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the LGBTIQ+ community
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Victims' Commissioner
Office of the Victims' Commissioner
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By online submissions upload

17 October 2025

Dear Commissioner

Review of the Queensland Charter of Victims' Rights

We are thankful for the opportunity to make submissions to the first round of the Review of the Charter of Victims' Rights (the Charter Review).

This submission was prepared by LGBTI Legal Service (LGBTILS), a not-for-profit, peer-led community legal centre in Queensland which strives to provide access to justice and specialist legal assistance to LGBTIQ+ communities. LGBTILS also advocates for law reform and human rights in areas that impact LGBTIQ+ communities and their families.

We consent to this submission being published on the Charter Review website.

We would be happy to provide further information or clarification regarding any parts of our submission. If you would like to discuss our submissions further or to meet with our team, please contact our Director & Principal Solicitor, [REDACTED], at mail@lgbtilegalservice.org.

Yours faithfully

[REDACTED]

[REDACTED]

Director & Principal Solicitor

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Ren Shike
President

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Review of the Queensland Charter of Victims' Rights

Submission of LGBTI Legal Service

1.0 Introduction

1.1 Acknowledgement of Country

We pay our deepest respect to Aboriginal and Torres Strait Islander peoples as the traditional custodians of the lands and waters on which we work and live and acknowledge that their sovereignty has never been ceded. We welcome and celebrate Aboriginal and Torres Strait Islander peoples who identify as LGBTQIA+, Sistergirl or Brotherboy and acknowledge their ongoing struggle for visibility, inclusion and justice. We acknowledge the wisdom and strength of Aboriginal and Torres Strait Islander peoples and are committed to fostering a culture of knowledge-sharing, solidarity and support for Aboriginal and Torres Strait Islander peoples' self-determination.

1.2 Background

LGBTI Legal Service (**LGBTILS**) welcomes the opportunity to make submissions to the Review of the Queensland Charter of Victims' Rights (**the Charter Review**).

LGBTILS is a not-for-profit, specialist, peer-led community legal centre established by and for LGBTQIA+ Queenslanders. The service offers legal advice and representation services across a wide range of areas to LGBTQIA+ clients and their families. LGBTILS provides a service that is uniquely responsive to the barriers experienced by LGBTQIA+ people in accessing the legal system. LGBTILS also engages in community education and law reform that advocates for LGBTQIA+ inclusive laws and systems and for the protection of human rights in Australia.

LGBTILS was launched in 2010 by the Hon Michael Kirby. The founding committee of LGBTILS comprised highly respected LGBTQIA+ community advocates and health professionals, lawyers from both the legal assistance sector and private practice and academics from several Queensland universities. LGBTILS continues to leverage pro bono assistance to provide additional capacity and engage specialist knowledge to respond to a range of legal issues in the LGBTQIA+ community.

LGBTILS provides this submission as a key stakeholder capable of providing valuable insights and assistance in informing the first stage of the Charter Review. Guided by its experience and knowledge of the unique challenges faced by the LGBTQIA+ community, LGBTILS welcomes the opportunity to contribute to the Charter Review and provides the following submission in accordance with the focus of the first stage of consultation.

1.3 Notes on Language and Abbreviations Used in Submission

1.3.1 Use of ‘victim’ to describe people fearing, experiencing or affected by violence

This submission uses the word **victim** to describe people fearing, experiencing or affected by violence. Similarly, this submission uses the words **perpetrator** or **offender** to describe people using or threatening violence, whether or not that violence constitutes a recognised criminal or domestic violence offence. This reflects the terminology used in the majority of Queensland legislation, including the Charter of Victims’ Rights.

Where specific reference is made to victims under the *Domestic and Family Violence Act 2012* (Qld) (*Domestic Violence Act*), this submission sometimes uses the word **aggrieved** to refer to a victim and **respondent** to refer to a perpetrator or offender.

LGBTILS recognises that people fearing, experiencing or affected by violence may choose not to use terms such as ‘victim’, ‘survivor’, ‘perpetrator’, ‘offender’ and so on to narrate their own experiences for myriad reasons, including language barriers, cultural understandings of violence and resistance to or rejection of the stigma or negative associations these terms carry.¹ LGBTILS acknowledges that the choice to use these terms in this submission, while reflective of the language of law and literature, is not necessarily reflective of community attitudes towards and narratives about the lived experience of violence. In conversations with people fearing, experiencing or affected by violence, LGBTILS considers that terminology and usage should be led and guided by those people’s particular needs in line with best-practice principles for trauma-informed and culturally safe support service delivery.

¹ See, eg, Women’s Safety and Justice Taskforce, Parliament of Queensland, *Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland* (First Report, 2021) (*WSJT First Report*) vol 1, xlvi–xlix.

Lived Experience Context: Insights from the *Queer Migrant Project*

LGBTQIA+ migrants with lived experience of domestic and family violence (DFV) may have varying responses to terms such as 'victim' and 'survivor' as they are commonly used within the DFV sector. In workshops facilitated by LGBTILS during the *Queer Migrant Project*, some participants spoke of feeling traumatised by the use of terms such as 'victim', while others spoke of viewing the word 'victim' as a sign of weakness.² One participant stated, 'All of us are kind of victim/survivor[s], but I personally prefer not to be a victim because it brings bad memories. I want to move on from those stories and not be a victim/survivor anymore.'³ Another shared, 'I am a victim. I am a survivor. But I am more than those things.'⁴

Associations with victimhood often carry stigma, both within communities and amongst support service providers. This stigma can be compounded by preconceptions or stereotypes about vulnerable victims on the basis of their identities. One participant told LGBTILS, 'If I told people I was domestically abused, or show the scars or whatever, they would make the stigma against me bigger. It would be confirming something they already thought about me. I don't want them to because it's not true. It's like I looked for it, or deserved it. If I wasn't dealing with these sorts of people, if I were a normal straight person, [it would not happen].'⁵

These responses reveal negative feelings towards these terms while expressing LGBTQIA+ migrants' need to be referred to in ways that acknowledge the complexity of their experiences without simplifying or conflating them. Self-expression and self-description in the language of one's choice can encourage the meaningful participation of individuals whose identities, experiences, wisdoms, and languages extend beyond English or the forms of language that dominate in discourses that speak to them, a practice of 'language justice'.⁶

² The Queer Migrant Project, *Manual for Liberatory Conscious Practice for Queer Migrants Within the Context of Domestic and Family Violence in Queensland* (LGBTI Legal Service, March 2025) (*Queer Migrant Project*).

³ *Queer Migrant Project* (n 2) 12-13.

⁴ *Queer Migrant Project* (n 2) 12-13.

⁵ *Queer Migrant Project* (n 2) 16.

⁶ Equity in the Center, 'Racial Equity Tools Glossary', *Racial Equity Tools* (Web Page) <<https://www.racialequitytools.org/glossary>> (*Racial Equity Tools*).

1.3.2 Abbreviations

Abbreviation	Meaning
CEDAW	United Nations <i>Convention on the Elimination of All Forms of Discrimination against Women</i>
Charter, Victims' Charter	<i>Victims' Commissioner and Sexual Violence Review Board Act 2024</i> (Qld) sched 1 (Charter of victims' rights)
<i>Domestic Violence Act</i>	<i>Domestic and Family Violence Protection Act 2012</i> (Qld)
ICCPR	United Nations <i>International Covenant on Civil and Political Rights</i>
ICESCR	United Nations <i>International Covenant on Economic, Social and Cultural Rights</i>
UDHR	United Nations <i>Universal Declaration of Human Rights</i>
UN Victims' Declaration	United Nations <i>Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power</i>
<i>Victims' Commissioner Act</i>	<i>Victims' Commissioner and Sexual Violence Review Board Act 2024</i> (Qld)
<i>Victims of Crime Act</i>	<i>Victims of Crime Assistance Act 2009</i> (Qld)

2.0 Recommendations

LGBTILS makes the following recommendations to the Review:

2.1 Recommendations about the Purpose of the Charter

Recommendation 1: that the purpose of the Charter as contained within the *Victims' Commissioner Act* s 42 be amended to make reference to the relevant international human rights instruments underlying its adoption and operation, and in particular the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

Recommendation 2: that the purpose and function of the Charter should be to codify and give legal effect to specific binding and legally-enforceable rights and obligations in line with community expectations about what a right defined in legislation is and how it operates.

2.2 Recommendations about Existing Charter Rights

Recommendation 3: that the right to be treated with courtesy, compassion, respect and dignity be clarified, with specific reference made to which individual needs may inform the operation of a victim's rights under the Charter.

Recommendation 4: that the right for a victim's personal information not to be disclosed be strengthened so that disclosure may only occur where *required* by law and, wherever reasonably possible, with the full, free and informed prior consent of the victim.

Recommendation 5: that the right for a victim's personal information not to be disclosed be expanded to include a right to privacy and confidentiality in the handling of complaints for contraventions of the Charter.

Recommendation 6: that the right of a victim to be informed at the earliest practicable opportunity about services and remedies available to them should include a positive duty on prescribed persons to provide this information to victims.

Recommendation 7: that the rights in part 1 div 2 of the Charter, which currently apply only to victims in the criminal justice system, be strengthened and expanded so that they apply to all victims to the greatest extent possible, whether or not those victims are engaged or choose to engage with formal criminal justice processes.

2.3 Recommendations about New Charter Rights

Recommendation 8: that the Charter be expanded to include the right of victims to be consulted, and for regard to be had to their views and concerns, in the making of decisions that may affect them.

Recommendation 9: that the Charter be expanded to include the right of victims to be informed of decisions affecting them before those decisions are made.

Recommendation 10: that the Charter be expanded to include the right of victims to be provided with written reasons for any decision affecting them, and to ask for a review of any such decision within a reasonable timeframe.

Recommendation 11: that the Charter be expanded to include the right of victims not to be subjected to unnecessary delays in proceedings or in the award of redress, or that other relevant legislation be amended to include this right.

Recommendation 12: that the Charter be expanded to include the right to understand and be understood, as well as the related rights to interpretation and translation and to be interviewed or assisted by personnel of the victim's requested gender wherever possible.

Recommendation 13: That the Charter be expanded to include the right to protection against victimisation, retaliation and intimidation, having particular regard to the additional vulnerability and support needs of marginalised victims.

2.4 Recommendations about the Charter and Other Relevant Legislation

Recommendation 14: that the Charter not be incorporated into the Human Rights Act 2019 (Qld) as it presently stands, as this would further limit its scope and operation rather than expanding and strengthening victims' rights.

Recommendation 15: that the definition of 'relevant offence' for the purposes of the Charter be expanded to include relevant breaches of the *Anti-Discrimination Act* parts 2-5, with particular consideration given to the inclusion of vilification, victimisation and sexual harassment.

Recommendation 16: that consideration be given to creation of a standardised information access scheme for victims under the Charter, or to review of existing administrative access

schemes and the RTI scheme with a view to assessing their accessibility and suitability for use by victims.

Recommendation 17: that the right to privacy both in the Charter and Queensland's information privacy legislative framework be strengthened in line with the recommendations of the UN Special Rapporteur on the Right to Privacy to reflect the additional privacy needs and concerns of marginalised people and communities.

2.5 Recommendations about the Charter's Application and Operation

Recommendation 18: that the definition of 'affected victim' for the purposes of the Charter be expanded to include complainants in breach of privacy proceedings and other abuses of power by government entities that may be subject to formal dispute resolution processes.

Recommendation 19: that the rights of domestic violence victims under the Charter be strengthened with a view to encouraging more consistent interpretation of the paramount principle in the *Domestic Violence Act* s 4(1) in line with the needs and priorities of affected victims.

Recommendation 20: that the definition of 'family member' in the *Victims' Commissioner Act* sched 2 be revised to reflect the diverse and complex family and kinship networks to which many victims, particularly marginalised and vulnerable victims, may belong, and that consideration be given to an expansion of the definition beyond immediate family (biological or otherwise) in acknowledgement of the ways in which extended family or kin may be harmed by acts of violence.

Recommendation 21: That the definition of 'relevant offence' for the purposes of the Charter be expanded to include abuses of power involving violation of human rights, such as contraventions of the *Anti-Discrimination Act* and other human rights instruments, in line with the intent of the UN Victims' Declaration.

Recommendation 22: that the definition of 'personal harm' for the purposes of the Charter be expanded to recognise other significant kinds of harm victims may suffer, such as property damage, financial or economic loss and relational or reputational harm.

Recommendation 23: that the definition of 'government entity' comprising part of the definition of 'prescribed person' for the purposes of the Charter should be expanded to ensure

that all prescribed persons who deal with victims in a governmental or institutional capacity are included.

Recommendation 24: that the definition of 'non-government entity' for the purposes of the Charter be expanded to include not only entities funded to provide victim support services as their primary function, but all entities who may deal with victims in the course of ordinary service delivery.

Recommendation 25: that the *Victims' Commissioner Act* be amended to give rise to binding and enforceable rights and obligations under the Charter and a revised complaints process consistent with established principles of equity and natural justice.

