

Making Queensland Safer Bill 2024

Submission No: 96
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Submitter Comments:

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Committee Secretary
Justice, Integrity and Community Safety Committee
Parliament House
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BRISBANE QLD 4000

By e-mail: JJCSC@parliament.qld.gov.au

Dear Dr Cavill,

Re: Inquiry into the Making Queensland Safer Bill 2024

Thank you for the opportunity to provide a submission to the Committee's consideration of the Making Queensland Safer Bill 2024.

Please see attached my submission.

Yours sincerely,

Beck O'Connor
Victims' Commissioner

Submission to the Justice, Integrity and Community Safety Committee

Acknowledgment to victims

The Office of the Victims' Commissioner respectfully acknowledges all victims of crime.

We see you, we believe you and we acknowledge the harm you have suffered.

We respect your choices in whichever path you may take. Your emotions and reactions are valid.

We see your strength, courage, resilience, and vulnerabilities and support your right to self-determination, and to lead lives free from fear.

To loved ones of those who have died, we offer our condolences, and we acknowledge the ongoing hurt and pain you experience.

We recognise the important role of people supporting and advocating for victims of crime, both personally and professionally.

We value the experiences you have shared with us as they shape our work.

Introduction

This Bill arises out of community concern for the harm caused by some young Queenslanders. I agree with the importance of responding to these concerns. I especially acknowledge the harm and pain caused to victims, their friends and family by serious offences committed by these young people.

However, the proposals in the Making Queensland Safer Bill (the Bill) are largely unprecedented and demand a thoughtful and balanced approach that recognises the needs of all victims, upholds human rights, and promotes community safety.

In fulfilling my functions to protect and promote the Charter of Victims' Rights (the Charter) I am also conscious of the need to avoid any erosion of the standing of rights in our community. When fundamental rights are not upheld, it weakens community confidence in the power of rights to provide protection and guide decision-making.

I strongly believe that advancing victims' rights should not be to the detriment of universal human rights.

The Human Rights Statement of Compatibility identifies that the purposes of this Bill can be achieved through less restrictive options. Human rights should be limited only after careful consideration and should only be limited in a way that can be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law.¹ A failure to provide proper consideration to less restrictive alternatives jeopardises our shared goal of amplifying the rights and meeting the needs of all victims in Queensland's criminal justice system.

¹ *Human Rights Act 2019* (Qld) Preamble.

I note the short timeframe to provide a submission – only 3 business days. This timeframe for consultation is unrealistic for stakeholders – particularly victims, their families, communities, legal advocates, and service providers who will have very significant contributions to make. We must adopt a balanced, evidence-based approach to community safety for all and this is done through open, transparent, and accessible consultation.

In the short time since my appointment, I've met with a broad range of victim-survivors—children, young people, and adults—each with unique, deeply confronting experiences of violence and harm and difficulties navigating the criminal justice system.

Victim-survivors are diverse with distinct experiences, needs, and perspectives, and this diversity must be reflected in how we craft solutions for their safety, recovery, and healing. It is also crucial to create responses that address the drivers of violence, while offering care and support for those already impacted by crime.

Too many victims are unaware of their rights and how to access them.

A key priority for my office is reviewing Queensland's Charter of Victims' Rights, a vital tool for putting victims of crime front and centre. While the Charter exists to ensure victims of crime are respected and informed, there may be opportunities to enhance it significantly. This includes strengthening the Charter to embed victims' needs more firmly within the justice system and ensuring greater accountability for upholding their rights.

Improving victims' experience in the criminal justice system requires evidence-based re-design, appropriate investment and a commitment by government, criminal justice and service agencies to work collaboratively in anticipating and responding to their needs. It requires listening to a broad range of victims' views and their intersectional experiences and it will require courageous leadership.

I am grateful to those individuals who have shared their experiences with myself and my office. Their experiences inform this submission.

This submission considers the Bill in the context of victims' rights, human rights, and the diverse experience of victims of crime.

Note on language

I use the term 'victim' and 'victim-survivor' throughout this submission. I acknowledge the diverse preferences of individuals with lived and living experience of crime. I recognise that language plays a significant role in shaping narratives and that individuals may have varying preferences regarding their identities. Some individuals may prefer 'victim' as it emphasises their experience of harm, while 'victim-survivor' acknowledges the ongoing effects and harm caused by crime and highlights the strength and resilience of individuals with lived experience. By incorporating both terms, I hope to honour these perspectives and foster an inclusive dialogue.

