

**Submissions by the North Queensland Women's Legal Service  
to the Victims' Commissioner  
for consideration in the  
Review of Charter of Victim's Rights**

**1. Do you have anything to share about victims' needs?**

The North Queensland Women's Legal Service (NQWLS) works with thousands of victims of domestic and family violence each year, in our primary areas of family law, child protection, migration, and domestic violence.

Many of the victims we support are involved in civil proceedings for protection orders in the domestic violence courts. Many may also be complainants in criminal domestic violence proceedings (although we do not assist these victims with their criminal matters.) Others are victims behind closed doors who have never made a formal complaint or sought formal intervention for the harm they experience by violent partners or family members.

Our extensive experience with these women informs us that victims need practical support, legal support, restitution where possible, and to be treated courteously and without judgement. Most importantly, these women need to feel safe to recover and secure a better future for them and their children.

Where victims report harm and enter the justice system in some way, they need timely information about decisions relating to investigations and prosecutions. They also need to be kept informed of key events (especially court events) and decisions made during criminal or domestic violence proceedings.

Unfortunately, the women we hear from often tell us they receive little or no information about matters finalised in the Magistrates Court. Victims often do not know when court events are listed, what a court date is for, whether an offender is applying for bail, or even when a sentence is listed and that they can attend court if they wish. We have even had feedback from some victims that they were not informed bail had been granted until after the offender was released.

We find that victims in the Magistrates Court are often not aware of their rights regarding victim impact statements. In the case of domestic violence offences, victims are also rarely told that protection orders could be varied or made at

sentence and that their views and wishes with respect to conditions on an order will be considered by the sentencing court.

If their matter is referred to the Mental Health Court, victims are not told about the processes involved in that court. They are not provided information about the principles relating to victims under the *Mental Health Act* or that they can provide a statement about the impact of the harm they have suffered to decision-makers in those proceedings who deal with the offending party.

Some victims tell us they would like more control and to be included in criminal proceedings, for instance having a right of appearance at subpoena hearings where confidential information held by them or a third party is being sought by the defendant.

Re-traumatisation by the system is ubiquitous and debilitating. From what we hear, when a victim enters the justice system there is a very real risk of them feeling invisible, excluded, and that the rights of the offender are elevated over their own.

In summary, the treatment and status of victims in the justice system, particularly in the Magistrates Court, needs improvement. We are pleased to sense an awareness of this issue is starting to take place, and that there is a level of determination by governments to make victim-focused changes.

It is important here to reflect here that people who experience harm are more than 'victims' and 'affected victims' - they are resilient human beings. Any assistance they receive from entities in or outside of the justice system should focus on the individual and their ultimate recovery and empowerment.

We acknowledge the objective of the Charter of Victims' Rights is to strive for a uniformity of treatment of victims after they experience harm. However, our experience is that most affected victims we engage with are not aware of the Charter. Of those who have heard of it, many do not know what rights they may have, how to exercise them, or what recourse they have if their rights under the Charter are contravened.

An important task for the Victims' Commissioner, is to promote wider knowledge of the Charter to those who have suffered harm and the individuals who humanise the prescribed entities dealing with these people in and outside the justice system.

2. Do the current purposes of the Charter outlined in section 42 of the Victims' Commissioner and Sexual Violence Review Board Act 2024 (Qld) reflect community expectations? If not, what other purpose/s should the Charter have?

The current purposes of the Victims Charter in s42 of the VCSVRBA could be enhanced to have a more meaningful impact on a victim's experience, especially throughout their justice system journey.

In our view, the Charter purposes should reflect that the ultimate goal for a person who has suffered harm is recovery to the fullest extent possible from the effects of the harm perpetrated against them and empowerment to find a way to move forward.

To this end, we support an additional purpose of the Charter to 'acknowledge, recognise, and validate the experience of harm suffered by each victim *to aid in their recovery and empowerment to the fullest extent possible.*'

The Charter should also seek to promote the status of the victim to the fullest extent possible during their engagement with the criminal justice system, including maximising their voice and inclusion in processes.

Whilst there may be merit in amending the Charter to hold prescribed entities accountable for not upholding Charter rights, consequences for non-compliance could have unintended consequences and must be realistic and appropriate if implemented.

For example, the Queensland Police Service (QPS) already works at beyond capacity to respond to the high levels of domestic violence in our community. The government has just seen fit to pass legislation to provide for on the spot police protection directions to attempt to ease the administrative burden on police so they can refocus on front line services. Unless the QPS is better resourced, responding to legislated consequences for noncompliance of the Charter may divert resources from the delivery of its core services, which may in turn impact community safety.

3. Should the Victims' Commissioner and Sexual Violence Review Board Act 2024 (Qld) or the Charter of Victims' Rights include introductory language that more clearly frames the experience of victims, and their rights, within a broader community and public interest or community context?

We support a preamble being included in the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) (VCSVRBA) to clearly frame the experience of victims and their rights within the justice system and the broader community.

We do believe however, that there should also be a statement of positivity that recognises victims as people who are resilient, who can recover from harm, and who can be empowered to heal and have strength.

This is the approach we use at NQWLS. We aim to support clients through trauma informed practice, to be empowered and to focus on their capabilities, opportunities, and creating their own safe and positive futures.

We suggest that in the drafting of the preamble, similar notions of empowerment and positivity are included. We believe that the community, and the individuals within the community who have experienced harm, should not only know of their rights as victims, but also be encouraged to move toward a place of strength and resilience.