3.0 Purpose of the Charter

3.1 Domestic and International Human Rights Context

The current purpose of the Charter of Victims' Rights (**the Charter**) is contained within the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) (*Victims' Commissioner Act*):

42 Purposes of victims charter

The purposes of the victims charter are to—

- (a) *advance the interests of affected victims* by stating rights that are to be observed by prescribed persons in dealing with affected victims; and
- (b) inform affected victims of the rights that affected victims can expect will underlie the conduct of prescribed persons in dealing with the affected victims.⁷

Prior to commencement of the *Victims' Commissioner Act*, the Charter and its purpose were contained within the *Victims of Crime Assistance Act 2009* (Qld) (*Victims of Crime Act*) sched 1AA and s 6C, respectively. The purpose contained therein was functionally identical to the purpose as it stands in the *Victims' Commissioner Act* s 42, but for the use of the term **victim** instead of **affected victim**; similarly, the definition of **victim** contained within the *Victims of Crime Act* s 5 was functionally identical to the definition of **affected victim** as it stands in the *Victims' Commissioner Act* s 38, but for the use of the term **crime** instead of **relevant offence** when defining a victim with rights under the Charter.

Contained within the Explanatory Note to the *Victims of Crime Act* as it commenced in 2009, however, was vital context informing the adoption of 'the fundamental principles of justice for victims of crime which stem from the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (UN *Victims' Declaration*).⁸

The Review's *Report to the Queensland Government on the Victims of Crime Review 2008* (Review Report) [...] recommended **maintaining the fundamental principles of justice** and **introducing a mechanism for resolving victim complaints** in relation to departures from the fundamental principles by government agencies.

[...] The Bill achieves the objectives by **maintaining the fundamental principles of justice for victims of crime adhering to the UN *Victims' Declaration***. However, they have been amended in an effort to ensure

⁷ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) (*Victims' Commissioner Act*) s 42 (emphasis added).

⁸ Explanatory Note, *Victims of Crime Assistance Bill 2009* (Qld) 1.

relevance, practicality and having regard to best practice in other Australian jurisdictions.⁹

Although it did not contain explicit reference to the UN *Victims' Declaration*, the *Victims of Crime Act* as it commenced in 2009 did state its purpose as follows:

3 Purposes of Act

- (1) The purposes of this Act are—
- (a) to declare fundamental principles of justice to underlie the treatment of victims by certain entities dealing with them; and
 - (b) to provide a mechanism for implementing the principles and processes for making complaints about conduct inconsistent with the principles;
- [...]¹⁰

The fundamental principles of justice as they were originally expressed in the *Victims of Crime Act*, taking their form from the UN *Victims' Declaration*, would later form the basis for the Charter as it was enacted in 2017; however, in removing the Charter from the *Victims of Crime Act* and transplanting it into the *Victims' Commissioner Act*, any explicit or implicit reference to the underlying Declaration was lost.

LGBTILS considers that a vital purpose of the Charter is to codify and give legislative effect to the rights contained in the UN *Victims' Declaration*, amongst other relevant United Nations human rights instruments to which Australia is signatory.¹¹ Explicit reference within relevant legislation to these human rights instruments gives rise to an obligation and practice of interpreting legislation having regard to those instruments, both administratively and judicially.

⁹ Ibid 1-2.

¹⁰ *Victims of Crime Assistance Act 2009* (Qld) s 3(1), as at 17 September 2009 (some sections omitted).

¹¹ See, eg, *Declaration on the Rights of Indigenous Peoples*, adopted 13 September 2007; *Convention on the Elimination of All Forms of Discrimination against Women*, adopted 18 December 1979 (entered into force 3 September 1981); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted 10 December 1984 (entered into force 26 June 1987); *Convention on the Rights of the Child*, adopted 20 November 1989 (entered into force 2 September 1990); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976); *Code of Conduct for Law Enforcement Officials*, adopted 17 December 1979; *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted 8 March 1999; *Guidelines on the Role of Prosecutors*, adopted 7 September 1990.

Recommendation 1: that the purpose of the Charter as contained within the Victims' Commissioner Act s 42 be amended to make reference to the relevant international human rights instruments underlying its adoption and operation, and in particular the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

3.2 Community Expectations

The fundamental principles of justice for victims under previous iterations of the *Victims of Crime Act* were expanded and consolidated into the Charter in 2017 with the explicit purpose of 'enhancing the rights of victims and how they are treated',¹² both by 'agencies such as the Queensland Police Service (QPS), Director of Public Prosecutions (ODPP) and Queensland Corrective Services (QCS) ... [and] non-government entities (and employees of these entities) that receive funding from a Commonwealth, State or Territory government to provide services to victims of crime.'¹³

LGBTILS considers that implicit in this purpose is an expectation that the Charter will give rise to enforceable rights and obligations binding entities dealing with victims. A Charter of Rights that does not give rise to any actual rights is not in line with community expectations about the form and operation of 'rights' as understood in and codified by law.

While different individuals and communities may have different understandings of what it means to have a right codified under law, LGBTILS considers that the lay understanding of a legal right – particularly one contained within the provisions of legislation – is that it is both binding and enforceable. This echoes the common law understanding of what rights are and how they operate. For that reason, a Charter of Rights that does not contain within it any enforceable rights is highly likely to give rise to confusion at best and distress at worst. Far from achieving its stated purpose to 'advance the interests of affected victims', the Charter as it stands is liable to cause or contribute to the significant harm victims already experience.

Recommendation 2: that the purpose and function of the Charter should be to codify and give legal effect to specific binding and legally-enforceable rights and obligations in line with community expectations about what a right defined in legislation is and how it operates.

¹² Explanatory Note, *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Qld) 6.

¹³ Ibid.

4.0 Scope and Application of the Charter

4.1 Sufficiency of Rights Contained Within the Charter

LGBTILS considers that the rights currently contained within the Charter do not meet the stated purpose of the Charter, ie, to advance the interests of affected victims; nor do they meet the stated purposes of the UN *Victims' Declaration*, ie, to 'secure the universal and effective recognition of, and respect for, the rights of victims of crime and abuse of power.'¹⁴ In fact, as detailed below, the principles of justice contained in the UN *Victims' Declaration* have in many cases found partial or no expression in the Charter as it stands.

Furthermore, LGBTILS considers that the rights currently contained within the Charter do not meet community needs or expectations with regard to support for victims of crime or other kinds of violence. As detailed in section 3.2 above, the lay understanding of what a right is does not align with the expression of rights within the Charter. This disconnect between expectation and operation serves to undermine community trust in the utility of the Charter (see also 5.1 below).

4.1.1 Rights currently contained within the charter

The Charter as it stands contains the following rights:

- **Part 1 div 1 rights**, relating to affected victims including victims of domestic violence that is not a relevant offence:
 - The **right to be treated with courtesy, compassion, respect and dignity**,¹⁵ taking into account the victim's needs;¹⁶
 - The **right for an affected victim's personal information not to be disclosed** unless authorised by law;¹⁷ and
 - The **right to be informed at the earliest practicable opportunity about available services** and remedies;¹⁸
- **Part 1 div 2 rights**, relating solely to affected victims within the criminal justice system:
 - The **right to be informed about the progress of an investigation**, unless doing so would jeopardise the investigation, in which case, the victim will be informed of this accordingly;¹⁹

¹⁴ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN GAOR, 3rd Comm, 96th plen mtg, UN Doc A/RES/40/34 (29 November 1985) (UN *Victims' Declaration*) 213.

¹⁵ See also UN *Victims' Declaration* (n 14) art 4, containing a substantially similar right.

¹⁶ UN *Victims' Declaration* (n 14) arts 3, 15, 17.

¹⁷ UN *Victims' Declaration* (n 14) art 6(d).

¹⁸ UN *Victims' Declaration* (n 14) art 5.

¹⁹ UN *Victims' Declaration* (n 14) art 6(a).

- The **right to be informed of major prosecution decisions** made about the accused (and the reasons for those decisions), specifically including the charges brought against an accused; the decision not to bring charges, or to substantially change charges; and the decision to accept a plea of guilty to a lesser or different charge;²⁰
- The **right to be informed of details of court proceedings**, specifically including the name of a person charged with a relevant offence; the issue of an arrest warrant against that person; details of relevant court processes; details of any diversionary programs available to the accused; and the outcome of any criminal proceedings against the accused;²¹
- The **right to be informed of an accused's bail application** and any release arrangements, including any special bail conditions that may affect the victim's safety or welfare;²²
- The **right of an affected victim who is a witness at trial to be informed about the trial process** and the victim's role as a witness;²³
- The **right to be protected from unnecessary contact** with the accused or any associates, or from any violence or intimidation by them;²⁴
- The **right to make a victim impact statement** for the court's consideration during sentencing;²⁵ and
- The **right to have one's property returned to the victim** as soon as possible where it has been held as evidence or during an investigation;²⁶
- The **part 1 div 3 right to make a complaint about a contravention under the Charter**, and to be given information about the procedure for making a complaint under the *Victims' Commissioner Act* ch 3;²⁷ and
- **Part 2 rights**, which apply only to eligible persons relating to a prisoner under the *Corrective Services Act 2006* (Qld) or a child detained under the *Youth Justice Act 1992* (Qld):
 - The **right to be kept informed of the offender's period of imprisonment or detention**; the offender's transfer to another facility; or the offender's escape from custody or the offender being unlawfully at large;²⁸ and

²⁰ Ibid.

²¹ Ibid.

²² UN *Victims' Declaration* (n 14) arts 6(a) and (d).

²³ UN *Victims' Declaration* (n 14) arts 6(a) and (c).

²⁴ UN *Victims' Declaration* (n 14) art 6(d).

²⁵ UN *Victims' Declaration* (n 14) art 6(b).

²⁶ UN *Victims' Declaration* (n 14) arts 6(d) and 8.

²⁷ UN *Victims' Declaration* (n 14) art 16.

²⁸ UN *Victims' Declaration* (n 14) art 6(d).

- The **right to make written submissions to the parole board** about granting parole to an offender.²⁹

These rights as they are currently expressed in the Charter primarily reflect the UN *Victims' Declaration* arts 3, 5, 6(a)-(d), 8 and 15-17. Other articles of the UN *Victims' Declaration* are reflected to varying extents in Queensland legislation as follows:

- Articles 1 and 2, relating to the definition of a victim, are reflected to some extent in the definitions contained in the *Victims' Commissioner Act* ss 6 and 38, though the UN *Victims' Declaration* contains a broader definition of 'victim' that includes a person who has suffered 'substantial impairment of their fundamental rights',³⁰ which is not reflected in the *Victims' Commissioner Act* or the Charter at present.
- Article 6(e), relating to the avoidance of unnecessary delay in proceedings and the award of compensation or restitution to victims, is partly reflected in the *Victims of Crime Act* s 63, which requires victim compensation applications to be dealt with quickly and in line with natural justice principles.
- Article 7, relating to the availability of alternative dispute resolution or other mechanisms for resolving disputes, is reflected to some extent in provisions under the *Penalties and Sentences Act 1992* (Qld) and *Youth Justice Act 1992* (Qld) relating to diversionary programs, alternative justice processes and Indigenous justice processes such as the Murri Court.
- Articles 8-11, relating to restitution for victims, are partly reflected in the establishment of the Victim Assist scheme under the *Victims of Crime Act* ch 3, and partly in the provisions relating to diversionary programs and alternative justice processes as above. Articles 12 and 13, relating to compensation, and art 14, relating to assistance, are reflected in the establishment of the Victim Assist scheme. The right to obtain redress through expeditious, inexpensive, fair and accessible procedures is also contained within art 5.

4.1.2 Sufficiency of part 1 division 1 rights

LGBTILS considers that these rights as they are currently expressed within the Charter are insufficient to meet both the stated purpose of the Charter in the *Victims' Commissioner Act* s 42 and the stated purposes of the UN *Victims' Declaration*.

Firstly, these rights apply only to **affected victims** of **relevant offences**, as well as victims of domestic violence that is not a relevant offence. The rights do not apply to victims of other types of violence or abuses of power, such as discrimination, vilification, victimisation or

²⁹ UN *Victims' Declaration* (n 14) art 6(b).

³⁰ UN *Victims' Declaration* (n 14) arts 1-2.

adverse workplace action (to name only a few), even though such victims would meet the definition in the UN *Victims' Declaration*. The rights also do not apply to victims of criminal offences which, while they may not be personal offences per se, may still cause significant harm to a victim. For example, victims of burglary, theft or property damage may experience harm of a similar kind to victims of personal offences such as fear of returning to or remaining at the site of the offence and other post-traumatic symptoms. Section 4.1.3 below deals with this consideration in further detail.

Secondly, these rights do not apply to victims in their dealings with public entities that are not public sector entities for the purposes of the *Public Sector Act 2022* (Qld) s 8, such as community justice groups and courts of record. These rights also do not apply to victims in their dealings with non-government entities other than those that provide services to victims as their primary function, even where those entities may provide services victims are highly likely to access in the course of their recovery, such as housing and homelessness services, health services, employment agencies or disability/aged care services, to name only a few. Section 4.5 below deals with this consideration in further detail.

Finally, each individual right contained within part 1 div 1 is insufficient to meet the Charter's stated purpose due to lack of specificity, limited scope, narrow application, functional inoperability or some combination of these as detailed below.

4.1.2.1 Right to be treated with courtesy, compassion, respect and dignity

LGBTILS considers that the requirement under this right to 'tak[e] into account the victim's needs' is so non-specific as to be functionally meaningless, as there is no clarification regarding what these needs might be. It is unclear whether this is a reference to victims who are particularly marginalised or vulnerable, as in a comparable provision in the *Domestic and Family Violence Protection Act 2012* (Qld),³¹ or whether this is a reference to needs victims might have in relation to other Charter rights, such as the right to be informed of the progress of an investigation; or whether other needs entirely should be taken into account.³²

³¹ *Domestic and Family Violence Protection Act 2012* (Qld) (*Domestic Violence Act*) s 4(2)(d).

