



Policing Steering Committee
Via policingsteeringcommittee@act.gov.au

11 February 2022

Dear Steering Committee

ACT Human Rights Commission feedback on ACT Policing Purchase Agreement

Thank you for inviting the ACT Human Rights Commission to provide feedback to inform negotiation of a new multi-year agreement for community policing services in the ACT.

The enclosed submission is made on a whole-of-Commission basis. Our submission should not be considered confidential; please be aware that we intend to make this feedback publicly available on our website at the time that it is provided to government.

Yours sincerely

Dr Helen Watchirs OAM
President and Human
Rights Commissioner

Jodie Griffiths-Cook
Public Advocate and Children
and Young People
Commissioner

Karen Toohey
Discrimination, Health
Services, and Disability and
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Commissioner

Heidi Yates
Victims of Crime
Commissioner

About the ACT Human Rights Commission

1. The ACT Human Rights Commission is an independent agency established by the *Human Rights Commission Act 2005* (HRC Act). Its main object is to promote the human rights and welfare of people in the ACT. The HRC Act became effective on 1 November 2006 and the Commission commenced operation on that date. Since 1 April 2016, a restructured Commission has included:
 - The President and Human Rights Commissioner;
 - The Discrimination, Health Services, Disability and Community Services Commissioner;
 - The Public Advocate and Children and Young People Commissioner; and
 - The Victims of Crime Commissioner
2. As independent statutory office holders with key oversight responsibilities for the promotion of human rights and welfare of people in the ACT, the Commission is interested in ensuring that policing arrangements and practices in the ACT reflect best practice. Community policing that is effective and accountable is fundamental to building a cohesive and safety society that upholds human rights. Negotiation of a new Purchase Agreement with ACTP (and, equally, the Policing Arrangement) is of shared interest to all Commissioners.
3. The Commission maintains a constructive and collegiate working relationship with ACT Policing (ACTP). Commissioners and their staff regularly meet with the Chief Police Officer (and members of ACTP) to discuss issues of common interest and sustain an open dialogue. We have also valued opportunities in recent years to support ACTP's Legislation and Policy team by providing advice, on request, about the human rights principles affecting potential legislative and policy reform proposals. Commissioners and their staff also regularly liaise with ACTP in the performance of their roles, including in handling complaints, advocating for the interests of client groups, including victims of crime, persons with disability, children and young people, Aboriginal and Torres Strait Islander people, and assessing applications under the *Victims of Crime (Financial Assistance) Act 2016*.

JACS Standing Committee Inquiry

4. Between February and September 2020, the Standing Committee on Justice and Community Safety of the Ninth ACT Legislative Assembly (henceforth, 'the Standing Committee') inquired into the form of an evaluation of current ACT Policing Arrangements. In its submission to this inquiry, the Commission highlighted the following areas of the ACT's policing architecture requiring further attention:
 - the lack of accessible local mechanisms to deal with police complaints;
 - the continued reliance on Commonwealth legislation to regulate police criminal investigative powers;
 - the adequacy of resourcing to ensure quality service provision to victims, especially in relation to Family Violence Orders, people with diverse needs, and in sexual assault matters; and

- the adequacy of data collection and reporting.¹

Human rights in community policing

5. Among the obligations central to the operation of a human rights framework is the positive duty of governments to protect individuals from interferences with their human rights by third parties.² In discharging this duty, the ACT Government is obliged to establish and maintain an effective structure for timely and measured enforcement of its criminal law. Human rights law has, for example, recognised positive duties of an operational nature, such as the investigation of deaths and serious offences,³ intervention where there is an identifiable and imminent threat of violence against someone,⁴ or where peaceful assembly is threatened by counter-demonstrators.⁵ A functioning and suitably resourced police service is, in these ways, vital to the practical and effective realisation and protection of Canberrans' human rights.
6. To satisfy these important duties, governments routinely afford officers an array of police powers, including, for example, the legitimate use of force, arrest, move-on directions and the ability to require information and conduct police interviews. By their nature, police duties and powers regularly involve limitations of a number of human rights such as rights to life, equality, privacy, liberty and security of the person, freedom of movement, fair trial and rights in criminal proceedings among many others. In this regard, human rights frameworks, such as the HR Act, also require governments, and those exercising functions on their behalf, to themselves refrain from unreasonably interfering with individuals' rights. It is therefore incumbent on police to ensure that any measures limiting human rights are necessary, rational and proportionate to achieving a legitimate public aim, such as the safety of the community; an assessment that will inevitably involve a careful consideration of the rights of police, offenders, victims and other members of the community in a given situation.
7. To this end, members of ACTP are subject to 'public authority obligations' under the HR Act. Section 40 of the HR Act expressly declares a police officer to be a 'public authority' for the purposes of the HR Act when exercising a function under a Territory law. As a public authority, members of ACTP are therefore required to act and make decisions compatibly with human rights in the exercise of their functions in the Territory.

Preliminary remarks

8. The Commission notes that its feedback has been sought within a short timeframe, that has allowed limited scope to analyse, research and evaluate opportunities to improve the existing accountability

¹ ACT Human Rights Commission, Submission No 9 to Standing Committee on Justice and Community Safety (Ninth ACT Legislative Assembly), *Inquiry in the form of an evaluation of current ACT Policing arrangements* (14 February 2020) <https://www.parliament.act.gov.au/_data/assets/pdf_file/0009/1541691/Sub-9-ACT-HRC.pdf>

² Under international human rights law, states have threefold obligations: to respect, to protect, and to fulfill human rights. For a short description of these obligations, see Office of the High Commissioner for Human Rights, 'International human rights law' <<https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>>

³ *Aydin v Turkey*, Application No. 57/1996/676/866 (25 September 1997), [103]-[109].