**4. Should the Charter be extended to cover types of crime not involving violence?**

**o whether the definition of victim provided by section 6 of the VCSVRBA should apply.**

The definition of victim under section 6 is too broad to realistically become applicable to the Charter. It could be problematic for most prescribed entities to observe strict compliance with the Charter if such a wide definition were to apply. We do believe however, that the Charter should have broader coverage than it currently does.

**o whether a different definition of victim should apply.**

The broad definition of 'victim' seems appropriate as applicable to the Victims' Commissioner's functions.

We note though, that the only specific reference to sexual violence ('sexually abusive') is contained in the definition of domestic violence in section 6. This is applicable only when a relevant relationship exists between the parties.

Whilst sexual violence is covered by the catchall definition of a person who suffers harm because a criminal offence or domestic violence offence is committed against them, we believe a specific reference to sexual violence is appropriate to indicate the seriousness attached to this type of offending by the community and

the Commissioner and also to acknowledge the unique violence that is sexual violence.

**o whether the current definition of affected victim should remain.**

Although we believe the definition of 'victim' should not apply to the Charter, we believe the current definition of 'affected victim' is too narrow and that it is unjust to exclude people who have suffered harm as a result of serious property offences, such as entering homes and stealing motor vehicles.

The current definition of 'affected victim' is not in line with community understanding of who a victim is. It disregards the impact of the harm caused from this type of offending on individuals and the community at large. Serious property offending that includes the violation of a victim's home can have devastating effects on a person's life. We believe the profound psychological harm and financial damage these people experience should be recognised by extending the same Charter rights to victims of serious property offending.

Having attended a recent government-led roundtable in Cairns where members of the community aired their frustrations with the current justice system response to this type of offending, an enormous sense of anger, fear, and unrest was evident. These victims felt they were being left in the dark by law enforcement agencies as to investigations, decisions, court dates, bail applications, outcomes etc.

These victims feel powerless and disenfranchised by the justice system and this has led to community unrest in our regions of Cairns and Townsville. As a result, we have seen a rise in community protests, sovereign citizenships, and vigilantism. Affording these victims Charter rights can only encourage social cohesion and observance of the rule of law.

In response to these concerns, the government has committed to creating a new 'victims' advocate' role to be accessible by all victims of crime in Queensland. In line with the direction now being taken by the government, and to meet community expectations, it is appropriate that the Charter apply to victims of serious property crime.

**o if harm is a necessary element in defining who a victim is.**

Harm is a subjective experience, unique to each who experience it. It can be difficult for others to comprehend.

We question the utility of 'harm' as an element of the definition of being a 'primary' affected victim. It may be that simply being the person who has been subjected to the offending behaviour is indicative that personal harm has happened to that person.

Affected victims who experience personal harm because a family member or dependant has experienced personal harm should, if required, be able to demonstrate harm in some way.

**o if you think harm is a necessary element, how this should be defined.**

**o if different types of victims should have different rights.**

We do not agree that different types of victims should have different rights. We are conscious of creating a sense of division if the rights of different types of victims are perceived to be elevated over others. Already such as division exists between 'victims', 'affected victims' and other members of the community.

We are also of the view that the Charter should not be a complicated document. It should be easily understood by affected victims and entities alike. We therefore do not agree with creating different classes of victims who are afforded different rights as this may be confusing and challenging to administer.

**5. Is it clear that emergency responders or justice system personnel, who have suffered harm as a result of intervening to help an affected victim, have rights under the Charter?**

If it is the intention that emergency responders or justice system personnel who suffer harm because of assisting an affected victim, are themselves affected victims to which the Charter applies, then this needs to be made clear. It is also not apparent who is meant by 'emergency responder' or 'justice service personnel.'

We are not sure whether the Charter should apply to this cohort. The purpose of them being included as affected victims is not clear and we are not sure of the utility or appropriateness extending them Charter rights.

**6. Do the definitions of 'family member' and 'dependant' adequately reflect culturally diverse understandings of family and dependants?**

It is not only under Aboriginal tradition or Island custom that families may regard other people as spouses, children, parents, siblings or stepsiblings, or dependents.

It should be acknowledged that significant harm could be suffered by people within the broader community who do not meet the definition of 'family member' or 'dependent' but who are closely affiliated to primary victims. This should not be restricted to considerations of 'cultural diversity.'

**7. Are there any issues with these rights being contained in the Charter?**

Many victims who would be eligible to register on the eligible persons register under the *Corrective Services Act 2006* and the *Youth Justice Act 1992* are not aware of either the existence of the register or the person's eligibility for registration.

Whilst inclusion in the Charter of an affected victim's right to registration on an eligible persons register may help bring a register to the attention of applicable persons, this may create expectations in affected victims who are not eligible for inclusion on a register.

Charter 'rights' should not create unrealistic expectations of a guaranteed entitlement.

**8. Does the definition of 'government entity' need to be amended?**

Clarity is needed for affected victims to understand which entities must adhere to the Charter. And the entities themselves must understand that they have obligations under the Charter.

Clarity is also needed broadly for all agencies providing advice and assistance to affected victims about expectations of rights under the Charter and complaint processes for noncompliance.

**9. Is the current definition clear enough about who has obligations and in which contexts, for example:**

- o government entities obligations with respect to their employees
- o the Work Health and Safety Prosecutor with respect to prosecutions.

See our answer above.

10. Are there other government entities who should have to uphold the Charter of Victims' Rights? For example, the Crime and Corruption Commission.

11. Does the definition of 'non-government entity' need to be amended?

If the Charter is to continue to apply to non-government entities, we believe this definition needs to be clarified but should retain reference to the provision of services to affected victims as a primary function.

