



Criminal Lawyers Association of the Northern Territory (CLANT)

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Judge Sue Oliver, Chairperson
Crime Victims Advisory Committee
GPO Box 1722
Darwin NT 0801

Dear Judge Sue Oliver

Thank you for the opportunity to provide comments to the Attorney-General's Department consultation on a proposed Charter of Victims Rights in the NT.

We understand that this is the first stage in the broader review, and that this consultation addresses the foundation and framework for general rights and principles for the treatment of victims rather than specific details of the legislative framework.

CLANT's comments to the questions under consultation follow:

1. Is the approach of the Charter appropriate? Should the Charter be a more high level aspirational document? Or should there be more detail?

As the Charter is to be incorporated into the policies and procedures of all NT Government Departments, it is important to make the document a flexible and aspirational document, to enable it to be applied to changing circumstances and social contexts.

Although the Charter will have most visible application to the DPP and those working in the justice sector, a balance must be struck between being high-level and aspirational, and providing guidance for any agency dealing with any situation involving a victim of crime. The Charter as presently drafted places an emphasis on the DPP and NT Police's dealings with victims. It is suggested that the Charter should explicitly acknowledge a potentially broader scope of victims, including victims who may be dealt with by other investigating agencies.

Further, there are crime types that affect any government agency or institution – for example, fraud and cybercrime, including online bullying through use of social media. Any agency dealing with fraud offences may need to apply these principles to victims of fraud.

The scope of potential victims must be kept in mind in the drafting of a Charter. Victims of crime now include a broader scope of persons – for example, victims of cybercrime, identity theft, and human trafficking – offences that did not exist a decade ago. Other categories of

victims may also include family members of persons who have died in custody, or persons who fall victim to non-consensual online publication of sexual or humiliating images or footage, as a form of harassment, bullying and/or intimidation.

2. Please comment on the content of the draft Charter. Should any rights be added or removed from the Charter? Do the draft principles reflect Best Practice?

The first sentence should provide a definition of a victim of crime. This sentence (as drafted), in effect, defines a victim by describing the type of harm that a victim can experience. However, it is suggested that there be an explicit definition, which can be taken largely from the text of the Un Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which reads:

1. *"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.*
2. *A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*
3. *The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.*

The first sentence should include not just physical injury, emotional harm or property damage, but economic loss or financial loss. If economic loss is included as a type of harm further consideration may be needed as to the scope of economic loss envisaged.

The Charter should include a provision that victims of fraud, or victims who have suffered financial losses, have a right to seek reparation through the prosecutorial processes (for example, through the sentencing process).

The Charter should also include provisions reflecting:

- a. that victims have the right to be informed of decisions regarding granting of bail, making of DVOs, sentencing and conditional release (whether an offender is on a suspended sentence or on parole), and
- b. that where an offender applies for or is given conditional release, victims have a right to be informed of this, and of any conditions placed on perpetrators or defendants that relate to the victim (for example, restraints on contacting the victim)

The rights articulated in points 3, 4, 5, 6, 8, and 10, relating to being informed about various stages and decision-making points in the prosecution process, should add, “in a language that they understand”.

3. *Is the presentation of the draft Charter appropriate? Is there a better way it could be presented?*

The presentation is appropriate. The Charter should be presented in multiple languages. A small booklet / brochure would also be an appropriate format.

4. *How can we better raise awareness of the Charter?*

Brochures could be placed at community legal centres, Legal Aid offices, the court registry etc. Public information sessions can be carried out in Darwin, Alice Springs, Katherine, Tennant Creek and other communities in the NT.

5. *Does the draft Charter reflect needs and necessary rights of victims taking into account the changing policy environment?*

Refer to comments at questions 1 and 2.

CLANT also refers the Committee to the extensive work done by the European Commission in developing an effective rights-based statutory and regulatory framework to support victims, accessed at http://ec.europa.eu/justice/criminal/victims/index_en.htm.

I hope this document is useful to the Crime Victims Advisory Committee’s work in this area. Thank you again for the opportunity to provide these comments.

Yours faithfully,



Russell Goldflam
President, CLANT