



Submission to the Northern Territory Government's consultation on
Draft Charter of Victims' Rights

December 2018



Jesuit
Social Services
Building a Just Society

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Jesuit Social Services

Who we are and what we do

Jesuit Social Services is a social change organisation working to build a just society where all people can live to their full potential.

For over 40 years we have been working at the hard end of social justice with some of the most disadvantaged and marginalised members of our community, who are often experiencing multiple and complex challenges. Jesuit Social Services works where the need is greatest and where we have the capacity, experience and skills to make the most difference.

We have a presence in Victoria, New South Wales, the Northern Territory and internationally, through our leadership of the Justice in Mining Network and involvement in the Jesuit Prison Network.

Our practical support and advocacy covers five main areas:

- **Justice and crime prevention** for people involved with the criminal justice system.
- **Mental health and wellbeing** for people with multiple and complex needs and those affected by trauma, suicide, and complex bereavement.
- **Settlement and community building** for disadvantaged communities, and recently arrived migrants and refugees.
- **Education, training and employment** for people with barriers to sustainable employment.
- **Gender and culture** providing leadership on the reduction of violence and other harmful behaviours prevalent among boys and men, and building new approaches to improve their wellbeing and keep families and communities safe.

The promotion of education, lifelong learning and capacity building is fundamental to all our activity. We believe this is the most effective means of helping people to reach their potential and exercise their full citizenship. This, in turn, strengthens the broader community.

Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence participants' lives and improve approaches to address long term social challenges. We do this by working collaboratively with the community sector to build coalitions and alliances around key issues and building strong relationships with key decision-makers and the community.

Our **Learning and Practice Development Unit** builds the capacity of our services through staff development, training and evaluation, as well as articulating and disseminating information on best practice approaches to working with participants and communities across our programs.

Our work in the Northern Territory

Jesuit Social Services' work in the Northern Territory commenced in 2008 with an invitation to work collaboratively with the Central and Eastern Arrernte people in Santa Teresa and Alice Springs.

Since then, at the invitation of a number of other communities and Aboriginal Community Controlled Organisations, our work has grown to include the communities of Atitjere and Engawala on the Plenty Highway and Tennant Creek. Our work in Central Australia has focused on building the governance and service delivery capacity of the communities and organisations we work with.

To enable a more strategic response to the structural issues we see playing out in the lives of people on the ground, in 2015 we established an advocacy presence in Darwin. Over the last three years, we have developed a strong network of relationships within government and the community and legal sectors, and have been strong advocates on youth justice issues.

In early 2017, Jesuit Social Services received funding from the Department of Territory Families to pilot the Northern Territory's first Youth Justice Group Conferencing program in the Darwin, Palmerston and Katherine regions. With the success of this pilot, we are working with other organisations and government to promote restorative practices in the Top End and Central Australia.

We acknowledge the Traditional Custodians of all the lands on which Jesuit Social Services operates and pay respect to their Elders past and present. We express our gratitude for their love and care of the land and all life.

Recommendations

Recommendation 1

That the Northern Territory Government ensure those responsible for upholding victims' rights are made aware of their obligations and that those individuals receive training to appropriately support victims from groups with specific needs and/or who are likely to experience greater levels of disadvantage in the criminal justice system.

Recommendation 2

That the Northern Territory Government provide adequate funding for victim support agencies.

Recommendation 3

That information for victims about their rights be made available in a variety of accessible formats in language they understand, including Easy English, Aboriginal and other languages.

Recommendation 4

That staff in victim support agencies, legal representatives, court staff, the judiciary and others working with victims and offenders in the public and non-government sectors receive training in trauma-informed practice; and that the Northern Territory Government support the implementation of trauma-informed principles, policies and practices at all stages in the court process.

Recommendation 5

That the Northern Territory Government investigates options to strengthen therapeutic jurisprudence, including supporting the reestablishment of Community Courts and the reestablishment of an Alcohol and other Drugs Court.

