires child sex offenders, who have been convicted of a child sex offence, to report to CSORT and provide their personal details.

In December 2021, a report titled the *Listen. Take action to Prevent, Believe and Heal* Report was authored by the Sexual Assault Prevention and Response (SAPR) Reform Program Steering Committee and presented to the ACT Government. The steering committee was appointed in May 2021 to make recommendations to the ACT Government on key priorities for future work to improve the ACT's response to sexual assault.

In response, a key focus for the ACT Government has been the implementation of recommendation 15 of the Report. To support the oversight committee established to implement this recommendation, ACT Policing created a SAPR working group to extract the relevant jobs in the prescribed time frame and provide the details to the ACT Office of the Director of Public Prosecutions for review and recommendation. Operation FOSTER (being a process review team) commenced in February 2023 to reinvestigate sexual assault matters where an opportunity for further progression of the job was identified and in cases where victims consented to re-engagement with police. Victim consent is obtained through phone calls made by Victim Support ACT.

Our Role

The SACAT works with victim survivors during what is a very stressful time in their lives. The SACAT's priority is to ensure the emotional wellbeing and physical safety of victim survivors of sexual assault, while bringing sexual offenders to justice.

ACT Policing works closely with victim support groups including the Canberra Rape Crisis Centre, the ACT Intermediary Program within the ACT Human Rights Commission and Victim Support ACT to deliver a high level of support and care to victim survivors.

ACT Policing recognise that reporting a sexual offence takes courage and may take time. It is not uncommon for a victim to take many years to report offending – this is why the support services offered by ACT Policing and ACT Health services are so critically important.

Sexual assault victims will always have a say in how far a police investigation goes, can determine that a matter not proceed to prosecution, and can withdraw from the process at any time. It is not uncommon for an investigation to halt, not proceed to prosecution, or to be recommenced at a later time, at the request of a victim.

It is important that a victim has a say in whether a matter proceeds to Court, and police are committed to ensuring that victims have a voice.

Court process continue to consider the needs of victim survivors. The *Victims of Crime Act 1994* (ACT) allows a victim to opt in or out of giving their evidence in Court or having appropriate aids and adjustments to support them including an intermediary.

If the victim wishes to proceed, ACT Policing assesses each matter on a case-by-case basis and makes a decision whether there is sufficient evidence. This can be done in consultation with the Office of the ACT Director of Public Prosecution (ACTDPP). ACTDPP recently placed a prosecutor within SOCA to assist investigators make decisions around charging offenders.

ACT Policing regards a case as unfounded when there is no verifiable evidence to support an allegation that an offence has occurred. It is important to note that 'unfounded' does not always mean that exculpatory evidence has been identified and does not reflect a police finding that the complaint was vexatious.

A matter may also be recorded as cleared due to the complainant withdrawing the allegation. Complainants are advised that nothing prevents them from reinvigorating the matter (if appropriate, and if they wish to do so) at a later time.

Laws and Frameworks

Affirmative consent in the ACT

In 2022, the ACT passed the *Crimes (Consent) Amendment Act 2022* to update the *ACT Crimes Act 1900* to align with contemporary community understandings and expectations of consensual sexual activity.

The Act outlines that people have a right to choose to not participate in sexual activities, and the amendments shifted the principle, meaning and definition of sexual consent from something that is presumed can be negated, to something that is unassumed and must be given. This is a communicative model of consent – one which is underpinned by principles of agency, autonomy and responsibility and is based on a culture of healthy, respectful relationships.

Case Study

In February 2023, Michelle made a report to police regarding allegations of sexual intercourse without consent by a friend named Michael.

Following a police investigation, Michael was charged with two counts of sexual intercourse without consent.

Michael admitted to the sexual acts stating that 'at no time did she say no', 'at no time did she push me off' and 'she didn't tell me to go away after'.

In considering the matter and the recently introduced affirmative consent legislation, the court found Michael guilty of the two charges and he was sentenced to three years imprisonment.

In December 2023, ACT Policing launched a new campaign with support of the Canberra Rape Crisis Centre and the dating application Tinder (Match Group), to promote positive consent when engaging in intimate acts.

