

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

**Submission No:** 10  
**Submitted by:** LawRight  
**Publication:** Public  
**Attachments:** See attachment  
**Submitter Comments:**

15 March 2024

Committee Secretary  
Community Support and Services Committee  
Parliament House  
George Street  
**BRISBANE QLD 4000**

***Submitted online***

Dear Committee Secretary

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

1. Thank you for the opportunity to provide this submission to the Community Support and Services Committee Inquiry into the *Victims' Commissioner and Sexual Violence Review Board Bill 2024 (Bill)*.
2. Overall, we commend the Queensland Government in its commitment to implementing the recommendations in the Women's Safety and Justice Taskforce's *Hear Her Voice – Report Two – Women and girls' experiences across the criminal justice system (Hear Her Voice Report Two)* to establish a Victims' Commissioner (**Commissioner**) and Sexual Violence Review Board (**Board**).
3. While commending the overall purpose of the Bill, we seek to provide feedback to improve particular aspects of the Bill, as detailed in these submissions.

**Background**

***LawRight***

4. LawRight is a not-for-profit, community-based legal organisation that coordinates the provision of pro bono legal services to disadvantaged Queenslanders.
5. LawRight improves the lives of vulnerable people by increasing access to justice through strategic partnerships with pro bono lawyers. Each year, LawRight's 65 member firms and 170 barristers deliver 16,000 pro bono hours to help vulnerable Queenslanders resolve complex legal issues that compound existing disadvantage.

***LawRight's Homelessness Law program***

6. LawRight's Community & Health Justice Partnerships | Homelessness Law program (**Homelessness Law**) is Queensland's free specialist legal service for people experiencing or at risk of homelessness. Homelessness Law's integrated,  
PO Box 12217  
George Street QLD 4003

ABN 52 033 468 135  
IA 30188

P: 07 3518 8125  
F: 07 3846 6311  
E: [admin@lawright.org.au](mailto:admin@lawright.org.au)  
W: [www.lawright.org.au](http://www.lawright.org.au)



holistic legal supports prevent and end homelessness by resolving legal issues connected to a person's housing, money, and experience of violence. We scale the impact of our frontline, client-centred work by advocating for better laws and policies.

7. Homelessness Law provides targeted, intensive legal representation to people experiencing or at risk of homelessness. We have a focus on key priority cohorts including women and their families with an experience of violence, children and young people, and people in or exiting prison.
8. Through this program, we assist a significant number of victim-survivors of domestic, family and sexual violence, as well as general violence outside these contexts. These clients, like all our clients, frequently experience multiple, intersecting forms of disadvantage connected with their experience of violence, including homelessness and housing instability, mental illness, severe financial hardship, addiction, physical or intellectual disabilities and complex family backgrounds.
9. Established in 2002, Homelessness Law implements an outreach-based, trauma informed model, with staff lawyers fully embedded in frontline homelessness and health agencies in both Brisbane and Cairns.
10. Homelessness Law's "Help to Heal: Helping Victim-Survivors Access Support and Avoid Homelessness" (**Help to Heal**) project provides ongoing, integrated legal representation to help victim-survivors access supports and resolve housing, income, and consumer issues connected to their experience of violence and recovery. Implementing a best practice, trauma-informed approach, between July 2019 and June 2023 Help to Heal:
  - assisted 313 victim-survivors to better understand their rights and to access supports through Queensland's victims of crime assistance scheme;
  - provided 195 victim-survivors intensive, wrap-around supports to resolve legal issues related to an act of violence and to apply to Victim Assist Queensland;
  - delivered regular training sessions to frontline lawyers, medical professionals, and social workers on accessing support through Victim Assist Queensland; and
  - leveraged our insights from working directly with victim-survivors and frontline workers, including through our embedded co-locations, to advocate for fairer and better laws for victim-survivors.
11. With that background in mind, LawRight's submissions will focus on the impact of the proposed provisions in the Bill on people experiencing violence in the Greater Brisbane region, particularly people experiencing or at risk of homelessness. Our submissions have been informed by our work providing legal services to our client cohort.