Recommendation 6

That the Northern Territory Government continues support victim participation in restorative justice programs through adequate funding for dedicated victim support.

Recommendation 7

That the Northern Territory Government continues to create more opportunities for victims and offenders to participate in restorative justice programs, including extending victim-offender conferencing to the adult justice system.

Introduction

Jesuit Social Services welcomes the opportunity to provide feedback on the Northern Territory Government's new Charter of Victims' Rights.

Jesuit Social Services has been working for over 40 years with people involved in the criminal justice system. Over this time, there has been growing recognition of the needs and rights of victims of crime. Victims are now recognised as more than simply a witness for the prosecution; policy and law reforms have supported their right to respect, safety, information and a voice in the criminal justice process.

The adoption of restorative justice processes has been part of this evolution, providing an alternative approach within a traditionally adversarial justice system: one that seeks to respond to harm with healing, in contrast to a narrow focus on punishment and retribution.

At Jesuit Social Services, we seek to embed the principles of restorative justice in all that we do, working to rebuild the web of relationships that sustain us as a community. We also speak from experience that the best way to prevent reoffending and make our community safer is to work with people to address the issues underlying their offending behaviour.

We support a criminal justice system that upholds the rights and interests of victims, holds people to account when they offend, and works with them to get on a better path. We believe that expanding restorative justice and building a culture of therapeutic jurisprudence offers a better way of 'doing justice' for victims, offenders and the wider community.

This submission provides some brief comments on the new Charter, namely:

- the need for strategies to ensure victims' rights articulated in the Charter are upheld
- the importance of recognising the particular needs of victims from marginalised groups
- opportunities to strengthen and expand trauma-informed practice, therapeutic jurisprudence and the availability of restorative options for benefit of both victims and offenders.

We look forward to providing a further submission to the Northern Territory Government's recently released Victims of Crime Reform discussion paper, due in March 2019.

A new Charter of Victims' Rights

More than words on a page

Jesuit Social Services welcomes the development of a new Charter of Victims' Rights in the Northern Territory. In our view, the draft Charter is a clear articulation of the rights to be afforded to victims of crime.

The proposed Charter does not define a victim, however we believe there would be benefit in doing so. This should be broadly based on the definition provided in the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, i.e. that a victim of crime is someone who has suffered physical, psychological or emotional injury, or financial or economic loss because of a crime; as well as a person who has witnessed a crime or is a family member or relative of the primary victim.

We understand further consultation on categories of victims for the purpose of support and financial assistance is being sought through the Victims of Crime Reform discussion paper; the definition of a victim may be most appropriately determined through that consultation process.

The Charter must be more than just words on a page. To ensure it makes a material difference to victims' experience of the justice system, the Charter must be accompanied by:

- education and training to ensure those responsible for upholding victims' rights (principally NT Police, legal representatives, court staff and the judiciary) are aware of their obligations;
- training for those professionals to appropriately support victims from groups with specific needs and/or who are likely to experience greater levels of disadvantage in the criminal justice system, in particular, children and young people, Aboriginal and Torres Strait Islander people, people from non-English speaking backgrounds, people with disability, people of diverse gender identities and sexualities, and victim/survivors of domestic violence and sexual assault;
- adequate funding for victim support agencies.

Recommendation 1

That the Northern Territory Government ensures those responsible for upholding victims' rights are made aware of their obligations and that those individuals receive training to appropriately support victims from groups with specific needs and/or who are likely to experience greater levels of disadvantage in the criminal justice system.

Recommendation 2

That the Northern Territory Government provides adequate funding for victim support agencies.

The Charter must also have 'teeth'. This means ensuring appropriate mechanisms are in place to support compliance with the Charter and provide mechanisms for complaint and redress where victims' rights are not upheld.

We note that the Victims of Crime Reform discussion paper includes consultation on options for the incorporation of the Charter into a new Victims of Crime Act and the potential creation of a new Victims of Crime Commissioner role, both of which provide avenues to address these issues. Jesuit Social Services will provide separate feedback through that consultation process.

