

## **Victims' Commissioner and Sexual Violence Review Board Bill 2024**

**Submission No:** 3  
**Submitted by:** Domestic Violence Prevention Centre Gold Coast  
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Community Safety and Legal Affairs Committee  
[CSLAC@parliament.qld.gov.au](mailto:CSLAC@parliament.qld.gov.au)

Dear Committee Members,

Thank you for the opportunity to provide feedback on the establishment of the Victims Commissioner and the Sexual Violence Case Review Board (the Board) in Queensland and the draft Victims' Commissioner and Sexual Violence Case Review Board Bill 2024 (consultation draft Bill).

DVPC submitted feedback to the Department of Justice and Community Safety on the draft bill, feedback which it appears has not been considered or applied prior to the current draft bill being introduced to parliament. We hope that the Community Safety and Legal Affairs Committee will consider our submission and amend the proposed legislation so that it will deliver a safe, effective response to victims of crime in Queensland.

DVPC welcomes the Queensland Governments' establishment of a permanent Victims Commissioner and the establishment of the Board. We are hopeful that both entities will give a stronger voice to the victims who have advocated for years about the systemic barriers to accessing justice and support for victims of crime, particularly those who experience sexual assault and domestic violence and those who are marginalised by the criminal system due to their race, gender, sexuality, age, or disability.

The Domestic Violence Prevention Centre Gold Coast Inc. (DVPC) was established in 1992 as a not-for-profit community-based specialist domestic violence service. We provide services and supports including crisis intervention and support, counselling for women, children and young people, groups for women, children and young people, court support and assistance, court information and case management for men, men's education and behaviour change programs, community education and training, community awareness activities, as well as being the driver for the Gold Coast Domestic Violence Integrated Response.

Over the past thirty-one years our service has grown and developed and is recognised as a leader in Queensland in providing high quality services and supports and individual and systems' advocacy on behalf of victims of domestic violence.

As you are no doubt aware, domestic violence victims often experience sexual assault as part of the violence and abuse perpetrated by the person using violence against them. It is from this experience of working with women, children and young people and men who have experienced sexual violence that we provide this feedback, noting that both the Victims Commissioner and the Board will only be successful if they are regarded as having a genuine interest and concern in improving the criminal justice system and not merely tinkering at the edges.

## **Feedback on the Victims Commissioner and the consultation draft bill.**

Trust and confidence in the Victims Commissioner will be key to the role being able to influence true change and improvements for victims of crime. We welcome the inclusion of a Victims Charter and a clear prioritising of the rights of victims and the creation of a permanent Victims Commissioner who will advocate on behalf of victims.

### **Meaning of victim s.6**

The definition of victim in the consultation draft bill should specifically reference children and young people as victims in their own right. As Chapter 4 of the Child Rights Report (Queensland Family and Child Commission 2023) outlines, Queensland needs to take 'active measures to support child victims' in relation to the abuse they have experience. An explicit statement that children and young people are considered victims of crime in their own right would signal a strong requirement to appropriately support child victims.

The definition of victim should also specifically define family to include Aboriginal kinship relationships, recognising the value of kinship structures in raising and caring for children and young people.

### **Appointment of Commissioner**

To truly serve and uphold the rights of victims, the Victims Commissioner will be required to have specific skills and be recognised in the community as understanding the needs of victims, particularly in relation to domestic and sexual violence.

The consultation draft bill should include a further subsection under s14(2) that the Minister recommend a person for appointment to the Victims Commissioner role only if satisfied:

(c) the person has a demonstrated understanding of and experience in systemic advocacy for the rights of victims of crime.

(d) the person has a demonstrated understanding of the intersecting needs of first nations people, domestic and sexual violence victim survivors and other victims of crime.

The appointment of Queensland first permanent Victims Commissioner will be a key moment in Queensland's treatment of victims of crime. For this reason, it is important that the appointment builds the trust and confidence in Queensland's commitment to victims and to systems reform. For this reason, it is recommended that the Ministers' appointee is endorsed by the Chairs of the Independent Ministerial Advisory Council (IMAC), which has been established to put victims' voices at the heart of criminal justice system reform, and the Chair of the Aboriginal and Torres Strait Islander Panel, which provides advice to Queensland Sentencing Advisory Council.

### **Disqualification from appointment**

Persons who have committed any domestic violence or sexual offence should be disqualified from becoming the Victims Commissioner.

The consultation draft bill, in its current form does not disqualify persons who have been found guilty of various domestic violence offences including breaching a domestic violence order.

S15 of the draft bill should state that anyone found guilty of any domestic violence offence or any sexual offence, including failure to report sexual offences against children, should be disqualified from becoming the Victims Commissioner. The legislation should specifically state

that the disqualification includes both summary and indictable domestic violence and sexual offences.

### **Consent and the functions of the Victims Commissioner**

Recommendation 18 The Women's Safety and Justice Taskforce (Taskforce), in its second report *Hear her voice — Report Two — Women and girls' experiences across the criminal justice system* (the Second Report) specified that the Victims Commissioner 'be authorised to exercise the rights of victims, upon their request **and with consent**, including in relation to their interactions with police, other government agencies and the courts (similar to the model in South Australian).'

We urge the government to consider a strong emphasis on the language and specifically the word 'consent' in the Draft Bill, which emphasises the need for the Victims Commissioner and the Board to act with the consent of victims of crime, particularly in sexual offence matters. Currently the Draft Act only uses the word 'consent' 13 times, and of those 13, none are specifically about seeking consent from victims, barring a person who is advocating on behalf of a victim with consent (s.47(3)(a)).

