



WOMEN'S LEGAL SERVICES NSW

**Incorporating**  
**Women's Legal Resources Centre**  
**Domestic Violence Advocacy Service**  
**Indigenous Women's Program**  
**Walgett Family Violence Prevention Legal Service**  
**Bourke/Brewarrina Family Violence Prevention Legal Service**

10 September 2009

Director  
Victims Services  
Department of Justice and Attorney General  
Locked Bag 5111  
Parramatta NSW 2124

By email: [vct@agd.nsw.gov.au](mailto:vct@agd.nsw.gov.au)

Dear Director,

### **Consultation on Strengthening the NSW Charter of Victims Rights**

Women's Legal Services NSW (WLS) welcomes the opportunity to comment on the implementation and operation of the NSW Charter of Victims Rights (referred to as "the Charter"). While we have addressed the specific questions that the review asks, we would like to make some preliminary comments regarding the use and effectiveness of the Charter.

While the Charter is valuable in stating a range of goals in relation to the rights of victims of crime, the impact of the Charter is hindered by the lack of cohesive monitoring of compliance of subject government bodies with Charter goals and the lack of a clear approach to responding to alleged breaches of the Charter reported by victims of crime. Further, in our experience, the level of awareness in the community about the Charter both among service providers and victims of crime is very low.

In its current form and function, the Charter is more an aspirational document than one which affords strong protection for the rights of victims of crime. We intend to address these points in more detail in this submission.

#### *About Women's Legal Services NSW*

A considerable amount of the work that WLS undertakes is with women who are victims of crime through experiences of violence including family / domestic violence and sexual assault. This work spans all of our programs and projects:

- Domestic Violence Advocacy Service, which focuses on assisting women seeking Apprehended Domestic Violence Orders (ADVOs) and in related legal processes such as defending cross applications for ADVOs, providing legal advice regarding experiences of violence, casework and advocacy at court.



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- Women’s Legal Resource Centre which focuses on assisting women in the family law system in cases where they have experienced family violence; victims compensation for women who have been sexually assaulted and / or experienced domestic violence.
- Family Violence Prevention Legal Services in Walgett and Bourke-Brewarrina, which focus on providing holistic services to Aboriginal women who are victims / survivors of family violence and sexual assault employing both solicitors and non-legal advocates to provide casework and preventative services.
- Indigenous Women’s Program which focuses on providing an accessible legal service for Aboriginal women across NSW. The program provides legal advice and advocacy, casework services to Aboriginal women regarding experiences of violence, discrimination, victim’s compensation and other legal issues. The program also offers community legal education and works to develop specific projects for Aboriginal women.
- Sexual Assault Communications Privilege Pro Bono Referral Project – This is a one year partnership project between WLS, Office of the Director of Public Prosecutions (ODPP), the NSW Bar Association and 3 private law firms – Clayton Utz, Blake Dawson and Freehills. The project provides advocacy and representation to enable victims of sexual assault to claim the sexual assault communications privilege in relation to subpoenaed records. In addition to providing direct service the project will inform law reform in this area.

Our work seeks to take a client focused approach and combines advocacy and casework, community legal education and law reform/policy work to maximise our capacity to respond to state-wide needs with limited resources.

Our casework services to women who have experienced family violence and sexual assault includes the work of solicitors who regularly represent women at Penrith, Blacktown, Mt Druitt and Sutherland local courts, as well as other courts in metropolitan Sydney. Solicitors from our Family Violence Prevention Legal Services appear for Aboriginal women and children in Walgett, Lightning Ridge, Bourke and Brewarrina local courts. We work with several Women’s Domestic Violence Court Advocacy Services (WDVCASs) in metropolitan Sydney and in Bourke. We provide general advice and advocacy services to many women who have experienced violence through our outreach advice program which operates in partnership with women’s health centres in Campbelltown, Blacktown, Penrith, Liverpool, Fairfield and Wyong.

