



BUILDING OUR COMMUNITY'S
HEALTH & WELLBEING



Gay & Lesbian Rights Lobby

Submission to:

The Review of the Rights of Victims
of Crime in NSW

Department of Justice and Attorney
General NSW

September 2009

About ACON

ACON (the AIDS Council of NSW) was formed in 1985 as part of the community response to the impact of the HIV/AIDS epidemic in Australia. Today, ACON is Australia's largest community-based gay, lesbian, bisexual and transgender (GLBT) health and HIV/AIDS organisation. ACON provides information, support and advocacy for the GLBT community and people living with or at risk of acquiring HIV, including sex workers and people who use drugs.

ACON is home to the Lesbian Gay Anti-Violence Project (AVP), the Community Support Network (CSN), the Positive Living Centre (PLC) and the Sex Workers Outreach Project (SWOP). ACON has its head office in Sydney as well as branches in the Illawarra, Northern Rivers, the Hunter region and the Mid North Coast.

The Lesbian and Gay Anti-Violence Project initially started in 1991 as a result of the *Streetwatch Report* published by the Gay and Lesbian Rights Lobby (NSW) in 1990. Since 2000 the AVP has been a part of ACON. Amongst other things, the AVP works with victims of homophobic violence and same-sex domestic violence to improve their wellbeing and assist them within the criminal justice and rehabilitation system. The AVP also works with government and other partners to prevent and reduce the underlying causes of violence.

About the Gay and Lesbian Rights Lobby (NSW)

Established in 1988, the Gay & Lesbian Rights Lobby (GLRL) is the peak representative organisation for lesbian and gay rights in New South Wales (NSW). Our mission is to achieve legal equality and social justice for lesbians and gay men.

The GLRL has a strong history in legislative and policy reform in NSW. In 1990, the GLRL led the process for the introduction of Gay and Lesbian Officers (GLLOs) across NSW police stations. In 1991 the GLRL established the Lesbian and Gay Anti-Violence Project (AVP) which has since been transferred to ACON. The GLRL also played a vital role in ensuring the introduction of homosexual anti-vilification legislation in 1993. In 2003 the GLRL was successful in campaigning for the equalisation of the age of consent in NSW for gay men.

More recently from 2001 to 2003, the Lobby conducted a comprehensive consultation with lesbian and gay parents that led to the law reform recommendations outlined in our 2003 report, *And Then ... The Bride Changed Nappies*. Several of our recommendations were enacted into law under the *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008* (NSW).

General Comments

Violence experienced in the GLBT community continues to be higher than violence in the general community. According to research by the NSW Attorney General's department, 85% of GLBT people had ever experienced homophobic abuse, harassment or violence, with 56% experiencing homophobic abuse, harassment or violence in the previous 12 months.¹

¹ NSW Attorney General's Department, *You shouldn't have to hide to be safe: a report on homophobic hostilities and violence against gay men and lesbians in New South Wales*, (2003), p.ix.

Victims of crime who are members of the GLBT community also fear they will experience discrimination and homophobic attitudes when accessing services such as NSW Police. This partly accounts for the statistic that only 13% of people who have experienced homophobic abuse or violence in the past 12 months reported the incident to police.²

ACON, in partnership with the Gay and Lesbian Rights Lobby NSW held a GLBT Community Forum to allow members of the GLBT community to discuss their experiences as victims. The *Community Forum* was held on 26 August 2009 and significantly informs this submission.

A Human Rights Framework for Victim's Rights

Human rights offer a framework to understand, promote and protect the rights of victims of crime. The existing human rights framework gives insights on the implementation of rights and the necessary conditions for the successful implementation of a rights regime. These conditions include non-discrimination, enforcement and accountability regimes, and promoting rights inclusive of the needs of victims, especially different groups of victims.

Non-Discrimination

Victims have a right to be treated with dignity, protected from unnecessary harm and be involved in or informed of the justice process if they choose to. These rights are included in the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (the *Declaration*). The *Declaration* explicitly states that that the rights "shall be applicable to all, without distinction of any kind..."³ The *Charter of Victims Rights* (the *Charter*) would also benefit from an explicit non-discrimination provision.

Victims of crime regardless of their sexuality, gender identity, race, sex, disability, age, religion or any other social status can and do experience harm. A non-discrimination clause would remind service providers, police and other government officers of their obligation to not discriminate against any group within society.

