

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

INTERIM GOVERNMENT RESPONSE

**FINAL REPORT OF THE ACT BOARD OF INQUIRY - CRIMINAL JUSTICE SYSTEM
WALTER SOFRONOFF KC 31 JULY 2023**

**Presented by
Andrew Barr MLA
Chief Minister**

**Shane Rattenbury MLA
Attorney-General**

7 August 2023

Recommendations	Government Position
<p>Recommendation 1</p> <p>I recommend that in consultation with the ODPP, the ACTP formulate a policy to define the threshold to charge and the considerations which should inform a police officer’s application of the threshold to a given case.</p> <p>I recommend that the ACTP implement training to ensure a consistent understanding among police officers about the threshold to charge and how it should be applied to evidence gathered during investigation. This training should be provided periodically.</p>	<p>Agree</p> <p>ACT Policing (ACTP) and the Office of the Director of Public Prosecutions (ODPP) will work together to clarify the threshold for charge with assistance, as required, from the Government.</p>
<p>Recommendation 2</p> <p>I recommend that consideration be given by policy makers and subject matter experts to amending section 16A(3) and (4) of the Victims of Crime Act.</p> <p>Section 16A(3) should include not just ‘the investigation’ but also ‘the matter generally’.</p> <p>Section 16A(4) should be amended as follows:</p> <p>Charge in the status of an investigation, for an offence, includes <u>when police decide to-</u></p> <ul style="list-style-type: none"> (a) a person being charged charge a person with the offence; or (b) issue a warrant being issued for the arrest of a person accused of committing the offence. 	<p>Agree</p> <p>The Government agrees to consider amending the <i>Victims of Crime Act 1994</i> and will work closely with stakeholders including the Victims of Crime Commissioner, ACTP and ODPP on this policy work.</p>
<p>Recommendation 3</p> <p>I recommend that the ACTP devise and implement governance material relating to the requirements in Parts 4.3 and 4.4 of the Evidence (Miscellaneous Provisions) Act. The governance material should outline how counselling notes must be stored within ACTP and when counselling notes can be disclosed.</p> <p>I recommend that the ACTP implement training to all officers on the governance material and that this training should be provided periodically.</p>	<p>Agree</p> <p>ACTP will implement this recommendation with assistance, as required, from the Government.</p>

<p>Recommendation 4</p> <p>I recommend that, in consultation with the ODPP, the ACTP amend its governance material on the brief adjudication process to devise a more consistent approach to the compiling of briefs of evidence.</p> <p>I recommend that the ACTP governance should be amended to incorporate the requirements in the Brief of Evidence Marking Guide.</p> <p>I recommend that the ACTP implement refresher training to all officers, including senior officers, about the adjudication process and its purpose. This training should be provided periodically.</p>	<p>Agree</p> <p>ACTP will implement this recommendation in consultation with ODPP and with assistance, as required, from the Government.</p> <p>The training proposed by the recommendation will be provided to all relevant ACTP officers, including senior officers.</p>
<p>Recommendation 5</p> <p>I recommend that consideration be given by the government, in consultation with criminal justice agencies, to address:</p> <ul style="list-style-type: none"> (a) whether there should be a prohibition against disclosure of protected confidences at the investigation stage of the criminal process; (b) where leave to disclose a protected confidence has not been obtained, and a protected confidence comes into the possession of a prosecutor or defence lawyer, whether there should be a prohibition against anyone reading a protected confidence; and (c) whether there should be a statutory prohibition against disclosure of protected confidences by any person who has been given lawful access to such material without the leave of the court. 	<p>Agree</p> <p>The Government agrees to consult with criminal justice agencies to consider the matters identified in this recommendation.</p> <p>The Government will consider whether further action is necessary, having regard to the outcomes of that consultation.</p>
<p>Recommendation 6</p> <p>The AFP, in consultation with the ODPP, should:</p> <ul style="list-style-type: none"> (a) modify the template used to prepare disclosure certificates so the front page of each disclosure certificate clearly identifies whether the disclosure certificate is a prosecution or defence copy; (b) provide training and/or guidance material to AFP employees (including employees working within AFP Legal) regarding how material is to be described on disclosure certificates. This training and/or guidance material should focus on ensuring descriptions clearly and accurately describe material on a disclosure certificate; 	<p>Agree</p> <p>Although, on its face, this recommendation is directed to the Australian Federal Police (AFP), ACTP will implement this recommendation in consultation with ODPP with assistance, as required, from the Government.</p>

<ul style="list-style-type: none"> (c) implement a system that allows AFP and ODPP employees to quickly and easily determine exactly what material is intended to be captured by a particular description on a disclosure certificate; (d) implement a system that allows defence lawyers to clarify what materials is captured by a particular description on a disclosure certificate; and (e) provide training/guidance to its officers on how best to prepare defence disclosure certificates. This training should focus on how to prepare this version of the disclosure certificate efficiently and in a way that minimises the risk of unintentional discrepancies between the prosecution and defence disclosure certificates. 	<p>The training and guidance proposed by the recommendation will be provided to all relevant ACTP officers.</p>
<p>Recommendation 7 I recommend that the ACTP formulate a protocol to affirm the desirability of police witnesses being available to legal representative for a defendant. The protocol should reflect:</p> <ul style="list-style-type: none"> (a) the principle that there is no property in a witness; and (b) that the allocated prosecutor / ODPP should be kept apprised of all communication between the ACTP and defence. <p>I recommend that the Collaborative Agreement should be updated reflect the protocol.</p> <p>I recommend that the ACTP develop an accompanying policy for all officers.</p>	<p>Agree in principle.</p> <p>The proposition that there is no property in a witness is uncontroversial and it is desirable for there to be a protocol and policy to give life to this proposition.</p> <p>ACTP will formulate such a protocol in consultation with ODPP with assistance, as required, from the Government. However, noting that any protocol may have operational implications for policing, the content of the protocol requires further consideration.</p>
<p>Recommendation 8 I recommend that the government, in consultation with stakeholders, enact legislation to codify the scope and content of the obligation of disclosure owed by the Prosecution in criminal proceedings.</p>	<p>Agree in principle</p> <p>The Government will work with stakeholders to examine these issues.</p>
<p>Recommendation 9 I recommend that the ODPP update the Prosecutions Policy or issue a Director’s Instruction to provide a process for recording retrial decisions. The policy or instruction should include the following:</p>	<p>Agree</p> <p>The ODPP will implement this recommendation with assistance, as required, from the Government.</p>

<ul style="list-style-type: none"> (a) the consideration required before seeking a retrial, as already set out in the Prosecution Policy; (b) who should be consulted prior to making a decision; (c) the process to request submissions or representations from the defence about the retrial considerations; (d) a procedure to record the decision and the consideration taken into account (including the weight given to particular matters where relevant); (e) the timeframe in which a decision should be made following the end of a trial without a verdict; and (f) a review process to ensure decisions are made with due consideration of all the relevant factors. 	
<p>Recommendation 10</p> <p>I recommend that the ODPP and ACTP review the Collaborative Agreement with the view to including a complaints mechanism between the agencies. The Agreement should include the following details:</p> <ul style="list-style-type: none"> (a) how complaints can be raised by both agencies and to whom; (b) who in the agency can handle complaints, with reference to the seniority of the complainant; (c) methods for resolving complaints including dispute resolution and external investigation where required; (d) further options for escalation if the initial action does not sufficiently resolve the complaint; and (e) record keeping procedures. 	<p>Agree</p> <p>ACTP and the ODPP will work together to implement this recommendation with assistance, as required, from the Government.</p>