⁴ *Osman v The United Kingdom*, Application No. 87/1997/871/1083 (28 October 1998), [116], [199]-[121].

⁵ *Plattform Ärzte für das Leben v Austria*, Application No. 10126/82 (21 June 1988), [32]-[34].

framework presented in the Agreement. The Commission would value the opportunity to discuss our feedback with the Committee in further detail.

9. The Commission appreciates that there are limitations on what may be achieved through negotiation of the next Agreement. These include limitations on the Territory's legislative power pursuant to the *Australian Capital Territory Self Government Act 1988* (Cth), functionality of the existing Police Records Information System (PROMIS) system and its implications for reporting, as well as ministerial agreement required for any changes not contemplated by the Police Arrangements. We have nevertheless elected to highlight several such areas that bear directly on the accountability of ACTP and that address critical safeguards against unreasonable limitation of human rights. By way of broad overview, the Commission perceives a need for revisions to both the Agreement and Arrangement to ensure that ACTP:
- i) recognises the new legislative framework of the Charter of Rights for Victims of Crime in the Arrangement,
 - ii) expressly addresses domestic, family and sexual violence as part of their core policing business in the Agreement and/or Arrangement,
 - iii) receives allocated and transparent funding that is particularised in the Agreement,
 - iv) embeds a robust performance framework that promotes transparency and accountability of policing function, and
 - v) plans to transition to a new data collection framework that can provide data disaggregation to inform evidence-based reviews of ACTP functions.

Legislative Framework

Charter of Rights for Victims of Crime

10. In July 2020, the ACT Legislative Assembly passed the *Victims Rights Legislation Amendment Act 2020*. This new legislation introduced a Charter of Rights for Victims of Crime (ACT) into the *Victims of Crime Act 1994*. The passage of this legislation reflects a significant legislative reform during the period of the Agreement, which the Commission considers must be reflected in the Arrangement and Schedule 4 of Complaints Reporting in the Agreement. In practical terms, the Charter seeks to protect and promote the rights of victims of crime in the ACT when they engage with criminal justice agencies, including ACTP. The Charter details how human rights apply in situations where a person is the victim of a crime and the core values of human rights, such as equality, dignity, autonomy and respect, are reflected in and reinforced by the rights in the Charter.

Consistent with the current Arrangement, when a member of ACTP is performing a relevant function in the ACT, they have the powers and duties conferred or imposed by or under any law of the Territory (including the common law) (per s 9(1)(b) of the *Australian Federal Police Act 1979* (Cth)). As described in the Arrangement:

“Under the Australian Federal Police Act 1979 (Cth) (AFP Act), the Commonwealth Minister responsible for the AFP and the Territory Minister responsible for policing on behalf of the Territory, can enter into arrangements for the provision of police services for the ACT (s 8(1A)) and for the doing of anything

incidental or conducive to the provision of those services (s 8(2B)). Having entered into an arrangement and subject to its terms, the functions of AFP members extend to the provision of police services in relation to the ACT (s 8(1)(a)) and anything incidental or conducive to the provision of those services (s 8(1)(c)). When a member is performing those functions in the ACT they have the powers and duties conferred or imposed on a constable or on an officer of police by or under any law of the Territory (including the common law) (s 9(1)(b)). Under the Human Rights Act 2004, a member is expected to act consistently with human rights when exercising a function under a Territory law (section 40) and any power or function conferred on a member by a Territory law is to be read consistently with human rights as far as possible consistent with the purpose of that law (section 30).”⁶

11. The Charter, which places duties on individual police officers in their engagement with members of the community, represents an important new element of the applicable statutory framework related to ACTP. Having commenced in January 2021, it includes, for example, requirements to regularly update victims of crime, provide written confirmation of a report and the contact details of two police officers, referrals to an appropriate support service, and provision of information about the criminal justice process.
12. The Charter’s implementation represents an ACT Government priority that will have implications for ACTP’s performance architecture, as discussed below. Embedding clear performance measures related to the Charter will support its effective implementation, and better equip ACTP to identify and review consequent resourcing implications, which will be integral to policing arrangements moving forward. It is therefore, in our view, essential that both the Arrangement and Agreement (in respect of complaints reporting in Schedule 4) are updated to recognise this change to the legislative framework. To this end, we recommend that the *Victims of Crime Act 1994* be acknowledged as an important element of the statutory framework relevant to ACTP; alongside s 40B of the HR Act as expressly referenced in the current Arrangement.⁷

Purpose, objectives and scope

13. The Commission supports the continued adherence to an outcomes-focused performance framework for ACTP, including one that is expressly linked to the ACT Wellbeing Framework. We note that the ACT Wellbeing Framework, which was introduced in March 2020 and developed in close consultation with the ACT community, includes ‘Human Rights’ as an indicator under the Governance and institutions domain. The ACT Chief Minister has noted that contributions to wellbeing, as defined in the framework, will play a key role in the Government’s decision-making and budget investment.⁸ In view of this recognition of human rights as a key element of community trust in civic institutions, we encourage government and ACTP to consider expressly recognising the role of police in upholding human rights in the ACT in the ‘Purpose, objectives and scope’ of the Agreement.

In terms of the Agreement’s structure, we also note that a performance outcome in the current Agreement assesses ACTP against ‘Community and Partner Engagement’. One strategy under this

⁶ *An ongoing arrangement between the Minister for Justice of the Commonwealth and the ACT Minister for Police and Emergency Services for the provision of policing services to the ACT* (‘Policing Arrangement’), (Ministerial agreement, June 2017), 2.

