

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

**Submission No:** 4  
**Submitted by:** Queensland Sexual Assault Network  
**Publication:** Public  
**Attachments:** See attachment  
**Submitter Comments:**

Community Safety and Legal Affairs Committee  
Queensland Parliament House  
Cnr George and Alice Streets  
Brisbane QLD 4001

cslac@parliament.qld.gov.au

14<sup>th</sup> March 2024

Dear Secretariat,

**RE: VICTIM'S COMMISSIONER AND THE SEXUAL VIOLENCE REVIEW BOARD BILL 2024**

Thank you for your correspondence to the Queensland Sexual Assault Network (QSAN) dated 8<sup>th</sup> March 2024 and providing us with the opportunity to respond to this consultation. Overall, although QSAN welcomes a Victim's Commissioner, the model proposed under this legislation is not consistent with the recommendations of the Women's Safety and Justice Taskforce (WSJT), especially in relation to the role's independence. It will be a lost opportunity for victim-survivors in Queensland if the WSJT recommendation is not implemented in full.

Independence is important to promote and enhance system's accountability and reform, and is explained more fully by one of our member services and quoted in the Women's Safety and Justice Taskforce Report (2):

*"The GCCASV (The Gold Coast Centre Against Sexual Violence) supports the establishment of a domestic, family and sexual violence commissioner, similar to that operating in the United Kingdom: 'When things are not working well and women seeking help want to complain about inappropriate responses, or lack of response by NGOs, police or health they currently have to raise issues with every individual organisation or agency. There is no central body providing oversight or management of complaints so currently it is up to the traumatised victim/survivors to negotiate with multiple individuals and systems. To streamline issues and complaints we believe a role such as a Domestic, Family and Sexual Violence Commissioner, similar to the UK model, would be invaluable as a central touch point. The Commissioner could be an independent voice for victim/survivors and provide support and early intervention when system responses fail - which could potentially save lives.'"*

**Time Period for Consultation**

The consultation period was only open for one week on the bill. This time frame is a completely impractical for many community agencies to provide a response. The government should be engaging in genuine consultation, especially on such an important legislative reform for victim-survivors of sexual violence and we are concerned about the legislation being rushed through.

## About QSAN

QSAN is the peak body for sexual violence prevention and support organisations in Queensland. We have 23 member services, including specialist services for Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with intellectual disability, young women, men and children and our membership are located throughout Queensland, including in rural and regional locations.

Our network of non-Government services is funded to provide specialist sexual assault counselling, support, and prevention programs in Queensland. QSAN is committed to working towards ensuring all Queenslanders who experience sexual violence recently or historically, regardless of age, gender, sexual orientation, cultural background receive a high-quality response in line with best practice, client-centred principles. Our work and analysis of sexual violence is from a feminist perspective and addressed within a “trauma-informed framework”.

The provision of service to victim-survivors is over and above trauma informed care, as QSAN services are trauma specialists. According to the Royal Commission into Institutional Child Sexual Abuse Responses, trauma specialist services are those *with specialist skills in the provision of services designed to address the impacts and effects of trauma and assist them to recover. While many agencies are required to be trauma-informed (i.e., operate with an awareness of the impacts and effects of trauma), trauma specialists are both trauma-informed and deliver trauma-specific interventions or therapeutic treatments.*

We are committed to engaging with government and other bodies to raise systemic issues of concern and to ensure the voices and experiences of victims-survivors of sexual violence are considered in the formulation of policy and legislation that impacts on sexual violence victim-survivors in Queensland.

We provide our response below:

## Victim's Commissioner

### **Proposed model is not independent enough and not consistent with WSJT recommendation.**

To establish and maintain the trust of victim-survivors of sexual violence in Queensland, this office needs to be as independent as possible, which was supported by the Women's Safety and Justice Taskforce.

Recommendation 18 of the WSJT, Report 2 states as follows:

18. The Queensland Government establish a victims' commission as an independent statutory office to promote and protect the needs of victims of all violent offences. The functions of the commission should include:

- identifying systemic trends and issues including in relation to policy, legislation, practice or procedure and potential responses to address these issues
- assisting victims in their dealings with government agencies across the criminal justice system, including through oversight of how agencies respond to complaints
- monitoring and reviewing the effect of the law, policy and practice that impact victims of crime.

The commissioner will 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).

The commissioner will have a specific and dedicated focus on victims of domestic, family and sexual violence and First Nations victim-survivors, given their particular vulnerability. This focus may be through the establishment of a deputy commissioner role, or similar.

We note Section 11 states that the Victim's Commissioner acts independently, and they are appointed pursuant to Section 14 by the Governor-in-Council, however Section 8 says the Commissioner represents the State.

However, in our opinion the proposed model is not an independent statutory officer as recommended by the WSJT.

For example, in the Northern Territory there is a published protocol on the appointment of statutory officers, for positions such as the auditor general, the ombudsmen and the independent commissioner against corruption. This includes the establishment of an independent advisory panel (a former judge of a superior court, an experienced lawyer and a person who has held a similar role in another state or territory) to make the appointment.

<https://cmc.nt.gov.au/supporting-government/statutory-officers-nt-integrity-framework>

**Additional independent functions are required to ensure system's accountability for victims.**

To be appropriately responsive to the needs of victim-survivors of sexual violence the model requires more powers similar to the UK model.

<https://victimscommissioner.org.uk/about-us/what-we-do/>

The UK model explains their role to be independent of government and able to provide their opinion about policy (and law reform) to make improvements to the justice system. This should be made clear in the proposed bill. So, for example, the Victim's Commission should be able to make public submissions on government inquiries and parliamentary inquiries into relevant bills.