³² Notably, the equivalent provision in the UN *Victims' Declaration* makes explicit reference to 'access to the mechanisms of justice and to prompt redress [...] for the harm they have suffered.' This suggests that the needs in question are those expressed elsewhere in the Charter. See UN *Victims' Declaration* (n 14) art 4.

Lived Experience Context: Taking into Account Victim Needs

Vulnerable victims often report service delivery experiences that are not suitable or sufficient to meet their particular needs. Participants in the *Queer Migrant Project* described their experiences attempting to have these needs met. 'I think there's a lot of code switching to even get a resource that will see you or understand you, and only one thing at a time can get dealt with,' one participant shared. 'So at no point were my needs met as a migrant and a woman, and certainly not in gender identity. I just cosplayed being a straight ciswoman, and tried to be as white presenting as possible to get help. But as a result, so much was missed, and even then, I still couldn't get help.'³³

Participants also worried that service providers would pre-judge or make assumptions about them based on their identity or expression. A participant told LGBTILS, 'I don't like to be associated with being a gay man. It kind of annoys me a little bit. People think you identify in one way or the other just because of the way that you look.'³⁴ This concern that a victim will be judged or presumed to identify in a certain way based on stereotypes or other characteristics is common to vulnerable victims and can pose additional barriers to seeking and accessing support services.

LGBTILS submits that this right should be strengthened both by broadening the application of the Charter generally and by clarifying how a victim's needs should be taken into account in the context of treating victims with courtesy, compassion, respect and dignity.

Recommendation 3: *that the right to be treated with courtesy, compassion, respect and dignity be clarified, with specific reference made to which individual needs may inform the operation of a victim's rights under the Charter.*

4.1.2.2 Right for personal information not to be disclosed

LGBTILS considers that this right as it stands is inconsistent with both the right to privacy and reputation as expressed in the *Human Rights Act 2019* (Qld) s 25 and the Australian Privacy Principles (**APPs**) as expressed in the *Privacy Act 1988* (Cth) and *Information Privacy Act 2009* (Qld), particularly APPs 3, 6 and 11.

The *Information Privacy Act* makes a distinction between **personal information** and **sensitive information** and the rights and obligations relating to each.³⁵ Personal information is not always sensitive information, but personal information may be rendered sensitive as it

³³ *Queer Migrant Project* (n 2) 21.

³⁴ *Ibid* 9.

³⁵ *Information Privacy Act 2009* (Qld) (*Information Privacy Act*) s 10 and sched 5.

relates to particular victims and circumstances. For example, information about a person's gender, relationship status or living arrangements could be sensitive information inasmuch as it relates to an LGBTQIA+ victim's sexual orientation or practices.³⁶ Such information should thus be safeguarded accordingly, with particular care paid in accordance with the increased risk of harm to the victim following an inappropriate or inadvertent disclosure.

Even information such as a person's name, title and pronouns – all highly likely to be collected even by entities that do not collect other potentially sensitive information – may be rendered contextually sensitive. An LGBTQIA+ person may, for example, reserve the use of a particular name or other identifier for certain people or situations; this is often a matter not solely of choice, but of safety and survival. Entities collecting this information may not realise its significance, and may thus inadvertently place an LGBTQIA+ victim at significant risk of serious harm by disclosing it.

Although legislation may permit or authorise the disclosure of a victim's personal or private information in particular circumstances,³⁷ disclosure is more fraught for some victims than for others. An LGBTQIA+ person may have significant reason to fear that inappropriate or inadvertent disclosure will have the effect of 'outing' them to an unsupportive or abusive partner, family, employer or community, resulting in further violence against them. That risk of harm may be compounded by multiple marginalisation; for example, an LGBTQIA+ person who lives in an isolated remote community or whose residency status is contingent on the support of a partner, family member or employer may have even greater reason to fear inappropriate disclosure.

LGBTILS submits that a victim's personal information should not be disclosed unless *required* by law, not merely where *authorised* by law. Furthermore, disclosure should require, wherever reasonably possible, the victim's full, free and informed prior consent. Such an approach is more consistent not only with other existing legislative privacy rights, but also with a trauma-informed and victim-centric approach to dealing with victims generally. It allows for victims to retain agency and ownership over their private information to the greatest possible extent and minimises the risk of harm resulting from inappropriate or inadvertent disclosure. Finally, this approach will reinforce the positive duty on prescribed persons or entities holding personal information to deal with that information in accordance with the APPs.

³⁶ *Information Privacy Act* (n 35) sched 5.

³⁷ See, eg, *Domestic Violence Act* (n 31) part 5A.

Recommendation 4: that the right for a victim's personal information not to be disclosed be strengthened so that disclosure may only occur where required by law and, wherever reasonably possible, with the full, free and informed prior consent of the victim.

Finally, the right to privacy and protection of a victim's personal information should be expanded to include a right to privacy and confidentiality in the handling of a complaint for contravention of the Charter. Although some provisions of the *Victims' Commissioner Act* do relate to the handling of confidential information by the Victims' Commissioner,³⁸ there is no explicit right to privacy or confidentiality of the kind attaching to certain kinds of court proceedings involving victims or other vulnerable people. Similarly, the proposed right to protection against victimisation, retaliation or intimidation (see 4.2.2.1 below) should extend to protection against victimisation, retaliation or intimidation on the basis of a complaint for contravention of the Charter.

Recommendation 5: that the right for a victim's personal information not to be disclosed be expanded to include a right to privacy and confidentiality in the handling of complaints for contraventions of the Charter.

4.1.2.3 Right to be informed of available services and remedies

LGBTILS considers that this right is not sufficient as it stands, as the lack of positive duty or obligation on prescribed persons to proactively inform victims of services and remedies available to them renders the right functionally non-operational. This is borne out in the experiences of victims who contact LGBTILS or other legal assistance services for help responding to and recovering from violence.

Victims often instruct LGBTILS that despite extensive prior contact with police, the judiciary, healthcare professionals, child safety workers, housing service centres and corrective services staff, they have received little or no information about services and remedies available to them. Not only does this place a significant burden on legal assistance services and other non-government entities to inform and assist people who might have been capably assisted to seek support by far more well-resourced government entities, but it also unnecessarily prolongs the victim's search for assistance and support. This information, were it provided to victims at the first point of contact with a prescribed person rather than after multiple

³⁸ See *Victims' Commissioner Act* (n 7) ch 5 part 1.

engagements, would enable and empower victims to seek the support they require sooner, perhaps even immediately, which could in turn mitigate some of the harms suffered by victims forced to engage in extended and often fruitless support-seeking from service after service.

Lived Experience Context: Manu's Story

Manu was a gay man who had been experiencing domestic and family violence from his partner.³⁹ He approached LGBTILS for assistance engaging with support services.

LGBTILS gave Manu information about available support services and facilitated a referral to a pro bono partner firm for further advice and assistance. The pro bono partner helped Manu to apply for financial assistance with Victim Assist Queensland. He obtained a recognition payment and was reimbursed for relocation costs, emergency accommodation and other expenses he incurred as a result of the violence. The pro bono partner has since assisted Manu to make other victim compensation claims in relation to acts of violence by other perpetrators.

It is not sufficient to provide information to victims at their explicit request. LGBTILS is frequently instructed by victims who, by reason of any number of access barriers including but not limited to language difficulties, remoteness, disability or fear for their lives, could not have been expected to be aware that such information was available to them had they only known to ask for it. The right to be informed of available services and remedies must therefore give rise to a positive duty to make that information available to victims. This is consistent with other duties to inform as they arise both at common law and under statute in relation to matters where a person who is not informed may be prejudiced in accessing a right or entitlement. It is also consistent with the comparable right as it is expressed in the UN *Victims' Declaration*.⁴⁰

Recommendation 6: *that the right of a victim to be informed at the earliest practicable opportunity about services and remedies available to them should include a positive duty on prescribed persons to provide this information to victims.*

4.1.3 Sufficiency of part 1 division 2 rights

LGBTILS considers that the rights contained within part 1 div 2 of the Charter are insufficient both in the limits on their scope and application and in their incomplete expression of the rights expressed within the UN *Victims' Declaration*.

³⁹ Names and locations have been changed to protect the identity of the client.

⁴⁰ UN *Victims' Declaration* (n 14) art 5.

4.1.3.1 Application of part 1 division 2 rights outside the criminal justice system

LGBTILS assists and represents a significant number of victims who, for various reasons, are not engaged or have chosen not to engage with criminal justice processes, including but not limited to:

- victims of domestic violence who are not also victims of a criminal offence;
- victims of discrimination, harassment, bullying, vilification, victimisation and other forms of violence not constituting a criminal offence;
- victims who are distrustful or suspicious of criminal justice processes due to previous negative interactions, particularly with courts or police;
- victims who are unable to engage or have difficulty engaging with criminal justice processes by reason of communication or other accessibility barriers (see section 4.2.2.1 below);
- victims who are afraid of retaliation or escalation from perpetrators if they report the violence to police;
- victims who have been unsuccessful in seeking protection or support from police;
- victims of violence perpetrated by criminal justice system personnel, or who fear violence or victimisation from those personnel;
- victims who have been misidentified as perpetrators and subjected to criminal justice proceedings as a result;
- victims of sexual violence or child sexual abuse who are afraid or ashamed to report the violence to police, or who fear retraumatisation or ridicule in the course of criminal justice proceedings;
- victims of historical acts of violence who were not able to access support at the time of the violence, and who are unlikely to be successful in criminal justice proceedings given the passage of time; and
- victims seeking or requiring support of a kind unavailable through criminal justice processes.

Part 1 div 2 rights do not apply, or apply only to a very limited extent, to all of these categories of victims. Considering that these victims are much more likely to be especially vulnerable and often require additional support as a result, the inoperability of a significant number of rights contained within the Charter in their circumstances is both inexplicable and unacceptable. In particular, the inoperability of the right to be informed of the progress of an investigation or of major decisions made in a proceeding can have a significant detrimental impact on a victim's wellbeing and long-term recovery from violence.

Lived Experience Context: Lidia's Story

Lidia is a trans woman who fled to a women's shelter in a different city to escape an abusive relationship.⁴¹ Lidia had reported the violence to police, who commenced an application for a protection order against the respondent; however, the police were inconsistent in their communication with Lidia and did not inform her of court dates or major decisions made in relation to her application.

Lidia engaged LGBTILS to communicate with the police on her behalf and to ensure police and the court were aware of her needs. This resulted in a final order made on terms consistent with Lidia's needs, including a condition preventing the respondent from locating Lidia.

Lidia felt significant anxiety about interacting with police and the justice system due to their historic mistreatment of LGBTQIA+ people and communities. LGBTILS provided support and assistance in this regard by accompanying Lidia to the police station to make her witness statement and appearing for or with Lidia at court. Lidia was also uncomfortable disclosing her trans identity to staff at the women's shelter and was afraid of being outed as trans in a 'women only' space that might harbour anti-trans attitudes: a common and understandable reaction to the vilification of trans people, and trans women in particular, in discussions about trans communities and their participation in public life. To avoid outing Lidia or raising suspicion about her gender, the LGBTILS staff member supporting her identified herself as a 'friend' when meeting Lidia at the shelter rather than disclosing her affiliation with LGBTILS.

LGBTILS considers that to the greatest extent possible, all Charter rights should apply to all victims, not only to victims in the criminal justice system. For example, the right to be informed of major decisions made about an investigation or court proceeding should extend to victims in civil domestic violence proceedings, whether or not the perpetrator has also been charged with a criminal offence. In particular, victims should be informed of the decision to apply (or not to apply) for a protection order, issue a police protection notice, or commence or discontinue related court proceedings and the reasons for those decisions.

Consideration should also be given to imposing a positive duty on prescribed entities to provide victims with copies of information used in relevant decision-making. This is consistent with the practices of many current government decision-makers who are required to provide written reasons with their decisions; for example, both Blue Card Services and NDIS Worker Screening are required to provide applicants with copies of material relied upon during the assessment and screening process. At present, prescribed entities and persons are not generally required to provide this information to victims, though victims may request it through

⁴¹ Names and locations have been changed to protect the identity of the client.

public interest information access schemes. Placing the onus on victims to request this information rather than on entities to provide it creates additional barriers for victims and may compound existing trauma or other harm.

The right to be provided with information about the progress of an investigation should similarly extend to victims of domestic violence and other offences or acts of violence that may result in harm to a victim, including public order or property offences, subject to reasonable safety and security considerations. Consideration should be given to incorporating a right to access transcripts of court or tribunal proceedings from the QTranscripts service free of charge within the Charter.

Prescribed entities should prioritise timely, expedient, affordable information access pathways for victims seeking to obtain or amend information about investigations relating to them, and information should be provided in writing where possible, or otherwise in alternative form of the victim's choice. The right to information should also extend to victims in their dealings with non-government entities such as domestic violence support services, and uniform, best practice standards for operation of information access regimes should be developed and implemented by these entities.