The inclusion of a non-discrimination clause would also be important to set a standard of appropriate behaviour in how service providers, police and other government officers interact with members from the GLBT community. The non-discrimination provision would also reinforce the need of culturally appropriate responses to diverse communities.

Since victims of crime may have suffered psychological or emotional harm, it is especially important for a *Charter of Victims Rights* that persons with mental illnesses or person perceived to have mental illnesses are not dismissed or otherwise discriminated against. Persons with mental illnesses may have legitimate complaints or have experienced a crime, and should be taken seriously by police and other service providers.

Recommendation:

² *Ibid.* p. iii.

³ Art 3, *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985).

1. The NSW Government insert a non-discrimination clause into the *Charter of Victims Right*. This clause should include the grounds of sexuality, gender identity, race, sex, disability, age and religion.

Enforcement and Accountability

The efficacy of the rights created under the *Charter* is largely dependent on the adoption of the corresponding obligations by police, government and other service providers. The obligations of the *Charter* should include all service providers that work with victims as victims, regardless of whether they are government or non-government organisations. The police and other government bodies (for example, the Department of Public Prosecutions) should continue to be obligated under the *Charter*.

Obligations on organisations under the *Charter* need to be able to be enforced both within the internal systems of the organisation, and also through an external authority. Enforceability of the *Charter* was a major concern of community members at our forum. The current body, Victims Services, in the Attorney General's Department does not have the perception of independence nor have the power to enforce rights in the *Charter*. Having a clear independent authority that can assist victims in enforcing their rights will provide a much needed service to current victims of crime who do not feel they are able to enforce their rights under the current *Charter*.

The external authority should also monitor systemic rights violations and review the operation of the *Charter*. The authority's review of the operations of the *Charter* should encompass all organisations and be conducted in regular periodical intervals. Such a review was seen by the community as an independent mechanism to promote the implementation of the *Charter* in organisations.

An independent and accessible authority that can enforce rights for victims while monitoring the operation of the *Charter* would assist and protect victims in the difficult period after a crime and improve the delivery of services and justice.

Recommendation:

2. The NSW Government establish an independent victims services authority with powers to enforce the *Charter of Victims Rights* in individual cases. The authority should also monitor and conduct reviews on the operation of the *Charter of Victims Rights*.

Promoting the Charter

To ensure the *Charter* is effective, victims must be made aware of the *Charter*, the rights in the *Charter* and how the *Charter* can be enforced. Community members at our consultation believed that most members of the community are not aware of the *Charter* and many remain unaware of the *Charter* even as victims of crime.

The forum suggested advertising on television, radio and other media to educate the public as well as to make the *Charter* a mandatory aspect of police education. The promotion of the *Charter* should target the general community, but also specifically communities that are at particular risk of crime, such as the GLBT community and other vulnerable communities to ensure that all victims and their supporters understand and can access the *Charter* rights.

Recommendation:

3. The NSW Government promotes the *Charter of Victims Rights* to both service providers and community members using a variety of channels including mainstream and community media targeting vulnerable communities including the GLBT community.

Victim Focused

The needs of victims should be paramount in the engagement of organisations with victims of crime. Paragraph 3 of the *Charter* states that “a victim should have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim’s needs”. However, at our community forum community members reported that they were not assisted by the police (as first responders) in accessing appropriate services, and that such services were difficult to access or were unknown to victims.

Victims’ services, including welfare, health, counselling and legal services should be provided to victims in a culturally appropriate manner which does not to exclude or alienate victims from marginalised groups.

Specialised and targeted services are necessary to understand the cultural and social dimensions of being a victim from a particular group. It is particularly important for GLBT victims of homophobic crimes, as the need to disclose their sexuality to a service provider and being subjected to homophobic abuse again can deter victims from accessing services.

The right of victims to access appropriate services should be facilitated by first responders, including police.

Recommendation:

4. The *Charter of Victims Rights* require first responders to inform victims of culturally appropriate welfare, health, counselling and legal services.
5. The NSW Government fund specialist and culturally appropriate services for marginalised communities including the GLBT community.

Homophobia and Hate Crime

The GLBT community experiences crime differently to the general community. The existence of homophobic hate crimes, as well as homophobic abuse and harassment has serious and long-term negative impacts on the GLBT community. This can have particularly devastating consequences for the psychological wellbeing of individual victims as well as the entire community. The psychological damage of homophobic violence is further compounded for same-sex attracted young people⁴

⁴ NSW Attorney General's Department, *You Shouldn't Have to Hide to be Safe*, (2003), p. iii.