It is unclear from the current definition if an entity's primary function must be the provision of services specific to the victimhood of an affected victim. Or if the fact they are an affected victim is incidental to service delivery.

Aside from the general rights, non-government entities cannot facilitate the majority of Charter provisions. Only entities such as the Queensland Police Service, the Office of the Director of Public Prosecutions, and the Queensland Correctives Services can facilitate the treatment of affected victims within the criminal justice system and provide them access to the information as set out in division 2 and part 2 of the Charter.

Non-government organisations, therefore, may not consider the Charter is applicable to them because it is not abundantly clear that the Charter applies to some agencies that deal with affected victims outside of the criminal justice system.

In relation to division 1, non-government entities whose primary function is providing services to people who may also be affected victims should not be subject to the Charter. This may be perceived as requiring an additional action of determining if the client of the service is an affected victim and whether the Charter is then applicable. It may mean making unnecessary enquiries of or making assumptions about people to assess or decide if they are affected victims, which may be upsetting or triggering to clients. This would detract from the functions of the entities to provide their core services.

Lastly but importantly, it also assumes that all people who meet the definition of an affected victim want to be treated as a 'victim' outside of the justice system and not simply as another person accessing services.

12. Is it clear what 'aware, or ought reasonably to be aware' means in section 44 of the VCSVRB Act?

We do not believe this is clear unless, perhaps, an organisation's sole primary purpose is to provide services to affected victims.

See our answer above. If it is determined that the Charter should apply to any non-government entity receiving governmental funds regardless of their primary function and regardless of what service they are dispensing, then it is crucial clarification is provided as to how an entity is to be, or ought reasonably be 'aware' their clients are regarded as 'affected victims.'

There will be instances where it is clear a person is an affected victim, or it is reasonable to make that assumption. However, when that is not the case clarification should be provided if any level of enquiry is appropriate to ascertain whether someone is an affected victim or whether that is inappropriate.

### **13. When is a prescribed person 'dealing' with an affected victim'?**

We do not believe this is clear. If it is determined that the Charter should apply to any non-government entity receiving governmental funds regardless of their primary function, then it is crucial clarification is provided as to whether an entity is 'dealing' with a client they are aware, or ought reasonably be aware are regarded as 'affected victims' when providing services not related to a person's status as a victim.

For instance, is 'dealing' any interaction with a client, or only certain interactions that specifically assist the client as an 'affected victim'?

### **14. Does the right to be treated with courtesy, compassion, dignity and respect, taking into account a victim's needs need to be strengthened? If so/not, why?**

We do not believe this provision needs strengthening. Conversely, consideration should be given to the choice of words used in the existing right and the subjective concepts behind those words.

For the Charter to be meaningful to affected victims and understood and adhered to by those to whom it applies, it must use clear language and enunciate rights that can be complied with. It must not be ambiguous in any way.

As it is written, the provision requires the prescribed person (entities and their members or employees) to treat an affected victim with 'compassion.'

'Compassion' is a quality or feeling an individual holds personally and is elicited because of an internal process whereby the individual subconsciously assesses

whether they 'feel' compassion (defined in the review paper as a '*genuine concern*') for someone. We believe it is inappropriate to legislate that entities and individuals must hold certain feelings for any affected victim they deal with.

Our view is that any legislated provisions (which potentially have consequences for noncompliance) must be easily understood, identifiable, appropriate, and able to be enforced. We do not believe that is the case with a subjective term like 'compassion.' We query how this could be enforced. What would happen if an affected victim made a complaint under the Charter that a prescribed person did not demonstrate 'compassion' when dealing with them?

Legislating that someone must have 'compassion' conflicts with what we know about managing vicarious trauma. Indeed, some individuals who work with victims may have their own experiences of being subjected to harm from offenders and perpetrators of domestic violence. Being legally compelled to have feelings of sympathy and sadness for the suffering of others is inappropriate.

Vicarious trauma is a real concern. Employees of entities that work with affected victims should be able to perform their roles professionally and courteously, and in a way that minimises potential harmful consequences for the individual from being exposed to another's trauma.

It is also inappropriate to legislate an individual have 'compassion' as this could be discriminatory towards neuro-diverse individuals who work in prescribed entities. These individuals may be more than capable of being professional and courteous and execute their roles extremely well when dealing with affected victims but not be capable of 'compassion.'

Treating another with courtesy or dignity/respect are concepts that are better understood and therefore better able to be enforced. Ultimately though, we prefer the language of the Victim Code in England and Wales and the Victim Charter of Northern Ireland which refers to 'professional and non-discriminatory treatment.'

**15. Does the right to have personal information protected need to be strengthened? If so/not, why?**

We believe the right to have personal information protected needs clarification, not strengthening. It is misleading to set up a victim's expectation of a right to protection of personal information when there are many exceptions under various laws to confidentiality.

For instance, affected victims who experience harm from domestic violence need to be made aware that the information-sharing provisions of the *Domestic and*

*Family Violence Protection Act* (DFVPA) may be utilised to share personal information without their consent, or sometimes even without their knowledge.

It is not sufficient to set up a victim's expectation of a right such as this and then simply include 'unless disclosed by law'. That will hold little meaning to a victim who will not be aware of exceptions under privacy laws and the DFVPA, but who are given an expectation their personal information is to be kept private. The onus is then placed on the prescribed entity to inform the affected victim that the Charter right is not an absolute right, and laws do provide for exceptions.

It may also make an individual in a prescribed entity not share personal information in order to adhere to the Charter when sharing the information pursuant to law is necessary for someone's safety.