Finally, the right to make a victim impact statement or parole submission should be expanded to include a right to make submissions on the harm suffered by a victim where a perpetrator's suitability for diversionary programs, restorative justice processes, intervention orders or other alternative justice mechanisms is being considered at any stage of civil or criminal proceedings, both prior and subsequent to a finding of fault or conviction and sentencing. In particular, where a victim lives in a regional, rural or remote community or is vulnerable in some other way and a perpetrator's suitability for re-entry or re-integration into the victim's community is being considered, particular regard should be had to the potential adverse impact or increased risk of harm.

Recommendation 7: that the rights in part 1 div 2 of the Charter, which currently apply only to victims in the criminal justice system, be strengthened and expanded so that they apply to all victims to the greatest extent possible, whether or not those victims are engaged or choose to engage with formal criminal justice processes.

4.1.3.2 Application of part 1 division 2 rights within the criminal justice system

Even within the criminal justice system, victims may find that their rights under part 1 div 2 are difficult to access or inconsistently upheld. Victims in criminal justice proceedings frequently approach LGBTILS for assistance obtaining information about ongoing investigations or court proceedings from police, prosecutors and court officials. Victims report multiple failed attempts to contact investigating officers or prosecutors with carriage of their matters; repeated refusals to share information with victims without provision of reasons as required; failure to notify victims of hearing dates or other important events; lack of communication about decisions regarding bail, plea bargains or diversionary programmes; and failure to notify victims of the outcomes of proceedings. In addition to compounding the trauma and other harms victims already suffer, this lack of communication leaves victims uncertain of the progress of their matters, unsure of the timeframes for expected resolution and unable to find closure or progress with their healing and recovery.

In addition to concerns about lack of communication or miscommunication, victims report frustration with the lack of consultation or regard had to their needs and wishes at all stages of criminal proceedings. Inclusion and expansion of the right to consultation and the victim's role in the decision-making process is considered in detail in section 4.2.1 below.

4.2 Rights Currently not Contained Within the Charter

The following rights arising from the UN *Victims' Declaration* are not reflected in the Charter or other relevant legislation:

- **The right for the views and concerns of victims to be presented and considered as appropriate during proceedings**, contained within art 6(b), is partially reflected in the right to provide a victim impact statement under the Charter and the *Penalties and Sentences Act 1992* part 10B, but there is no right for a victim's views and concerns to be considered during the decision-making process at any other stage of proceedings, such as a decision whether or not to investigate, arrest, charge or prosecute an accused or the decision to accept a plea of guilty to a different or lesser charge.
- **The right not to be subjected to unnecessary delay in proceedings**, contained within art 6(e), is afforded to the accused under the *Human Rights Act 2019* (Qld) ss 29 and 32-33, but not to victims under the Charter or any other mechanism.
- **The right of a victim to be dealt with by police or other personnel who have received training to 'sensitise them to the needs of victims'**⁴² has been raised

⁴² UN *Victims' Declaration* (n 14) art 16.

repeatedly within Queensland in the context of relevant reviews and inquiries,⁴³ but is not explicitly reflected in the Charter or other relevant legislation.

- **Rights relating to victims of abuses of power**, those being 'acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognised norms relating to human rights',⁴⁴ are not contained within the Charter or other relevant legislation.

4.2.1 Rights relating to consideration of the views and concerns of victims during proceedings

LGBTILS considers that the right to be informed of the progress of an investigation under part 1 div 2 of the Charter does not give sufficient expression to the right for the views and concerns of a victim to be presented and considered as appropriate during proceedings as it appears in the UN *Victims' Declaration*. A true and full expression of this right should necessarily include the following:

- **The right to be consulted during decision-making**, including a positive duty to have regard to a victim's views and concerns in the course of making any of the decisions mentioned in part 1 div 2 of the Charter;
- **The right to be informed of decisions before they are made**, rather than the right to be informed of decisions only *after* they have already been made, at which time it may be too late to prevent or mitigate any deleterious effects on the victim;
- **The right of review of decision**, including a requirement to provide written reasons for any decision mentioned in part 1 div 2 s (2) of the Charter, and the right to request a review of any such decision within a reasonable specified timeframe; and
- **The right to request that the Office of the Director of Public Prosecutions consider an appeal**, including a requirement to provide written reasons for a decision not to consider an appeal and provision of information about complaints processes in the event that a victim is unsatisfied with the reasons provided.

The right of a victim to be consulted in the making of decisions that may affect them is not without precedent in Queensland legislation. The *Domestic and Family Violence Protection Act 2012* (Qld), for example, includes a requirement to seek, where appropriate and practicable, the views of people who fear or experience domestic violence before a decision affecting them is made.⁴⁵ The *Victims of Crime Assistance Act 2009* (Qld), meanwhile, allows for discretion in the recovery of victim compensation debts from convicted offenders,⁴⁶ which

⁴³ See, eg, *WSJT First Report* (n 1)..

⁴⁴ UN *Victims' Declaration* (n 14) art 18.

⁴⁵ *Domestic Violence Act* (n 31) s 4(2)(b); see also, eg, *CTW v PAB & Anor* [2017] QMC 4, [61] (Magistrate Carmody). But see section 4.3.5.

⁴⁶ *Victims of Crime Assistance Act 2009* (Qld) (*Victims of Crime Act*) part 16. But see section 4.3.1.

may be exercised at the request of victims who fear retaliation or further violence should the offender become aware of their application for assistance.⁴⁷ Such rights are consistent not only with international human rights instruments, but with a best-practice, trauma-informed decision-making rationale that centres a victim's individual support and recovery needs.

Recommendation 8: that the Charter be expanded to include the right of victims to be consulted, and for regard to be had to their views and concerns, in the making of decisions that may affect them.

Similarly, the right of victims to be informed of decisions affecting them before those decisions are made is consistent with a focus on victim agency and autonomy that is essential to trauma-informed practice. The observations of the Women's Safety and Justice Taskforce regarding the insidious degradation of a victim's self-agency through prolonged exposure to violence and the pernicious impact this has on a victim's long-term health and wellbeing are borne out in the experiences and stories of victims who present to LGBTILS seeking assistance and support.⁴⁸

Recommendation 9: that the Charter be expanded to include the right of victims to be informed of decisions affecting them before those decisions are made.

The requirement to provide reasons for a decision and the right of review or appeal is also not without legislative precedent. In fact, several decisions of government entities are already subject to requirements to provide reasons and a related right of review or appeal.⁴⁹ The creation of a right of review under the Charter would not supplant these provisions or render them redundant; rather, it would guide the exercise of government entities' decision-making functions and the interpretation of relevant provisions in enabling or authorising Acts in line with victims' rights.

⁴⁷ Queensland Government, 'Who Pays for Financial Assistance Awarded to Victims', *Victim Assist Queensland* (Web Page, 27 July 2023) <<https://www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/financial-assistance/who-pays>>.

⁴⁸ See, eg, Women's Safety and Justice Taskforce, Parliament of Queensland, *Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland* (Report, 2021) vol 2, 59.

⁴⁹ See, eg, *Victims of Crime Act* (n 46) s 124, sched 1; see also *Acts Interpretation Act 1954* (Qld) s 27B.

Recommendation 10: *that the Charter be expanded to include the right of victims to be provided with written reasons for any decision affecting them, and to ask for a review of any such decision within a reasonable timeframe.*

4.2.2 Rights relating to avoidance of unnecessary delay in proceedings or in awards of redress

LGBTILS considers that the right of victims not to be subjected to unnecessary delays in proceedings or in the award of redress does not find sufficient expression in the Charter as it stands, nor in any other applicable domestic statutory instrument. A true and full expression of this right, whether it were to appear in the Charter or elsewhere, would include:

- **The right of a victim not to be subjected to unnecessary delay in proceedings**, consistent with a similar right afforded to the accused under the *Human Rights Act 2019* (Qld) ss 29 and 32; and
- **The right of a victim to access or be awarded redress without unnecessary delay**, which is currently partially expressed in the *Victims of Crime Assistance Act 2009* (Qld) s 63 only in relation to the operation of the Victim Assist Queensland scheme, but not to any other statutory or court-ordered compensation scheme.

Recommendation 11: *that the Charter be expanded to include the right of victims not to be subjected to unnecessary delays in proceedings or in the award of redress, or that other relevant legislation be amended to include this right.*

4.2.2.1 Rights relating to sensitivity training and appropriate guidelines for personnel dealing with victims

LGBTILS considers that the right of victims to be dealt with by personnel who have received appropriate sensitivity training and operate under appropriate guidelines does not find sufficient expression in the Charter as it stands, nor in any other applicable domestic statutory instrument. A true and full expression of this right, were it to appear in the Charter or elsewhere, would include:

- **The right to understand and be understood**, including the right of victims to understand the substance and process of matters involving them; the right to be afforded opportunities to communicate in the language or manner of their choice; and the right to be interviewed or assisted by personnel of the victim's requested gender wherever possible;

- **The right to interpretation or translation**, including provision of information and materials to a victim in a language or manner of their choice and the conduct of proceedings involving a victim with the assistance of appropriate interpreting or translation services; and
- **The right to be protected from repeated victimisation, intimidation or retaliation**, whether at the hands of a perpetrator or their associates, or through contact with prescribed persons in the course of their dealings with a victim's matter.

Lived Experience Context: Language Matters

Participants in the *Queer Migrant Project* discussed in detail the various challenges posed when trying to seek support from services they could not understand, and which could not understand them. In one workshop participant's words, 'Everything is new in this country. We cannot find the service we need here, even though they exist. It is hard to find them when you struggle with the new system.'⁵⁰

'Maybe there are good services around,' another participant shared, 'but I don't feel comfortable to go and ask for help. Maybe because of the language barrier or all other barriers.'⁵¹ This identification of language as yet another barrier is illustrative of the layers of compounded and compounding disadvantage vulnerable victims may be forced to navigate when seeking support, and the feelings of frustration, helplessness or overwhelm that may lead them to desist or disengage.

A victim's understanding of the substance and process of matters involving them is an important measure of natural justice. The safety and wellbeing of victims is enhanced when they are provided the opportunity to be aided by personnel and community members of their choice to assist both in understanding these processes and being understood by the personnel dealing with them.

A right to understand and be understood would give rise by nature to other related rights. For example, the right gives rise to the right to interpretation or translation for victims from non-English speaking backgrounds. Such a right could also mandate or influence the development of new standards or tests for determining whether victims are able to comprehend the material provided to them in the course of proceedings. For example, victims could be required to receive support from personnel who are also members of their cultural community wherever possible, or to be interviewed by personnel of their requested gender wherever possible.

LGBTILS considers that the onus should be on government entities and service providers to ensure that their communications practices and processes meet the needs of victims and their

⁵⁰ *Queer Migrant Project* (n 2) 38.

⁵¹ *Ibid* 31.

communities. Prescribed entities and persons should be bound to provide victims with meaningful, accessible opportunities to access information and materials in the language or communication method of their choice, whether through use of written translations, interpreting services or assistive communication technologies.

Recommendation 12: *that the Charter be expanded to include the right to understand and be understood, as well as the related rights to interpretation and translation and to be interviewed or assisted by personnel of the victim's requested gender wherever possible.*

Victims who are particularly vulnerable by reason of marginalisation, especially multiple marginalisation, may have reason to fear that engaging with victim support services and processes will be particularly complicated or fraught for them. For example, a victim accessing a specialist or community-controlled support service may interact with personnel who are members of the victim's community; this may give rise to fears that pre-existing relationships will be jeopardised or concerns about confidentiality. Victims may also fear procurement of those personnel to participate in the violence against them. The right against repeated victimisation, retaliation or intimidation is particularly significant in this context.

Lived Experience Context: Queer Migrant Experiences of Victimisation

Participants in the *Queer Migrant Project* noted that the availability of language supports, including interpretation and translation services, was absolutely necessary to enable meaningful engagement of LGBTQIA+ migrants with victim support services and processes.⁵² However, they also spoke of their real-world experiences of harm perpetrated by interpreters with discriminatory attitudes against them, as well as the danger posed to victims who are not out in communities where these interpreters are at large. One participant told LGBTILS, 'One time a service told me you can change the interpreter if you're not happy. When I changed the interpreter due to abusive behaviour, the second interpreter was even worse. It made me go home without solving my problem but also taking home a new trauma.'⁵³

Enforcement of the right to protection against victimisation, retaliation or intimidation could mandate a requirement to permit victims an ongoing choice of interpreter during proceedings whenever practicable, with the opportunity to request a new interpreter where there are safety or suitability concerns. Such a right could also give rise to guidelines standardising training for prescribed persons, including contracted service providers such as translators and interpreters, to ensure a fuller understanding of vulnerable communities and the complexities of their experiences with violence. For example, *Queer Migrant Project* participants suggested that interpreters be screened for a willingness to help LGBTQIA+ people and trained in basic terminology and common issues faced by queer communities.⁵⁴ Participants also suggested having interpreters undergo regular exposure to queer communities to build relationships and enhance empathy.⁵⁵

Recommendation 13: *That the Charter be expanded to include the right to protection against victimisation, retaliation and intimidation, having particular regard to the additional vulnerability and support needs of marginalised victims.*

4.2.3 Rights not relating to the criminal justice system

LGBTILS represents communities whose historically low levels of engagement with criminal justice processes or the legal system more broadly are reflective of institutionalised discrimination and violence perpetrated by people and entities charged with the administration of justice. Many LGBTQIA+ people and members of other marginalised communities are distrustful, suspicious and even afraid of these institutions and processes as a result.