We also undertake extensive community legal education activities. This includes a state-wide program of workshops and seminars for workers and the community; plain English publications and guides to the law such as *Women and Family Law*; the *Law Handbook* chapters on domestic violence, sexual assault and family law; *Counsellors and Subpoenas*; *Silence is Abusing our Kids*; the *Hot Topics* issue on Sexual Assault.

We also have a significant role in law reform with the aim of improving the legal systems response to those who have experienced violence. This includes working with Women’s Legal Services Australia and CLCsNSW; participating in high level consultative committees such as the Family Court Chief Justice’s Forum, the NSW Apprehended Violence Legal Issues Coordinating Committee (AVLIC) and the Domestic Violence Intervention Court Model Senior Officers Group.

**1. Is the general public aware of the Charter? If not, what strategies could be considered to improve their knowledge?**

Our view is that the general public is not aware of the Charter of Victims Rights to any great extent. Information is not available generally regarding the Charter except through the Victim of Crime / Victim Services website. We are aware that Victims Services has a program of community education and that particular attention has been paid in recent times to the Aboriginal community. However there does need to be further work undertaken to raise awareness of the existence and use of the Charter.

An additional issue that needs to be taken into account is the disconnection between what the public sees as the role of the criminal justice system and the role of victims of crime within that system and the actual role of victims as complainants in that system. While Victims Services offers information to the community about the role of victims of crime in the criminal justice system (for example through the development of web resources) more attention may need to be given to this. Improving the distribution of existing resources may be one measure to increase awareness.

In our experience, there is also a general lack of awareness about the Charter among service providers who provide support and assistance to those who fall under the category of victims of crime. Most service providers, in both the government and non-government sectors display little knowledge of the Charter including of its existence. They are therefore not in any position to assist an individual to use or make a complaint under the Charter.

We recommend that Victims Services embark on a campaign to ensure an enhanced level of awareness among service providers and the community about the Charter. We suggest that there be a particular emphasis on those service providers who will have contact with victims of violent crime and that information is provided in accessible form for Indigenous and Culturally and Linguistically Diverse (CALD) communities.

**2. Are victims aware of the Charter? If not, what strategies could be considered to improve their knowledge?**

In our experience there is a very low level of awareness by victims of crime of the Charter, their rights as a victim of crime and associated matters such as victim's compensation. Most community members who experience acts of violence will find out about these through specialist services such as community legal centres or Aboriginal Legal Services, Victims Services, the Witness Assistance Program of the ODPP, and sexual assault services – if they access such services.

To ensure that victims of crime get this information we recommend that the police provide information about both Victims Services and the Charter to victims of crime at the point when they first make a report. All people who report crimes of violence against themselves (including domestic violence offences and sexual assault) or family members of homicide victims, should be provided with appropriate written information at that point by investigating police.

- 3. Does the Charter of Victims Rights adequately reflect the needs of victims in NSW?**
- 4. How could the charter be improved?**
- 5. What elements of the Charter are the most important to be upheld for victims?**
- 6. Which Charter right(s) are easy to access for victims of crime?**
- 7. Which Charter right(s) are difficult to access for victims of crime?**

We have chosen to answer these questions together to enable broader comment about the current content of the Charter and recommended improvements. The Charter was originally developed in 1995 and is given force through the *Victims Rights Act 1996*. At the time, it represented a significant step in acknowledging the need to provide protections for victims of crime. However, in the intervening years we have observed a welcome shift towards a human rights approach to providing services and advocacy for those who are victims of violence. The impact of this on the Charter should be that it requires a greater emphasis on the responsibility of the police and prosecuting agencies, services for victims of crime and others to address systemic barriers to people achieving their rights under the Charter.

The existing Charter sets out the entitlements that a victim of crime may have, while in practice a number of key principles are balanced with a consideration of the resource implications for the agencies concerned. The impact of this is that there is a real risk that many of the principles set out in the Charter are not obtainable to the extent that was originally intended.