**16. Does the right to be provided information about services and remedies need to be strengthened? If so/not, why?**

We believe the right to be provided information about services and remedies available to affected victims needs to be clarified. This is especially so if the Charter is to apply more broadly to any non-government entity regardless of their primary purpose and/or consequences for noncompliance come into effect.

The wording of this 'right' ('an affected victim *will be* informed at the earliest practicable opportunity about services and remedies available to the victim') is problematic. Using broad terminology to compel information be received by a victim does not elicit understanding of *what* information about *which services and remedies* and *who will* provide it. It is ambiguous.

Whilst NQWLS supports all victims having access to information about services and remedies in a timely manner if they choose to, it is unclear from the statement of this right what information is to be provided, under what circumstance, and by whom. Victims and prescribed entities do not have access to the explanatory paper, which sets out examples of information that *could* be applicable to affected victims. For this right to be understood by both victims and entities, it needs to be clarified.

It is highly likely an affected victim will engage with multiple prescribed entities as they deal with the aftermath of an offence, or when they are navigating a domestically violent relationship, or when a domestically relationship has come to an end. Should the definition of a prescribed entity be broadened, the affected

victim may also engage with other prescribed entities whose focus is to provide services not specific to their victimhood.

The affected victim will likely have multiple legal and non-legal issues and require information about more than one of the examples provided in the review paper, and possibly information about other services and remedies. The delivery of this information must be done by entities or individuals competent to provide the information and at an appropriate time for the victim to receive it.

Too much information delivered by well-intended entities that do not have full understanding of the matter can cause overwhelm and lead to unrealistic expectations or safety issues. An example from the explanatory paper is the provision of information about options for a domestic violence order. Where possible, this information ought to be provided in conjunction with legal advice where all circumstances can be taken into account and consideration given to safety issues. In some cases, applying for a protection order significantly increases the risk of domestic violence and compromises a victim's safety.

Another example of information that ought be delivered by an appropriate agency is the provision of information about special measures. This information should only be provided by lawyers or prosecutors as an application for special measures is determined by judicial discretion and requires careful explanation.

The rights pertaining to the provision of information under division 2 and part 2 of the Charter are better particularised and clearer. The entities that hold that information, and therefore can comply with the rights, are easily identifiable by both the affected victim and the relevant prescribed entity.

**17. Is the phrase 'at the earliest practicable opportunity' helpful or should a different phrase be used? What might a better phrase be and why?**

The phrase 'at the earliest practicable opportunity' is not helpful. As per above, professionals working with affected victims should have discretion as to when and how certain information about services and remedies should be provided as they see appropriate to meet the needs of the individual victim.

**18. Should examples about what services and remedies means be provided? If so, what examples should be prioritised and why?**

See answers above. If this general right to information is to remain, it must be meaningful to victims and prescribed entities. Examples of the types of information to be provided and who is required to provide the information should be included.

We believe this right should be clarified so that the affected victim understands that this right is to information about the services and remedies and not access to the service or remedy.

**19. Should there be separate rights for specific services or remedies (for example, special witness measures)? If so, what specific services and remedies should be included?**

We do not believe separate rights for specific services or remedies are appropriate.

The discretion of the service provider to make decisions about individual matters after consideration of all circumstances (including conflict checking in the case of legal services), and consideration of the capacity of the entity to provide the services should be preserved.

There can be no guaranteed expectation to remedies. For instance, remedies such as domestic violence orders are rightly determined by a domestic violence court after consideration of the evidence and its application to the law.

Access to financial assistance under VOCAA, or the National Redress Scheme, must maintain a consideration of all circumstances as it may result in the distribution of public funds.

As mentioned above, special witness measures cannot be a 'right,' as they are determined by a judicial officer upon an application to a court and after consideration of all circumstances.

Even the DFVPA does not guarantee a right to protections for protected witnesses in civil domestic violence proceedings. Again, this requires a judicial determination.

**20. Does the right to be provided information about the investigation and prosecution need to be strengthened? If so, how?**

We believe the rights contained in Division 2 pertaining to the criminal justice system are extremely important for affected victims, to the extent they wish to exercise them.

The rights help to promote victim safety, engagement in the process, empowerment, and overall satisfaction with the justice system. Each of these elements can make a meaningful difference in a victim's recovery journey. The rights are generally clear and understandable by victims and entities. However, we do believe some amendments are needed to strength them.

Firstly, it must be appreciated that not all affected victims want to be informed of the progress of criminal proceedings. Re-traumatisation by the prosecution process itself is a real concern and a victim may wish to limit their exposure to it as much as possible. Accordingly, the rights under division 2 should all be reframed to allow for victims to elect to 'opt out' of the right.

We also support an amendment of language of these rights to be more assertive such as 'a right to be provided with...unless a victim elects not to receive such information'. This will allow flexibility for victims that do not wish to receive ongoing information or be apprised of prosecutorial decisions.

Finally, we suggest augmenting the list of examples of relevant court process that an affected victim is to be informed of if they so elect. Inclusion of the following should be considered:

- A subpoena request involving personal information of the victim
- A protected counselling communication application
- Notice of intention by a defendant to adduce expert evidence of sexual offence expert evidence panel

**21. Should victims have the right to be informed about decisions prior to decisions being finalised (for example when a decision is going to be made about the charges)? If so/not, why?**

We believe affected victims should have a right, if they wish, to be informed *prior* to key decisions being made. This is important to allow victims the opportunity to maximise their influence and control within the justice system (see answer to below question) and indicates to the victim they are integral to the process.