⁷ *Ibid.*

⁸ ACT Government, *ACT Government Wellbeing Framework*, i and 15

<https://www.act.gov.au/__data/assets/pdf_file/0004/1498198/ACT-wellbeing-framework.pdf>

outcome includes ‘collaborat[ing] with partner agencies and community groups to prevent and reduce recidivism, prevent repeat victimisation and protect ‘at risk’/vulnerable groups’.⁹ In this regard, considerations of marginalised or diverse communities are somewhat buried, and could be said to be framed as protecting vulnerable groups from their own conduct (through early intervention and diversion strategies) and not from other risks to them (for example, exploitation and abuse of people with disability, engagement of children with the criminal law system, and police responses to people with complex mental health needs). As such, the Commission recommends careful consideration of the way in which such communities are framed and situated in the context of any future performance reporting and policing outcomes.

Resourcing

14. As with most other stakeholders, the Commission is not in a suitable position, given its visibility of the operation of the existing Agreement and Arrangement, to provide a considered view as to their value for money. For example, the Commission is unaware to what extent the Minister for Police and Emergency Services (MPES) (or his delegate in the Director-General of JACSD) receives and acts on various updates contemplated in the Agreement.¹⁰ Similarly, it is unclear from the Commission’s vantage whether facility in the Agreement (at clause 6.4) enabling ACT Government agencies to request information from ACTP provides an efficient and timely flow of information required by agencies to perform their statutory functions. Accordingly, the Commission does not seek to offer a firm view about whether the Agreement represents good value for money in the procurement of policing services.
15. Notwithstanding, the extent to which the Agreement provides a robust and sufficiently targeted measure of ACTP’s performance directly bears on whether the ACT is achieving good value for money for the benefit of the ACT community. In this regard, the capture and regular publication of data relevant to community policing (including the rollout of new technologies, legislative powers and operational strategies) provides an important safeguard against arbitrary or disproportionate impacts on marginal communities. Consistent with our commentary below, it is vital that ACTP is suitably resourced and equipped to collect and publish data that enables the impact of the ACT Government’s policing policy and the impact of policing activities on diverse communities to be assessed. In this regard, the day-to-day realities of community policing have a significant bearing on the extent to which the ACT can achieve a number of ambitious policy aims, including:
 - The ACT’s Reducing Recidivism Plan;
 - Raising the minimum age of criminal responsibility in the ACT, including implementation of therapeutic diversionary response; and
 - Addressing the over representation of Aboriginal and Torres Strait Islander people in the justice system

⁹ *Agreement between the ACT Minister for Police and Emergency Services, Australian Federal Police Commissioner, and the Chief Police Officer for the ACT for the provision of policing services to the Australian Capital Territory 2021-2022* (‘Agreement’), 17.

¹⁰ See, for example, clause 6.8 of the Agreement which anticipates timely advice to the Minister on matters having a significant media or other impact on ACT Government, subject to operational requirements.

16. Rather than seek to involve itself in operational matters, which the Commission acknowledges would be inappropriate, greater availability of data ought to support the ACT Government to meaningfully assess resources required to support ACTP in pursuing these objectives, as well as identifying positive outcomes and programs that ought to be celebrated, researched or further resourced. To this end, greater investment and reporting against resourcing is necessary to better inform ACT policing and broader justice policy.

Operational capacity affecting performance and need for transparent funding arrangements

17. In the latest reporting year, ACTP are noted as having the lowest local operational capacity per capita in Australia¹¹ According to the Productivity Commission's Report on Government Services for 2022, in 2020-21 the ACT has had the lowest number of operational staff per 100,000 people at 219 (relative, for example, to 244 operational officers per 100,000 population in NSW and a national average of 284 per 100,000).¹² The ACTP has also, during the same period, recorded the lowest public satisfaction rate across the country for people who directly engage with police at 77.6%; the general public satisfaction rate – only a fraction above the national average – was 80.8%.¹³ ACTP's nationally lowest public satisfaction rating follows from an ongoing trend, since 2014-15, of ACTP consistently recording lower satisfaction rates annually for people directly engaging with Police.¹⁴ The SAPR Report similarly noted a lack of faith in the ACT criminal justice system on the part of victims of sexual violence offences, which appears to reflect the ACT's nationally lowest satisfaction rate for police engagement, and the decline in reports for certain offence types, including domestic, family and sexual violence.
18. The issue of operational capacity also relates to a gap in the Agreement and broader Arrangement, neither of which acknowledge domestic, family and sexual violence as a core part of policing business. For instance, current police funding models (such as the annual funding breakdown specified in the Agreement, and the new Police Services Model), has not particularised allocated funding to specific areas of ACTP, including domestic, family and sexual violence. The lack of transparent and particularised funding creates a barrier to understanding gaps in operational need, and opportunities for investment in future resourcing. This is especially of concern to the Commission as ACTP data shows nearly half of all assault offences in the ACT are domestic and family violence related (2020-21),¹⁵ there has been a general trend of increasing reports for domestic, family and sexual violence since around 2014,¹⁶ and yet there has been a lack of transparent investment of allocated funding to those relevant areas in ACTP. Accordingly, we suggest that clear and transparent funding arrangements, which address outcomes relative to their funding, merit consideration as a means to maximise operational capacity and boost policing performance in the ACT.

¹¹ Productivity Commission, *Report on Government Services 2022 – Part C – Section 6A* (Report, January 2022) <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2022/justice/police-services>>

¹² Ibid, Section 6A.2.