I may also use the term 'victim' when referring to legislation as it is a term commonly used in legal frameworks.

Role of the Victims' Commissioner

The role of the Victims' Commissioner is established under the *Victims' Commissioner and Sexual Violence Review Board Act 2024* to promote and protect victims' rights.

My functions include:

- a) to identify and review systemic issues relating to victims; and
- b) to conduct research into matters affecting victims, including particular cohorts of victims; and
- c) to consult in relation to matters relating to victims, including a person's experience as a victim and their experience in the criminal justice system; and
- d) to deal with complaints about alleged contraventions of the victims charter; and
- e) to publish information in relation to the criminal justice system; and
- f) to promote the victims charter and rights of victims and to advocate on behalf of victims by making recommendations and providing advice, training, information or other help to government and non-government entities; and
- g) to provide advice to the Minister on issues affecting victims and the promotion of victims' rights, including making recommendations about improvements to government policy, practices, procedures and systems to support the rights of victims; and
- h) to monitor the implementation of recommendations made by the commissioner under this Act; and
- i) to perform any other function given to the commissioner under this Act or another Act.

In September this year, my office began receiving complaints from victims about their rights not being upheld under the Charter of Victims' Rights² (the Charter). Previously, the Victim Services Coordinator, Victim Assist Queensland had responsibility for receiving Charter of Victims' Rights complaints, however the powers and functions in relation to those complaints are significantly enhanced under the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

Since September, my office has received over 200 complaints, feedback, and enquiries. This represents a significant increase in engagement with the Charter, especially noting that Victim Assist Queensland received less than 40 Charter complaints during 2021-2023.³

My office is also working to raise awareness of the rights of victims of crime and the services available through developing additional accessible resources for victims of crime to understand their rights, the criminal justice process and how to access support and assistance.

My office is also developing accessible resources for victims of violent and non-violent property crime committed by young and adult offenders to improve understanding of the criminal justice system.

² *Victims' Commissioner and Sexual Violence Review Board Act 2024* Schedule 1.

³ Parliamentary Inquiry into Support Provided to Victims of Crime, *Departmental Briefing Paper – Department of Justice and Attorney-General* (30 March 2023) 8.

Charter of Victims' Rights

The Charter sets out the rights of an affected victim⁴ that are to be upheld by prescribed persons⁵ when dealing with the victim.

The Charter rights relevant to consideration of the Making Queensland Safer Bill 2024 (the Bill) include:

- An affected victim will be treated with courtesy, compassion, respect, and dignity, taking into account the victim's needs.
- During a court proceeding, the affected victim will be protected from unnecessary contact with, or violence or intimidation by, the accused, defence witnesses and family members and supporters of the accused.
- An affected victim may make a victim impact statement under the [Penalties and Sentences Act 1992](#) for consideration by the court during sentencing of a person found guilty of an offence relating to the relevant offence.
- An eligible person in relation to a prisoner under the [Corrective Services Act 2006](#) or a child detained under the [Youth Justice Act 1992](#) will be kept informed of the following matters—
 - (a) the prisoner's period of imprisonment or the child's period of detention;
 - (b) the transfer of the prisoner or child to another facility;
 - (c) the escape of the prisoner or child from custody or whether the prisoner or child is unlawfully at large.
- An eligible person will be given the opportunity to make written submissions to the parole board under the [Corrective Services Act 2006](#) about granting parole to the offender.

Review of the Charter of Victims' Rights

I have committed to undertaking a review of the Charter, noting:

- the Women's Safety and Justice Taskforce *Hear her voice- Report two - Women and girls' experiences across the criminal justice system*, recommendations 19 and 20.
- the Legal Affairs and Safety Committee (the Committee) Report No. 48, 57th Parliament, Inquiry into support provided to victims of crime, recommendations 2 and 3.

A review of the Charter is an opportunity to consider the complexity of victim rights in the criminal justice system and the appropriate balancing of these rights alongside those of the accused, while adhering to the requirement of fair process.

⁴ *Affected victim* includes a person who has suffered personal harm because of a violent crime or domestic and family violence committed against them, a family member or dependent of that person or a person who dies as a result of the offence, a person who is harmed when intervening to help another person who is harmed or dies because of the offence. See ss 38 and 39 VCSVRBA for more detail.