ACT based users of the dating platform Tinder began to receive in-platform advertising which reminded users of ACT's positive consent laws. The campaign generated excellent results in males responding to the advertisement, and consequently being made aware of the positive consent laws.

Policies, Practices, Decision-making and Oversight

ACT Policing continues to review structures, processes, policies and training activities and supports to adopt best practice approaches in the investigation of sexual offences.

In 2021, ACT Policing conducted an internal review of the Sexual Offences and Child Abuse (SOCA) investigative function. The Sexual Assault Prevention and Response Report (SAPR Report) was released in December 2021.

ACT Policing is working through implementing recommendations from the internal review, the SAPR Report, the ACT Board of Inquiry into the Criminal Justice System and the Sexual Assault (Police) Review. ACT Policing has commenced the following measures:

Structures

- Appointment of a dedicated SOCA Inspector and Project officer.
 - ACT Policing has strengthened ACT Criminal Investigations to include a Detective Inspector with specific oversight of the SOCA area which incorporates the Sexual Assault and Child Abuse Teams, the Joint Anti-Child Exploitation Team, Operation FOSTER and the Child Sex Offender's Registry elevating the leadership and enhancing the decision-making process.
 - An additional Sergeant role has been created to provide increased specialist support to the SOCA and Criminal Investigations teams with a specific focus on training, stakeholder engagement and coordination.
- The Family Violence and the SOCA portfolios are now aligned under the same Command.
- Supported the embedding of an ACT Director of Public Prosecutions Prosecutor within the SOCA area.

Processes

- Introduction of an online reporting mechanism for historical sexual offences.

- Introduction of a case finalisation report process for all sexual offence matters reported to ACT Policing.
- Introduction of a review process by the Criminal Investigation Management Committee for matters that do not proceed to charge.
 - ACT Policing has reformed the decision-making model to include additional oversight of a Criminal Investigations Management Committee in certain circumstances before investigations are finalised. Part of this committee process considers legal advice where appropriate.
- A dedicated sexual offences and child abuse contact officer is on call to provide advice to any ACT Policing member who needs advice and assistance.
- Stronger working relationship with the Canberra Rape Crisis Centre to allow them to directly refer victim survivors to SOCA.

Policies

- The ACT Policing process review team and the Crime Manager for SOCA have been in consultation with ACT Policing Victim's Rights Policy to address recommendations from the early stages of the SAPR Report.
- ACT Policing is trialling a customised measure to assist in providing more detailed data in relation to sexual offence investigations conducted in the ACT.
- More broadly, the AFP has invested in a new investigations management system.

Training

- Engaged a subject matter expert (Professor Patrick Tidmarsh) to redesign and develop the SOCA training package.
- ACT Policing is reviewing training across all levels to upskill the workforce, mitigate identified issues and improve the outcomes for victim survivors. Training will target police officers working in General Duties in conjunction with specialist members in SOCA and within ACT Criminal Investigations more broadly.

These reforms have resulted in an increase in charging with 623 sexual offence charges laid in the 2022-23 financial year, this is an 46 per cent increase in the charge rate from 2020-21 financial year and an 56 per cent increase in the charge rate from the financial year prior to that – 2019-20 and 378 laid this financial year (between 1 July 2023 and 31 March 2024).

Historical Sexual Assault Online Reporting Portal

Victim survivors can report an incident of sexual assault to ACT Policing, regardless of how long ago it occurred. When making a report they can be assured that the information they provide will be handled confidentially and that full control over the next steps will be retained by the victim survivor.

In August 2020, ACT Policing launched an online sexual assault reporting platform for historical sexual assaults (offences that had occurred greater than six months from the incident). This

platform allows victim survivors to make a report from the comfort of their own home, at a time that they choose, via the ACT Policing website.

This option complements existing reporting avenues and enables victim survivors to make informed decisions about their options. The portal outlines what level of information is required for such proceedings and gives victim survivors the choice to proceed with a criminal investigation or not.

This platform also breaks down geographical barriers for victim survivors, who may not reside in the ACT, and because of this, do not feel comfortable or confident to make a report to police. The option to use the online platform in this instance will ensure appropriate support is offered through the reporting process, no matter where the victim survivor currently resides.