Many victims perceive they are incidental to the proceedings, despite being the individual who has been harmed by the accused's actions. Without the action against the victim, there would be no proceedings. Therefore, as far as is reasonable and practicable, (and only in accordance with their wishes) victims should be brought into decision making processes. This should occur as much as

possible on key decisions, noting that it is not practical or appropriate to include a victim in all decisions.

**22. Should victims have a right to be consulted about certain decisions, or their views to be obtained? If so, what kind of decisions should this apply to?**

As per the answer to the preceding question, not only do we believe victims should be informed prior to key decisions, we also believe victims should be consulted (or at least have their views obtained) about some key decisions prior to decisions being finalised. This is applicable only to the extent the victim wants to be contacted for this purpose.

We acknowledge that on occasions, a victim may not be able to be reached in a timely manner. We acknowledge that there will be many occasions when prosecutors will make key decisions against the views and wishes of the victim. We also accept that some key decisions during a prosecution are highly technical in nature and require specialised legal acumen and judgment, and it may not be appropriate for victims to be consulted on such decisions. Hence, this right must be balanced with prosecutorial discretion and the need to progress matters without undue delays.

For these reasons, if the right to be informed prior to and consulted about certain decisions is included in the Charter, then a list of these key decisions should be settled with input from victims and prosecutorial bodies.

Based on feedback from our clients, we believe some of the key decisions about which victims should have a right to be consulted about include:

- the decision to accept a plea of guilty to a lesser or different charge
- whether a protection order is or isn't pursued under s42 of the *Domestic and Family Violence Protection Act* if charges result in a sentence
- what conditions should be included on a protection order
- any special conditions related to bail
- whether restraining orders should be pursued with stalking charges
- whether the victim wishes to engage in restorative justice conferencing as an alternative to criminal proceedings (noting current QPS policy)

Major decisions that are made without consultation with the victim should be explained to victims. For instance, if decisions regarding appropriate charges or decisions not to prosecute have been decided after consideration of the evidence, available defences, court procedures, case law, any implications under the

*Evidence Act* etc without consultation, then a victim should still be informed prior to the decision being actioned and the reasons for the decision explained.

It must be made clear to victims however, that whilst they have a right to be consulted or have their views considered, the prosecutorial body does not represent them and may make decisions contra to the victim's wishes.

**23. Does the right to be protected from unnecessary contact with the accused during a court proceeding need to be strengthened? If so/not, why?**

Whilst this right may be able to be enforced in larger metropolitan areas, contact between the victim and the accused and/or the accused's family members and supporters is a major problem in regional and remote courts.

A right for an affected victim to be protected from unnecessary contact is difficult for prescribed entities to fulfil in many of these courts. This is due to the structural layout of regional and remote courthouses and limited security staff.

For instance, the one unisex public toilet in the Yarrabah Courthouse is located just outside the door into the courtroom and the only waiting area for all court users is the veranda outside the building where everyone must wait together (i.e. the accused, victims, other witnesses, supporters, aggrieveds, respondents...)

Significant investment would be needed to redesign and renovate existing structures to ensure unnecessary contact does not occur. Realistically, this is unlikely to occur in the foreseeable future.

Therefore, for this right to be meaningful to *all* affected victims and not mislead a victim into a false sense of security, we suggest it is varied to reflect a right to request measures that could minimise any unnecessary contact. Such measures cannot always be guaranteed, hence it should a right to request these measures.

In compliance with the right, victims would be asked if they wish for measures to be sought such as to attend court proceedings electronically or for screens to be erected in a courtroom. Victims could be consulted on special bail conditions and finalised bail conditions be explained to victims.

Police could utilise PPNs and seek domestic violence orders (including temporary orders) with no contact and no approach conditions if the relationship between the parties was a relevant relationship and there were allegations of domestic violence. The amended mandatory condition specifically states a respondent must not

'organise, encourage, ask, tell, force or engage another person to do something that, if done by the respondent, would be domestic violence against the aggrieved.'

We are yet to hear about any prosecutions of the new provision in the DFVPA (s179A) where a family member or supporter of a respondent to a protection order who engages in domestic violence to aid a respondent commits an offence. We are hopeful that this offence will be utilised by the QPS to address the significant issue of intimidation of victims by family members and other supporters of respondents.

**24. Does the right to make a victim impact statement need to be strengthened? If so/not, why?**

We believe this right needs to be clarified and strengthened.

Making a statement about the impact of the harm can have an extremely positive effect on a victim's recovery and wellbeing, sense of justice, and overall satisfaction with the justice system. Yet from our experience, the Charter right to make a victim impact statement is not widely known by victims in the Magistrates Court. It is also somewhat misleading.

Firstly, the right refers to a right to make a victim impact statement under the *Penalties and Sentences Act 1992* (PSA) for 'consideration by the court during sentencing...'. The wording of this right creates an expectation that a victim has a guaranteed entitlement to have whatever they have penned placed before a sentencing court. This is not the case.

Clarification is needed due to operation of s 179K of the PSA, the effect of which is that:

- under s 176K (2) there is some discretion on behalf of the prosecutor as to whether a victim is permitted to give details of the harm
- under s 176K (3) it is up to the prosecutor to decide 'what, if any' details are appropriate to be given to the sentencing court
- s 176 (7) states that it is up to the sentencing court (subject to s 179M) to decide how the details of harm are to be given to the court in accordance with the rules of evidence and the practices and procedures applying to the court (*for example*, a victim impact statement.)

Unless there is legislative change, the right to make a victim impact statement for consideration by a sentencing court needs to be varied to reflect the current law, to manage victim expectations appropriately.