Examples of where the seeking of consent should be included are in relation to the release information in ss 30-35. Material that is personal and confidential in nature to the victim should not be released without the consent of the victim of crime. This is particularly relevant for victims of domestic violence and sexual violence, as often their private information is utilised in criminal court without their consent, they are forced to give evidence on matters that increase their risk and decrease their autonomy and safety. The continual breach of the privacy of victims creates further systems abuse and deters victims from reporting to police – the inclusion in the legislation would go some way to role modelling an approach of working alongside victims, ensure they are able to provide informed consent where-ever possible.

Under the functions of the Victims Commissioner, s9(d) should stipulate that the Victim Commissioner can 'deal with' individual complaints about the criminal justice system with the consent of the victim, or the victim's representative. This would demonstrate the requirement to include victims in the processes that are about them and model a consent-based approach to dealing with victims matters. It may appear as semantics, as some would claim the Victims Commissioner would not investigate an individual matter without the victim's consent, but this legislation is key to modelling what is expected of all those who deal with victims and, in that regard, must set the standard for all to follow.

Further, the functions 'to advocate for the recognition, inclusion, participation and respect of victims of crime by government departments, bodies responsible for conducting public prosecutions and the Queensland Police Service', as per the Victorian Victims of Crime Commissioner Act 2015 should be added to s.9.

## **The Charter of Victims' rights (Victims Charter)**

### **Division 2**

The Victim's Charter is a statement of what victims of crime are entitled to and can expect and the obligation on entities to uphold these entitlements.

The proposed draft Victims Charter is not adequate – it needs to be a clear statement of all the rights and entitlements of victims. Victims will read this section of the legislation more than any other legislation to understand their rights. Entities will be required to understand the extent of

these rights and provide this information to victims. For these reasons, the Victims Charter needs to be a clear, comprehensive, unambiguous, and accessible statement of these rights and obligations.

In line with victims of crime legislation in other Australian jurisdictions, the Victims Charter should be enlarged and include in division 2 rights as set out in the South Australian Victims of Crime Act 2001 including the right to information, the right to have perceived need for protection taken into account in bail proceedings, victims of serious offences to be consulted in relation to certain decisions, victims entitlement to be present in court, to have the impact of the offence considered by sentencing court and to make submissions on parole, victims' rights in relation to compensation and restitution and return of property.

The Charter should also speak to the sentencing, parole, and appeals process in the same section, for clarity and easy understanding for victims of crime and responding entities.

Informing a victim of their right to independent legal advice and support should be included in division 2(5) of the Victims Charter, modelled on the South Australian Victims of Crime Act 2001.

In addition, a principle should be added to the legislation that speaks to the protection of the privacy of the victim, as per the South Australian Victims of Crime Act 2001.

#### 14—Protection of privacy

(1) There should be no unnecessary intrusion on a victim's privacy.

(2) In particular, a victim's residential address should not be disclosed unless it is material to the prosecution or defence.

(3) A victim should be protected as far as practicable from unnecessary contact with the alleged offender and defence witnesses during the course of the trial and in proceedings under this Act.

(4) A victim should only be asked to attend proceedings related to the offence if the victim's attendance is genuinely necessary.

### Part 3

#### Complaints for contraventions of the Victim's Charter

The Independent Commission of Inquiry into Queensland Police Services examined the lack of 'robust conduct and complaints system' (A Call for Change p.19) with Queensland Police Services.

As noted in the Victorian Victims of Crime Commissioner's Submission on the Victorian Government's Consultation Paper: Systemic review of police oversight (February 2022), the role of the VOCC oversees complaints 'about police from victims of crime in the context of the Victims' Charter'. The Queensland Victims Commissioner will no doubt have the same experience. The Victims Charter therefore needs to be clear about the rights of victims and how entities are required to respond to complaints.

Noting this, s.48 of the consultation draft bill should include a timeframe for taking all reasonable steps to resolve the complaint – including 'as soon as reasonably practicable' in s2(b) is too nebulous and open to misuse and delay.

Accountability of the justice system entities to their conduct when dealing with victims of crime will only be realised if the legislation specifies the timeframe in which an entity must initially respond to their complaint, and the timeframe within in which they must investigate the complaint. Enshrining the timeframes in legislation indicates the priority that must be given to victim complaints.

## **The proposed Sexual Violence Case Review Board**

The scope of the matters that the Board can review is not broad enough to cover all the systemic barriers that victims of sexual assault face in the criminal system.

The Board will not be able to provide meaningful advice on systems reform if it does not include in its review matters where the prosecution has been successful, however there were systemic issues apparent, including during sentencing, during the offenders' time in custody or parole proceedings. The scope of the board should include:

- review of cases where sentencing has been inadequate.
- review cases that Victims Commissioner may refer to the board, which may have had a finding of guilt but where there were issues in the reporting, investigation, prosecution or sentencing of sexual offences.

### **Membership of the Board**

The Board membership should include persons with a lived experience of sexual assault, to provide firsthand understanding of the systems impacts upon sexual assault victims and opportunities for improvement. Without this inclusion, the board will lack validity and will not be regarded as victim centred.

The Board membership should also include persons who were children when they were victimised and persons who have experience working with men who have experienced sexual assault, as this cohort of victims have needs and vulnerabilities which should be recognised and need to be better understood.

### **Appointment of board members**

As proposed for the Victims Commissioner, s.73(3) of the draft bill should state that anyone found guilty of any domestic violence offence or any sexual offence, including failure to report sexual offences against children, should be disqualified from becoming a member of the Board. The legislation should specifically state that the disqualification includes both summary and indictable domestic violence and sexual violence offences.

Please do not hesitate to contact me for further clarification or to discuss any aspect of the feedback,

Sincerely,

Lucy Gregory,

Chief Executive Officer

Domestic Violence Prevention Centre Gold Coast