¹³ Ibid, Section 6A.3.

¹⁴ Ibid.

¹⁵ ACT Policing, *Annual Report 2020-2021*, 32 (Figure 4)

<<https://www.police.act.gov.au/sites/default/files/Publications/actp-ar-2020-2021.pdf>>

¹⁶ ¹⁶ ACT Policing, *Annual Report 2020-2021*, 31 (Figure 4.1L Offences reported against the person)

Increased resourcing for SACAT and the FVU

19. As noted above, there is a strong need to incorporate transparent funding models that identify domestic, family and sexual violence as a core area of policing business in the ACT. In addition to this, the Commission considers that there is also a growing need to increase allocated resourcing to the Sexual Assault and Child Abuse Team (SACAT) and Family Violence Unit (FVU), in line with the acknowledgement of such acts of violence being a core part of policing business.
20. The SAPR Report notes several recommendations that have direct resource implications for areas of Policing that respond to sexual violence, noting the intersection between sexual and domestic violence in many cases. Recommendation 14 of the SAPR report is of particular significance in relation to resourcing sexual violence and identifying it as a strategic crime type to be reflected in the Australian Federal Police (AFP) Corporate Plan.¹⁷

Training

21. Part of this recommendation acknowledges that ACTP should support SACAT to conduct a review of the current training framework for both specialist SACAT investigators and all other community facing ACTP capabilities as they apply to sexual assault and child abuse investigations.
22. The SAPR Report also recommends the funding, design and delivery of externally provided specialist training to SACAT officers on an annual basis in relation to the conduct of effective Evidence in Chief (EIC) Interviews with vulnerable witnesses including children, young people, people with disabilities, Aboriginal and Torres Strait Islander people. This recommendation supports the existing performance measures in the Agreement relating to supporting the judicial process by obtaining the best evidence from vulnerable witnesses in the EIC Interview process. Undoubtedly, this would likely also contribute to performance outcomes in community engagement and satisfaction with police in relation to victims of crime. Recommendation 14 further extrapolates other training considerations that have resourcing implications.

Recruitment

23. As ACTP has had the lowest number of operational staff per 100,000 people in Australia, consideration should be given to direct investment in the recruitment of staff so that operational capacity can be increased proportionally. There is a real need that any investment in staff resourcing provides for direct allocation to specialist teams (i.e., SACAT and the FVU) to directly increase their operational capacity considering the concerns raised above by the Commission in these areas. By way of example, the SAPR report recommended that ACTP review its policies for recruitment of SACAT officers, to address a lack of diversity in staff and thereby help realise a victim survivor's right to elect the gender of the interviewing officer. To this end, the SAPR Report recommended increasing the number of women employed in SACAT, including women in senior roles and employing Aboriginal and Torres Strait Islander officers.¹⁸

¹⁷ SAPR Report, 7, 66.

¹⁸ SAPR Report, 7, 64-66.

Resource Reporting

24. In line with the Commission's recommendations to increase transparency around allocation of resources, we further recommend that Schedule 6 of the Agreement be amended to include reporting on the breakdown of operational staff per discrete business unit in ACTP, to show the distribution of operational staff across ACTP as a whole. This will provide a mechanism through which the ACT Government can understand relative gaps in operational need based on staff deployment within ACTP.

Performance and Reporting

Performance measures - Shared ACT Government Outcomes

Decline of domestic, family and sexual violence reporting

25. The Commission is concerned that current ACTP arrangements can negatively impact outcomes for victims of crime in the ACT community, particularly in relation to domestic, family and sexual violence offences.
26. ACTP data shows domestic, family and sexual violence reports have steadily increased since around 2014-15,¹⁹ which aligns with broader national trends reflecting a growing societal awareness and understanding of these forms of violence. Since 2019-20, however, ACTP data has traced a sustained decline in reports being made in respect of domestic, family and sexual violence. This uncharacteristic trend has raised concern within the Commission, given that frontline and community services (including Victim Support ACT) have, in the same period, reported increased demand from clients.²⁰ The trend showing increased support-seeking behaviour to frontline services is, for example, congruous in relation to further national trends evidenced by ABS data. In relation to rates of sexual assault victimisation for persons over 15 years of age, national data reported by police shows that there has been an increase of more than 30 per cent between 2010 and 2018.²¹ This is consistent with the broader ACT specific trend of domestic, family and sexual violence steadily increasing since around 2014-15. The recent '*Listen. Take action to prevent, believe and heal*' report by the Sexual Assault Prevention and Response Steering Committee ('the SAPR Report'), published in December 2021, has drawn on available data to further show that sexual violence offences are under-reported, under-

¹⁹ ACT Policing, *Annual Report 2020-2021*, 31 (Figure 4.1L Offences reported against the person)

<<https://www.police.act.gov.au/sites/default/files/Publications/actp-ar-2020-2021.pdf>>

²⁰ In the 2020-21 financial year, nearly two thirds of offences reported to VSACT related to domestic, family or sexual violence. The Victims of Crime Commissioner's client group has consistently grown annually, and the increase in demand for services in 2020-21 were driven by a spike in clients reporting safety concerns associated with COVID movement restrictions, including a growing proportion of VSACT clients seeking support in relation to domestic, family and sexual violence.