Further, the Charter embodies a passive rather than active response to the concept of victim's rights. The operation of the Charter does this in a variety of ways:

- It sets out a number of aspirational guidelines regarding such things as the provision of information, services and how victims of crime are to be treated. However, as there is limited resources put towards an independent assessment of how government bodies are guided by the Charter there is limited means for identifying or addressing systemic or individual failures.
- A number of the Charter principles require the victim of crime themselves to be an active seeker of information rather than this information just being provided as a matter of course.
- The process for dealing with complaints regarding breaches of the Charter principles is complex, contradictory and sometimes lengthy, and ultimately the Victims of Crime Bureau tasked with dealing with complaints, has limited power to effect change for individuals. This raises the question of whether rights that are unenforceable are actually rights.

In relation to the form of the principles of the Charter which are set out in Part 2 of the *Victims Rights Act 1996* we have the following specific comments regarding certain clauses:

*s 6.1: Courtesy, compassion and respect – a victim should be treated with courtesy, compassion, cultural sensitivity and respect for the victims rights and dignity*

We recommend the addition of a further clause regarding the treatment of victims of crime to include a responsibility on agencies to be responsive to people's particular and unique needs as a result of their background, experience of disability, sexual orientation or gender. The existing

clause does not go far enough in this regard. The Victorian *Victims Charter Act 2006*, s 6(1) (2) is an example of a suitable clause.

We are aware that the *Resource Kit on Victims Rights* produced by Victims Services as a resource for government agencies on implementing best practice regarding the Charter of Victims Rights contains comment and ideas about ensuring that services are responsive to diversity. However there is no external imperative for agencies to focus resources on this. We recommend that the Charter itself include this requirement rather than merely positioning it within internal policy.

*s 6.4: A victim should, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardize the investigation. In that case, the victim should be informed accordingly.*

We recommend a change of emphasis so that the victim should as a matter of course be informed (unless it will jeopardize the investigation) unless they request that they should not be informed. This formulation reflects the Victorian approach in the *Victims Charter Act 2006 (Vic) s 8*.

*s 6.5: Information about the Prosecution of the accused*

*s 6.6: Information about the trial process and role as witness*

The formulation of these rights in the Charter is adequate. The main issue lies with the practicalities of providing such information. We receive many reports from clients that this does not occur to the level that makes them feel informed of the process of a prosecution and their role as a witness. We are aware that both the Police and the ODPP operate under significant resource restraints.

We recommend the expansion of the Witness Assistance Scheme within the ODPP to ensure that the ODPP is able to provide further assistance. Further, internal policies within the Police Service need to be reviewed to ensure that victims of violent crime are consistently provided with the contact details of the officer in charge or other relevant officer such as Domestic Violence Liaison Officers as a matter of course.

*s 6.7: Protection from contact with the accused*

This clause in particular relates to minimizing contact by the victim with the perpetrator at court. While this is achievable at many metropolitan courts, it remains an issue in courts in rural areas or in courts that occupy heritage buildings.

*s 6.13: Information about outcome of a bail application*

This clause should be amended to ensure that victims of domestic violence offences are included as a category of victim.

*s 6.15: Information about impending release, escape or eligibility for absence from custody*

Registration with the Victims Register is the main way that victims of crime are able to be informed about the impending release or other aspects of an offenders detention. It requires that victims of crime register their request to be kept informed. The level of awareness about the Victims Register is relatively low, particularly among CALD and Indigenous communities.

Information about this should be provided to all victims of violent crime where the offender has a custodial sentence.

**8. How could NSW better achieve a co-ordinated implementation of the Charter of Victims Rights?**

**9. What is the best way to uphold/enforce the Charter of Victims Rights?**

In order to achieve a co-ordinated implementation of the Charter of Victims Rights we recommend a number of initiatives as follows:

- Strengthen the Charter as outlined above;
- Resource an external review of participating agencies to ensure compliance with Charter principles. This review to look at both policies and the practical effect of those policies in relation to the rights of victims;
- Review externally the efficacy of internal complaints processes in participating organizations both in terms of process and outcomes for victims of crime;
- Require organizations subject to the Charter to report regularly to the Victims of Crime Bureau on their compliance with Charter principles;
- Improve processes to ensure that victims of crime are given appropriate and accessible information about their rights under the Charter;
- Develop a clear, coherent and client focused process for complaints by victims of crime regarding breaches of Charter principles.