To ensure that victims from the GLBT community are treated equally, it is vital for police and other service providers to understand the distinctive issues of hate crimes as well as to provide non-discriminatory and culturally appropriate services.

Definitions

The current definition of victims in the *Charter* is unnecessarily narrow, excluding victims who have suffered from crime. Victims of crime can suffer physical, psychological and emotional harm without necessarily fitting the definition of “physical bodily harm, mental illness or nervous shock”. The broader definition used in the document produced by Victims Services, Attorney General’s Department NSW which states that “a victim is a person who, as a direct result of a criminal offence, suffers physical, psychological or emotional harm...”⁵ is more appropriate to capture all victims of crime.

The *Charter* recognise that families of victims can be victims themselves, however the recognition that “[i]f the person dies as a result of the act concerned, a person’s immediate family is also a victim of crime for the purposes of this act” should be broadened. Families of victims can suffer significant psychological harm from their partner, child, parent or sibling being a victim to a crime. A death of their family member should not be necessary for families to be entitled to parts of the *Charter*, whilst other aspects of the *Charter* should apply also when the victim is incapacitated to make decisions.

Furthermore, the definition of immediate family should explicitly include same-sex partners as well as the children in that family, even if the partner or children are not necessarily recognised in other aspects of law. This would assist same-sex partners of victims accessing essential services such as health and counselling services available to victims of crime.

Recommendations:

6. The NSW Government amend the definition of harm in relation to victims in the *Victims Rights Act 1996* to include physical, psychological and emotional harms.
7. The NSW Government define “immediate family” for the purposes of the *Victims Rights Act 1996* to include same-sex relationships and children in those relationships.

Hate Crimes

Hate crimes are crimes that are perpetrated against a person or that person’s property and motivated by hate, prejudice or bias based on real or perceived grounds such as sexual orientation, gender identity, race, sex, disability, age, religion etc.

A hate crime is different from other crimes in that it is primarily motivated by a person’s dislike or hate of a fundamental aspect of another person’s identity such as their sexual orientation. This has been documented to have significant psychological harms for the individual against whom the crime occurs. Victims of hate crimes are more likely to suffer

⁵ Victims Services, Attorney General’s Department, *Charter of Victims Rights: Victims Rights Act 1996*, June (2003).

psychological harms and can develop “depression, anxiety, and post traumatic stress disorder”.⁶ Hate crimes are also more difficult to overcome psychologically.⁷

Hate crimes have the additional element of harming the community that shares the identity that was targeted. Hate crimes motivated by the victim’s sexuality victimises not only the individual but the entire GLBT community. Members of the community that share the identity upon which the crime was motivated may feel less safe and experience lower self esteem thinking that their identity is part of the problem.⁸

The inclusion of hate crimes in the *Charter* would assist service providers to understand that hate crimes have specific impacts and raise additional issues for consideration for victims of hate crimes. Inclusion would also assist victims in accessing services that they fear are discriminatory or ignorant of their experiences. Specifically including hate crimes also alerts NSW Police to the need to effectively respond to hate crimes in a manner that is consistent with the *Charter* and the rights of victims of such crimes.

It is also important for the victims of hate crimes that police or other service providers do not dismiss their experience of prejudice. One community member expressed difficulty in persuading police to consider hate crimes as motivated on the ground of sexual orientation. Victims of hate crimes should be able to have their case recorded as a hate crime, as well as for the case to be handled as a hate crimes case, where it is clear that such a crime has occurred.

Recommendations:

8. The NSW Government include hate crimes specifically in the *Charter of Victims Rights* including the specific impact of hate crime on communities. Hate Crimes should also include crimes on the grounds of sexual orientation, gender identity, race, sex, age, disability and religion.
9. The NSW Government insert the right to have a case recorded and considered as a hate crime for victims of hate crime, including the ground on which the crime was motivated.

Hate Incidents

Prejudice on the basis of sexual orientation, gender identity and other grounds are not necessarily always expressed as a crime and hate incidents such as actions or speech that are harmful, are not classified criminal. For example, discrimination, vilification and harassment can be unlawful without being criminal. Victims of hate incidents are still targeted and can experience psychological harm. Often hate crimes are preceded by hate incidents. Community members expressed strong support that the *Charter* should apply to hate incidents even when it is not a crime. This would assist communities to prevent hate crimes as well as offer services to victims that share the same experiences of other victims of crime and require the same support.