²¹ Australian Institute of Health and Welfare, *Sexual Assault in Australia* (Report, August 2020), 1

<<https://www.aihw.gov.au/getmedia/0375553f-0395-46cc-9574-d54c74fa601a/aihw-fdv-5.pdf.aspx?inline=true>>

charged and under prosecuted in the ACT.²² For example, in 2020, less than three percent of finalised police investigations into sexual violence resulted in charges being laid.²³

27. Reliance on performance measures and reporting frameworks built around reduction in reporting of crimes cannot, in our experience, provide a sufficiently meaningful measure of ACTP performance. The absence of such information presents an intractable barrier to assessing the underlying causes of the recent and uncharacteristic decline in reporting of domestic, family and sexual violence, and the historical decline in reported domestic, family and sexual violence offences resulting in legal action. By failing to gather robust data assessing such factors and trends, the existing police accountability framework in our view can challenge, rather than support, efforts to advocate for evidence-based reforms that meet the needs of victims of crime and the broader community.

Preventing and reducing crime targets may conflate a 'true' versus 'perceived' reduction in crime

28. To assess an overall reduction in crime and recidivism, there is a strong need to understand the underlying causes and stages of attrition, and to monitor this on a regular basis through ACTP data. There is a concern that the lack of effective data collection may limit the extent to which the ACT can identify causes of attrition and assess a true reduction in crime and recidivism for certain classes of offending, namely, domestic, family and sexual violence. As is noted below – in the wide-scale audit of Queensland's criminal justice data, including Queensland Policing data – the presentation of policing data often involves a risk that it may appear to infer a reduction in the crime rate. Without an understanding of attrition for certain crime types, performance measures around crime reduction may obscure other explanations underpinning a decline in reports. This risk, in our view, warrants careful attention in examining and designing performance measures in the Agreement that relate to crime reduction targets, to ensure such targets are underpinned by transparent data.
29. For instance, ACTP has reported a steady increase in sexual assault matters reported or made known to ACTP in recent years, with matters increasing from 385 in 2014 to 614 in 2019.²⁴ However, since 2019, there has been a decline in the number of reports of sexual assault. A similar trend has been observed in relation to domestic and family violence. In relation to sexual violence particularly, there has been a further reduction in the proportion of reports that result in charges being laid. The recent drop in total number of offences is not congruous with the broader experience of community services responding to reports of such violence.
30. On the data that is available from ACTP, a substantial number of ACT victim-survivors withdraw their reports of sexual assault after reporting to police. The most common outcome for a sexual assault reported to police in the ACT is that the complaint will be either *withdrawn*, deemed *unfounded* or remain *unsolved*. In the ACT, one in five sexual assaults reported to police in 2017 were rejected as 'baseless' (four times the proportion rejected in 2015). The ACT has the equal lowest proportion of

²² Sexual Assault Prevention and Response Reform Program Steering Committee, *Listen. Take action to prevent, believe and heal* (Final Report, 6 December 2021) ('SAPR Report')

<https://www.communityservices.act.gov.au/_data/assets/pdf_file/0006/1915332/CSD_SAPR_approved_W_CAG_plus.pdf>

²³ Ibid, 35 (Table 2).

²⁴ ACT Policing Crime Statistics, 'Table 1: ACT - Offences and other activities (from PROMIS, Autocite and ACT Policing Fatal Register as at 1 February 2022), <<https://policenews.act.gov.au/crime-statistics-and-data/crime-statistics>>

cases leading to legal action in Australia, shared with NSW. The ACT has never charged a majority of sexual assault offences reported in a calendar year. The last five years of sexual assault reports has seen the highest proportion of reports not resulting in legal action. This is despite the last five years seeing an overall increase in reports of sexual violence being made.

31. Police data, available via PROMIS, does not provide any clarity about the stage at which a complaint is withdrawn or, the reason a complaint is withdrawn. Given the lack of visibility around this type of attrition, systemic review is warranted to understand the reasons complaints are withdrawn, and at what point in the investigative process. This difficulty is the subject of **Recommendation 14(f)** in the SAPR Report, which recommends the implementation of procedures around decisions to not charge an offence. As a consequence, we suggest that a transparent review of ACTP data is necessary in considering any new or existing ACTP performance measures for crime reduction.
32. As foreshadowed, this analysis of policing data raises a significant concern over incorrect conclusions being drawn from a crime rates perspective. In the widescale audit of criminal justice data in Queensland,²⁵ the auditors found there were three main areas at risk of data error or manipulation in the Queensland Police Force: these were, reducing the rate of reported offences, inflating the clearance rate of offences, or reducing the severity of offences.²⁶ The auditors found 22 per cent of all occurrence reports with reportable offences recorded in the Queensland Police Records Information Management Exchange system, were incomplete, inaccurate or both.²⁷ In addition, the auditors found that police were incorrectly changing the status of some reports to reduce the overall crime rate.²⁸
33. The availability of robust data that can measure the reasons for attrition will support performance indicators that measure the reduction of crime and recidivism. Without those additional data measures being available, the performance indicators are, at best, an underestimate of actual crime with no option for systemic oversight and accountability of unexplained attrition levels. This is particularly alarming for victims of crime reporting domestic, family and sexual violence – where attrition levels are, comparative to other crime types, substantially high.
34. In line with this feedback, the SAPR Report recommended that the ACT Government commission a Sexual Violence Data Collection Framework and embed a requirement for compliance with this framework in service funding agreements (**Recommendation 10**). This recommendation ought to be contemplated in future Agreements, and to be considered as part of performance measures for data compliance and reporting. Due to the paucity of granular data, the SAPR Report further recommended the establishment of an independent cross-agency taskforce to undertake a review of sexual assault cases reported to ACTP that did not progress to charge (**Recommendation 15**).