Currently there is no realistic enforcement mechanism to support the Charter of Victims Rights. The *Victims Rights Act 1996* requires that the Victims of Crime Bureau promote and oversee the implementation of the Charter. The Victims of Crime Bureau has the capacity to make presentations to the Attorney General or the Parliament about its functions. There is also a requirement that material is included in the Annual Report of the Attorney General's Department regarding the work of the Victims Bureau. Unfortunately, the material provided is limited and is usually confined to the provision of service only, and does not cover any issues that may have arisen in relation to the Charter.

There is a need for these monitoring mechanisms to be strengthened and regular reporting required that specifically relates to the implementation of Charter principles.

**10. What strategies could be implemented to improve the resolution of complaints regarding breaches of the Charter?**

There is currently no effective model in place in NSW to deal quickly and appropriately with complaints by victims of crime in relation to breaches of the Charter of Victims Rights. It is the role of the Victims of Crime Bureau to receive and respond to complaints from victims of crime and to "*use its best endeavours to resolve the complaints*" (*Victims Rights Act 1996 s10(1)(d)*).

The Victims of Crime website sets out the steps required to make a complaint. The first step is to make a formal complaint in writing to the agency they are concerned about directly. The website directs that if you need help writing your complaint that you could ask the agency concerned what help they provide to write the complaint.

Further, it is only when someone is dissatisfied with the response from that agency that they can make a complaint in writing to the Victims of Crime Bureau. At that point the Bureau has the ability to contact the agency concerned to attempt to resolve the matter.

With respect to the Bureau's ability to assist with resolving complaints, the Victims of Crime Bureau website contains the following information:

*“Bureau staff are trained to help victims identify issues that may arise that are related to the rehabilitation process. On occasion, this means that Bureau staff may work through the issue with you and together you may agree that the issue is not a breach of the Charter but relating to another concern or process.....”*

The complaint process is difficult to negotiate, reliant on the timeframes of the agencies themselves for dealing with complaints. Information such as that quoted above, provides contradictory messages about whether the Bureau will take a complaint seriously.

The Victorian model has introduced a particular contact point for people having concerns about breaches of their rights as a victim of crime. This allows the Victorian equivalent of Victims Services to receive complaints, to discuss them with victims of crime directly and to formally approach agencies concerned on behalf of a victim of crime to try and resolve the matter directly. Victims of crime in Victoria still have the capacity to make formal complaints with assistance from Victims Services but the model allows an early focus on the resolution of the issue. The NSW model relies on formal complaints mechanisms, which may on occasions be necessary, but could prevent people from having concerns dealt with appropriately in a client focused way.

We recommend that NSW consider the introduction of a model similar to Victoria for managing and responding to complaints about breaches of the Charter.

## **11. Is the current definition of victim adequate? How could it be improved?**

The current definition of a victim in the *Victims Rights Act 1996* could be amended to give a wider of definition of harm. The existing definition of harm including “...*the person suffers actual physical bodily harm, mental illness or nervous shock*” uses language which does not reflect more recent legislation. We recommend that the definition of harm be broadened to include a clause similar to that contained in the Victorian *Victims Charter Act 2006* definition of injury. This broadens the concept of harm to include “grief, distress or trauma or other adverse affect”.

We thank you for the opportunity to contribute to the review of the NSW Charter of Victims Rights. If you would like to discuss any of the issues raised in our submission in more detail please contact or Felicity Martin on 9749 7700 or [felicity\\_martin@clc.net.au](mailto:felicity_martin@clc.net.au).

Yours faithfully,

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Principal Solicitor