⁶ C Langner, *Hate Crimes: Psychological Research on the Origins and Impact of Bias-Motivated Crimes*, Society for the Psychological Study of Social Issues, (2008), at: [http://www.spssi.org/ data/n_0001/resources/live/SPSSI%20Fact%20sheet_Hate%20Crimes.pdf](http://www.spssi.org/data/n_0001/resources/live/SPSSI%20Fact%20sheet_Hate%20Crimes.pdf)

⁷ American Psychological Association, *Hate Crimes Today: an age-old foe in modern dress Position Paper*, (1998), at: <http://www.apa.org/releases/hate.html>

⁸ R J Boeckmann, & C Turpin-Petrosino. “Understanding the harm of hate crime”, *Journal of Social Issues*, 58(2), (2002) pp. 207-226.

Recommendation:

10. The NSW Government include victims of hate incidents in the *Charter of Victims Rights* by broadening the definition of a victim to also include victims of hate incidents.

Police Engagement and Response

The operation of the *Charter* is heavily dependent on first responders such as NSW Police, as the earlier *Charter* rights are pre-requisites for the exercise of other *Charter* rights. Rights relating to respectful services, investigation and prosecution are necessary for victims to be able to exercise rights relating to trial, bail, release and parole. It is thus important that first responders such as NSW Police are particularly observant of the *Charter*.

Addressing discrimination from NSW Police

A core right that is necessary for the exercise of all rights is the right to non-discrimination. This right includes the right for victims not to have to encounter homophobic attitudes, comments or actions from NSW Police and other service providers, as well as engagement that is culturally appropriate. Many members of the community have experienced discrimination from NSW Police. Discrimination can be more severe in cases of hate crimes or same-sex domestic violence when the victims need to “come out” to different people every time they access NSW Police services, risking homophobic responses each time.

Discrimination and/or perceived discrimination combined with the difficulties of “coming out” to Police (again and again) can deter victims from reporting crime and accessing services and *Charter* rights.

Non-discrimination in the context of policing also entails that NSW Police understand and recognise homophobic abuse and same-sex domestic violence as crimes. Community members have expressed experiences where NSW Police underestimate or do not understand the impact of homophobic abuse on the victims. Therefore education of NSW Police around GLBT issues is necessary to reduce the dismissal of homophobic abuse or same-sex domestic violence as crimes.

Assigning one Officer to work with the victim to reduce the need to “come out” and having a strong non-discrimination culture in NSW Police would assist in victims reporting crime and accessing justice. The role of Gay and Lesbian Liaison Officers can be particularly helpful in this regard.

Recommendation:

11. The NSW Government improve training for NSW Police on non-discrimination, including GLBT Issues.
12. NSW Police assign individual officers to deal with all communication between victims of a particular case for the duration of that case.

Timeframes for Police Response

A common experience that was expressed at the community forum was the lack of timeliness in the response by NSW Police.

Unnecessary delays in action and communication by NSW Police have significant impact on the welfare of victims and should be minimised. The current definition of “a timely manner” in the *Charter* is unclear.

It would be useful for Victims Services to create timeframes that are considered timely under the *Charter* so that victims and NSW Police have clarity on what timeframes are appropriate and what are not.

Recommendation:

13. The NSW Government empowers the authority that monitors the *Charter of Victims Rights* to make regulations under the *Victims Rights Act 1996* to define “a timely manner” in relation to the *Charter*.

Protection

The protection of victims from their perpetrators is already a right in the *Charter* during the course of court proceedings; however the need for protection is not diminished outside of court. For many victims of violent crimes, contact with the perpetrator can be very traumatic and could be an opportunity for the perpetrator to intimidate the victim. Protection from the perpetrator(s) needs to be extended beyond the courtroom.

Recommendation:

14. The NSW Government broaden the scope of the right to protection from contact with the accused to include all situations. This right can be implemented through assistance from NSW Police in lodging AVOs.

Reforming Police Processes

As NSW Police play a key role in upholding the rights of victims, it is necessary to ensure that police officers understand and perform their duties according to the *Charter*. While training is a key element to encourage compliance with the *Charter*, this would be assisted if the internal NSW Police processes and regulations are structured so that compliance with the *Charter* is easier or in some areas mandated. For example, introducing the victim to the *Charter* can be built into the regular process of the police interaction with the victim in the first instance, perhaps after their initial interview.

Recommendation:

15. The NSW Government reform regulations and internal processes of NSW Police to assist and mandate compliance with the *Charter of Victims Rights*.

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