

CHARTER OF VICTIMS RIGHTS, QUEENSLAND

SUBMISSION TO STAGE 1 OF THE REVIEW

Dr Robyn Holder
Senior Research Fellow
Griffith Criminology Institute
Griffith University

INTRODUCTION

This submission is made to Stage 1 of the Review of the Qld Charter of Victims' Rights. The submission is informed by my professional experience as a statutory victims' rights advocate from 1995 to 2011 in the ACT, and my academic experience as a researcher and educator on victims' rights. In particular, the submission is informed by recent literature reviews conducted by me as part of Griffith University teams.¹ Finally, this submission focuses on:

- the experiences of victims and their needs,
- the Charter's purpose,
- the rights within its scope, and
- how it currently operates.

THE EXPERIENCES OF VICTIMS AND THEIR NEEDS

A challenge for the Charter of Victims' Rights is that the term, 'victim', covers a very diverse range of individuals and groups. This diversity includes that:

- victims of crime can be children and adults, male and female, First Nations or not, from any ethnic or language group and whether located in urban, regional or remote situations.
- These individuals can have experienced incidents that range from robbery to sexual assault to murder. Incidents can be one-off or part of a series. Incidents of victimisation by crime can occur in situation where individuals already experience disadvantage related to personal attributes, living circumstances, or

¹ Holder, R., Bond, C. & Mitchell, E. (2025). *Literature Review: Victims' Rights, Interests and Needs Final Report* prepared for the Office of the Victims Commissioner (Qld) and Holder, R., Mitchell, E. & Wickes, R. (2025). *Rapid Literature Review on Models of Victim Advocacy and Navigation*. Griffith Criminology Institute.

have experienced unfair, inappropriate or discriminatory interactions with authorities.

- The experience of crime affects the direct victim and also their family, friends, neighbours and workmates.

Given this diversity there is understandable concern to recognise the diversity of needs arising from crime and violence. While the available research suggests some differences between these groups of victims, there is remarkable similarity. Research evidence reveal that needs range from those basic to survival (security, housing, practical requirements) to support and connection (with services, social networks) and needs that seek recognition (being acknowledged, informed, notified). The intensity of these needs can fluctuate over time and, perhaps critically, in reaction to the types of responses from social supports and formal authorities.

However, most research has examined the impact of crime and needs arising on those victimised by domestic and family violence (DFV), sexual assault and abuse (both child and adult) and homicide. This suggests that the impact of victimisation from certain types of crime such as street assault or home invasion and the needs arising are less understood. Similarly, some groups such as men, younger and older people, First Nations people and those living in regional and remote locations are less known about.

Needs also vary in relation to different systems with which people are engaged. For example, the impact of violence on the education of children and young people is not well researched but education disruptions can have significant impacts on their life outcomes. In another example, those with ready access to good quality medical and health care and who have stable and secure housing will have different recovery trajectories to those without.

Even less understood is the relationship between victims' needs and their rights. A significant problem here is that there is very little empirical research on victims' rights (almost none in Australia) whether as the focus of study or as a key variable.

THE RELATIONSHIP BETWEEN VICTIMS' RIGHTS AND NEEDS

Rights perform a number of functions in Australian society. Rights tell us how we ought to relate to each other and how we might wish to be treated by others. Rights have a powerful hold on our social and political imagination. While Australians can be cynical about the idea of rights, they provide a critical language to guide what we might expect from authorities and a means to claim and to hold those same authorities to account.

Particularly in a human rights jurisdiction such as Queensland, persons have *rights* irrespective of personal attribute and background. They are *rights-holders*.

To have a *right* suggests to ordinary members of the public that they **can rely on** something happening or not happening.

This is the first point to make about the relationship between needs and rights post-victimisation. Becoming a victim can be extraordinarily unsettling on so many levels. *Rights* provide a **stable platform** upon which a victim may stand irrespective of personal attribute and background.

Victimisation throws up many challenges to individual and group sense of security, belonging and self-worth. A further point then is that *rights* create **guardrails** to ‘hold’ people within certain expectations until such time as they may not be required or called upon. These guardrails exist – once again – irrespective of personal attribute and background. If one is afraid or distressed, then consciousness that you have rights to certain things acts to contain runaway emotion and provide something to hang on to. Further, the right to be treated with respect is not dependent on you *needing* respect. Rather, it is a fundamental duty that authorities hold towards everyone. Authorities are *duty-bearing*.

These broad points only take us so far in understanding the relationship between rights and needs. An analysis of 30 empirical studies into victims identified needs mapped the justice related concern, problem or need to a specific victim right and also to the relevant human right (Appendix 1). As there is almost no Australian research that examines if the availability of a right mitigates the identified concern or need, we can only demonstrate the association.