Effort must also be made to ensure victims of crime are aware of their rights. This means ensuring that the Charter is available in Easy English and languages other than English, and that this information is actively explained to victims in language they understand.

It also means ensuring that information for victims about their rights, avenues for support and guidance through the legal process is readily available online, in hard copy and over the phone. The Victorian Victims of Crime website (www.victimsofcrime.vic.gov.au) is an example of an easy-to-navigate 'one-stop-shop' for information about what to do if you are a victim of crime and where to get support.

Recommendation 3

That information for victims about their rights be made available in a variety of accessible formats in language they understand, including Easy English, Aboriginal and other languages.

Further considerations

The rights of victims and offenders: not an 'either or'

There is a risk that discussions of victims' rights are framed in opposition to the rights of people who have committed crimes.

The advancements that have been made to strengthen and protect the rights of victims in the criminal justice system are necessary and welcome – in particular, in light of the recent *Royal Commission into Institutional Response to Child Sexual Abuse* and progress nationally to tackle domestic violence, action to strengthen the rights of and support available to victim/survivors of sexual assault and domestic violence is long overdue. However, establishing a binary distinction between the rights of victims and offenders is neither necessary nor helpful.

Jesuit Social Services has more than 40 years' experience working with people in contact with the criminal justice system. On a daily basis, we work with men, women, children and young people who have committed crimes but who themselves – far more often than not – have experiences of significant trauma and disadvantage.

Our experience is borne out in the statistics: we know that people with experiences of trauma, abuse and neglect, people with cognitive disability and people experiencing mental ill-health are grossly overrepresented in Australian prisons.^{1,2}

In the Northern Territory the link between experiences of trauma and disadvantage and offending is even more starkly drawn, with Aboriginal and Torres Strait Islander people making up more than 80 per cent of the adult prison population and currently 100 per cent of the youth detention population.

Further, the *Royal Commission into the Protection and Detention of Children in the Northern Territory* has thrown into sharp focus the link between involvement with the child protection system and the youth justice system. A 2016 report published by the Northern Territory Government (and cited by the Royal Commission) demonstrated that maltreatment as a child is not only related to youth offending, but remains a risk factor for offending into adulthood.³

Acknowledging these facts, the concepts of trauma-informed practice, therapeutic jurisprudence and restorative justice provide useful frameworks to move our justice system forward to the benefit of victims, offenders and the wider community.

¹ Baldry, E. (2017) *The Booming Industry continued: Australian Prisons – A 2017 Update*, UNSW (online); Cuneen, C. et al (2013) *Penal culture and hyperincarceration: the revival of the prison*, Ashgate, Aldershot.

² See for example discussion of the gross overrepresentation of people with an Acquired Brain Injury in Victorian prisons: Jesuit Social Services and RMIT Centre for Innovative Justice (2017) *Recognition, Respect and Support: Enabling justice for people with an Acquired Brain Injury* (online)

³ Yick, J. (2016) *An analysis of the association between criminal behaviour and experience of maltreatment as a child in the Northern Territory*, Department of the Attorney-General and Justice, Northern Territory.

A trauma-informed justice system

Many (if not most) of the people who come into contact with the justice system – offenders and victims alike – will have experiences of trauma, which, to a greater or lesser degree, affect their cognitive functioning, behaviour, motivations and responses.⁴

Yet the criminal justice system is largely organised around simplistic assumptions that people act as rational maximisers of their own self-interest.⁵ For this reason, victims and offenders often find their interactions with the system either ignore or exacerbate their trauma.

Trauma awareness in the context of legal and judicial practice is still an emerging field, however there is mounting evidence that more effective, fair and just responses must work from a perspective that is trauma-informed.⁶

Training in trauma-informed practice for staff in victim support agencies, legal representatives, court staff, the judiciary and others working with victims and offenders in the public and non-government sectors, and the implementation of trauma-informed principles, policies and practices at all stages in the court process is likely to lead to more positive interactions and successful outcomes for both victims and offenders.