⁵² *Queer Migrant Project* (n 2) 31.

⁵³ *Queer Migrant Project* (n 2) 31.

⁵⁴ *Ibid* 33.

⁵⁵ *Ibid*.

Furthermore, victims react and respond to violence in myriad ways, and their recovery needs are similarly diverse. A criminal justice or legal response will not always suit the needs and priorities of victims, particularly vulnerable victims, seeking to recover from violence.

LGBTILS considers that a victim should not be forced to engage in a formal justice or legal process that may be unsuitable or even actively detrimental to their recovery in order to access the rights and entitlements afforded to victims under the Charter or any other human rights instrument. Rights under the Charter should attach to victims at every stage of their journey, whether or not that journey includes interaction with police, courts or any other machinery of justice.

4.3 Interaction Between the Charter and Relevant Legislative Frameworks

The scope and application of certain rights contained within the Charter are more fully expressed within the enabling or governing Acts of the government entities responsible for the formal administration or enforcement of those rights. Certain rights identified in the UN *Victims' Declaration* but not currently contained within the Charter are protected under other statutory instruments. Certain other rights implied or referred to within the UN *Victims' Declaration*, but which arise from other international human rights instruments, are similarly protected under other legislation.

Where other legislation gives rise to opportunities for fuller expression and protection of victims' rights in conjunction with the Charter, consideration should be given to amending the Charter to include those rights.

4.3.1 *Victims of Crime Assistance Act 2009 (Qld)*

The *Victims of Crime Act* establishes the Victim Assist financial compensation scheme for victims of violence in line with certain articles of the UN *Victims' Declaration*. The objectives of the Victim Assist scheme, as outlined in the *Victims of Crime Act* s 3, are as follows:

3 Purpose of Act

[...]

- (2) The objectives of the scheme are—
- (a) to help victims of acts of violence to recover from the acts by giving them financial assistance; and
 - [...]
 - (d) to add to other services provided by or for government to victims of acts of violence.
- [...] ⁵⁶

As a government entity for the purposes of the *Victims' Commissioner Act* s 40(1)(a),⁵⁷ Victim Assist Queensland is subject to the Charter, and their conduct when dealing with affected victims should be consistent with the rights contained within the Charter.⁵⁸ In particular, the rights contained within part 1 div 1 of the Charter apply to affected victims in their dealings with Victim Assist.

4.3.1.1 Interaction between the *Victims of Crime Act* and Charter definitions of victim

The *Victims of Crime Act* categorises eligible victims as **primary victims**, **secondary victims** (comprising **parent secondary victims** and **witness secondary victims**) and **related victims**.⁵⁹ The definitions of each class of victim correspond broadly with the definition of **affected victim** used in the Charter.⁶⁰ The definitions of **act of violence** and **injury** under the *Victims of Crime Act* also correspond broadly with the definitions of **relevant offence** and **personal harm** used in the Charter.⁶¹ Notably, neither the *Victims of Crime Act* nor the Charter considers victims of abuses of power to be victims or affected victims to whom any rights arising under the Victim Assist scheme or the Charter more generally might apply.

4.3.1.2 Codification of UN *Victims' Declaration* rights

The *Victims of Crime Act* codifies to some extent the right of victims not to be subjected to unnecessary delays in awards of redress as expressed in the UN *Victims' Declaration*:

63 General principles

- In deciding an application for assistance, the government assessor must—
- (a) observe the principles of natural justice; and

⁵⁶ *Victims of Crime Act* (n 46) s 3 (some sections omitted; emphasis added). See also UN *Victims' Declaration* (n 14) arts 12-13.

⁵⁷ See also *Victims' Commissioner Act* (n 7) sched 2 definition of **government entity**.

⁵⁸ *Victims' Commissioner Act* (n 7) s 44(2).

⁵⁹ *Victims of Crime Act* (n 46) s 26.

⁶⁰ *Victims' Commissioner Act* (n 7) s 38.

⁶¹ *Victims' Commissioner Act* (n 7) ss 38-9; *Victims of Crime Act* (n 8) ss 25-25A, 27.

- (b) act as quickly as the requirements under this Act and a proper consideration of the application permit.⁶²

Applicants for Victim Assist also have rights with respect to the access, use and disclosure of their personal information under the *Victims of Crime Act*,⁶³ which reflect the scheme manager's obligations under both the *Human Rights Act* and the Australian Privacy Principles.⁶⁴

4.3.1.3 Non-application of part 1 division 2 rights

Because Victim Assist operates outside of the criminal justice system, the rights contained in part 1 div 2 of the Charter do not apply to victims in their dealings with the scheme. This represents a change in the status of these victims in comparison with victims who may have been entitled to compensation under the repealed *Criminal Offences Victims Act 1995* (Qld), a court-administered scheme – a change guided by trauma-informed considerations for the wellbeing of victims.⁶⁵ This separation, while well-intentioned and sound in principle, has unfortunately given rise to a class of victim who, while they have suffered eligible injuries for Victim Assist's purposes, are nonetheless denied several key rights expressed within the UN *Victims' Declaration* that are only afforded to victims within the criminal justice system under the Charter.

In particular, **special primary victims** – a category under the *Victims of Crime Act* which includes victims of domestic, family and sexual violence – who do not report violence to police are not covered by part 1 div 2 of the Charter. They are thus not entitled to the right to be kept informed of a Victim Assist assessor's investigation except inasmuch as required under the *Victims of Crime Act*.⁶⁶ Nor does the victim have the right to be protected from violence or intimidation by a perpetrator or their associates in the event that Victim Assist commences offender debt recovery (ODR) proceedings against the perpetrator,⁶⁷ though in practice, Victim Assist does exercise discretion in suspending ODR at the victim's request. These victims, who are far more likely to be particularly vulnerable and in need of support, are placed at an even greater risk of retraumatisation when engaging with a system ostensibly designed to protect and support them through their recovery from violence.

⁶² *Victims of Crime Act* (n 46) s 63.

⁶³ See, eg, *Victims of Crime Act* (n 46) ss 64-9, ss 133-7.

⁶⁴ *Privacy Act 1988* (Cth) (*Privacy Act*) sched 1; *Human Rights Act 2019* (Qld) (*Human Rights Act*) s 25; *Information Privacy Act 2009* (Qld) (*Information Privacy Act*) sched 3.

⁶⁵ Explanatory Note, *Victims of Crime Assistance Bill 2009* (Qld) 1-2.

⁶⁶ Victim Assist is required to inform victims when proposing to make certain decisions. See, eg, *Victims of Crime Act* (n 46) s 88.

⁶⁷ See *Victims of Crime Act* (n 46) s 115.

The Charter's focus on victims in the criminal justice system is thus inconsistent with the needs of many affected victims who may be eligible for assistance under the Victim Assist scheme. One stated purpose of creating a compensation scheme separate from court processes was to increase access to victim support services – including compensation – and decrease the need for victims to engage at length with formal justice processes that may 'exacerbate the effect of the crime on the victim.'⁶⁸ A system within which victims are not entitled to the full exercise of their rights under the Charter unless they engage with the criminal justice system is not only incompatible with this purpose, but actively detrimental to it.

4.3.2 *Human Rights Act 2019 (Qld)*

The *Human Rights Act* codifies rights which are expressed in multiple international human rights instruments to which Australia is signatory.⁶⁹ Some of these rights are reflected or reiterated in the UN *Victims' Declaration*. All *Human Rights Act* rights bind **public entities**, which include all of the government entities who may be prescribed persons for the purposes of the Charter; by implication, this means that government entities must observe these rights in their dealings with victims in addition to observing those rights contained within the Charter.

Notably, the *Human Rights Act* affords certain rights to an accused during criminal justice proceedings that are not afforded to victims within those proceedings. For example:

- An accused has the right to be informed of the nature of a charge against them in a language or mode of communication they understand, and to access free interpreter services or assistive communication technologies if required;⁷⁰
- An accused has the right not to be subjected to unreasonable delay in proceedings;⁷¹
- An accused has the right to be provided with legal aid if the interests of justice require it,⁷² and
- An accused who is convicted of an offence has the right to appeal their conviction and/or sentence.⁷³

4.3.2.1 *Incorporation of the Charter into the Human Rights Act*

Previous reviews of human rights and victims of crime in Queensland have given consideration to situating the Charter within the *Human Rights Act*.⁷⁴ LGBTILS considers that to incorporate

⁶⁸ Explanatory Note, Victims of Crime Assistance Bill 2009 (Qld) 1.

⁶⁹ See Explanatory Note, *Human Rights Act 2019* (Qld) 1.

⁷⁰ *Human Rights Act 2019* (Qld) (*Human Rights Act*) ss 32(2)(a), (i)-(j).

⁷¹ *Ibid* s 32(2)(c).

⁷² *Ibid* s 32(2)(f).

⁷³ *Ibid* s 32(4).

⁷⁴ See, eg, Susan Harris Rimmer, 'Placing People at the Heart of Policy' (Final Report, Independent Review of the Human Rights Act, 30 September 2024) 92-7, citing Women's Safety and Justice

the Charter into the *Human Rights Act* as it currently stands would have the undesirable effect of limiting the Charter's operation to public entities and such non-government entities as choose to be bound by the *Human Rights Act*. This would further limit the protections available to victims under the Charter rather than expanding and strengthening them. Were the *Human Rights Act* to be expanded in scope and operation to bind entities other than public entities, future consideration could be given to incorporating victims' rights into the *Human Rights Act*.

Recommendation 14: *that the Charter not be incorporated into the Human Rights Act 2019 (Qld) as it presently stands, as this would further limit its scope and operation rather than expanding and strengthening victims' rights.*

Like the Charter, the rights expressed in the *Human Rights Act* do not give rise to enforceable rights and obligations, nor to any cause of action where an entity breaches a right stated therein. LGBTILS considers this to be inconsistent with community expectations about the operation of a statutory human rights instrument (see 3.2 above).

4.3.3 *Anti-Discrimination Act 1991 (Qld)*

Like the *Human Rights Act*, the *Anti-Discrimination Act* codifies rights which are expressed in multiple international human rights instruments to which Australia is signatory.⁷⁵ Unlike the *Human Rights Act*, however, the *Anti-Discrimination Act* gives rise to binding and enforceable rights and obligations, as well as discrete causes of action and potential remedies for breaches of the rights contained therein. While a breach of a right under the *Anti-Discrimination Act* generally does not constitute a criminal offence,⁷⁶ a robust dispute resolution process in which parties may be directed to participate is available to both individual and representative complainants.⁷⁷

4.3.3.1 Charter rights not applicable in proceedings for breaches of the *Anti-Discrimination Act*

Proceedings for a breach of the *Anti-Discrimination Act* may involve conciliation conferencing followed by referral to the Queensland Civil and Administrative Tribunal (QCAT) or the

Taskforce, *Hear Her Voice: Women's and Girls' Experiences Across the Criminal Justice System* (Report, 2022).

⁷⁵ *Anti-Discrimination Act 1991 (Qld)* (*Anti-Discrimination Act*) preamble.

⁷⁶ Contraventions under ch 5 of the *Anti-Discrimination Act* do constitute offences, but are not relevant offences for the purposes of the Charter. The offence of serious vilification, which was previously contained within ch 5A of the *Anti-Discrimination Act*, is now contained within the *Criminal Code*; however, serious vilification is not an offence against the person, and is therefore also not a relevant offence. See *Anti-Discrimination Act* (n 75) ch 5; *Criminal Code Act 1899 (Qld)* sched 1 part 2 ch 7A; *Victims' Commissioner Act* (n 7) s 39(1).

⁷⁷ *Anti-Discrimination Act* (n 75) ch 7 part 1.

Industrial Relations Commission (IRC) for arbitration where necessary and appropriate. These processes, while not identical to those of the criminal justice system, are similar in several key respects. In particular, both conciliation and arbitration are likely to involve contact between a victim and perpetrator at several points throughout the process, particularly if a complaint proceeds to arbitration. Myriad opportunities thus abound for a perpetrator to threaten, harass and intimidate a victim, just as they do during criminal court proceedings.

In other key respects, the *Anti-Discrimination Act* complaints process differs from criminal proceedings in ways that may heighten the vulnerability of victims. For example, because conciliation and arbitration processes are by their nature less adversarial and more inquisitorial than court proceedings, victims in a discrimination complaint can expect to deal frequently with persons who would be prescribed persons for the purposes of the Charter in an equivalent court proceeding. Furthermore, because a victim in an *Anti-Discrimination Act* complaint is generally responsible for bringing the complaint themselves, there is no prosecutorial buffer between the victim and the proceedings. Similarly, parties are not necessarily entitled to legal representation either at conciliation or arbitration and must seek leave to be represented;⁷⁸ this may result in a vulnerable victim who is unable to secure leave to be represented (or unable to secure representation) being directly exposed to potentially retraumatising material and circumstances repeatedly throughout the proceedings.

LGBTILS considers that the Charter should apply to complainants under the *Anti-Discrimination Act* parts 2-5, and particularly to complainants in matters of vilification, victimisation and sexual harassment. Breaches of the *Anti-Discrimination Act* share several key characteristics with offences against the person to which the Charter does apply, namely:

- they often involve behaviours personally targeting a particular individual or group of people;
- they may result in physical, psychological, emotional, financial and reputational harm to the victim;
- harm inflicted against the victim may be serious and lasting, and may potentially be permanent or fatal;
- they may be reported to an entity with powers of investigation and enforcement; and
- they give rise to clear, identifiable causes of action against the perpetrator, and may attract both statutory penalties and awards of redress to the victim.