Notwithstanding this research silence, there is significant case law arising from the European Court of Human Rights relevant to the relationship between rights (there human rights) and identified concerns, problems or needs, particularly in relation to authorities. The circumstances giving rise to the case law relate, variously, to failures to investigate, failures to provide information, the abrogation of privacy amongst others (for a discussion, see Holder & Dearing 2024). The case law especially engages respect for human dignity, recognition & equality before the law, access to justice, protection from torture and cruel, inhuman and degrading treatment, and the right to remedy. The connection between a seemingly innocuous *need* and a broadly written *right* can be very direct.

THE CHARTER’S PURPOSE

The existing three purposes of the Victims Charter are prosaic. Do these meet ‘community expectation’? It is almost impossible to know, again due to the absence of rights-related research. However, one national study conducted in 2007 gives some ‘community expectations’. This study examined public confidence in criminal justice and asked specifically about confidence in police, criminal courts and the prison system. On the criminal courts, the study “found that Australians have more confidence in the criminal courts to have regard for defendants’ rights (70%) than victims’ rights (47%) or to deal with matters fairly (52%) (Roberts & Indermauer, 2009, p.3). The results

were replicated in similar studies in NSW (Moore, 2020). A reasonable hypothesis from these studies is that low public confidence in criminal justice stems from an assessment by respondents that victims are treated unfairly. Of course, while the proposition remains to be tested, various studies do show that the public highly values equal treatment by authorities of their fellow citizens.

In sum, I would suggest that community expectations for peoples' treatment inside criminal justice would be that:

- They are treated equally, fairly and with respect, and
- Their dignity and rights are upheld.

WHAT SHOULD BE THE CONTENT TO VICTIMS' RIGHTS?

This review should consider that there are two broad approaches to victims' rights instruments. One is written broadly and uses open language. The other is detailed with 'rights' attributed to specific agencies and to certain procedures. Examples of the former are the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and the US Federal *Crime Victims Rights Act* (2004). Examples of a more detailed instrument is the *Victims of Crime Act* (ACT) (1994) or the EU Framework Decision establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU)

Each model offers advantages and disadvantages. The more open language of the earlier documents provides considerable scope for these to be asserted. For example, 'the right to be reasonably heard in any public proceeding' (s4) in the US federal jurisdiction potentially allows for a victim to assert this in a range of proceedings. In the ACT legislation, on the other hand, the right is specified in relation to (for example) a specific procedure for a victim impact statement (s17A). The choice may revolve around assessments of legal and administrative culture.

For the United States, where there are legislated as well as constitutional rights for victims, Cassell (2017) suggests that we can now speak of core and non-core rights. He argues that included in the core are the right:

- to notice of court hearings
- to attend court hearings
- to be heard at appropriate court hearings
- to proceedings free from unreasonable delay
- to consideration of the victims' safety during the process
- to restitution.

A review of victims' rights conducted for the Victims Commissioner (England and Wales), argued that the specifics of rights could be clustered into three levels:

- *Service level rights*: comprising interaction rights, information rights and support rights. The 1985 UN Victims Declaration was the first international articulation of service level rights that defined a minimum level of fair treatment of victims by public officials but did not provide any enforcement mechanism or remedy for victims whose service rights were breached.
- *Procedural level rights*: rights to privacy and protection and access to justice processes, including investigation and trial proceedings, but not allowing victims to influence decision-making processes. Such procedural rights give the victim the opportunity to participate and be heard in court without fear of intimidation.
- *Substantive level rights*: legally enforceable rights to participation and reparation. Participatory rights include the right to make submissions to the police, prosecutors, the court and parole bodies, and to have those submissions taken into account with a view to influencing the outcome of decision-making or criminal proceedings. Such enhanced, enforceable participatory rights allow victims substantive input into the criminal justice process. Key examples include the right to make a victim impact statement; the right to consultation (for example, with the public prosecutor); and the right to a modified trial process (well beyond existing special measures) to protect vulnerable victims (Gordon and Gordon 2020, p.20).

Another key scope question is that a victim's right should be capable of being mapped to a human right. These two instruments are entirely compatible (QHRC, 2024, section 4 and 2023, pp.4-7). Why this is so important relates both to the preceding comments about *rights* being generally expected and generally about fair and equal treatment, as well as the question of compliance and enforcement (not dealt with in this submission).