Recommendation 4

That staff in victim support agencies, legal representatives, court staff, the judiciary and others working with victims and offenders in the public and non-government sectors receive training in trauma-informed practice and that the Northern Territory Government support the implementation of trauma-informed principles, policies and practices at all stages in the court process.

Therapeutic jurisprudence

Therapeutic jurisprudence recognises that the criminal justice process has the potential to impede or promote the wellbeing of people who have offended – this includes a specific focus on approaches that address the issues underlying a person's offending behaviour and supporting their rehabilitation.

⁴ Zehr, H. (2009) 'The intersection of restorative justice with trauma healing, conflict transformation and peacebuilding', *Journal for Peace and Justice Studies* 18(1-2):20-30 (online)

⁵ Randall, M. (2013) 'Trauma-informed approaches to law: Why restorative justice must understand trauma and psychological coping' *Dalhousie Law Journal* 36 (online)

⁶ Ibid.

Community Courts are one example of a model of therapeutic jurisprudence that has shown potential in the Northern Territory.⁷ While acknowledging that limited resources were constraining the ability of the Court to fully realise its objectives, an evaluation of the pilot program in the Darwin Magistrates' Court showed it was achieving positive initial outcomes, including involving the community in the sentencing process and providing more meaningful and culturally relevant sentencing options.⁸ The evaluation noted that to be effective, Community Courts must be linked to the provision of effective community-based reparation and rehabilitation programs to support offender behaviour change.

A recent study published by the Australian Institute of Criminology on diversion pathways for Aboriginal young people in remote communities in Western Australia similarly highlighted the value of 'needs based' courts that shift the emphasis on 'processing offenders' to 'identifying solutions' – and preferably solutions that are community-owned and culturally strengthening.⁹

Alcohol and drug courts (such as the SMART Court trialled in the Northern Territory from 2011 to 2012) are another model of specialist, therapeutic courts that have the potential to address the root causes of offending.¹⁰ The recent *Alcohol Policies and Legislation Review* (Riley Review) recommended the establishment of an alcohol and drug court in the Northern Territory, which the Government is investigating.

By focusing on rehabilitation rather than merely deterrence, embracing a culture of therapeutic jurisprudence in the Northern Territory has the potential to reduce reoffending – meaning a safer community and fewer victims of crime.

Recommendation 5

That the Northern Territory Government investigates options to strengthen therapeutic jurisprudence, including supporting the reestablishment of Community Courts and the reestablishment of an Alcohol and other Drugs Court.

⁷ For discussion of the early positive outcomes achieved by the Community Court established in the Darwin Magistrates Court in 2005, see Blockland, J. (2007) 'The Northern Territory Experience', paper presented at the 2007 Australian Institute of Judicial Administration Indigenous Courts Conference, Mildura, Victoria.

⁸ Suggit, D. (2012) 'Joining forces – A partnership approach to effective justice: community-driven social controls working side by side with the Magistracy of the Northern Territory. A review of Community Courts.' (online)

⁹ Blagg, H. and Tulich, T. (2018) 'Diversionary pathways for Aboriginal youth with fetal alcohol spectrum disorder' *Trends and Issues in Crime and Criminal Justice No. 557*, Australian Institute of Criminology (online)

¹⁰ Although the SMART Court was abolished before it could be formally evaluated, it showed early signs of being able to achieve positive outcomes. For discussion, see Hannam, H. (2013) 'Current issues in delivering Indigenous justice: Challenges for the Courts', paper for the AIJA Indigenous Justice Conference, July 2013 (online)

The role of restorative justice

Restorative justice recognises that crime is about more than breaking the law: crime hurts individuals and damages relationships. Restorative justice is a practical philosophy of responding, with authority, to harmful actions and involving the people affected in a process of restoring 'right' relations.

While the specific processes and program models can differ depending on the nature of the conflict, context and setting, restorative interventions commonly seek to respond to harm with healing, prevent further harm, and promote wellbeing. Taking a restorative lens, we ask: What happened? How has each of us been affected? What can be done to repair the harm and set relations right?

