



### Witness Assistance Service Referral Guidelines

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#### Background

1. The Commonwealth Director of Public Prosecutions (CDPP) commenced a Witness Assistance Service (WAS) Pilot Project in November 2008 with the employment of one social worker in the role of Witness Assistance Officer (WAO). The CDPP WAS consists of a small team of social workers located in both the Sydney and Melbourne office and attached to the Human Exploitation and Border Protection Practice (HEBP) Group. The CDPP WAS aim to work with the most vulnerable victims and witnesses and assists the office to meet its obligations towards them as set out in the Victims of Crime and Prosecution policies.
2. The resources of the WAS are limited and there is therefore a limit to the number of victims/witnesses who can be offered and provided with a direct service. The following referral guidelines apply across the CDPP and aim to ensure that assistance is offered and provided to those victims considered most vulnerable and in need. In particular the guidelines serve to:
  - provide referral criteria for vulnerable victims
  - identify who can refer matters
  - set a 21 day time period for the referral of Category A matters
  - outline the steps in the referral process
  - provide information about the specific services that may be provided by the WAO once a referral has been made and the obligations this places upon legal staff.

#### Who may refer matters

3. WAS referrals may be made by all CDPP lawyers.

#### 21 day referral period

4. Lawyers should ensure that details of victims are entered into CRIMS as soon as possible and that **Category A** matters are referred to the WAS within 21 days of the matter being received by the office.

### Who should be referred

5. The CDPP Victims of Crime Policy defines a victim of crime as “an identified individual who has suffered harm as a direct result of an offence or offences committed, or apparently committed, against Commonwealth law or prosecuted by Commonwealth authorities”. ‘Harm’ includes “physical or mental injury, pregnancy, emotional suffering or economic loss”.
6. Some victims may be considered vulnerable due to the presence of factors that may act as barriers to them in their role as a witness. Such factors may relate to the nature of the offending about which the victim is required to give evidence (for example, sexual offences). Other factors may relate to the personal circumstances of the victim concerned (for example, persons with a disability or young children). The following recommendations aim to assist in the identification of those who may be considered most vulnerable and in need.

#### **Category A: Identifiable victims of the following offences should be referred to the WAS in every case:**

- Any child (person under 18 years of age) who is considered a victim of crime (as defined in the CDPP Victims of Crime Policy), including victims of:
  - online child sex exploitation offences including grooming, procuring and engaging in sexual activity
  - child sex offences outside Australia
- Any victim of slavery, servitude and forced marriage offences.
- Any direct family member of a person who has died as a result of any alleged offence; and
- Any victim suffering really serious physical or psychological harm as a result of alleged offences

#### **Category B: Identifiable victims of the following offences may be referred where appropriate:**

- human trafficking and other slavery-like offences including deceptive recruiting, forced labour and debt bondage offences
- offences involving sexual and/or violent offending (for example, sexual/violent assaults that take place on aircraft/ships)
- offences which have resulted in identifiable physical or psychological harm
- people smuggling where death or serious injury has occurred in the course of the relevant criminal conduct
- terrorism offences
- offences involving a significant financial loss to the victim (e.g. investor fraud) which has caused harm of such a nature that necessitates assistance by the WAS.
- Vulnerable witnesses involved in Commonwealth prosecutions may also be referred to the WAS – such referrals will only be accepted by the WAS where capacity allows for assistance to be provided. The presence of any known factors that may cause or contribute to the vulnerability of any witness will also be taken into account when assessing new Category B referrals to the WAS.

### How to make a referral

7. Identifiable victims who fall within category A (as described above) are a priority group for the WAS. If the File Request/Fresh Charge sheet indicates a category A identifiable victim CDPP lawyers should make a referral to the WAS within 21 days. Early referral is an important step towards ensuring that the Office meets its obligations towards victims of crime as set out in the Victims of Crime Policy and the Prosecution Policy of the Commonwealth (“Prosecution Policy”).
8. Identifiable victims within category B (as described above) should promptly be referred to the WAS as soon as relevant factors that render them vulnerable become known. If in doubt as to whether or not to refer a matter CDPP lawyers should speak to their Branch Head about seeking WAS assistance. If it is determined by the Branch Head that a WAS referral may be appropriate the CDPP lawyer should then make contact with the WAS Manager to discuss the matter and the possible WAS role. The WAS Manager may be contacted via telephone (02 9321 1182) or [WitnessAssistance.ServiceReferrals@cdpp.gov.au](mailto:WitnessAssistance.ServiceReferrals@cdpp.gov.au). The acceptance of category B referrals will in part be dependent upon the workload and capacity of the WAS.
9. In the event that the WAS is unable to accept category B referrals, CDPP lawyers will be responsible for ensuring that the Office meets its policy obligations towards such victims as set out in the Victims of Crime Policy and the Prosecution Policy. The Assistant Director and Deputy Director responsible for management of the WAS will oversee the acceptance of referrals by the WAS. This will entail consideration of the competing priorities of the WAS so as to ensure that the demand for assistance from the WAS can be met taking into account the available resources.
10. Referrals to the WAS should be made via email to the following email address: [WitnessAssistance.ServiceReferrals@cdpp.gov.au](mailto:WitnessAssistance.ServiceReferrals@cdpp.gov.au). A proforma template described as ‘Email Referral to the WAS’ is located under the national button on the ribbon in word under a tab titled “Victims of Crime”, containing all the information required to be provided at the time of referral. As much of the following information as possible should be provided to the WAS at the time of referral:
  - name of the victim concerned (in the case of child victims include names of parents/guardians)
  - contact details for the victim (e.g. phone/address)
  - if applicable, details concerning the victim’s particular vulnerability and/or relevant personal circumstances (e.g. age, intellectual/physical disability, mental health issues)
  - name of the accused
  - charge(s)
  - statement of facts
  - bail (e.g. is the accused in custody? If not, are there any bail conditions concerning the victims? e.g. that victims not be contacted?)
  - next in court date (including purpose of listing and court details)
  - informant name and contact details.