Related to this relationship between victims' rights and human rights are innovations in the latter such as obligations on authorities for due diligence reporting. However, this question also related to compliance and enforcement. This is one of the most critical components to reform as "providing rights without remedies would [likely] result in the worst of consequences, such as feelings of helplessness, lack of control, and further victimisation" (Kilpatrick & Otto, 1987 quoted in Davis, et al., 2002, p.30). This is surely the most pertinent of expectations from the community: that rights are real, meaningful and enforceable.

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Appendix 1: Justice-related concern mapped to victim's right and relevant human right (N=30 studies)

Justice-related concern identified in studies	Victim's Right (Broadly identified across instruments & not exclusive)	Relevant Human Right (Broadly identified across instruments & not exclusive)
Access to justice		
To access the criminal justice system by making a complaint to police To have equal access to justice (as a person with a disability) Access to family group conferences Access to victim-offender mediation Access to restorative justice Support with decision-making and having a voice for people with a disability (including the right to an advocate) Witness assistance programs Right to lawyer or advocate Greater control during process / to be treat as an active party in the proceedings Equal rights for minority victims Recognition of laws of Indigenous peoples Greater emphasis on rights for victims of sexual violence	Right to be treated with courtesy, compassion, respect and dignity, taking into account the victim's needs Right to information about court processes & diversionary programs Right to understand & be understood Right to receive information (process, services, complaints, legal advice & assistance, protection, available procedures) Rights to safeguards in restorative justice Right to legal aid Non-discrimination Provision of aids or adjustments Right to consideration of views Right to be present	Respect for human dignity Recognition & equality before the law Access to justice Right to remedy Rights of Persons with Disabilities Cultural rights
Procedural		
To access the criminal justice system by making a complaint to police To be able to confer with prosecutor Speedy trial with prompt conclusion Watch the trial and attend public hearings Be heard at proceedings (including during plea, sentence and release) Provide victim impact statement	Right to make victim impact statement Right to make submission regarding parole Right to understand & be understood Right to interpretation & translation Right to be heard Rights of review Provision of aids or adjustments Right to inform of harm(s) Requirement to consider victim views	Fair hearing (where text "everyone") Rights in criminal proceedings (where text "everyone")

Protection		
Right to personal safety Protection of self (including appearing via video link to give evidence, where defendant cannot see victim) Protection (from further harm, during the process and from the offender) where reasonable Right to personal safety Protection from self-harm	Protection from unnecessary contact at court Right to protection (special measures) Right to protection (children)	Respect for human dignity Recognition & equality before the law Protection from torture and cruel, inhuman and degrading treatment Freedom of movement Protection of families & children Right to liberty & security of person
Privacy		
Protection of private information during discovery and refusal of defence requests during discovery Confidentiality and privacy Greater protection of privacy and confidential information (including medical reports)	Non-disclosure of personal information Right to protection of privacy	Privacy & reputation
Information		
Access to information To be informed of victim rights	Right to information about court processes, role(s) & diversionary programs	Respect for human dignity Recognition & equality before the law Access to justice
Notification		
Prompt notifications about the case, notification about hearing dates	Right to notification of investigation, major decisions, charge information, bail, hearings, court outcomes, release decisions Notification of decisions to discontinue prosecutions and review processes Right to certain information relating to detained persons Right to receive information about their case Right to register for notifications	Respect for human dignity Recognition & equality before the law Access to justice
Restitution/compensation concern		
	Right to reimbursement of expenses Right to return of property Right to decision on offender compensation Information about reparation	Right to remedy Legal proceedings for relief or remedy
Treatment		
To be treated fairly and with respect at all stages of the process, including by service providers	Right to be treated with courtesy, compassion, respect and dignity, taking into account the victim's needs Right to individual assessment	Respect for human dignity Recognition & equality before the law

To have a normal life (including right to go wherever victim wants, wear whatever victim wants, etc.) Understanding of how the legal system is re-traumatising Medical care (including mental health care)	Right to understand & be understood Right to interpretation & translation Right to access support services Non-discrimination	Protection from torture and cruel, inhuman and degrading treatment Right to health services
Rights upheld		
To have procedural rights enforced To complain about treatment or lack of rights Providing victim rights to victims who have been previously found guilty of offending	May make a complaint Right to information about complaints processes Rights making a complaint Statutory rights protecting entity Reporting of implementation/compliance/ complaints Agencies must comply Victim representatives	Binding on all persons Duty of public entities to act compatible with human rights Parliamentary scrutiny Supreme Court referral Specified intervention(s) Legal proceedings for relief or remedy Commission complaint & conciliation Other statutory complaint bodies

SOURCE: Holder, Bond & Mitchell 2025, pp.60-61