## Summary of submissions

12. In summary, LawRight submits:

- a. in all broader communications regarding the Bill, the Commissioner and the Board should use the term “victim-survivor” rather than “victim” (paragraphs 14 to 17);
- b. that the Bill retain all sections that expand the scope and focus of the Commissioner and Board beyond just a victim’s experience of the formal criminal justice system (paragraphs 18 to 25);
- c. in relation to the access to information regime in the Bill:
  - i. measures should be put in place to ensure that perpetrators cannot access information relating to a victim-survivor from the Commissioner, Board or other entity that the Commissioner or Board have shared information with, through a subpoena, including the addition of sexual assault counselling privilege to parts of the Bill and/or the removal of the ability of the Board or Commission to disclose information in response to a court order (paragraphs 30 to 40);
  - ii. the definition of “prescribed entity” as it relates to non-government entities should be reconsidered (paragraphs 41 to 43);
  - iii. non-government entities (as opposed to government entities) should only be required to share information with the Board or Commission when the victim-survivor that has engaged with the entity has consented to the information being shared, to preserve a trustful relationship between the client and service provider (paragraphs 44 to 48);
  - iv. operationally, the Board and Commission should be weary of the capacity of non-government to respond to notices to produce information when determining the time limit to respond to such notices (paragraphs 49 and 50);
  - v. operationally, clear and transparent guidance should be published in relation to how the Commission and Board can use personal or other identifying information, for the benefit of individual victim-survivors and services (paragraphs 51 and 52);
- d. in relation to the charter of victims’ rights (**Charter**):
  - i. measures should be taken to ensure that the Commissioner undertakes a review of the Charter, possibly through legislating the need for a review in the Bill (similarly to the approach in the *Human Rights Act 2019* (Qld)) (paragraphs 53 to 57);
  - ii. operationally, the Commission should develop accessible complaint channels, including over the phone (paragraphs 58 to 60);
  - iii. the Bill should include an option for victim-survivors to complain anonymously, for the purpose of informing the Commissioner of issues in the community (paragraphs 61 to 63); and
  - iv. operationally, the Commissioner should work with non-government service providers to increase awareness about the Charter (paragraph 64).

13. Our detailed submissions are set out below.

### **Trauma-informed language**

14. We note that the Hear Her Voice Report Two intentionally uses the term “victim-survivor”, rather than “victim”, to describe women and girls who have experienced sexual violence, because this term “acknowledges the harm done by sexual violence and the efforts of victims to protect themselves from the sexual violence and the violence of the criminal justice process”.<sup>1</sup>
15. For the same reason, LawRight prefers the term “victim-survivor”, rather than “victim”, in its communications. In our view, the former term is a more trauma-informed use of language.
16. The Bill uses the term “victim”, rather than “victim-survivor”. We understand that “victim” may have been chosen for the purpose of simplicity in legislative drafting. Although we do not seek to advocate for a change in wording used directly in the Bill, we recommend that any broader communications about the Bill or its contents (for example, websites for the Victims’ Commissioner and/or Sexual Violence Case Review Board or any other relevant communications by the Queensland Government) uses the term “victim-survivor”.
17. We note that other Australian jurisdictions that have a victims’ commissioner have consistently used the term “victim” rather than “victim-survivor” in their broader communications. However, the approach we suggest is consistent with that of the Domestic Abuse Commissioner in the United Kingdom, whereby although the [relevant legislation](#) uses the word “victim”, the public facing communications regarding the commissioner (including its [website](#)) use the term “victim-survivor”.

### **Beyond the criminal justice system**

#### ***The experience of LawRight’s clients beyond the criminal justice system***

18. The overwhelming majority of victim-survivors of violence which LawRight assists through Homelessness Law are not engaged with the criminal justice system and have limited interest in being engaged in such a system.
19. In terms of first response, victim-survivors that LawRight assist are more likely to report the violence they have experienced to a medical professional (for instance, at a hospital), counsellor, or support worker, rather than the police. This common experience is recognised by Victim Assist Queensland, where the requirement to report the violence to be eligible for financial assistance in relation to “special primary victims” (including victims of sexual offences or domestic violence) can be satisfied by reporting to a doctor, psychologist, counsellor or domestic violence

---

<sup>1</sup> Women’s Safety and Justice Taskforce, *Hear Her Voice Report Two, Volume 1*, 8.

support worker.<sup>2</sup> In contrast, all other victims must report the violence to police in order to be eligible for financial assistance.

