

Our Ref: SPB:SB

17 October 2023

Mr Josh Burns MP
Chair, Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: human.rights@aph.gov.au

Dear Mr Burns,

Inquiry into Australia's Human Rights Framework — answer to Question on Notice

Thank you again for giving knowmore the opportunity to appear at the Committee's public hearing on 27 September 2023. We value the opportunity to assist the Committee's inquiry. Please see below our answer to the question asked by Senator Lidia Thorpe, which we received by email on 5 October 2023.

Ideal end point for proper protection of victims' and survivors' rights

Senator Thorpe asked the following question:

Your submissions bring up how there is no explicit protection of victim's rights in the proposed framework, taking state and territory victims' rights charters in Australia as a starting point. What would the ideal end point look like for proper protection?

The ideal end point would include human rights charters in all Australian jurisdictions that include specific protection of victims' and survivors' rights. At present, no Australian jurisdiction has a human rights charter that includes specific protection of victims' and

survivors' rights.¹ This creates a significant gap in protection for the human rights of victims and survivors, in all parts of Australia and at all levels of government.

All states and territories have some form of victims' rights charter. These victims' rights charters recognise that victims of crime have rights linked to their dignity as human beings, not simply private interests in often adversarial legal processes. They provide models of rights that could be considered for an Australian Charter of Human Rights —for example, rights for victims of crime to be treated with respect,² to be provided with information,³ to have access to services⁴ and to be protected from the accused.⁵ Despite this, the existing victims' rights charters are limited — they vary significantly between states and territories, do not apply at the federal level and do not adequately protect the human rights of victims and survivors at the state or territory level.

In knowmore's view, the ideal end point draws on the strongest aspects of state and territory victims' rights charters, while learning from and responding to the limitations and weaknesses of those victims' rights charters. With this in mind, we consider that an Australian Charter of Human Rights (Charter) could help to embed a trauma-informed approach to working with victims and survivors across all federal government agencies, courts and tribunals. For federal government agencies, courts and tribunals, this means:

- ensuring they do no further harm to victims and survivors
- delivering services to victims and survivors in accordance with the core trauma-informed principles of safety, trustworthiness, choice, collaboration, empowerment and respect for diversity⁶

¹ The Queensland Government has committed to considering whether to incorporate victims' rights in Queensland's human rights charter (*Human Rights Act 2019*) as part of a statutory review. See Queensland Government, *Response to the inquiry into support provided to victims of crime*, 19 May 2023, p 4, <www.parliament.qld.gov.au/docs/find.aspx?id=5723T648>.

² See, for example, *Victims Rights and Support Act 2013* (NSW), section 6.1; *Victims' Charter Act 2006* (Vic), section 6.

³ See, for example, *Victims Rights and Support Act 2013* (NSW), sections 6.2, 6.4–6.6, 6.12–6.13, 6.15 and 6.18; *Victims of Crime Act 1994* (ACT), divisions 3A.4–3A.5.

⁴ See, for example, *Victims Rights and Support Act 2013* (NSW), section 6.3.

⁵ See, for example, *Victims Rights and Support Act 2013* (NSW), sections 6.7 and 6.11; Northern Territory Government, Department of the Attorney-General and Minister for Justice, *Northern Territory Charter of Victims' Rights*, August 2019, p 3, <justice.nt.gov.au/justice-services/crime-victims-services-unit/charter-of-victims-rights>.

⁶ See Blue Knot Foundation, *Trauma-informed services*, accessed 5 October 2023, <professionals.blueknot.org.au/resources/trauma-informed-services/>.

- recognising the particular needs of victims and survivors and responding to these with an increased level of support.⁷

Our clients frequently experience interactions with federal government agencies that do not accord with the above principles, creating barriers to accessing vital services and leading to re-traumatisation. Specific protection of the human rights of victims and survivors in a Charter is likely to have particular benefits for our clients' experiences with the National Redress Scheme (NRS) for survivors of institutional child sexual abuse, the National Disability Insurance Scheme (NDIS), Centrelink and aged care services.

Further to the general principles outlined above, we consider that a Charter should include a specific right to prompt redress for victims of crime, noting that this right is recognised by article 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁸ At present, the redress provided by the NRS is often far from prompt. A major review of the NRS reported that the NRS takes an average of 12.5 months to process an application and 13.4 months to process a priority application, commenting that 'applicants should not wait 13.4 months or more for an outcome'.⁹ Despite this report, it remains common for our clients to face delays of this nature or longer.

Unfortunately, some survivors have passed away without receiving a redress payment. knowmore shared the following experience of a client passing away without receiving redress with the former Joint Select Committee on Implementation of the NRS.¹⁰

⁷ See further discussion in knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse's criminal justice consultation paper*, 31 October 2016, p 7, <knowmore.org.au/wp-content/uploads/2018/06/Consultation-Paper-Criminal-Justice-Submission-32-knowmore.pdf>.

⁸ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985, article 4, <www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

⁹ R Kruk AO, *Final report: second year review of the National Redress Scheme*, 26 March 2021, pp 43 and 115, <www.nationalredress.gov.au/document/1386>.

¹⁰ knowmore, *Submission to the Joint Select Committee on Implementation of the National Redress Scheme*, 28 April 2020, p 9, <knowmore.org.au/wp-content/uploads/2020/11/submission-joint-select-committee-on-implementation-of-the-national-redress-scheme-cth.pdf>.

A posthumous offer of redress for a client whose application took 16 months to assess

The client came to knowmore in August 2018. They were flagged as a very high priority, given that they were over 80 years of age and had a serious chronic health condition.

knowmore lodged the client's application with the NRS in November 2018. The 2 responsible institutions — a state government institution and a religious institution — were both participating in the NRS at this time.

Despite this, and despite some applications lodged at a similar time in relation to the same institutions already having seen results, no offer was received by our client until March 2020 — nearly 16 months since their application was lodged and, tragically, only some days after they had passed away.

A right to prompt redress in a Charter would provide a means of addressing lengthy delays with the NRS.

knowmore would welcome the opportunity in the future to provide feedback on draft legislative provisions protecting the human rights of victims and survivors. Should we be able to provide any further information to the Committee in the meantime, please do not hesitate to contact us.

Yours faithfully,

SIMON BRUCK
Principal Lawyer