Rather than defining victim and offender rights in opposition to each other, restorative justice offers an alternative approach: addressing the needs of both victims and offenders in order to create healing, offer reparations, promote accountability, and prevent future harm.¹¹

To date, restorative justice in Australia has been used to deal almost exclusively with offenders who have admitted to an offence, and most commonly as a diversion option for youth offenders.¹²

Jesuit Social Services has significant experience delivering restorative justice programs. We have been a lead provider of Youth Justice Group Conferencing in Victoria since 2003, and – since early 2017 – have been funded to deliver the Northern Territory's first pre-sentence Youth Justice Group Conferencing pilot in the Darwin, Palmerston and Katherine areas.

More recently, our work in restorative justice has expanded to include two pilot interventions in the Melbourne Children's Court and Western Sydney responding to adolescent family violence, as well as the development of new school-based interventions in Victoria.

Jesuit Social Services welcomes the Northern Territory Government's commitment to expanding restorative justice approaches, such as victim-offender conferencing, and supports the inclusion in the new Charter of victims' rights to participate in restorative justice options.

In our experience, involvement in restorative justice processes is therapeutic for both victims and offenders.

For victims, a conference offers far more than can be achieved through a two-page victim impact statement. A conference provides a safe and structured space for their voice to be heard and to have a say in how the young person can make up for what they have done. In our experience, victims value the opportunity to actively participate in seeking justice and find the process personally restorative, as it provides the opportunity to address the hurt and fear they have felt as a result of the crime.

For the offender, participating in a conference is an opportunity to come to terms with the true impact of their offending behaviour, take practical steps to repair the harm they have caused, and avoid

¹¹ In the same vein, restorative approaches recognise that victims are often seeking more than simply punishment or retribution: they respond to victims' need to be heard, to receive an apology, to ask for accountability, to forgive.

¹² Australian Institute of Criminology, *Restorative justice in Australia* (online)

further offending. The accountability, insight and empathy elicited during a conference often acts as a strong incentive to change their behaviour.

More broadly, the dialogue and relationships built through the conferencing process provide an opportunity to heal divisions and – in the long term – build a more harmonious and safer community.

At a practical level, restorative justice programs have the potential to reduce costs to the criminal justice system by diverting people away from the courts or more costly sentencing options, including detention – not to mention avoiding the significant personal costs of time spent in detention.

Evaluations of best practice restorative justice programs have shown high levels of victim satisfaction and a positive impact on reoffending.¹³

While the program is still in its early stages, the Northern Territory pre-sentence Youth Justice Group Conferencing pilot is showing early signs of success. In particular, the evaluation of the first year of the pilot has shown high levels of victim satisfaction: approximately 4 out of 5 victims (81 per cent) were satisfied with the young person's outcome plan and the same proportion (81 per cent) said they would recommend Group Conferencing to other victims of crime. Eighty-five per cent of victims surveyed believed the young person had a better understanding of the impact of their actions at the end of the conference.

As shown by the quotes at **Appendix A**, victims have:

- Valued the opportunity to engage directly with the young person
- Felt the process can be a strong motivator for change for the young person
- Felt the conference was well-run, fair and respectful
- Found insight and closure through the process
- Thought that conferencing is a valuable intervention within our youth justice system.

In addition to the positive outcomes achieved for victims, we are also seeing early signs of success of the program for young people. The first year evaluation showed that almost 9 out of 10 young people (86 per cent) had successfully completed their outcome plan, and the majority of young people were showing improvements in the factors we know help protect against reoffending, including stronger connection to family and improved engagement with school, training and employment.