20. Beyond the immediate response, our clients are generally more concerned with recovering from the violence and the consequences of it, rather than seeking redress from the criminal justice system. In that regard, they will seek support from services unrelated to the criminal justice system, like health, housing or broader legal services that are not concerned with the criminal justice system (including LawRight).
21. The “Help to Heal” project, run under LawRight’s Homelessness Law, provides best-practice, trauma-informed representation to help victim-survivors through mechanisms outside of the criminal justice system. For example, we assist victim-survivors to access support and resolve housing, income, and consumer issues connected to an experience of violence and recovery. Since 2019, LawRight has accessed over \$1,300,000 in financial support from Victim Assist Queensland for victim-survivors through this project. The assistance that LawRight provides empowers victim-survivors to recover from their experience of violence.
22. The importance of prioritising the recovery and healing of victim-survivors, independent of and alongside prioritising the improvement of the criminal justice system in relation to experiences of violence, is recognised in the [National Plan to End Violence against Women and Children 2022-2023 \(Plan\)](#). The Plan sets out four categories of action to address violence:
  - a. **prevention**, which requires addressing the underlying drivers of violence;
  - b. **early intervention**, which aims to stop violence from escalating or reoccurring;
  - c. **response**, which aims to hold perpetrators of violence accountable (including through the criminal justice system) and support victim-survivors; and
  - d. **healing and recovery**, which focusses on victim-survivors being able to recover from trauma and the physical, mental, emotional, and economic impacts of violence and rebuild their life, including being able to return to the workplace and community and obtain financial independence and economic security.
23. Similarly, the Hear Her Voice Report Two itself recognises the experience of victim-survivors beyond the criminal justice system. For example, the report notes that sexual violence is significantly underreported to the police.<sup>3</sup> Further, it acknowledges that some women and girls who are victim-survivors of sexual violence would like there to be alternatives to the traditional criminal justice system in the form of a restorative justice process and makes recommendations for the expansion of restorative justice services in Chapter 2.15.

---

<sup>2</sup> See Victims’ Assist Queensland, *Reporting Requirements – all victim types*, 1.

<sup>3</sup> 18, 42, 101.

24. With that background, the report states:

*“Taskforce recommendations in this report are aimed at ... increas[ing] the ability of the conventional criminal justice system to meet the needs of victim-survivors. **However, no matter how extensive the reforms, it may be impossible for a criminal justice system to best meet the diverse needs of victim-survivors.** Restorative justice holds potential to increase the options a victim-survivor has available to better meet their needs.”<sup>4</sup>*

...

*“Even with the desired criminal justice reform, some victims may still prefer the offender to take responsibility and repair harm outside the criminal law.”<sup>5</sup>*  
(emphasis added)

25. In light of the above, LawRight supports the components of the Bill that expand the scope of the Commissioner and Board beyond just a victim’s experience of the formal criminal justice system.

### **Access to information**

26. LawRight supports the proposed overarching functions of both the Commissioner and Board, and understands the need for both bodies to access information in order to perform these functions.

27. At the same time, LawRight is concerned that particular aspects of the access to information provisions in the Bill may have an unintended consequence of hindering the trust that vulnerable victim-survivors of violence, and particularly victim-survivors of domestic violence and/or sexual violence, put into non-government support services, including LawRight (although noting that LawRight may be protected from the access to information regime in some ways, given much of our client information would be covered by legal professional privilege). Ultimately, if such trust is eroded, this may stifle the extent to which some vulnerable victim-survivors of violence seek assistance from such support services.

28. Further, in a context where victim-survivors of violence often feel as though their agency and power is stripped from them, both by their perpetrator and the wider support and justice system, we believe it is important to empower victim-survivors with agency as much as possible in relation to access of their information, while balancing this with the need to access information that relates to them to create systemic change.

29. With that background, this section of our feedback addresses specific issues that LawRight has considered in relation to the access to information provisions of the Bill.

---

<sup>4</sup> 393

<sup>5</sup> 395.