If all of the information outlined above is not available when the Category A matter is received by this office lawyers should still make a WAS referral within the 21 day period and make efforts to obtain the outstanding information from the informant and provide it to the WAS as soon as possible.

### Service provision

11. The CDPP Victims of Crime Policy identifies the types of information that victims of crime are entitled to receive upon request and guides the work of the WAOs in this area. The services and information provided to any referred vulnerable victim will also be based on their individual needs and circumstances and may include one or more of the following:
  - general information about court procedures and legal processes, for example:
    - role of the CDPP
    - role of the prosecutor/defence
    - general trial process.
  - general information about their role as a witness, for example:
    - giving evidence in court
    - any vulnerable witness provisions that may be relevant.
  - case specific information, for example:
    - charges laid
    - court dates
    - bail status
    - outcomes of court proceedings (e.g. verdicts/ sentences/ appeal proceeding).
  - WAO attendance at case conference and court
  - referral to support services (e.g. counselling services)
  - in appropriate cases, a liaison role between referred victims/witnesses and the CDPP lawyer in relation to information/support related issues
  - court familiarisation tours
  - assessing the need for any special measures
  - support before, during and after victim/ witness participation in judicial proceedings (e.g. court attendance and follow-up contact post court attendance)
  - assistance/ information concerning Victim Impact Statements.
12. It is important to note that in certain circumstances, it will be more appropriate for the CDPP lawyer or the informant to pass on certain case-specific updates to victims (e.g. a lawyer may be the most appropriate person to explain a complex legal situation or address certain legal questions/concerns raised by victims.
13. It is not the role of WAS staff to conduct plea negotiation discussions, nor should they be requested to do so. Communications with victims in relation to plea negotiations should be conducted by the

CDPP lawyer. WAS staff may play a supporting role during such discussions between CDPP lawyers and victims of crime.

14. Where WAS assistance is requested in matters being prosecuted in States or Territories other than NSW or Victoria, the actual service delivery may vary from that which may be offered to victims located in offices where WAS staff are located and will be determined on a case-by-case basis. The WAS may be able to provide the following forms of assistance:
  - updates, if requested, regarding the prosecution process (via telephone and/or in writing)
  - pre-trial contact to assess support needs
  - referrals to local support services (e.g. counselling/court support services)
  - information concerning the role of the Office and being a witness
  - telephone contact following court attendance (for debriefing purposes)
  - assistance in relation to Victim Impact Statements.
15. CDPP lawyers may also consider referring the victim to a specialist victim assistance service in that particular jurisdiction. In such cases, lawyers must gain consent from the victim concerned before sharing any personal information regarding the victim with an external agency or service.
16. If appropriate and feasible, the WAO may be able to travel to the relevant State or Territory in order to provide direct support and assistance to particularly vulnerable victims and witnesses. Such arrangements may be negotiated and arranged in consultation with the WAS Manager, the WAO and the Assistant Director responsible for management of the WAS on a case-by-case basis.

#### **Obligations following referral**

17. Once a matter has been referred to the WAS, the victim will be provided with relevant information and informed of the types of information and services that they are able or entitled to receive as the prosecution progresses. CDPP lawyers are reminded of the need to maintain contact with the WAO assigned to the matter throughout the course of legal proceedings in order to ensure that referred victims are provided with relevant information and updates in a timely manner. Where possible, court updates should be provided to the relevant WAS staff member on the same day that the matter is in court.
18. In the event that CDPP lawyers provide case-specific updates directly to victims who have been referred to the WAS or ask informants to do so, it is requested that they also inform the WAO assigned to the matter that this has occurred.