Of particular note, with respect to the current pre-sentence Youth Justice Group Conferencing pilot, is the high rate of victim participation – more than half the conferences have been attended by victims

¹³ See for example the recently published ten-year evaluation of the ACT's Restorative Evaluation scheme ([online](#)), as well as Larsen, J. 2014, Restorative justice in the Australian criminal justice system, AIC Reports, Research and Public Policy Series 127, Australian Institute of Criminology ([online](#)); New Zealand Ministry of Justice, 2016. Restorative Justice Victim Satisfaction Survey – Research report ([online](#)); and KPMG (2010) *Review of the youth justice group conferencing program: Final report*. Melbourne: State Government of Victoria ([online](#))

in-person, and most of the remaining conferences have been attended by a community representative from a victim support agency.

The high rates of engagement of victims in the conferencing program and their satisfaction with the process is due in a large degree to availability of dedicated support for victims before, during and after the conference (initially provided by the Northern Territory Government's Witness Assistance Service and now provided by Victims of Crime Northern Territory). Ongoing funding for dedicated, independent and impartial victim support is critical to the success of victim-offender conferencing.¹⁴

Recommendation 6

That the Northern Territory Government continue to support victim participation in restorative justice programs through adequate funding for dedicated victim support.

Building on the success of Youth Justice Group Conferencing, Jesuit Social Services strongly supports the creation of more opportunities for restorative and non-adversarial processes for both victims and offenders, within and beyond the criminal justice system.

We note the option to extend victim-offender conferencing to the adult justice system has been flagged in the Victims of Crime Reform discussion paper. Jesuit Social Services is fully supportive of this and will comment on the proposed model in a separate submission.

Recommendation 7

That the Northern Territory Government continue to create more opportunities for victims and offenders to participate in restorative justice programs, including extending victim-offender conferencing to the adult justice system.

Conclusion

Jesuit Social Services would like to thank again the Northern Territory Government for the opportunity to comment on the draft Charter of Victims' Rights.

If you have any further questions regarding our submission, please do not hesitate to contact **Julie Edwards**, CEO Jesuit Social Services on (03) 9421 7604 or at Julie.edwards@jss.org.au.

Jesuit Social Services looks forward to hearing the outcomes of the consultation process and the opportunity to provide further input to Victims of Crime Reform in the Northern Territory.

¹⁴ This has been emphasised in evaluations of Group Conferencing programs in other jurisdictions – see for example KPMG (2010).

Appendix A. Victims' perspectives on Youth Justice Group Conferencing

As highlighted in this submission, Group Conferencing is generally a positive experience for victims. Some quotes from victims are highlighted below:

Victims on the reasons why they attended the conference...

I felt it was important to hear what the young offender had to say and for him to hear what we had to say. I feel that the offender needs to hear from the people they have affected and see that there are consequences.

It's a good way for kids to be confronted with people who they have hurt. You come face-to-face with the emotions. Sometimes you only need one person for (the young person) to say 'Wow, what have I done?'

At the start, I went in thinking this was a waste of time. But after halfway I realised it wasn't a waste of time (...) Having the opportunity to speak to the young person in a controlled environment – you don't normally get that.

On respect throughout the process...

It was a welcoming place for everyone.

Everyone had an opportunity to speak. No one was speaking over another person.

On what it means for young people...

It is much harder to apologise than to be punished and he seemed genuine in wanting to change, so I want to support him with that.

Because it's much easier to be punished than apologise. If anyone wants to take the higher road we should enable that. It shows strength of character.

On the benefits for them, as victims...

I think it helps the victim. I felt relief after actually identifying the person (...) You have the knowledge of who it was and what they've done and that gives you a bit of peace of mind.

It just made me feel better being able to talk to the young person face-to-face in a controlled environment. I found it therapeutic.

On the role of Group Conferencing in the youth justice system...

This is a good thing to have in the mix of how we treat young people. I think it is a worthwhile effort because we are low on options on how to re-enter these kids into their community.

I understand a lot of the anger that has been building up in these children, and if community and children can meet and discuss this then that's a positive thing.

(The restorative justice process) moves beyond the offence to try and bring in the fact that it actually affects people. It humanises the whole interaction. This is beneficial alongside a justice system response. If you want to see community change you have to involve the whole community.