The ACT Policing website has extensive information on the process of reporting a sexual assault in the ACT, including but not limited to the options available to a victim survivor, the investigation process, and available support services. In addition, the website provides a link to an ACT Policing sexual offences information pamphlet, with additional information on each step.

Sexual Assault Prevention and Response Report

ACT Policing acknowledges the Sexual Assault Prevention and Response Steering Committee's report into sexual violence in 2021 and the work that all relevant agencies in the ACT can do to improve the experience for victim survivors of sexual assault.

The report highlights changes that can be made to improve the experience for victim survivors of sexual violence and emphasises that a trauma-informed approach is of paramount importance.

The report's case studies also highlighted that some ACT Policing officers could benefit from a renewed training program that includes the full spectrum of sexual violence, and expectation of police by victim survivors.

ACT Policing continues to review these issues to improve service delivery and support for people who report a sexual assault.

The long-term focus for ACT Policing has always been to put decision making into the hands of the victim survivor at the centre of the process so their voice is heard in relation to how their matter proceeds.

An Oversight Committee co-chaired by Professor Christine Nixon AO APM and Ms. Karen Fryar AM was established in response to Recommendation 15, supported by a working group consisting of the ACT Policing review team, ACT DPP, and Victim Support ACT. The working Group was chaired by the Office of the Coordinator-General for Family Safety.

Operation FOSTER was established in February 2023 to reinvestigate matters recommended from the working group. This team conduct investigations with victim survivors who have agreed to reengage with police.

An independent researcher from Swinburne University has been engaged to further inform this important work.

On 30 April 2024, the Sexual Assault (Police) Review (the Co-Chairs Report) (Terms of Reference at Appendix 2) was publicly released. ACT Policing appreciated the opportunity to contribute to the *Sexual Assault (Police) Review* (the Co-Chairs Report).

The Co-Chairs review identifies a range of systems, process, governance, and training issues for ACT Policing, and ACT Policing acknowledge its findings. There are a number of recommendations that will now be considered with ACT Government, and partners to continue to refine ACT Policing processes and systems to ensure that their response to these serious crimes are victim survivor centred and meets community expectations.

ACT Board of Inquiry into the Criminal Justice System

In August 2023, ACT Policing welcomed the release of the ACT Board of Inquiry into the Criminal Justice System report (Terms of Reference at Appendix 3).

ACT Policing is working with the ACT Government to implement recommendations, some of which were already underway before the Board of Inquiry began.

ACT Policing are committed to ongoing reform which improves the way police operate and conduct criminal investigations. It is also essential we continue to strengthen our positive working relationships with ACT's criminal justice agencies.

Both the Board of Inquiry and the Sexual Assault Prevention and Response review identified the need for clear guidance to investigators on the threshold to charge a person with a crime.

ACT Policing is working with the ACT Director of Public Prosecutions and the ACT Justice and Community Safety Directorate on finalising a guide for investigators. ACT Policing are hopeful that this policy will be settled shortly.

Notwithstanding the development of the guide – ACT Policing's additional oversight of sexual offence matters that do not proceed to charge, has given greater confidence that matters that should proceed to charge are progressing.

Training and Professional Development

ACT Policing has taken steps to tailor dedicated training within the Sexual Offences and Child Abuse area (SOCA). Its focus is to strengthen the victim-centric and trauma-informed specialist approach to better support victim survivors.

ACT Policing has delivered four of these new programs to more than 70 investigators. The program has been designed with subject matter experts across forensics, psychology and criminology to upskill investigators with contemporary best practice and victim-centric investigation practices. ACT Policing continues to review these issues and seek ways to improve service delivery and support for people who report a sexual assault.

This two-week program has been redeveloped in response to the recommendations to review the current training framework for both specialist Sexual Assault and Child Abuse Team investigators and all other community-facing ACT Policing capabilities.

The program participants come from both within SOCA, ACT Policing General Duties and the broader AFP. The program has also hosted observers from the Australian Defence Force, other policing jurisdictions both domestically and internationally.

Alternative Approaches and Available Support Services

The needs and welfare of the victim are paramount. ACT Policing adopt trauma-informed and victim-centric principles. That means members ought to be guided by their victim's desired outcomes and ensure victims' rights, as found in Part 3A of the *Victims of Crime Act 1994* (ACT) and the Better Practice Guide on Victim's Rights (ACT), are kept at the forefront of their minds.