Performance indicators on proven court outcomes skew ACTP focus

35. Current performance measures regarding the percentage of cases proven in court is a concern for the Commission, because this measure focuses on variables that are outside the functions of ACTP and may create reluctance in ACTP to charge offences which have been historically viewed as difficult to

²⁵Queensland Audit Office, *Criminal justice system – reliability and integration of data* (Report, April 2017) <https://www.qao.qld.gov.au/sites/default/files/reports/integration_and_reliability_of_data.pdf>

²⁶ Ibid, 16.

²⁷ Ibid, 3.

²⁸ Ibid, 37.

prove. This concern particularly arises in cases that relate to offending that is most often committed in private – such as domestic, family and sexual violence. Given these concerns, the Commission suggests that more appropriate targets to measure the provision of effective and efficient support for the judicial process may relate to:

- i) The duration of investigation from offence report to an offence being charged – this is relevant in ensuring efficient and timely access to justice (for both a victim of crime and accused person), as delays in investigation and charging can, and have, prejudiced court outcomes.²⁹
- ii) The percentage of charges dropped, and percentage of charges laid by the Director of Public Prosecutions – this is relevant to the extent to which ACTP may be perceived to determining appropriate charges in a relevant case, which links to the strategy of delivering high standard briefs of evidence.

ACTP Operational Outcomes – Key Performance Indicators

Ensuring all ACTP work is reflected in performance measures

36. The Commission welcomes the proposal in the Information Paper (at p.13) that future performance measures are intended to build on existing measures that focus on referring or diverting people from the criminal justice system. Commissioners and staff are acutely aware of the degree to which ACTP officers undertake roles beyond the detection and investigation of criminal offences. We appreciate, in particular, that a significant share of ACTP officers' callouts entail time-consuming responses to individuals experiencing mental health conditions, intoxication or interpersonal disputes, including in combination. As we have noted above, these duties are intrinsically linked to the government's duty under the HR Act to protect individual's rights from interference by third parties – and the delicate balancing of interests this requires.
37. To this end, we consider it important that any new performance measures are crafted in such a way as to capture the full spectrum of work undertaken by ACTP officers. We further note that the ACT Government has flagged intended reforms and an ambitious policy agenda (as alluded to above) that, if implemented, will significantly increase the extent to which police officers are called on to respond to complex social issues that do not strictly involve the commission of a criminal offence. Such 'proactive policing', as envisaged by the new PSM, is likely to expand the responsibilities of ACTP officers, including the skills and partner engagement necessary to perform those roles. The ACT Government's recent Mental Health Support Package, the Police, Ambulance and Clinician Early Response (PACER) initiative, commenced in 2019, for example has been funded for four years from 2021 and cooperation in a similar multidisciplinary structure may be a feature of the ACT's implementation of an increased minimum age of criminal responsibility. Consequently, the Commission supports any future ACTP performance measure framework being developed with such initiatives in mind with the intention that any reporting complement the evaluation of future pilot programs and implementation of new policy.

²⁹ See, for example, Blake Foden 'Anam Haque avoids jail for supplying drugs to children after 'unreasonable delay', *Canberra Times* (Online article, 2 February 2022), <<https://www.canberratimes.com.au/story/7602633/dealer-who-supplied-drugs-to-children-dodges-jail-because-of-police-delay/?cs=14329>>

Charter of Rights for Victims of Crime

38. The Commission recommends that ACTP key performance indicators take into account the Charter of Rights for Victims of Crime as a core operational outcome for ACTP. The Charter legislates a complaints mechanism with an independent conciliation process for victims of crime to seek an appropriate resolution. Given the new statutory framework which places statutory obligations on criminal justice agencies, including ACTP, it is appropriate to incorporate performance measures that are relevant to the operation of the Charter.
39. The Commission therefore proposes that any new performance measures seek to include the following:
- i) The proportion of victims rights complaints successfully conciliated.
 - ii) The proportion of victims rights complaints raised with ACTP resolved (from the victim of crime's perspective).
40. Measures, such as those enumerated above, will assist ACTP in measuring community confidence in the context of the new legislative framework that has enshrined specific rights for victims of crime. Further, the existence of performance measures in relation to the Charter will allow ACTP to regularly review the Charter from an operational and resourcing perspective.

Reporting

Annual reporting on human rights

41. The present Agreement requires the ACT Chief Police Officer (CPO) to provide an annual report to the MPES about the provision of policing services.³⁰ Until 2014-2015, ACTP annual reports previously included information addressing implementation strategies and progress in incorporating human rights standards under the *Human Rights Act 2004* within its operations.³¹ The Commission strongly recommends that this practice be reinstated, and formalised in the Agreement. Such reporting would align with existing statutory requirements that mandate reporting on specified human rights practices across whole of government.³² Though this reporting is now collated across Whole of Government by the ACT Justice and Community Safety Directorate (JACSD) and presented in that directorate's annual report, it appears that this reporting does not address human rights practices implemented by ACTP.
42. As noted above, police officers are, when exercising functions under Territory laws, deemed to be public authorities under the HR Act. We appreciate that ACTP is not, nor can it – as an entity – be, required by territory legislation to report on implementation strategies and progress in incorporating human rights standards under the HR Act into all aspects of their operations. Instead, the Agreement presently requires that, when preparing annual reports, the CPO to adhere to the timelines and processes identified in the ACT Government (Annual Reports) Notice for the relevant year. Required content, however, is specified in the Agreement; including outcomes achieved against performance

³⁰ Policing Agreement, cl 16.1.

³¹ See [ACT Policing Annual Report 2013-2014](#), 71.

³² *Annual Reports (Government Agencies) Act 2004*, s 6(2); *Annual Reports (Government Agencies) Directions 2021*, Part 5.

measures and resources employed, levels of crime reported, and other matters as specified by the MPES.