Strengthening and clarifying the right could include:

- Varying the right to be a right to:
  - receive information about making a victim impact statement
  - request a prosecutor to request the court to permit the victim to read the statement aloud
  - receive information about what arrangements that can be sought if the victim is to read the statement aloud
  - receive information about what happens if a victim elects not make a victim impact statement
  - receive information about who can make a victim impact statement if the victim is unable to
  - receive reasons for decisions and information in relation to:
    - why a prosecutor did not permit the victim to give details of the harm
    - why details were not provided to a sentencing court
    - why the details were not provided to the court in the form of a victim impact statement
    - what reasons the court gave for if and how details of the harm were given to the court
    - what reasons the court gave for not permitting a victim to read aloud a victim impact statement
    - what reasons a court gave for not making any requested arrangements when a victim is to read aloud a victim impact statement.

To make the right easily understood and able to be complied with, it should be made clear that the onus is on the prosecutorial body to provide this information and reasons for decisions to the victim.

**25. Does the right to return property held by the State for an investigation or as evidence 'as soon as possible' need to be strengthened? If so/not, why?**

**26. Does the right to make a complaint need to be strengthened? If so/not, why?**

The right to make a complaint does not need strengthening. It is succinct in its current format.

27. While these entitlements are contained within the Corrective Services Act 2006 and Youth Justice Act 1992, are any changes needed to these rights? If so, what should those changes be?

28. Should the Charter include a right which creates a positive obligation on agencies to provide information to victims about their Charter rights and their right to make a complaint under the Charter? If so/not, why?

We do not believe that the Charter should include a right involving a positive obligation on agencies to be responsible for the provision on information about the Charter and the complaint provisions to an affected victim.

Firstly, it seems unnecessary to include a right to be informed of the Charter rights within the Charter rights. Secondly, all rights should be clearly understood by affected victims and prescribed entities and able to be complied with. The same issues arise as we raised in our answer to question 16 about which entities are to be held responsible for providing information in compliance with the general rights.

We believe that agencies should be encouraged to inform affected victims of their Charter rights, with the primary responsibility for the promulgation of the Charter falling to the Office of the Victim Commissioner.

A concern may arise, given that the Charter only applies to affected victims and not all victims or other members of the community, that a prescribed entity who deals with both affected victims, and people other than affected victims, could draw criticism for differentiating between clients who have 'rights' and those who do not. This may cause the clients who are excluded from the operation of the Charter to feel aggrieved they do not have a guaranteed expectation of the same treatment by an agency.

By centralising the responsibility of awareness of the Charter and the right to make a complaint with the Victims' Commissioner, the individual agencies are less likely to be held responsible for the unequal entitlements to rights between affected victims and others. They can choose if and how they disseminate information about Charter rights in a way that does not alienate other clients of the agency.

29. Should the Charter include a right for criminal justice proceedings to be free from unreasonable delay and for inconvenience to the victim to be minimised? If so, what should the scope of this right be, and what obligations should it create for a prescribed person?

Whilst unreasonable delay should be avoided and court processes reviewed to find ways to minimise delay, the progress of individual cases through the justice system depend on many variables. It is unrealistic to fashion this into a meaningful 'right.'

To guarantee an expectation that criminal proceedings pertaining to an affected victim will be free from unreasonable delay is fraught with potential issues. For instance, who judges what is reasonable and unreasonable? What recourse does a victim have and against whom, when delays (inevitably) occur?

Procedural fairness is the cornerstone of our legal system and reasonable allowances for this to occur may not be understood or agreed with by an affected victim and may be regarded as 'unreasonable' or unnecessary in their eyes.

Whilst we do not agree with this 'right', we absolutely believe that delays in the justice system are highly detrimental to the mental health and the recovery of victims and their engagement in the process. We know this because our clients tell us. The extraordinary length of time some matters take to progress is the reason so many victims withdraw complaints. Some defendants use delay as a tactic for this very purpose.

Accordingly, measures should be taken to place an onus on key actors involved in the justice system such as prosecutors and courts, to scrutinise processes and procedures for unreasonable delays and minimise these where possible.

**30. Should the Charter include a right to be protected from repeated victimisation, intimidation or retaliation? If so, what should the scope of this right be, and what obligations should it create for a prescribed person?**

We cannot understand how this can be included as a right.

**31. Should there be a Charter right to understand and be understood? If so, what should the scope of this right be, and what obligations should it create for a prescribed person?**

**32. Should there be a Charter right to interpretation or translation? If so, what should the scope of this right be, and what obligations should it create for a prescribed person?**

We will answer questions 31 and 32 together.

We support the Charter including a right to access interpretation or translation services when they are available.

We also support a prescribed entity using its best endeavours to facilitate an affected victim to understand and be understood, although we do not believe this can be fashioned into a 'right.'

Of the examples of how international jurisdictions address this issue, we prefer the wording of Ireland, and England and Wales.

**33. Should the Charter include a right for victims to request to be interviewed by officials of a particular gender, and to have that request accommodated where possible? If yes/no, why?**

We believe the Charter should include a right for sexual assault and domestic violence victims of one sex to be interviewed by an official of the same sex if reasonably possible. Both sexual assaults and domestic violence are gendered offences with the majority of victims suffering harm from these offences being women.

From a feminist perspective, a woman being able to request to be interviewed by another woman will make her feel safer and more comfortable to candidly disclose her experiences.

We know this from the experience of our service. Women routinely tell us that our exclusively female staff make them feel safe, supported and empowered. The sense of the shared experiences of womanhood is extremely important in helping female victims talk about harm perpetrated (usually) by men.