### ***Risk of perpetrators accessing information***

30. Victim-survivors of violence are more likely to trust the support service they are accessing if they are confident that the information they are disclosing will not ultimately be disclosed to others, including their perpetrator.

### **Sexual assault counselling privilege**

31. The need to protect this trust is what led to the introduction of sexual assault counselling privilege in Queensland in 2017, in response to a recommendation in the Special Taskforce on Domestic and Family Violence in Queensland report, *Not Now, Not Ever: Putting an end to Domestic and Family Violence in Queensland*, contained in Part 2, Division 2A of the *Evidence Act 1977 (Qld)* (**Evidence Act**). Under the Evidence Act, a person cannot compel “protected counselling communications”, as defined in s14A.
32. We note that, currently in the Bill, the sexual assault counselling privilege is not included as an exclusion to:
- a. the type of information entities may be required to provide to the Commissioner or Board, where other exclusions to this type of information are listed in sections 29(5), 86(5) and 51(5) of the Bill; and
  - b. the type of information that the Commissioner or Board can exchange with other entities, where other exclusions to this type of information are encompassed within the meaning of “protected information”, as defined in Schedule 2 and referred to in sections 33(3), 60(3) and 90(3) of the Bill.
33. LawRight is concerned that leaving out reference to information that would otherwise be protected by sexual assault counselling privilege in the above provisions could create a risk of alleged perpetrators accessing records relating to a victim-survivor that were provided to the Commissioner, the Board, or other entities with which the Commissioner or Board shares information, through a subpoena to the Commissioner or Board.
34. If this situation arose, it is possible that these entities could defend the subpoena through the sexual assault counselling privilege process set out in the Evidence Act. However, even if the entity can successfully defend the production of information, the process itself would cause additional trauma for the victim-survivor, and the risk of the situation arising could erode the victim-survivor’s trust in accessing counselling assistance. In our view, including “protected counselling communications, as defined in s14A of the *Evidence Act 1977 (Qld)*” as an additional exclusion or exemption in **all** of the provisions listed above would mitigate the risk of this situation arising entirely, given the entity would not have access to confidential counselling communications in the first place.
35. Alternatively, if the Department considers that it would be useful for the Commission and Board to have access to “protected counselling communications”



in order to perform its functions, it could consider only creating this exclusion in relation to what the Commissioner or Board can exchange with other entities (that is, by adding it to sections 35(3), 64(3) and 97(3)), without creating an exclusion in relation to what other entities can provide the Commissioner or Board (that is, not adding it to sections 30(5), 92(5) and 52(5)).

36. We note that Division 2A of the Evidence Act only restricts the production of protected counselling communications in connection with particular types of proceedings, which are limited to criminal trial, committal proceeding or bail proceedings, or domestic violence order proceedings. The same restriction is not imposed by the Evidence Act itself in relation to family law proceedings. However, by adding an exclusion to the Bill in the provisions detailed above by reference to "protected counselling communications, as defined in s14A of the *Evidence Act 1977 (Qld)*", the exclusion will not be limited by the particular types of proceedings to which Part 2, Division 2A of the Evidence Act applies. Rather, the Bill would encompass all information which falls within the relevant definition.
37. Finally, we note that sexual assault counselling privilege does not encompass confidential counselling notes in relation to domestic violence (where the form of violence does not constitute sexual violence). This means that, even if this option is implemented, there may still be a gap in terms of information that the Commissioner or Board could receive and/or disclose in response to a court order, which could ultimately erode a victim-survivors' trust in support services. The recommendation suggested below may therefore provide a more effective approach to addressing the risk of perpetrators accessing information through subpoenas.

#### Removal of ability to disclose in response to court order

38. An additional or alternative avenue to reducing the risk of perpetrators accessing sensitive information relating to victim-survivors through a subpoena could be by removing the ability of either the Victims' Commissioner or the Sexual Violence Case Review Board to disclose information in response to a court order.
39. This approach to protecting sensitive information has been followed in the context of Quality Assurance Committees, established under the *Hospital and Health Boards Act 2011 (Qld) (HHBA)*. Section 84(1) of the HHBA provides the circumstances in which a relevant committee is able to disclose confidential information, similar to s103 in the Bill. However, s 87 of the HHBA provides that particular types of documents or information "can not be accessed under any order, whether of a judicial or administrative nature". Section 81 provides that the purpose of the relevant HHBA division is "to improve the safety and quality of health services by providing protections for quality assurance committees established under this division".
40. The Department could consider including similar provisions in the Bill in relation to both the Commissioner and the Board. This would also require removing s 103(3)(c) of the Bill, which currently allows the Commissioner or Board to disclose

or use confidential information in order to comply with “a lawful process requiring the production of documents to, or giving of evidence before, a court or tribunal”.