⁷⁸ See *Anti-Discrimination Act* (n 75) s 163; *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) s 43.

Recommendation 15: that the definition of 'relevant offence' for the purposes of the Charter be expanded to include relevant breaches of the Anti-Discrimination Act parts 2-5, with particular consideration given to the inclusion of vilification, victimisation and sexual harassment.

4.3.3.2 The *Anti-Discrimination Act* as a model for enforceable victims' rights

Finally, the *Anti-Discrimination Act* provides an example of enforceable rights and obligations against government entities for breaches of victims' rights; it is an offence under the *Anti-Discrimination Act* for current or former members of the Queensland Human Rights Commission or Anti-Discrimination Tribunal to improperly communicate information about a person acquired in their official capacity.⁷⁹ This is reminiscent of the right to privacy contained within both the Charter and the *Human Rights Act*; however, the creation of an offence under the *Anti-Discrimination Act* allows for wrongdoing to be investigated, offenders to be held accountable and victims to receive restitution.

4.3.4 *Information Privacy Act 2009 (Qld)* and *Right to Information Act 2009 (Qld)*

Taken together, the *Information Privacy Act* and *RTI Act* operate not only to establish an access scheme for government-controlled information, but to regulate government collection and handling of individuals' personal and/or sensitive information. Although neither Act's purpose makes explicit reference to applicable human rights, the Queensland Privacy Principles (**QPPs**) contained within the *Information Privacy Act* are derived from the Australian Privacy Principles (**APPs**) contained within the *Privacy Act 1998 (Cth)*, the stated purpose of which includes implementation of 'Australia's international obligations in relation to privacy.'⁸⁰

4.3.4.1 Rights and obligations under the *Information Privacy Act* and *RTI Act*

The *Information Privacy Act* and *RTI Act* impose binding obligations on government with regard to information privacy and access. Importantly for victims, the Acts establish both a mechanism by which they may access or amend their own personal information and principles safeguarding that personal information from inappropriate use or disclosure. The Acts also establish a complaints process for victims whose personal information has been collected, used or disclosed inappropriately, which includes penalties for entities found to have breached the QPPs and redress for victims found to have suffered harm as a result.

⁷⁹ *Anti-Discrimination Act* (n 75) s 220.

⁸⁰ *Privacy Act* (n 64) s 2A(1)(h).

The information rights of victims under the Charter are consistent with the principles of both information access and information privacy expressed in the *Information Privacy Act* and *RTI Act*; however, conflicts may arise between the rights of victims and perpetrators with regard to both information access and information privacy. In such instances, the public interest test in the *RTI Act* may operate in favour of a victim accessing information relating to acts of violence against them, even if this results in disclosure of a perpetrator's personal information. On the other hand, the public interest test may operate in favour of a perpetrator accessing information relating to an investigation or charge against them, even if this results in disclosure of a victim's personal information.

Information access under the scheme established by the *RTI Act* and *Information Privacy Act* is not the only mechanism by which victims may exercise their information access rights under the Charter. Various administrative access regimes operate outside of the RTI scheme. This can create access barriers for victims who are unfamiliar with the operation and application of each information access scheme, particularly in the face of conflicting (and sometimes incorrect) information from government agencies. Without specialist legal assistance, victims may find these systems incomprehensible and un navigable.

Recommendation 16: *that consideration be given to creation of a standardised information access scheme for victims under the Charter, or to review of existing administrative access schemes and the RTI scheme with a view to assessing their accessibility and suitability for use by victims.*

4.3.4.2 Right to privacy in LGBTQIA+ communities

The right to information privacy is consistent with and implicitly contained within the rights to privacy expressed in the ICCPR and UDHR and codified in the *Human Rights Act*.⁸¹ This right is particularly vital as it relates to vulnerable people and communities, who may face a greater risk of harm through inappropriate or inadvertent disclosure of their personal information. As detailed in *section 4.1.2.2 above*, LGBTQIA+ people are especially vulnerable to harm resulting from disclosure of personal information, including information about their gender identity. Furthermore, LGBTQIA+ people are not only less protected under the existing information privacy framework, but also less able to access redress or remedy for harms suffered. In light of this, the UN Special Rapporteur on the Right to Privacy recommended in

⁸¹ UDHR art 12; ICCPR art 17; *Human Rights Act* s 25. See also *UN Resolution on the Right to Privacy in the Digital Age*; *UN Resolution on the Mandate of Special Rapporteur on the right to privacy*.

2024 that Australian federal and state governments implement specific privacy protections based on gender identity and sexual orientation:

114. The Special Rapporteur reminds the Government of the Human Rights Committee reiteration that *the right to privacy covers gender identity*. Australia has a duty to uphold the right to privacy in relation to gender identity [...].

[...]

116. The Special Rapporteur urges the Government to ensure that personal information relating to sex and gender is protected through regular vulnerability assessments of information management systems and regular training for staff on data privacy and data security.

[...]

126. The Australian Human Rights Commission investigates and resolves complaints regarding violations but the Special Rapporteur noted a *lack of trust and accessibility to national institutions* among some sectors of society (such as Indigenous persons and LGBTQI+ persons), which can result in a reluctance to bring forward a complaint at either the administrative or judicial level.⁸²

Recommendation 17: *that the right to privacy both in the Charter and Queensland's information privacy legislative framework be strengthened in line with the recommendations of the UN Special Rapporteur on the Right to Privacy to reflect the additional privacy needs and concerns of marginalised people and communities.*

4.3.4.3 Charter rights not applicable in privacy breach proceedings

Finally, although the *RTI Act* and *Information Privacy Act* establish a complaints mechanism for breaches of the QPPs, such a breach is not considered a relevant offence for the purposes of the Charter despite the significant risk of harm befalling a person whose personal information has been used or disclosed inappropriately. This means that a victim of a privacy breach is not afforded the rights in part 1 div 2 of the Charter with relation to investigation or arbitration of their complaint. A victim of violence who is then subjected to a breach of privacy is at significant risk of retraumatisation or other compounding harms both as a result of the breach and during the subsequent complaints process. In LGBTILS' view, the Charter's non-

⁸² Report of UN Special Rapporteur 20-21 (citations omitted; emphasis added.)

operability in privacy complaint proceedings is inconsistent with the principle in the UN *Victims' Declaration* that victims of abuses of power should be afforded the same rights as victims of criminal violence.

Recommendation 18: *that the definition of 'affected victim' for the purposes of the Charter be expanded to include complainants in breach of privacy proceedings and other abuses of power by government entities that may be subject to formal dispute resolution processes.*

4.3.5 Domestic and Family Violence Protection Act 2012 (Qld)

The *Domestic Violence Act* recognises certain **domestic violence offences** which are relevant offences for the purposes of the Charter. These are contravention of a domestic violence order, contravention of a police protection notice and contravention of release conditions.⁸³ Other acts of domestic violence do not constitute relevant offences, and victims of those acts of violence are only considered affected victims for the purposes of the Charter part 1 divs 1 and 3.

4.3.5.1 Application of charter rights in domestic violence proceedings

The limited application of Charter rights to victims of domestic and family violence gives rise to several concerns. Chief amongst these is that a victim of domestic violence who is not also a victim of a relevant offence has no right to be informed of the progress of any investigation against the perpetrator; no right to be informed of a decision to apply for a domestic violence order against the perpetrator (or an order or cross order against the victim); no right to protection from threats, harassment or intimidation during civil domestic violence proceedings; no right to be informed of the outcome of civil domestic violence proceedings against the perpetrator; no right to the expeditious return of any personal property confiscated in the course of an investigation or as evidence in a proceeding.

Although provisions of the *Domestic Violence Act* operate to confer some of these rights on victims, they are limited in scope and application. For example, a victim must be given a copy of an application for a protection order naming them as aggrieved, but failure to do so does not give rise to any reviewable defect in proceedings.⁸⁴ This means that a victim may remain unaware of an application made on their behalf until after an order has already been made, but have little recourse other than an appeal of the decision or an application to vary the order

⁸³ *Domestic Violence Act* (n 31) ss 177-9.

⁸⁴ *Domestic Violence Act* (n 31) s 35.

(both potentially lengthy and traumatising legal processes) if they do not agree with the making of the order or the terms on which it was made.

Similarly, while a court is required to consider making certain orders protecting a victim from contact with a perpetrator that may cause them distress,⁸⁵ this requirement only applies in the event that a victim is a witness giving evidence in a proceeding. The requirement to consider making such orders for a victim's protection is not enlivened where the victim is not a witness (for example, in pre-trial mentions of a matter or in correspondence relating to a matter between a self-represented victim and respondent).

Section 4(2)(b) requires decision-makers to seek the views of victims before making decisions that will affect them, but only 'to the extent that it is appropriate and practicable' and subject to the paramount principle in s 4(1). This is partially but not fully consistent with the right to be consulted as it appears in the UN *Victims' Declaration*. Notably, while a court must consider the principles in *Domestic Violence Act* s 4 before making certain orders under the Act, police are not required to consider the principles before exercising any of the functions or powers afforded to them under *Domestic Violence Act* part 4, such as commencing a domestic violence investigation or issuing a police protection notice.⁸⁶

4.3.5.2 Failure of *Domestic Violence Act* to protect vulnerable victims

Concerningly, no provision of the *Domestic Violence Act* operates to prevent a person authorised to apply for a protection order on behalf of an aggrieved under s 25(1) from doing so against that aggrieved's wishes or without their prior consent. A police officer, for example, could apply for a protection order, appear in court in support of the application and obtain an order at first mention of the application without ever having spoken to the aggrieved for whose benefit the order was ostensibly made. The officer's failure to provide the aggrieved with a copy of the application would not meaningfully prejudice that application in any way;⁸⁷ similarly, neither the lack of evidence from the aggrieved nor the lack of opportunity for the aggrieved to express their wishes before the making of the order would necessarily be fatal to the application's prospects.⁸⁸

Victims may not agree to the making of domestic violence orders for any number of reasons. They may be afraid of retaliation or escalation from the perpetrator; they may fear reputational or relational damage within their communities; they may wish to avoid retraumatising police

⁸⁵ *Domestic Violence Act* (n 31) ss 150-1.

⁸⁶ *Domestic Violence Act* (n 31) part 4 ss divs 1-2.

⁸⁷ *Domestic Violence Act* (n 31) s 35(2)

⁸⁸ A court is not required to have the personal evidence of the aggrieved before making an order; *Domestic Violence Act* (n 31) s 145(4). Nor is a court required to consider the wishes of an aggrieved where not 'appropriate and practicable'; s 4(2)(b).

investigations or court proceedings; they may fear for the safety of the perpetrator in police custody; they may wish to remain in a relationship with the perpetrator, or may have limited or no options for safer accommodation if forced to leave the perpetrator's residence; they may wish not to disrupt the lives of family, friends or dependants; they may even disagree or deny that the perpetrator's behaviour towards them constitutes domestic or family violence. Instigation of police investigations or court proceedings for the ostensible benefit of a victim without their consent or against their wishes not only places the victim at a greater risk of compounding existing harm or trauma; it may give rise to new harms either at the hands of the perpetrator or in the course of justice processes.

LGBTQIA+ victims may be particularly motivated to resist or contest the making of orders against their wishes. While proceedings under the *Domestic Violence Act* take place in a closed court, this does not prevent an LGBTQIA+ aggrieved from being seen by others while entering or leaving the court precinct. A perpetrator may threaten to 'out' an LGBTQIA+ victim if proceedings against the perpetrator are not discontinued, even though this may not be within the victim's control; the making of an order against such a perpetrator is unlikely to deter them from realising such threats, nor a victim from fearing them. An LGBTQIA+ victim may also fear humiliation, social stigma and even vilification if the details of an intimate personal relationship considered unorthodox or deviant within their community were to become widely known in the course of a domestic violence investigation or proceeding, or in the published decision of a court.

On the other hand, an LGBTQIA+ child who wants the protection of an order against a violent family member may be dismayed to learn that children cannot be named as aggrieveds in orders against respondents with whom they have a family relationship. Similarly, an LGBTQIA+ aggrieved may contact police or other services for assistance only to be misidentified as a respondent on the basis of their gender, sexual orientation or gender expression. Perpetrators may weaponise the likelihood of misidentification to coerce or intimidate an aggrieved into not seeking help or retracting a statement; police, courts and support services may then misinterpret this reticence as further evidence of an aggrieved's guilt or lack of credibility.

4.3.5.3 Operation of *Domestic Violence Act* information-sharing provisions

The *Domestic Violence Act* also establishes an information-sharing scheme for certain government entities and service providers working with victims.⁸⁹ Information-sharing under the scheme in part 5A does not require the consent of the victim,⁹⁰ and the provisions in the

⁸⁹ *Domestic Violence Act* (n 31) part 5A.

⁹⁰ *Domestic Violence Act* (n 31) s 169B(b).