A clear example from our experience is that *all* our female clients who need the assistance of an interpreter when accessing our service opt for another woman when asked what sex they would prefer the interpreter to be.

**34. Should the Charter reflect a victim's access to reimbursement for witness expenses, compensation paid by an offender, or financial assistance provided by the State? If yes/no, why?**

An affected victim's access to reimbursement, compensation, or financial assistance are examples of information that an affected victim has a right to be provided with under the general rights already under the Charter.

Not all affected victims may be able to access compensation paid by an offender or financial assistance provided by the State. Therefore, information should be

provided but a guaranteed expectation in the form of a right should not be included in the Charter.

Access to reimbursement for witness expenses for affected victims under the *Criminal Practice (Fees and Allowances) Regulation 2021* is another example of information a victim has already has a right to receive under the Charter. We have not heard of any issues with victims not being made aware of or receiving expenses.

As above, an affected victim's potential access to financial support under the *Victims of Crime Assistance Act 2009* is also information that a victim has an existing right to receive under the Charter.

**35. Noting that the Charter presently only applies to government entities and non-government entities, is the Charter an appropriate vehicle for a right to be protected from adverse employment actions? If the Charter is not an appropriate vehicle, how else could this protection for victims be provided?**

We do not believe the Charter is the appropriate vehicle for a right to be protected from adverse employment actions as it should extend beyond affected victims. This is better addressed in relevant legislation such as the *Industrial Relations Act 2016*.

**36. Should the Charter of Victims' Rights include a right to receive a victim recognition statement or request a victim recognition meeting?**

There is not enough information available to determine what impact, if any, a victim recognition statement or meeting on behalf of the State would have on an affected victim's recovery. We do not believe it should be included as a right at this stage without good reason, as it may divert resources from more effective measures to assist victims with recovery.

**37. Should the Charter of Victims' Rights reflect the ODPP's right to review policy? If yes/no, why?**

We support the Charter reflecting the right to review policy of the ODPP.

Over the years, we have had several clients who have been extremely aggrieved by decisions by the ODPP to withdraw charges against an offender who has harmed them or their children. They have felt powerless about such decisions and often received unsatisfactory explanations from the legal officer with carriage of the matter.

On occasions, this has led to people taking to social media and making statements about alleged offenders in order to achieve some sense of justice. Obviously, such publications can be problematic as there could be legal consequences for the publishers of such statements, and it may also detract from confidence in public institutions within the justice system.

We applaud the ODPP for the introduction of the right to review policy. It is an example of a guaranteed expectation that we believe is entirely appropriate to be included in the Charter.

**38. Should the Charter of Victims' Rights include a right to review police investigative decisions, as considered by WSJT and the ALRC? If yes/no, why?**

We note the recommendation in the WSJT specifically related to victim-survivors of sexual violence having a right to review of police and ODPP decisions to withdraw all charges.

We support extending such a right to all affected victims such as implemented by the ODPP and would welcome the QPS implementing the same right to review. If this occurred, we would support the inclusion in the Charter of a right to review a police decision to withdraw all charges.

However, we believe the right to review all investigative decisions of the police could lead to unrealistic expectations by victims and places too much of a burden on the already stretched resources of the QPS.

**39. Should the Charter of Victims' Rights contain a right to request the ODPP consider an appeal? If yes/no, why?**

More information is needed as to what a right to request an appeal would look like. If the Charter was to contain such a right, it would need to be balanced against the number of resources the ODPP would potentially have to divert to process such requests as it may be significant.

We are aware that many victims are not content with the outcome of their criminal matters because they do not meet with the victims' expectations of a just outcome. This does not mean that there is appealable error in the decisions.

If the right to request the ODPP consider an appeal can be met with an explanation about why an appeal is not appropriate, then we would support such a 'right' being included in the Charter, to allow victims to have more inclusion in the process.

We also believe the QPS should be available to explain decisions not to appeal in matters in the Magistrates Court.

#### **40. Are there any other rights that should be included in the Charter?**

We believe the Charter should include a right to have their views and wishes heard and considered by a court considering making or varying a protection order.

This would include:

- a sentencing court considering making or varying a protection order under s 42 of the *Domestic and Family Violence Protection Act* (DFVPA), or
- a child protection court considering making or varying a protection order under s43 of the DFVPA, or
- a domestic violence court considering making or varying a protection order under s37 of the DFVPA.

Many protection orders could be finalised by a court sentencing an offender for a domestic violence offence if the court was apprised of the aggrieved's views and wishes. Unfortunately, many victims in the Magistrates Court are unaware that a protection order can be finalised at a criminal sentence and their views are not sought. Many times they are even unaware that a sentence is taking place.

Not utilising the power under s 42 is a missed opportunity to finalise protection orders whilst the respondent is present in court and can have the conditions on the order and consequences of contravening them explained to them. Finalising an order at sentence also obviates the need for proceedings in the civil domestic violence court, which can be protracted and stressful for victims.

#### **41. Should the Charter include rights specific to alternative justice pathways, such as restorative justice processes? If yes – why and what should those rights look like?**

We do not believe that the Charter should include specific rights about alternative justice pathways, such as restorative justice processes, only about the provision of information about these processes by prosecutorial bodies.

We hold this view because alternative justice pathways are not guaranteed to be available to victims. For instance, there is a current QPS policy regarding domestic violence matters not being appropriate to refer for restorative justice conferencing.

For matters that can progress along these pathways, the ultimate discretion lies with the courts as to whether matters are adjourned for restorative justice conferences.