### ***Non-government entities subject to access to information regime***

#### Definition of “prescribed entity”

41. The Bill allows the Commissioner or Board to require “prescribed entities” to provide either entity with information (ss 29, 51, 86) where a “prescribed entity” as defined in Schedule 2 includes “an entity funded by the Commonwealth or the State that provides services to victims as its primary function”. This is the same as the definition of “non-government entity” in Schedule 2 and used in the provisions of the Bill that relate to the charter of victims’ rights (**Charter**).
42. The meaning of the definition of “prescribed entity” is unclear and confusing. LawRight recommends the Bill is amended to clarify its meaning. It is unclear whether the general definition of a “prescribed entity” (as opposed to a “non-government entity”) is intended to encompass non-government support services, rather than government services which provide services to victim-survivors as its primary function (like Victims Assist Queensland).
43. Further, the test for what constitutes a “primary function” is unclear. For instance, the vast majority of clients that LawRight assists through Homelessness Law have experienced violence. However, LawRight’s services through this program is not intentionally or even primarily targeted towards people who have experienced violence, in that it also maintains other programs directed at other cohorts and experiences, including people sleeping rough, young people and multicultural clients. Given this, would LawRight meet the test for “prescribed entity”?

#### Client consent for information from non-government entities

44. If it is intended that a non-government domestic violence or sexual violence support service constitutes a “prescribed entity” that could be required to provide information to the Board or Commissioner without the consent of the client to whom the information relates, LawRight is concerned that this access to information scheme may stifle the trust of some vulnerable victim-survivors of domestic violence or sexual violence.
45. LawRight notes that the relationship with a vulnerable victim-survivor and a non-government support service is very different to the relationship between a victim-survivor and government service, including the director of public prosecutions, police commissioner or Victims Assist Queensland, which also constitute a “prescribed entity”.
46. Trust and confidentiality are critical to the former relationship, and the victim-survivor knowing that the information they divulge may then be disclosed to a government entity may erode that trust. On the other hand, in terms of the latter relationship, victim-survivors at times view government entities as one and the

same and knowing that the information they divulge may be disclosed to a different government agency may not have any impact, if at all, on the relationship.

47. With that in mind, LawRight requests the Government consider whether it may be more appropriate to separate the access to information regime as it relates to non-government service providers from the regime as it relates to government entities, such that the Commissioner or Board can only require a non-government entity to provide information that its victim-survivor clients have consented to being provided. Such consent can be incorporated in the standard privacy policy consent forms which non-government service providers usually have a client sign. LawRight imagines that in most cases, obtaining this consent from clients will not be an issue, however it would allow the possibility of a small portion of clients to opt out if they desired. In our view, this would best maintain the trust in the relationship between victim-survivor clients and non-government entities which they seek support from, while also respecting the empowerment and agency of victim-survivors.
48. At the same time, our suggested approach acknowledges that it would be impractical for government service providers (for example, the police) to request consent from individuals to share information accordingly.

#### Resourcing issues

49. LawRight notes that most non-government entities providing services to victim-survivors are under-resourced. This may make it practically difficult for the entities to comply with notices to produce information in a timely manner.
50. We support the requirement that these notices specify a “reasonable period” for the entity to comply with notices to produce under sections 29, 51 or 86 of the Bill. However, we would like to emphasise that, operationally, the Commissioner and Board should consider realistic timelines for notices to produce information issued under these provisions.

#### ***Transparency of information use***

51. LawRight suggests that, operationally, once the Commissioner and Board are established, very clear and transparent guidance is published in layperson terms in relation to how each entity will and will not use information it receives. This will be important to empower both victim-survivors and frontline service providers with knowledge in relation to how exactly the information will and will not be used.
52. Relatedly, this would also help service providers incorporate the relevant information into their privacy policy and consent forms which it issues to victim-survivors.