43. As also noted above, the exercise of police functions and powers, by their nature, often limit a wide range of human rights, including rights to liberty, freedom of movement, privacy and fair trial. Insofar as police officers are authorised on behalf of the Territory executive to exercise its monopoly on the legitimate use of force, community policing can, absent appropriate support, operational planning, policy and training, give rise to unreasonable and significant limitations of individuals' rights. The Commission therefore considers it important that the Agreement contemplate obligations in respect of reporting about step taken by ACTP to prepare and support police officers in the execution of their public authority duties, include for example the adoption of a human rights policy and regular human rights training for recruits on induction and regularly.
44. Such obligations should, in our submission, substantially correspond to those outlined in Part 5 of the *Annual Reports (Government Agencies) Directions 2021* to the extent applicable (eg reviews of internal policies for compatibility with human rights, litigation involving human rights arguments, and education and training of staff on human rights principles). The Commission is aware of litigation in at least two matters before the ACT Supreme Court or ACT Court of Appeal in recent years, involving police officers or the scope of police powers, that have advanced arguments about the Human Rights Act³³ These finalised matters represent missed opportunities for ACTP to contribute to dialogue about the application of human rights standards in the ACT and, in doing so, enhance public trust and confidence in its community policing services. In particular, annual reporting on human rights standards would serve to highlight the initiative regularly demonstrated by ACTP's Legislation and Policy team in liaising with the Commission about various policy and legislative proposals during early stages of their development.³⁴
45. The need for human rights reporting across all government agencies was emphasised in the first review of the HR Act in May 2009 as a means of supporting longitudinal study of development of a human rights culture within the ACT.³⁵ Lack of meaningful information and reporting on human rights matters within ACT Government has also been more recently criticised by the ACT Auditor-General.³⁶ Such reporting would, in our view, usefully strengthen consistency with whole of government practice and align with the objectives of the ACT Government Wellbeing framework, which expressly includes, as an indicator, the proportion of adults who have high confidence that the ACT Government respects and protects human rights, as well as considers human rights in decision-making.³⁷

³³ *Andrews v Thomson* [2018] ACTCA 53; *Johnson v Commonwealth of Australia and Others* (SC/17/2020) as discussed in ACT Human Rights Commission, Annual Report 2020-21, 25.

³⁴ See, for more information about ACTP collaboration with the Commission, above 1, 3.

³⁵ ACT Human Rights Act Research Project (Australian National University), *The Human Rights Act 2004 (ACT): The first five years of operation – A report to the ACT Department of Justice And Community Safety* (Report, May 2009), 11 <https://justice.act.gov.au/sites/default/files/2019-08/report_HumanRightsAct_5YearReview_ANU_2009.pdf>

³⁶ ACT Auditor-General, *Recognition and implementation of obligations under the Human Rights Act 2004 – Report No.2/2019* (Report, February 2019), 38 <https://www.audit.act.gov.au/data/assets/pdf_file/0018/1322460/Report-No-2-of-2019-Recognition-and-implementation-of-obligations-under-the-HRA-2004.pdf>

³⁷ ACT Wellbeing Framework, 'Human rights' <<https://www.act.gov.au/wellbeing/explore-wellbeing-data/governance-and-institutions/human-rights>>

46. To these ends, we recommend that negotiations specifically explore the inclusion of information about how ACTP has incorporated human rights standards into all aspects of their operations, as required of other agencies exercising functions under Territory laws. As an alternative, we recommend the Minister for Police and Emergency Services exercise his existing discretion under the Agreement to specify that ACTP describe in its annual report steps taken as an organisation to support staff to realise human rights standards in the exercise of territory functions (eg adoption of a human rights policy, training and guidance about human rights principles in police functions etc.).

Limited capability to present disaggregated data

47. The Commission remains concerned that the configuration of the existing PROMIS has been consistently cited as an obstacle to greater collection of disaggregated data by ACTP. The capture of such data provides an important safeguard against arbitrary or disproportionate application of police powers, operational tools and/or disruption activities. It is therefore critical that the ACT Government participate in and directly inform the development of the AFP's Investigation Management System (IMS) to ensure it is fit-for-purpose in a human rights jurisdiction and aligns with community and government expectations.
48. In our submission to the Standing Committee's Inquiry, the Commission emphasised, among other issues, our ongoing concerns around the adequacy of data collection and reporting, especially regarding the lack of disaggregated data about police interaction with people with diverse needs and backgrounds. This suggestion was subsequently adopted by the Standing Committee in its report, which proposed at Recommendation 9: "[t]hat the Minister take carriage and provide to the assembly improved data collection on contact information with cultural and disability groups and their interaction with the police. This should include the types of people police are dealing with to enhance Human Rights protection."³⁸
49. The ACT Government response to the Standing Committee's report, published in March 2021, accepted this recommendation in principle. The response noted that the Minister for Policing and Emergency Services will work with ACTP to improve the level of reporting around the interaction police have with marginalised cohorts and diverse population groups. However, due to the way the current PROMIS is configured, the response noted challenges and limitations to updating the system to allow for additional information to be recorded *in a searchable format*. While we welcome that the new IMS is presently under development and appears to have been budgeted for, the extent to which this system will provide greater data on police interactions with marginalised groups and diverse communities (and so facilitate oversight and identify systemic issues that affect our client group) remains unclear.
50. Our concern regarding the limited availability of disaggregated data relates not only to the absence of data available regarding police interactions with diverse cohorts but also to the level of detail available regarding uses of force or the implementation of new policing technologies as they are trialled and adopted. ACTP has, for example, previously suggested in discussions with the Commission that existing

