

Australian Capital Territory

Crimes (Restorative Justice) Sexual and Family Violence Offences Guidelines 2018

Disallowable Instrument DI2018-266

made under the

Crimes (Restorative Justice) Act 2004, s61 (Restorative Justice Guideline)

EXPLANATORY STATEMENT

Clause 1 Name of instrument

Clause 1 sets out the name of the disallowable instrument – the Crimes (Restorative Justice) Sexual and Family Violence Offences Guideline 2018.

Clause 2 Commencement

Clause 2 provides that the instrument commences on the phase 3 application day. Clause 4 points to the definition of phase 3 application day in the *Crimes (Restorative Justice) Act 2004* (the Act), being a day declared by the Minister on which sections 16(1) to (4) will apply. These sections provide for the application of the Act to family violence offences and sexual offences.

Clause 3 Declaration

Clause 3 states the director-general makes the guideline outlining the procedures in the Schedule about the management of restorative justice for sexual and family violence offences.

Clause 4 Definitions

Clause 4 signposts the definition of *phase 3 application day*, by reference to section 16(5) of the Act.

Schedule

Part 1 - Introduction

Part 1 of the schedule outlines the authority for the director-general to issue guidelines under section 61 of the Act. This part also outlines key functions

undertaken by the staff of the Restorative Justice Unit (RJU) as delegates of the director-general for the purpose of administering the Act.

The introduction notes that the guideline will outline how the restorative justice (RJ) process will be applied in the management of sexual and family violence offences referred to RJ.

Part 2 – Background

This part provides an explanation of the features of restorative justice, details the objects of the Act, and identifies ways in which participants' rights are safeguarded.

It also outlines how disclosures made during the course of RJ will be responded to, including reporting obligations of RJU staff.

Part 3 – Eligibility

This part explains the threshold that will generally be applied in relation to the exceptional circumstances test for referral of a sexual assault or family violence offence, prior to a plea or finding of guilt.

Part 4 – Referral

This part explains which entities can refer matters to RJ, and at what point in the criminal justice process. It notes there is scope for referral post-sentence without the offender's prior notification in limited circumstances.

Part 5 – Restorative Justice process for sexual or family violence offences

This part notes the need in referrals of sexual or family violence offences to consider power imbalances between the parties, as part of considering the suitability of the matter for RJ.

Part 6 – Quality assurance in the restorative justice process

This part refers to measures in place to protect the safety and information of participants in RJ for sexual assault and family violence offences. This includes:

- the training and supervision of RJU staff
- a more thorough initial and ongoing risk assessment
- measures to manage higher levels of risk.

Part 7 – Stage 1 Assessment of suitability

This part outlines required considerations to determine the suitability of a matter for RJ, once a referral from a referring entity has been received, and how these will be managed.

7.1 – Considering relevant policy

This part notes the alignment of RJ principles and objectives with human rights principles, the objectives of the Sexual Assault Reform Program, the Family Violence Intervention Program, and the objectives of child and youth protection services.

7.2 – Considering the nature of the offence

This part outlines considerations that are relevant for managing referrals of sexual or family violence offences including:

- the experience of vulnerable people
- identification of power imbalance
- the range of impacts sexual or family violence can have.

7.3 – Considering appropriateness of referral for RJ at current stage

This part provides guidance about factors that may satisfy the ‘exceptional circumstances’ requirement for referral of a less serious family violence offence or less serious sexual offence prior to a plea or finding of guilt.

7.4 – Considering the potential power imbalance

This part outlines requirements to address risks associated with power imbalances, potential for coercion of victims and acting in the best interests of children. It also outlines how assessment of capacity to participate in RJ will be undertaken, including where specialist supports may be needed.

7.5 – Considering the physical and psychological safety of participants

This part outlines steps that will be taken to assess safety risks, including seeking necessary information from referring entities and others. It anticipates using appropriate assessment tools, ensuring the suitability of venues for a conference to occur and careful assessment of all conference participants, including supporters.

This part also includes information about the steps to be taken to reduce risks of psychological harm to a victim, including preparation of a suitable responsibility statement by the offender.

It also outlines steps that will be taken to engage with the victim about risks prior to making a decision about the suitability of a matter for RJ.

Part 8 – Stage 2 – the conference

This part outlines measures to ensure conferences promote the rights of victims to be empowered in their own justice process. Factors that are identified include:

- the appropriate format and venue for the conference

- preparation of participants, including cultural responsiveness
- articulation of the details of the offence in accordance with the victim's needs.

Part 9 – Agreements

This part outlines how consideration of whether an RJ agreement may be appropriate will occur. It also outlines the two phased process for establishing an agreement for sexual or family violence offences.

Part 10 – Stage 3 – Post-conference

This part outlines what will happen following a conference, including de-briefing arrangements, review of the victim's safety plan and follow up contact.

Part 11 – Amending Restorative Justice agreements

This part notes that an RJ agreement can be amended if the convenor considers it is detrimental to the victim or the safety of children in their care.

Part 12 – Monitoring of agreements

This part notes measures to ensure monitoring of an agreement do not put a victim of a sexual or family violence offence at risk.

Part 13 – Content of reports to referring entities

This part outlines how the content of reports to referring entities will be prepared to protect the safety of conference participants and limit disclosure of personal information.

Part 14 – Conclusion of the restorative justice process

This part outlines steps that will be taken at the end of a RJ process, including steps to ensure the safety and wellbeing of the victim and offender.