ACT Policing has access to support services to aid in victims of sexual violence including specialised services for children and domestic/family violence support. ACT Policing has a Memorandum of Understanding with ACT's Domestic Violence Crisis Service team (DVCS. DVCS supports all people, regardless of socioeconomic backgrounds, immigration status, gender, age, sexual orientation, religion, cultural and ethnic background who are affected by domestic/family violence. This includes people who are subjected to violence and abuse and people who use violence and abuse. DVCS provides crisis support to victims following a family violence incident.

ACT Policing can also refer victims to the Canberra Rape Crisis Centre (CRCC. Officers attending an incident identified to be family violence offer crisis support services from the CRCC to the victim. This provides support to victims where sexual violence occurs within a broader context of family violence.

Conclusion

ACT Policing recognise their responsibility to do more and to do better. ACT Policing need to understand and improve practices for victim communication and look to their partner agencies to assist in meeting their statutory requirements under the *Victims of Crime Act 1994* (ACT).

ACT Policing supplied the data to support the independent researcher to undertake their review of victim survivors experience of reporting sexual crimes to ACT Policing, as well as examine why attrition for sexual offences is high. ACT Policing also provided data to the ACT Director of Public Prosecutions to inform their investigative case review.

Both of these reviews, together with the Co-Chairs Report provide an evidence-based position on what has occurred, and importantly recommendations to improve victim survivors reporting experience with ACT Policing, as well as assist ACT Policing reconsider their approach to investigating sexual offences going forward, particularly with regards to meet and greets and Evidence In Chief Interviews.

Further, the reviews and the Co-Chairs Report remind us that improvements are achievable when agencies work together to support victim survivors. This has been evident in the work undertaken by Operation FOSTER. The work undertaken by Operation FOSTER and ACT Policing's Sexual Assault (Police) Review team, together with Victim Support ACT, have improved the experiences of victim survivors in their dealings with police.

Appendices

1. Listen. Take Action to Prevent, Believe and Heal Report Terms of Reference
2. Sexual Assault (Police) Review Terms of Reference
3. ACT Board of Inquiry into the Criminal Justice System Terms of Reference

APPENDIX 1 STEERING COMMITTEE TERMS OF REFERENCE AND MEMBERSHIP

Sexual assault prevention and response steering committee.

PURPOSE

The Steering Committee will oversee the ACT's Sexual Assault Prevention and Response program. The Steering Committee will provide formal recommendations to the Minister for the Prevention of Domestic and Family Violence and to the Coordinator-General for Family Safety on how to improve sexual assault prevention and responses to victims in the ACT.



ROLE OF THE COMMITTEE

The Steering Committee will:

1. Oversee the operation of the three Working Groups and Workplace Reference Group.
2. Ensure the working groups and Workplace Reference Group are focused on delivering within their agreed scope.
3. Establish additional Working Groups as needed with the endorsement of the Minister.
4. Prepare independent recommendations to the Minister on key sexual assault reforms. This will be done by:
 - i. Listening to and incorporating the perspectives and advice of the Aboriginal and Torres Strait Islander Consultation Committee.
 - ii. Considering the advice from the working groups and Workplace Reference Group.
 - iii. Considering the views and experiences of sexual violence across the community including people with disability, children, and young people, the LGBTIQ+ community, and communities that are culturally and linguistically diverse.

ROLE OF MEMBERS

The Steering Committee members are responsible for:

1. Supporting the achievement of the Steering Committee's purpose and bringing a strong commitment to preventing sexual assault and improving responses to victims.
2. Working collaboratively with other members to develop advice on areas for future action and reform. Advice will be evidence-based, drawn from the lessons from other jurisdictions and reflect the needs of a diverse Canberra community.
3. Attending all meetings as scheduled. Where absence is unavoidable, the member may nominate a suitable proxy to attend on their behalf. Should a member be absent for three consecutive meetings, their ongoing membership will be referred to the Minister for consideration.

ROLE OF THE CHAIR

The Steering Committee Chair will:

- 1 Attend Steering Committee meetings and provide strategic leadership and guidance to members.
- 2 Attend Working Group meetings when required and provide support to the Chairs.
- 3 Support and lead the Steering Committee in achieving its purpose.
- 4 Liaise closely with the Office for the Coordinator-General for Family Safety.

