

Victims' Commissioner and Sexual Violence Review Board Bill 2024

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Submission by Legal Aid Queensland

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Submission to The Community Safety & Legal Affairs Committee on the Victims Commissioner and Sexual Violence Review Board Bill 2024

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in response to the Victims Commissioner and Sexual Violence Review Board Bill 2024.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day-to-day application of the law in courts and tribunals. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

This feedback is provided in response to the Victims’ Commissioner and Sexual Violence Review Board Bill 2024 and is made in consultation with LAQ’s Violence Prevention and Women’s Advocacy Team (‘VPWA’), encompassing the Counselling Notes Protect service (‘CNP’), who regularly represent victims of sexual offences, as well as LAQ’s Criminal Law Services.

Victims’ Commissioner and Charter of Victim’s Rights

LAQ welcomes the implementation of a permanent Victims Commissioner into legislation and the use of this legislation to highlight the Charter of Victims’ Rights.

LAQ notes that Report 2 of the Women’s Safety and Justice Taskforce “Hear Her Voice: *Women and girls’ experiences across the criminal justice system*” (*the Report*) found that victims of sexual assault feel disempowered in the criminal justice process and trauma-informed approach encourages hearing their voices.¹ Clients of LAQ’s VPWA and CNP services report similar experiences.

LAQ also notes the findings that victims often report that Victim Liaison Officers (within the Office of the Director of Public Prosecutions (DPP)) are not providing the level of interaction that victims need to feel supported through the trial process, and that victims require clear communication that is consistent, delivered in a way that is trauma-informed, culturally capable and evidence based.²

¹ Women’s Safety & Justice Taskforce, *Hear Her Voice: Women and girls’ experiences across the criminal justice system* (Report 2, Volume 1), page 233.

² *Ibid* page 233.

The Report noted that victims' experiences would be improved by collaboration between Queensland Police Service (QPS) and the prosecutors from both within QPS and the DPP with clear distinction between roles and responsibilities for communicating with victims.³ These findings are consistent with experiences commonly reported by clients of VPWA and the CNP service. Promotion of the Charter of Victims' rights and a clearer pathway to complaints under the Charter may assist in improving this.

LAQ supports the addition of legislated time frames for responding to complaints under Chapter 3 of the Bill.

Sexual Violence Review Board

LAQ supports the implementation of the Victims Commissioner and Sexual Violence Review Board to review cases that are not progressed or fail to be successfully prosecuted.

LAQ notes that the Board is proposed to comprise of the Victims Commissioner and not more than eight other members, including the Police Commissioner or their nominee, the Director of Public Prosecutions or their nominee, a public service officer with experience working in forensic DNA profiling and examinations, a public service officer with expertise or knowledge of the court system, and not more than four other members who are appropriately qualified to ensure the board performs its functions effectively and efficiently.

Given the nature and purpose of the Board, LAQ has concerns that the Board composition does not require the appointment of a member with legal experience, specifically from a criminal defence perspective. LAQ supports a requirement that at least one member of the board be a lawyer with experience in the conduct of criminal defence and sexual violence matters. LAQ also notes that most victims of sexual violence are female⁴ and supports measures that ensure both appropriate and adequate representation on the Board with respect to this factor.

Information sharing provisions – Division 4, Part 2

LAQ notes that information sharing provisions under Division 4, Part 2 of the Bill may result in production of protected counselling communications to the Board obtained either lawfully or at times outside the authority of Part 2 Division 2A of the *Evidence Act 1977* by prosecuting authorities in the course of prosecutions (for example by a request under proposed section 92 or 93). This is noted particularly given the inclusion of proposed section 95, which specifies that sections 92 and 93 operate "*despite any other law that would otherwise prohibit or restrict the giving of the information*".

A consequence of the chairperson of the Board compelling a prescribed entity to provide information could be that protected counselling communications could be produced to the Board. LAQ supports the Board having access to protected counselling communications where leave was granted for the material to be used in the proceedings. However, LAQ has concerns that in limited circumstances the Board could compel the prosecuting authority to provide protected counselling communications which are in their possession where leave to use the material in the proceedings was not granted. LAQ supports the inclusion of proposed section 95(3) which provides some protection of the confidentiality of the information.

³ Ibid page 237.

⁴ Ibid page 41.

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