³⁸ Standing Committee on Justice and Community Safety (Ninth ACT Legislative Assembly), *Inquiry in the form of an evaluation of current ACT Policing arrangements* (Final Report, September 2020), <https://www.parliament.act.gov.au/_data/assets/pdf_file/0004/1634881/JACS-Report-9-Inquiry-into-the-form-of-an-evaluation-of-current-ACT-Policing-arrangements.pdf>

system provides limited ability to distinguish between *degrees* of force used; that is, to distinguish in reporting data between instances of, for example, a conducted energy weapon (CEW) being drawn, aimed or discharged. As each of these actions appropriately qualify as a use of force, as defined in the AFP Commissioner's Order 3, their being consolidated in the same measure risks obscuring the context of any emerging trends regarding the use of firearms, CEWs, chemical agents by police.

51. By way of example, in 2017-18, ACTP reported a significant increase (+342.2%) in use of force reports related to 199 reported uses of CEWs following their increased distribution to ACTP officers in accordance with a \$5.3m commitment in the 2017-18 ACT Budget.³⁹ Although this dramatic increase coincided with ten unauthorised discharges of a CEW owing to function tests performed at the commencement of shifts, the remaining 189 uses of force cannot be distinguished between drawing, aiming and discharge. This observation applies equally to the 61.4% increase in use of CEWs in 2019-20.⁴⁰ Although reported use of CEWs subsequently decreased by 17.3% in 2020-21,⁴¹ on the published data, it is presently impossible to meaningfully gauge whether CEWs any trends in the extent to which CEWs have been discharged against a person.
52. Since October 2018, the Commission has supported ACTP and the JACSD by providing advice regarding human rights safeguards that ought to underlie police use of body-worn cameras (BWCs). The Commission's advice has consistently highlighted the need for annual reporting to encompass the number of complaints related to the use of BWCs. In its most recent annual report, ACTP has reported that the rollout of body-worn cameras has had a noted effect on reducing behavioural escalations and has precipitated a considerable reduction in the time taken to assess use of force complaints made by members of the public.⁴² However, at present, there is insufficient information or data available that would enable these statements to be interrogated. In addition, it is unclear whether the existing configuration of PROMIS is capable of categorising complaints that relate to particular activities (eg use or misuse of BWCs by police).
53. Commitment to the ACT's human rights framework depends on sufficient information being published to allow identification of policing measures or strategies that disclose disproportionate consequences relative to their operational objectives. Indeed, we have previously noted in our appearance before the Standing Committee in June 2020 that a trend toward predictive policing (as envisaged by the Information Paper) carries with it some risk of increased incarceration rates for marginal or diverse groups within our community.⁴³ Given the current lack of jurisdiction for the Commission to handle complaints about ACTP under the *Discrimination Act 1991*, complaints data is not presently available that would enable an indirect measurement of whether such risks are being realised under the new

³⁹ ACT Government, 'Better emergency and legal services for Canberra' (Media Release, 6 June 2017) <https://www.treasury.act.gov.au/data/assets/pdf_file/0003/1069518/Better-emergency-and-legal-services-for-Canberra.pdf>

⁴⁰ ACT Policing, *Annual Report 2019-2020*, 79 <<https://www.police.act.gov.au/sites/default/files/Publications/actp-ar-2019-2020.pdf>>

⁴¹ ACT Policing, *Annual Report 2020-2021*, 75 <<https://www.police.act.gov.au/sites/default/files/Publications/actp-ar-2020-2021.pdf>>

⁴² *Ibid*, 20.

⁴³ Ms Karen Toohey (ACT Discrimination, Health Services, Disability and Community Services Commissioner), appearing before Standing Committee on Justice and Community Safety (Ninth ACT Legislative Assembly), *Inquiry in the form of an evaluation of current ACT Policing arrangements* (Transcript of Hearing, 23 June 2020), 26 <<https://www.hansard.act.gov.au/hansard/2017/comms/justice27a.pdf>>

Police Services Model (PSM). Such reporting is even more imperative in the context of the new PSM, which foregrounds the concept of disruption. Such disruption risks, for example, the over policing of specific cohorts and diverse communities, including Aboriginal and Torres Strait Islander peoples, those with disability or mental health conditions, young people and those from culturally and linguistically diverse backgrounds.

54. The Commission recognises that there may be situations in which the collection of personal information may be inappropriate, unreasonable or limited by applicable privacy legislation. Although we maintain that such information should be collected with an individual's consent wherever possible and so may not fully reflect the extent of interaction with members of diverse communities, the accountability value of gathering and reporting such demographic data nevertheless merits consideration. Moreover, such considerations are not insurmountable; the Commission has previously recommended piloting a receipting scheme in the ACT which would provide an individual with the reason they were stopped by police.⁴⁴ An approach of this kind, which was trialled in Victoria in 2015,⁴⁵ would provide assurance to community members that they were not stopped arbitrarily and may present scope for individuals to later register their interaction and demographic data with an independent third party. In this manner, there are a number of approaches to data collection that may be explored to increase police accountability and, with it, positive relationships and trust within the community.
55. Accordingly, we strongly recommend the ACT Government liaise with ACTP to play a proactive role in informing the capability of the new IMS to be deployed by ACTP in the provision of community services. It is essential that collection of data required to meaningfully inform legislative and policy reform is not dictated by the capability of any new IMS without input from the ACT Government and community.

⁴⁴ Above 1, [40].

⁴⁵ Victoria Police, 'Receipting proof of concept' <<https://www.police.vic.gov.au/receipting-proof-concept>>