MEMBERSHIP

Members are appointed by the Minister for the Prevention of Domestic and Family Violence.

Position	Name	Organisation
Chair	Ms Renée Leon	Independent
Member	Tanya Keed	Community member
Member	Dianne Lucas	Community member
Member	Tim Bavinton	Sexual Health and Family Planning ACT
Member	Chrystina Stanford	Canberra Rape Crisis Centre
Member	Heidi Yates	Victims of Crime Commission
Member	Vanita Parekh	Forensic and Medical Sexual Assault Care
Member	Peter Crozier	ACT Policing
Member	Maddy Northam	Unions ACT and CPSU
Observer	Coordinator-General Family Safety	ACT Government

FREQUENCY OF MEETINGS

TBC by the Steering Committee.

SECRETARIAT

The Secretariat will be provided by the Office of the Coordinator-General for Family Safety, Community Services Directorate. The Secretariat will:

- Schedule all meetings and set the agenda with the Chair.
- Ensure members are invited and available to attend all meetings, including additional attendees at the request of the Chair.
- Circulate the agenda and other relevant information to members at least one week prior to the meeting.
- Prepare minutes that record key decisions and actions. Ensure minutes are circulated within one week of the meeting. Maintain a log of the actions.

APPENDIX 1 – TERMS OF REFERENCE

Review of cases to understand attrition rates – Sexual Assault Review

Background & context

Sexual violence is a pervasive and unacceptable problem in the ACT. In December 2021 the Sexual Assault Prevention and Response Steering Committee released the *Listen. Take action to prevent, believe and heal* report, which provided an evidence based, extensive and thorough analysis of the current problems in systemic responses to sexual violence in the ACT and the systems failure to address the needs of victim-survivors and the community more generally – both from a procedural and cultural perspective.

In particular, the Report found that the supports and responses available to victim-survivors are inadequate – both the response by the community sector (specialist response services) and by government agencies. It further identified inadequacies within the Justice system. The Report made 24 recommendations to Government, encompassing a wide range of reforms necessary to prevent sexual violence and to urgently address the current failures within the non-government specialist response service sector, within government agencies and within the Justice system.

One of the issues the Report identified within the overall systems response to sexual violence was the high attrition rates of sexual offence complaints following an initial report to ACT Policing. To further understand this issue and the barriers preventing cases from progressing in the criminal justice system, the Report recommended:

The ACT Government establish and fund an independent cross-agency taskforce to undertake a review of all sexual assault cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared or withdrawn. The initial phase of the review to focus on reports made from 1 July 2020 to present. Subject to the outcomes of this initial phase, the review is to be extended to all reports made since 1 January 2015 that have not progressed to charge. Further any victim survivor whose matter has not progressed to charge outside of this stated review period may also request a review of their matter. (Recommendation 15)

In its formal response to the Report, released in June 2022, the ACT Government agreed to this Recommendation and committed to funding the implementation of this Recommendation through the establishment of a multidisciplinary team to review sexual assault cases reported to ACT Policing between 1 July 2020 and 31 December 2021 which were not progressed to charge, including those deemed unfounded, uncleared, or withdrawn.

Establishment of the Review & its purpose

An **Oversight Committee** is established to oversee an independent review of sexual assault cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared, or withdrawn.

The initial phase of the review is to focus on all reports made from 1 July 2020 to present.

Subject to the outcomes of this initial phase, the review may be extended, in further phases, to reports made since 1 January 2015 that have not progressed to charge.

At the conclusion of each phase of the review, the Oversight Committee is to provide a report to the Attorney-General, the Minister of Police and the Minister for the Prevention of Domestic and Family Violence summarising the findings of the Review, including any identified systemic issues, and, if required, proposing the extension of the review for other periods and/or for identified classifications of cases.

The Oversight Committee will be supported by a **Review Team** which will provide practical assistance in the undertaking of the review of reports and support the considerations of the Oversight Committee, as directed by the Co-Chairs. It is noted that it is ultimately a matter for the Director of Public Prosecutions to determine if further investigation is required and whether there would be a reasonable prospect of conviction of any resulting charges.