Further, we believe convenors of restorative justice conferences should retain discretion as to whether they accept a matter for conferencing after considering the relationship and power dynamics of the parties and the specific vulnerabilities of the victim.

We do believe however, that a victim should receive information about restorative justice conferences and can discuss whether this is an appropriate option with the relevant prosecutor.

**42. Should the Charter provide for specific rights outside the criminal justice process, noting that the Charter applies to Queensland government agencies and funded non-government agencies?**

The Charter does provide some specific rights outside the criminal justice system under the general rights. We believe the focus of the Charter should remain on affected victims navigating the justice system.

**43. Should the Charter provide for specific rights in response to recent or emerging issues?**

**44. How are Charter rights upheld or not upheld in practice?**

We wish to commend the QPS for the hard work they perform daily to keep Queenslanders safe and address the never-ending tsunami of domestic violence within our community. We acknowledge the progress they have made to understand and better respond to coercive control.

We must also acknowledge here that our clients routinely tell us that their Charter rights are not always or fully upheld by the QPS. Concerningly, many clients tell us they are unaware of court dates, including bail applications and sentences. This lack of information about key court dates can severely compromise the safety of victims.

Clients are also not routinely made aware of bail conditions. Very often at the domestic violence court, victims are not aware of bail conditions and our lawyers must seek information in the courtroom to ensure harmonisation with temporary protection orders.

We are told by victims they are rarely informed about the progress of investigations or charges, or about other major decisions involved in prosecutions. We also hear

that victims being told about and assisted with victim impact statements seem to be the exception rather than the norm.

The feedback we receive suggests once a matter is committed to a higher court, the victim liaison officer at the ODPP is better able to uphold a victim's Charter rights.

We believe that many of the above concerns could be addressed if the QPS extended the pilot of their excellent victim engagement officer program from youth justice to all matters in the Magistrates Court.

Other than this, we also wish to comment that there may be agencies who are unaware they are prescribed entities to which the Charter applies. This may result in noncompliance. We have responded previously about the confusing definitions of government and non-government entities. If these definitions were clarified and brought to the attention of agencies, better and wider application of the Charter may follow.

#### **45. What would need to change to see Charter rights upheld consistently, fairly and effectively?**

For consistent fair application of the Charter, clarification is needed as to who the Charter applies to and who is responsible for meeting which right.

All Charter rights must be able to be understood to be complied with. All Charter rights must reflect something that the affected victim can have a guaranteed expectation of, i.e. not be aspirational or dependent on the exercise of discretion of a decision maker.

Victims can be angry, scared, confused, physically or psychologically harmed, and/or dealing with many other emotions. There is no question that they ought to be treated with great care as they build resilience and recovery from whatever harm has been perpetrated against them.

We believe the Charter is an important document to set ground rules for agencies when interacting with victims. To be effective though, the Charter must be meaningful and not lead to misunderstandings, unfulfilled expectations or build tension with agencies who are there to assist victims. Therefore, the Charter must be an uncomplicated, accessible document and be easily useable as a tool by agencies to inform their internal policies and training.

46. Have you made a complaint (or supported someone making a complaint) about rights as a victim of crime to any of the above-named agencies? (see page 54) If so, what was your experience?

47. Are there any issues that arise from how the Charter interacts with other legislative frameworks?

We have highlighted several issues that could arise if suggested Charter amendments come into force. The source of the potential tension is the expectation created by a 'right' that may not result in a guaranteed outcome. This is so whenever there is discretion in legislated decision making.

48. Should the Charter of Victims' Rights specifically include rights of victims whose matters have been diverted to the Mental Health Court? If so: • What rights should be included? • Should the principles for victims in the Mental Health Act 2016 continue to exist?

We believe that the Charter should include the rights of affected victims who suffer harm by offenders diverted to the Mental Health Court. Victimhood is brought about by the harm suffered by an individual, rather than the state of mind of the offender.

We cannot see any reasons that Charter rights should not extend to this cohort of victims. Specific rights to information about mental health court proceedings, decisions to release offenders into the community, and the victim's opportunity to express the impact of harm (i.e. by providing a victim impact statement) to decision-making entities should be included.

We do not believe that the principles for victims in the *Mental Health Act* should be removed and any amendments to the Charter should align with these principles.

49. Are there any additional issues that arise from the interaction between the Mental Health Act (2016) and the Charter of Victims' Rights that have not yet been considered?

50. Are there any additional issues that arise from the interaction between the Human Rights Act 2019 and the Charter of Victims' Rights?

51. Are there any additional issues that arise from the interaction between the Anti-Discrimination Act 1991 and the Charter of Victims' Rights?

52. Are there any additional issues that arise from the interaction between the Information Privacy Act 2009 and Right to Information Act 2009 and the Charter of Victims' Rights?

See our comments about general right (2). The wording of this right does not adequately alert affected victims to the exceptions in the privacy legislation that limit a person's expectation of confidentiality.

53. Are there any additional issues that arise from the interaction between the Crime and Corruption Act 2001 and the Charter of Victims' Rights?

54. Are there any issues that arise from the interaction between the Victims of Crime Assistance Act 2009 and the Charter of Victims' Rights?

55. Are there any issues that arise from the interaction between the Penalties and Sentences Act 1992 and the Charter of Victims' Rights?

56. Are there any issues that arise from the interaction between the Corrective Services Act 2006 and the Charter of Victims' Rights?

57. Are there any additional issues that arise from the interaction between the Youth Justice Act 2016 and the Charter of Victims' Rights?

58. Are there any issues that arise from the interaction between the Child Safe Organisations Act 2024 and the Charter of Victims' Rights?