Act override obligations of confidentiality or privilege to which entities might ordinarily be subject, provided that the entity in question acts ‘honestly’ in sharing the information.⁹¹ The victim’s right to privacy under the information-sharing provisions is similarly subject to the paramount principle in s 4(1).⁹²

4.3.5.4 Operation of *Domestic Violence Act* paramount principle in limiting victims’ rights

LGBTILS considers that neither the *Domestic Violence Act* nor the Charter operate to fully protect the rights of victims in domestic violence investigations or proceedings. Not only do several Charter rights not apply to domestic violence victims in civil proceedings, the rights that do apply are significantly limited in scope and application. The paramount principle in *Domestic Violence Act* s 4(1), while it may be interpreted for a victim’s benefit, may just as easily be employed to permit the making of decisions contrary to a victim’s needs or wishes. In particular, a victim’s right to be treated with courtesy, compassion, respect and dignity is subject to the paramount principle, and the right to privacy and non-disclosure of a victim’s personal information is heavily qualified by the operation of the *Domestic Violence Act* information-sharing provisions.

Recommendation 19: *that the rights of domestic violence victims under the Charter be strengthened with a view to encouraging more consistent interpretation of the paramount principle in the Domestic Violence Act s 4(1) in line with the needs and priorities of affected victims.*

4.3.6 *Penalties and Sentences Act 1992 (Qld)*, *Youth Justice Act 1992 (Qld)* and *Corrective Services Act 2006 (Qld)*

4.3.6.1 Victim impact statements

The Charter right to provide a victim impact statement for use during sentencing is codified in detail within the PSA part 10B. Although that part makes explicit reference to the Charter, the provisions therein function to limit the scope and application of the right. For example:

- The right is subject to prosecutorial discretion both in permitting the victim to provide the statement and which details, if any, the prosecutor chooses to share with the court,⁹³

⁹¹ *Domestic Violence Act* (n 31) s 169N.

⁹² *Domestic Violence Act* (n 31) s 169M(2)(b).

⁹³ *Penalties and Sentences Act 1992 (Qld)* (PSA) ss 179K (1)-(4).

- There is no requirement to allow a victim to be assisted in preparing a statement, except by reason of the victim's age or impaired capacity (but not by reason of language difficulties, cultural considerations, fear or intimidation, or distress caused in the course of interacting with the justice system);⁹⁴
- A victim cannot nominate anybody except themselves or the prosecutor to read their statement aloud in court;⁹⁵ and
- There is no requirement to allow a victim to read their statement in a language or communication method of their choice with the assistance of an interpreter if necessary.

4.3.6.2 Victims' Register

The Charter right of an eligible person to receive certain information about a prisoner (including a child under the YJA) is codified in detail within the CSA part 13 div 1, establishing an eligible persons register. The right applies only to victims of certain violent offences, victims' immediate family members (or guardians of victims with impaired capacity) and certain victims of domestic violence.⁹⁶

Most information subject to notification through the register must be provided to an eligible person 'as soon as practicable';⁹⁷ only information about a prisoner's death, escape or circumstances that may endanger the eligible person's life or safety must be provided to them immediately.⁹⁸ This is partially consistent with the rights to information and safety contained within the UN *Victims' Declaration*.

4.3.6.3 Submissions to parole board

The Charter right of an eligible person to make submissions to the parole board regarding a perpetrator is codified within the CSA s 188. Although the Charter provides that an eligible person should be given an opportunity to make these submissions in writing, the CSA provides that a submission may be in writing or any other form allowed by the parole board.⁹⁹ The provisions of the CSA limit any submission from an eligible person to matters that were not before the court at the time of sentencing;¹⁰⁰ this would potentially restrict a victim who has already made a victim impact statement from making further submissions to the parole board.

⁹⁴ Ibid s 179L.

⁹⁵ Ibid s 179M(2).

⁹⁶ *Corrective Services Act 2006* (Qld) (CSA) ss 321-3A.

⁹⁷ Ibid s 324A(2)(a).

⁹⁸ Ibid s 324A(2)(b).

⁹⁹ Ibid s 188(7)(b).

¹⁰⁰ Ibid s 188(3)(c)(ii)

4.3.6.4 Other rights to be consulted not protected

With the exception of victim impact statements and parole submissions, victims have no right under the Charter to express their views or have their wishes taken into account at any other stage of proceedings. (See also section 4.2.1 above.) LGBTILS considers that true expression of the right to be consulted as it appears in the UN *Victims' Declaration* would include a right for victims to express their wishes about other decisions before they are made, including but not limited to the decision to initiate or discontinue a police investigation; the decision to charge or prosecute a perpetrator, to discontinue or modify a charge, or to discontinue prosecution; or the decision to grant bail to a perpetrator.

4.4 Victims Protected by the Charter

4.4.1 Affected victims, family members and dependants

The Charter as it currently stands does not apply to all victims as defined in the *Victims' Commissioner Act* s 6, but only to **affected victims** as defined in s 38:

38 Meaning of affected victim and personal harm

- (3) An **affected victim** is a person who suffers personal harm—
 - (a) because a relevant offence is committed against the person; or
 - (b) because the person is a family member or dependant of another person who suffers personal harm or dies because a relevant offence is committed against the other person; or
 - (c) as a direct result of intervening to help another person who suffers personal harm or dies because a relevant offence is committed against the other person.
- (4) Subsection (3) applies if an affected victim mentioned in subsection (1)(a) is pregnant when the relevant offence is committed and, as a result of the commission of the relevant offence—
 - (d) the person sustains a bodily injury that results in the destruction of the life of the person's unborn child; or
 - (e) the person dies, resulting in the destruction of the life of the person's unborn child.
- (5) An affected victim includes a person who has suffered personal harm because the person would, if the unborn child had been born alive, have been a family member of the child.
- (6) Also, an affected victim includes a person not mentioned in subsection (1) or (3) who suffers personal harm—
 - (f) because domestic violence is committed against the person; or
 - (g) because the person is a family member or dependant of a person mentioned in paragraph (a); or

(h) as a direct result of intervening to help a person mentioned in paragraph (a).

[...] ¹⁰¹

This definition presents some contradictions in terms when read in conjunction with the Charter. For example, part 1 divs 1 and 3 of the Charter make specific reference to the inclusion of victims of domestic violence that is not a relevant offence in the definition of affected victim for those parts only, whereas part 1 div 2 and part 2 do not; however, s 38(4) provides that a person who has suffered personal harm because domestic violence was committed against them is an affected victim notwithstanding the commission of a relevant offence. Arguably, this means that the rights in part 1 div 2 of the Charter as discussed in section 4.1.3 above *do* apply in civil domestic violence proceedings, even though the lack of explicit reference to victims of domestic violence under that division seems designed to indicate otherwise.

Affected victims under s 38(1)(b) include family members and dependants of a person against whom a relevant offence is committed. Definitions of **family member** and **dependant** are found in sched 2:

family member, of a person, means—

- (a) the person's spouse; or
- (b) the person's child; or
- (c) the person's parent; or
- (d) the person's brother, sister, stepbrother or stepsister; or
- (e) a person who, under Aboriginal tradition or Island custom, is regarded as a person mentioned in paragraph (a), (b), (c) or (d). ¹⁰²

dependant, of a person, means—

- (a) another person who is entirely or substantially dependant on the person's income; or
- (b) if the person has died because a criminal offence or relevant offence is committed against the person—
- (c) a person who was entirely or substantially dependant on the person's income when the person died; or
- (d) a person who would have been entirely or substantially dependant on the person's income if the person had not died, including a child of the person who is born after the person's death. ¹⁰³

¹⁰¹ *Victims' Commissioner Act* (n 7) s 38 (some sections omitted; emphasis in original).

¹⁰² *Ibid* sched 2 (emphasis in original).

¹⁰³ *Ibid*.

LGBTILS considers that these definitions are insufficient to capture the diversity of family and kinship relationships and networks to which victims may belong. Families, both for LGBTQIA+ people and members of many other marginalised communities, may comprise networks of closely-connected and highly interdependent individuals with no biological or recognised legal relationship. Some of these family members may occupy roles traditionally held by biological parents, siblings or children, both materially (eg, in the provision of necessary maintenance, administration of the household, carer responsibilities, etc) and socially (eg, in interactions with educational or medical institutions, use of particular familial names and titles, recognition of the relationship by other community members, etc). Others may occupy roles traditionally held by a spouse, whether or not a legally-recognised spouse relationship exists between the parties.

Limiting the definition of affected victim for the purposes of the Charter to the specific immediate family members listed in sched 2 (notwithstanding the limited exceptions made for Aboriginal and Torres Strait Islander people) limits the ability of LGBTQIA+ people and their families – biological or cultural – to access the rights and entitlements afforded to victims. This oversight is particularly disappointing because broader and more inclusive conceptions of the family abound in state and federal legislation. For example, under the *Domestic Violence Act*:

19 Meaning of family relationship and relative

[...]

- (2) A **relative** of a person is someone who is ordinarily understood to be or to have been connected to the person by blood or marriage.

Examples of an individual's relatives—

an individual's spouse, child (including a child 18 years or more), stepchild, parent, step-parent, sibling, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law

[...]

- (4) A relative of a person (the first person) is also either of the following persons if it is or was reasonable to regard the person as a relative especially considering that for some people the concept of a relative may be wider than is ordinarily understood—

- (a) a person whom the first person regards or regarded as a relative;
(b) a person who regards or regarded himself or herself as a relative of the first person.

Examples of people who may have a wider concept of a relative—

Aboriginal people
Torres Strait Islanders
members of certain communities with non-English speaking backgrounds
people with particular religious beliefs

- (5) In deciding if a person is a relative of someone else—

- (a) a subsection of this section must not be used to limit another subsection of this section; and
- (b) each subsection is to have effect even though, as a result, a person may be considered to be a relative who would not ordinarily be understood to be a relative.¹⁰⁴

This definition, which makes allowances for ‘people who may have a wider concept of a relative’, could conceivably apply to LGBTQIA+ people with ‘found family’ networks of non-biological ‘relatives’ occupying positions and roles traditionally held by biological or legally-recognised family members. Although LGBTILS is not aware of any case law concerning this provision of the *Domestic Violence Act* with specific regard to queer families and relationships, it considers that such an interpretation would be open to a decision-maker were the definition to be tested in this context.

Even were the definition of affected victim for the purposes of the Charter necessarily limited to immediate family, as it is currently, consideration could still be given to expansion of the definition of ‘family member’ in line with the extant exception for Aboriginal and Torres Strait Islander cultural family relationships. LGBTILS considers, however, that a definition of family that is limited to immediate family members only fails to take into account the ways in which a victim’s broader family and kinship networks may be significantly impacted and potentially harmed by the commission of an act of violence.

The limited scope of these definitions may also contribute to issues of LGBTQIA+ people and other marginalised victims feeling invisible or unrepresented within the victim support services sector. Participants in the *Queer Migrant Project* told LGBTILS that differences in usage and understanding of words such as ‘victim’ and ‘violence’ between LGBTQIA+ migrants and support services could pose additional barriers to support-seeking. How this language is used and understood, not only within the Charter but by stakeholders and in literature, may directly impact the effectiveness of services and frameworks designed to support victims. When LGBTQIA+ migrants or other marginalised people (mis)understand and (mis)interpret their rights due to difficulty understanding the language used to communicate those rights to them, difficulty accessing those rights is likely to result.¹⁰⁵

¹⁰⁴ *Domestic Violence Act* (n 31) s 19 (some sections omitted; some emphasis in original; some emphasis added).

¹⁰⁵ *Queer Migrant Project* (n 2) 54.

Recommendation 20: that the definition of ‘family member’ in the Victims’ Commissioner Act sched 2 be revised to reflect the diverse and complex family and kinship networks to which many victims, particularly marginalised and vulnerable victims, may belong, and that consideration be given to an expansion of the definition beyond immediate family (biological or otherwise) in acknowledgement of the ways in which extended family or kin may be harmed by acts of violence.

4.4.2 Relevant offences and personal harm

A **relevant offence** for the purposes of the Charter comprises one of the following:

39 Meaning of relevant offence

- (1) A **relevant offence** is an act or omission constituting any of the following offences—
- (a) an offence against the person of someone;
 - (b) a domestic violence offence within the meaning of the Criminal Code, section 1;
 - (c) an offence against the Domestic and Family Violence Protection Act 2012, section 177(2), 178(2) or 179(2);
 - (d) an offence of attempting to commit, or conspiring to commit, an offence mentioned in paragraph (a), (b) or (c).

Offences against the person are those listed in the *Criminal Code Act 1899* (Qld) sched 1 part 5. Notably, these do not include any of the offences against morality mentioned in part 4 ch 22, many of which involve violence against a person; nor does this include the offence of serious vilification, which is a public order offence. Domestic violence offences as defined under the *Criminal Code* are offences other than those under the *Domestic Violence Act* where the act constituting the offence is also domestic violence as defined in the *Domestic Violence Act* s 8; this definition allows for some criminal offences that are not offences against the person to be considered relevant offences for the purposes of the Charter if they are committed in the specific context of domestic violence, but does not expand the definition much otherwise. The offences under the *Domestic Violence Act* listed in paragraph (c) all relate to contraventions of orders and conditions, not to the commission of acts of domestic violence in and of themselves except inasmuch as those acts are mentioned in paragraphs (a) or (b).

Other forms of violence are not mentioned within the definition of relevant offence at all. These notably include discrimination, vilification, sexual harassment or victimisation in contravention of the *Anti-Discrimination Act* parts 2-5 (see 4.3.3 above); institutional violence, including violence committed against vulnerable people by paid carers or health practitioners; workplace

or other public harassment not amounting to a criminal offence against the person; and other abuses of power involving violation of a person's human rights, a definition that would be consistent with that imagined in the UN *Victims' Declaration*. LGBTILS considers that such offences, giving rise as they do to potential harms of the same or comparable kind as those within the current definition of relevant offence, should be included in the definition, thus entitling victims of those offences to the protection of the Charter.