Review Terms of Reference

The purpose of the Review is:

1. better understand the reasons for the low number of sexual offence reports proceeding to the point of charge including but not limited to:
 - a. identifying whether current police processes are being adhered to and whether any changes should be made to police processes in relation to the conduct of investigations;
 - b. identifying whether decisions are legally sound in all cases and whether those decisions are clearly recorded, reviewed, and communicated to the Director of Public Prosecutions and the complainant;
 - c. Identifying any systemic cultural or practical changes or additional services that may be required to better support child and adult complainants and uphold their rights under the Victims Charter;
 - d. any other relevant matter.
2. for each case reviewed:
 - a. identify what, if any, further investigation should be undertaken;
 - b. identify whether there is a reasonable prospect of conviction after the investigation; then,
 - c. consider whether criminal charges should be laid.

Membership of the Oversight Committee & its Co-Chairs

Members of the Oversight Committee to include:

- Independent Co-Chairs: Dr Christine Nixon and Ms Karen Fryar
- Director of Public Prosecutions
- Chief Police Officer
- Domestic, Family, and Sexual Violence Coordinator-General
- Victims of Crime Commissioner

Review Methodology

The methodology for the Review will be finalised by the Oversight Committee having regard for the provision, use and security of the information to be reviewed and the priority areas of focus appropriate to the review of individual reports.

Proposed specific areas of focus for the Review will be considered by the Oversight Committee and applied to each individual case by the relevant Review Team to the extent appropriate.

The role of members of the Oversight Committee will be clarified in the context of finalising the methodology for the Review. There may be certain aspects of the Review work – for instance, assessing the decision-making about whether a matter is charged and prosecuted – which would not appropriately involve all members of the Oversight Committee.

The approach to contacting and consulting victims in any cases to be further investigated / prosecuted will be developed collaboratively between the Chief Police Officer, the Director of Public Prosecutions, and the Victims of Crime Commissioner, to reflect a trauma-informed approach and ensure ongoing support is available to those who choose to have their matter re-opened.

Appendix A – Terms of Reference

Preamble

- A. The ACT Government acknowledges the need for public confidence in the criminal justice system in the Australian Capital Territory.
- B. Recent public reporting and commentary in relation to the case of *R v Lehrmann* and in relation to a letter sent by the ACT Director of Public Prosecutions to the Chief Police Officer, ACT Policing dated 1 November 2022 raise issues that may have wider implications for the prosecution of criminal matters in the Territory.
- C. The ACT Government is concerned to ensure that:
 - a. the ACT's framework for progressing criminal investigations and prosecutions is robust, fair and respects the rights of those involved; and
 - b. the ACT's criminal justice entities work effectively together, and appropriately within their respective statutory frameworks.

Terms of Reference¹

- D. The Board will inquire into:
 - a. Whether any police officers failed to act in accordance with their duties or acted in breach of their duties:
 - i. in their conduct of the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann;
 - ii. in their dealings with the Director of Public Prosecutions in relation to his duty to decide whether to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann in relation to those allegations;
 - iii. in their dealings with the legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
 - iv. in their provision of information to any persons in relation to the matter of *R v Lehrmann*.
 - b. If any police officers so acted, their reasons and motives for their actions.

¹ Amendments that were made to the Terms of Reference pursuant to Notifiable Instrument NI2023-232 (effective from 29 April 2023) are identified by strikethrough and underlining.

- c. Whether the Director of Public Prosecutions failed to act in accordance with his duties or acted in breach of his duties in:
 - i. making his decisions to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann; and
 - ii. his conduct of the preparation of the proceedings for hearings; and
 - iii. his conduct of the proceedings.
 - d. If the Director of Public Prosecutions so acted, his reasons and motives for his actions.
 - e. The circumstances around, and decisions which led to the public release of the ACT Director of Public Prosecutions' letter to the Chief Police Officer of ACT Policing dated 1 November 2022.
 - f. Whether the Victims of Crime Commissioner acted in accordance with the relevant statutory framework in terms of support provided to the complainant in the matter of *R v Lehrmann*.
 - g. Any matter reasonably incidental to any of the above matters.
- E. The Board will report to the Chief Minister by ~~30 June 2023~~ 31 July 2023.