The Commissioner should also be able to undertake its own reviews, instigate research and investigations and publish reports and it should be specifically stated, similarly to the UK, be able to:

- use their independent voice to influence national policy-making and hold partner agencies to account
- speak up about what works best for all victims and witnesses, and especially the most vulnerable

We note the UK Victim's Commissioner undertook a review of their role in 2020 and recommended the following changes to enable them to carry out their functions effectively:

*This report recommends that, in order to fully perform these connected duties, the Commissioner needed the following additional powers:*

- 2. Rely on the cooperation of bodies named in the Code when encouraging them to adopt good practice;*
- 3. Identify weakness in the implementation of the Code;*
- 4. Require action if bodies are found not to be complying with the Code;*
- 5. In the last resort and if necessary to clarify the law in the public interest, to bring appropriate legal proceedings;*
- 6. Receive and direct complaints from victims as users of services provided by bodies named in the Code;*
- 7. Conduct and commission research and training on, for example, what constitutes good practice and on victims' emergent needs;*
- 8. Require changes to the Code if it is found to be inadequate;*
- 9. Ensure that Parliament is fully aware of victims' needs, and upholds their entitlements and rights;*
- 10. Recommend changes to the law.*

<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/6/2021/12/OVC-Constitutional-Powers-2020.pdf>

Similarly, we would suggest that Queensland learns from the existing processes in the UK and adopt these changes into the proposed model.

#### **Other WSJT recommendations that have not been included.**

We also note the Taskforce recommended that the Commission be able to:

- a. assist victims in their dealings with government agencies across the criminal justice system, including through oversight of how agencies respond to complaints and
- b. The commissioner will 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 support these recommendations being appropriately reflected in the current bill.

We would recommend that public entities provide an annual report to the Victim's Commissioner reporting on complaints from victims including the number of complaints, the nature of the complaint, the length of time and resolution.

#### **There is no dedicated focus on victims of sexual violence, domestic and family violence and Aboriginal and Torres Strait Islander people.**

As stated previously The WSJT recommended (Recommendation 18, Report 2) that:

*"The commissioner should have a specific and dedicated focus on victims of domestic, family and sexual violence and First Nations victim-survivors given the particular vulnerability. This focus may be through the establishment of a deputy commissioner role, or similar."*

Though Section 11 provides for the commissioner to act with regard to specific vulnerabilities of victims, including domestic, family and sexual violence and First Nations victim survivors, this is not a specific and dedicated focus as outlined by the WSJT and is not consistent with the recommendation.

#### **Definition of Victim is too broad**

The definition of "victim" is too broad and believe the definition should be limited to victims of violence which, again is consistent with Recommendation 18 of the WSJT.

Resources are limited and the issues are large in respect of victims of sexual violence interactions with the criminal justice system. Sexual violence is one of the most under reported, under charged and under prosecuted crimes and significant reform and investment will be required to change our systemic response to this crime.

## **Misidentification of victims needs to be taken into account**

A more nuanced approach needs to be taken to determining “victims”, especially since the most likely system’s response to domestic violence is a civil protection order and not a criminal charge. There are also concerning issues about the misidentification by the police of the person in most need of protection.

The misidentification of the person most in need of protection by the Queensland Police is well documented in the Queensland Domestic and Family Violence Death Review and Advisory Board Annual Reports and in the research by ANROWS commissioned by the Board,

<https://www.anrows.org.au/project/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law/>

A specialised commissioner dedicated to responding to gendered violence and who had a history of working in domestic, family and sexual violence, would be across these issues and be well placed to respond appropriately.

## **Definition of offence needs to specifically state “no need to report to police”.**

The definition of offence in Section 39(2) should specifically state, it does not matter whether the victim reported the matter to the police. The latest findings of the personal safety survey are that only 8 % of victims of sexual violence ever report to the police. It is extremely important that there be no ambiguity about these definitions.

## **Charter of Victim’s Rights**

We note the Charter will be comprehensively reviewed and updated by the Victim’s Commissioner. We agree that an update is essential. For example, the South Australian approach is more comprehensive than Queensland.

<https://www.voc.sa.gov.au/your-rights-as-a-victim-of-crime-4>

## **Victims charter does not give legal rights or affects legal rights or obligations**

QSAN looks forward to participating in the review of the victim’s charter to be undertaken by the Victim’s Commissioner.

We note Section 43 makes it clear that victims do not have legal rights as the charter is not enforceable and a failure to comply with the charter.

QSAN therefore asks if victims’ rights are so important, why is it that they cannot be enforced? If agencies have duties, why is it that they cannot be compelled to perform these duties?

**Sexual Violence Case Review Board should comply with WSJT recommendation and undertake both individual and systemic reviews.**

The recommendation of the Women's Safety and Justice Taskforce, recommendation 46 was for both individual and systemic reviews to be undertaken.

Recommendation 46 specifically states that:

*The board's functions and powers will be provided for in legislation and should include the independent review of sexual violence cases that are not progressed, or cases requested to be considered by the victims' commissioner.*


QSAN strongly supports this approach and recommendations that the WSJT recommendation be implemented in full to ensure both individual and systemic accountability for victims of sexual violence.

Such an approach is consistent with that taken in the UK.

<https://www.cps.gov.uk/child-sexual-abuse-review-panel>

If anything further is required, please do not hesitate to contact the Secretariat.

Kind Regards,

  
Angela Lynch,  
Executive Officer  
QSAN Executive Officer