Recommendation 21: *That the definition of 'relevant offence' for the purposes of the Charter be expanded to include abuses of power involving violation of human rights, such as contraventions of the Anti-Discrimination Act and other human rights instruments, in line with the intent of the UN Victims' Declaration.*

The definition of **personal harm** for the purposes of the Charter is similarly truncated in scope:

38 Meaning of affected victim and personal harm

[...]

- (6) For this section, a person suffers **personal harm** if, because of a relevant offence or domestic violence committed against the person, the person suffers physical, psychological or emotional harm.¹⁰⁶

Property damage and economic or financial loss, which are both included in the broader definition of **harm** in s 6(7), are not included in this definition. Also not included in this definition is relational or reputational harm. LGBTILS considers all of these to be significant, recognisable and quantifiable harms a victim can suffer. LGBTQIA+ people and communities may be particularly vulnerable to relational and reputational harm resulting from being outed or threats of outing; inappropriate disclosure of personal or sensitive information; and various forms of discrimination based on sexual orientation, gender identity or sex characteristics. These harms may cause or compound other harms, including those recognised in the definition above.

An expanded definition of personal harm would allow for a redefinition of the affected victim to include the full scope of victims harmed by violence and abuses of power. This in turn would allow for a reconsideration of relevant offences to include discrimination, vilification, school or workplace bullying, defamation, cyberbullying not amounting to a criminal offence against a person, deliberate or reckless damage to personal property, burglary or theft other than robbery with violence, or acts designed to threaten or intimidate another person not amounting to domestic and family violence.

¹⁰⁶ *Victims' Commissioner Act* (n 7) s 38 (some sections omitted; emphasis in original).

Recommendation 22: *that the definition of ‘personal harm’ for the purposes of the Charter be expanded to recognise other significant kinds of harm victims may suffer, such as property damage, financial or economic loss and relational or reputational harm.*

4.5 Entities Bound by the Charter

4.5.1 Government entities

Although the Charter applies to many government entities who regularly deal with victims under the definition in the *Victims’ Commissioner Act* sched 2, some relevant entities remain outside its remit. Most notably, community justice groups – which deal regularly with victims of violence, including victims of relevant offences – appear to be excluded by the definition of **government entity** for the purposes of the Charter. Courts of record – including tribunals – are also excluded, though court and tribunal registries are not.

LGBTILS considers that such entities should be subject to the rights contained within the Charter in their dealings with victims. Additional consideration should be given to the experiences of victims within systems and institutions that support or provide services to people who may have been subjected to criminal or non-criminal violence and abuses of power, including but not limited to WorkCover, the Motor Accident Insurance Commission and other statutory insurance schemes; and the Queensland Ombudsman, Health Ombudsman, Crime and Corruption Commission, Office of the Information Commissioner, Queensland Human Rights Commission and other entities with independent investigative or complaints handling functions.

Recommendation 23: *that the definition of ‘government entity’ comprising part of the definition of ‘prescribed person’ for the purposes of the Charter should be expanded to ensure that all prescribed persons who deal with victims in a governmental or institutional capacity are included.*

4.5.2 Non-government entities

The Charter currently applies only to those non-government entities who are ‘funded by the Commonwealth or State to provide services to affected victims as [their] primary function.’¹⁰⁷ This definition includes some kinds of specialist victim support services, but excludes many

¹⁰⁷ *Victims’ Commissioner Act* (n 7) sched 2.

services that victims are as likely or more likely to access than other members of the population.

For example, LGBTILS is not a specialist victim support service; its primary function is the provision of legal services to LGBTQIA+ people and communities. As is the case elsewhere in the legal assistance sector, however, many people who contact LGBTILS for assistance are victims of violence. These include victims of domestic, family and sexual violence or other offences against the person, but also victims of workplace discrimination and bullying; vilification and harassment; institutional violence and human rights abuses; and other abuses of power. Despite the high proportion of client matters which somehow involve or relate to violence, the lack of specialist designation and funding would preclude LGBTILS from being bound by the Charter unless it voluntarily adopted the Charter rights into its own policies and procedures.¹⁰⁸

Many other non-government entities which do not provide services to affected victims as their primary function may nonetheless deal regularly with victims. These include but are not limited to community-controlled or other non-government healthcare services; disability and aged care service providers and advocacy organisations; employment agencies and job search providers; housing and homelessness services; financial counselling and consumer advice providers; community mental health organisations; refugee and migrant settlement services; and dispute resolution services. Although these entities have primary functions that do not directly relate to the provision of victim support services, they operate in areas where victims are likely to be disadvantaged, marginalised or in need of additional support.

LGBTILS considers that the current definition of non-government entity for the purposes of the Charter, which excludes entities of this kind, is not reflective of the true range of victim needs and experiences. This is particularly detrimental to victims who, despite being unwilling or unable to engage with formal legal or justice processes, still require support as they navigate their experiences of violence and recovery from violence. As detailed in 4.2.3 above, the most marginalised and vulnerable victims, including LGBTQIA+ people, are less likely to engage with legal and justice processes but more likely to have complex support needs. The Charter should operate not only with respect to victims who can and do access the mechanisms of formal justice, but with respect to victims who can or will not.

¹⁰⁸ LGBTILS considers its operations and activities to be subject to the Charter, the *Human Rights Act* and other applicable human rights instruments, a position that is fortunately not uncommon in the legal assistance sector. Perhaps contradictorily, LGBTILS is also subject to certain of the information-sharing provisions under the *Domestic Violence Act* part 5A, which may in some circumstances operate to limit or impair some of the rights recognised in those instruments. Strengthening Charter rights and making them binding and enforceable is one way to mitigate limitations or impairments on victims' human rights that may be imposed by the information-sharing provisions and other similar statutory frameworks.

Recommendation 24: *that the definition of 'non-government entity' for the purposes of the Charter be expanded to include not only entities funded to provide victim support services as their primary function, but all entities who may deal with victims in the course of ordinary service delivery.*

5.0 Operation of the Charter

5.1 How the Charter is Upheld in Practice

As the Charter does not give rise to any binding or enforceable rights, victim experiences of its operation vary wildly, not only between but within individual prescribed entities and persons. It is not uncommon for two clients to report diametrically opposed experiences of the same police station, domestic violence support service, health provider or court registry when contacting LGBTILS or other legal assistance services for assistance. This inconsistency in the operation of the Charter gives rise to further confusion, uncertainty and misunderstandings about victims' rights and may compound the trauma and other harms suffered by a victim.

Even where victims are aware of the existence and operation of the Charter and the rights conferred therein, they may be reluctant to engage in the complaints process for contraventions of the Charter. Victims report an unwillingness to engage in a process that does not mandate the involvement of the entity responsible for the contravention and cannot result in any kind of enforceable penalty or redress. By contrast, contraventions of the *Anti-Discrimination Act* or the *Information Privacy Act* give rise to enforceable causes of action which may be resolved through a formal dispute resolution process through which tangible, enforceable penalties and remedies are available. Likewise, errors in the exercise of decision-making functions and powers under the *Domestic Violence Act* and the *Victims of Crime Act* may give rise to grounds of review or appeal.

Lived Experience Context: Jason's Story

Jason was a gay man who contacted LGBTILS for assistance with a number of complaints against the Queensland Police Service relating to their handling of a domestic and family violence matter, including complaints of discrimination on the grounds of his sexual orientation.¹⁰⁹ In the course of advising Jason about various avenues for pursuing his complaint, LGBTILS provided Jason with advice about his right to make a complaint for contravention of the Charter.

Jason was unwilling to pursue a complaint to the Victims' Commissioner, as he thought it was unlikely that the complaint would result in any meaningful remediation on the part of QPS. He preferred to continue with a complaint under the *Anti-Discrimination Act*, even though that process was potentially longer and more complex, because of the greater likelihood that the complaint would be dealt with in a way leading to a binding and enforceable resolution. He was uninterested in accessing his rights under the Charter because they could not be enforced even against an entity required to act in accordance with them.

LGBTILS considers that this inconsistent approach to upholding the Charter has served only to further weaken community trust in its utility and operability. As detailed in section 3.2 above, community expectations are that a charter of rights enshrined in law will give rise to rights as they are commonly understood, ie, as binding and enforceable protections. The Charter does not meet these expectations.

Furthermore, operation of the Charter is highly contingent on a prescribed person's own knowledge of the rights contained therein and their correct application. Inconsistent, infrequent access to inadequate or incomplete training for prescribed persons will necessarily lead to incorrect, inequitable upholding of the Charter by those persons. Victims attempting to assert or access their Charter rights in their interactions with poorly-trained prescribed persons are unlikely to achieve any kind of satisfying resolution.

These issues with the operation of the Charter speak to broader concerns about a lack of trauma-informed, victim-centric approaches to victim support service delivery. LGBTILS clients report feelings of frustration, confusion, uncertainty, disappointment and despair in their dealings with the people and institutions ostensibly responsible for the fair administration of justice. As a result, these clients – who are often highly vulnerable or marginalised victims with significant and complex support needs – are even less likely to seek support from these entities in the event of future violence.

¹⁰⁹ Names and locations have been changed to protect the identity of the client.

Lived Experience Context: Queer Migrant Experiences of Seeking Support

Frustrations and challenges encountered when attempting to seek support were a central theme raised by *Queer Migrant Project* participants. One participant told LGBTILS, 'I felt like I had to justify myself to be able to access a particular service. So you're cosplaying different identities to get different services, because it feels exactly like that.'¹¹⁰

Workshop participants found that their experiences were often shared by others in the room. This knowledge that they were not alone could be both infuriating and reassuring. As one workshop participant shared, 'People on the outside want to put us in a certain box. [This is] instead of giving us a space to decide how we are going to be addressed and how we're going to express ourselves. It was like, "No, you have to be like that," instead of thinking about how you want to be addressed. I thought this was with me but I see now that this experience is shared with others in the group.'¹¹¹

Negative experiences with seeking support were not limited to matters of identity and invisibility, and participants identified clear priorities for organisational change beyond the superficial. 'I want to see them make structural changes in their own organisations, and not just tokenising us,' one participant told LGBTILS. 'Not just as "we welcome you," but make efforts to diversify their workplaces.'¹¹² Another participant was more cynical. 'The point isn't to do the work,' they said. 'It's to say they [e.g. the services] are doing the work.'

5.2 Fair, Consistent and Effective Upholding of the Charter

LGBTILS submits that a fair, consistent and effective approach to upholding the Charter will necessarily involve the creation of binding and enforceable rights and obligations that are understood and interpreted in accordance with agreed guidelines informed by a trauma-informed and victim-centric service delivery approach. Until rights under the Charter are strengthened in this way, community trust and belief in the useful operation of the Charter is likely to remain low.

This belief is borne out in the experiences of victims in their interactions with entities ostensibly subject to the Charter. Vulnerable victims in particular have often witnessed or experienced inconsistent operation of the Charter or other forms of institutional mistreatment and abuse of power not only once, but on multiple occasions.

¹¹⁰ *Queer Migrant Project* (n 2) 21.

¹¹¹ *Ibid.*

¹¹² *Ibid* 41.

Lived Experience Context: Vincent's Story

Vincent was a trans man who fled his previous home in regional Queensland to escape an abusive relationship. He made a private application for a protection order, which was later taken up by the police. After police failed to prepare satisfactory evidentiary materials in the lead-up to the hearing, the prosecution contacted LGBTILS for assistance. LGBTILS was able to prepare evidence speaking to the severity of violence specific to Vincent's gender identity, including continuous transphobic remarks and controlling Vincent's body and clothing choices in an effort to force him to live as his birth-assigned gender.

Despite this assistance, police withdrew their support of Vincent's application a week before trial. LGBTILS was able to assist in obtaining a last-minute adjournment, but did not have capacity to provide ongoing representation at hearing. Vincent ultimately withdrew his application after receiving advice. He was extremely upset by the outcome and felt 'led on' by police.

The creation of binding and enforceable rights under the Charter will necessarily require adoption of a process for resolving complaints for contravention of those rights. While the *Victims' Commissioner Act* as it stands does contain a mechanism for investigation and resolution of complaints under the Charter, this process cannot result in enforceable penalties, redress or the making of other orders, which the creation of true rights under the Charter would require.

LGBTILS acknowledges that conciliation, mediation and arbitration processes, which are often introduced to provide for the resolution of disputes in a timely and inexpensive way, may become victims of their own success, where efficiency and expediency are eventually eroded in the face of demand that far outstrips supply. True resolution of complaints, however, may not always be effected through voluntary or non-binding processes. Dispute resolution processes that are transparent, impartial and operate according to natural justice principles help to build community trust in the fair and equitable administration of justice. LGBTILS considers that such a process, comprising a fair hearing of parties, an equitable scheme of penalties and redress and rights of review or appeal, would be central to the operation and enforcement of a more meaningful and effective Charter giving effect to the principles contained in the UN *Victims' Declaration* and other relevant human rights instruments.

Recommendation 25: *that the Victims' Commissioner Act be amended to give rise to binding and enforceable rights and obligations under the Charter and a revised complaints process consistent with established principles of equity and natural justice.*