## **Charter of Victims' Rights**

### ***Review of Charter***

53. Historically, LawRight and its clients have rarely utilised the Charter given the substantive rights, remedies and enforceability mechanisms within it are weak.
54. We appreciate the proposed new powers of the Commissioner to deal with complaints contained in sections 49-55 of the Bill, and particularly section 52. However, in our view, this does not go far enough in terms of creating enforceability and accountability mechanisms in relation to the Charter.
55. We also note the Bill does not expand on the substantive rights granted by the current form of the Charter under the *Victims of Crime Assistance Act 2009* (Qld), and maintains the position that the Charter does not give legal rights or effect legal rights or obligations (sections 42-44). By contrast, the equivalent charter of victims' rights in South Australia does grant rights and authorises the commissioner to exercise any right to which the victim is entitled (*Victims of Crime Act (SA)*, s32A, as noted by the Hear Her Voice Report 2, 135).
56. We understand that the intention of the Bill may be that, rather than improve the enforceability mechanisms and substantive rights in the Charter at this stage, the Commissioner will oversee a review of the Charter in due course, as recommended in the Hear Her Voice Report 2 (Recommendation 19). However, while acknowledging that s 11 of the Bill requires the Commissioner to act independently and not be subject to the direction of any person, including the Minister, we encourage the Government to consider how it may ensure that the Commissioner will review the Charter in due course, or at least encourage the Commissioner to do so.
57. In that regard, we note that sections 95 and 96 of the *Human Rights Act 2019* (Qld) provided that the operation of that legislation was required to be reviewed as soon as practicable after 1 July 2021, and then again as soon as practicable after 1 July 2023 (or before, if the Attorney-General considers it appropriate). The Committee may want to consider whether an equivalent provision could be inserted into the Bill to ensure that the Commissioner will review the Charter in due course.

### ***Accessibility of complaints***

58. Section 47(1) of the Bill provides that a complaint may be made or referred to the Commissioner in relation to a breach of the Charter. We understand that it may be intended that the requirements in s 47(1) mirror the requirements of complaints to the Queensland Human Rights Commission, in accordance with s 67 of the *Human Rights Act 2019* (Qld).
59. In relation to the requirement for the complaint to be in writing, LawRight assumes that the requirement in s 47(2) for the Commissioner to give reasonable help to the complainant to put the complaint in writing if it is satisfied that they need such help, will in practice create an option for individuals to make complaints over the phone

(where the entity will assist the individual to formulate a complaint in writing in response to the information the individual provides over the phone, as is the case with the Queensland Human Rights Commission).

60. The option to complain over the phone would increase access for complainants that have a disability, do not have general literacy and/or do not have technology literacy which would enable them to make a complaint in writing online. These circumstances would apply to many of the clients we assist through our Homelessness Law program.

### ***Anonymity of complaints***

61. Section 47(1) of the Bill also provides that a complaint made or referred to the Commissioner must state the complainant's name and address for service.
62. There may be some victim-survivors of violence that may prefer to make a complaint anonymously. Although the Commissioner and Board would not have the ability to resolve a complaint where it is anonymous, it would allow both entities to understand community experiences which could in turn inform its work and ability to perform its functions to effect systemic change. There is a similar option to make an anonymous report to the Queensland Human Rights Commission for some types of matters (although this is not publicized extensively) and to the Victorian Equal Opportunity and Human Rights Commission, which has a clear section on its [complaints webpage](#) that allows individuals to make anonymous reports.
63. We recommend that provision is made for a similar option in relation to complaints to the Commissioner.

### ***Awareness***

64. Based on our experience with clients and frontline services, LawRight understands that there is a very low level of awareness in relation to the Charter in the community. We therefore support the inclusion of the promotion of the Charter as one of the functions of the Commissioner in s 9 of the Bill and encourage the Commissioner to work alongside support services like LawRight to successfully implement this function operationally.

Thank you for considering this feedback.

Yours faithfully



Stephen Grace

**Director**

Community & Health Justice Partnerships | Homelessness Law and Multicultural Law