⁵ *Prescribed person* includes government entities, and non-government entities that are funded by government to provide support to victims as its primary function (section 40 and Schedule 2 VCSVRBA).

I will be considering whether the Charter can be strengthened to more firmly embed victims' needs within the justice system and ensure greater accountability for upholding their rights.

I am cognisant that victims are not equal in their ability to claim their Charter rights, or access remedies, including complaints processes, when their rights are not upheld. We know from consultation undertaken by the Interim Victims' Commissioner that awareness of the Charter is low, including among some agencies and organisations that regularly interact with victims. These are issues that I intend to explore during the review.

I welcome the government's recognition of the need to improve how victims are supported in the criminal justice system and the commitment to:

- establishing a new professional Victims Advocate Service to help guide victims of crime through the justice process, as recommended by the Women's Safety and Justice Taskforce
- enabling victims of serious crime to be automatically provided with updates which relate to their case unless they opt out.

I look forward to opportunities to contribute to the design of these initiatives.

The diversity of victims and their experiences

There have been several inquiries and reviews in Queensland in recent years that have engaged or are engaging in extensive consultation with victims of crime, people who support victims and the community. This includes (but is not limited to):

- the Women's Safety and Justice Taskforce
- the Legal Affairs and Safety Committee Inquiry into support provided to victims of crime.
- the Youth Justice Reform Select Committee
- the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence.

This consultation highlights the diversity of victims themselves, and their experiences in their interaction with criminal justice agencies and through the court process.

This diversity continues to be highlighted as I engage with victims around the state, and through the feedback, questions, and complaints my office is receiving. Victims are not a homogenous group – their experiences, needs, perspectives and opinions differ widely.

For some victims, punishment of an offender is integral to their sense of justice. For others, understanding, and addressing of, the causal factors of the offending is crucial. Some victims want to access restorative justice processes, others would never want to choose this path.

Criminal justice responses must be capable of responding to this diversity. Critical to this is creating options for victims and providing victims with choice. This is consistent with the principles of trauma-informed practice: safety, trust, choice, collaboration, empowerment.

I note the Women's Safety and Justice Taskforce recommended an independent review of the use of youth justice conferencing in cases involving sexual offences, with a particular focus on the experience and justice outcomes achieved for victim-survivors (recommendation 89, Report 2). I understand this work is due to commence in April 2025, and I look forward to the

outcomes of this work as an important part of providing victim-survivors with options on their path to recovery and healing.

Young people's experience of victimisation

In my role, I must have specific regard to victims who have characteristics that may make them particularly vulnerable to harm, including children.⁶

A child or young person's experience as a victim is often minimised, ignored, or overlooked when they are also interacting with the youth justice system. I recognise and acknowledge the broad range of circumstances in which a child or young person offends, including the experience of adverse childhood experiences and domestic and family violence in young people who offend.⁷

Recent research undertaken by the Queensland Government Statistician's Office highlights that approximately one-sixth (16%) of young people had recorded contact with police as both a victim and offender. Victim-offenders were 'also more common among Aboriginal and Torres Strait Islander young people (26.3%) than non-Indigenous young people (14%)'.⁸ I also note the Queensland Family and Child Commission's 2024 report *Growing Up In Queensland* which identified that '53% of young people under youth justice supervision have experienced or been impacted by domestic and family violence'.⁹

We must give greater attention to recognising and responding to the needs of young victims, and to upholding their rights, especially in contexts such as the youth justice system. While a young person's victimisation does not detract from the pain and harm they may cause to others through committing serious crime, it is integral that we acknowledge their own experience and respond appropriately through providing options for support, recovery, and rehabilitation. This can be done in the context of the youth justice response, by investing in holistic, person-centric, trauma-informed options for intervention and rehabilitation.

The government's commitment to investing in early intervention and post-release support is integral to effective prevention and justice responses and I urge the government to incorporate trauma-informed principles which identify and respond to victimisation as the context in which offending can occur.

⁶ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 11.

⁷ Australian Institute of Criminology, *Adverse Childhood Experiences and Trauma Among Young People in the Youth Justice System* (2022) *Trends and Issues in Crime and Criminal Justice* 651; Chanon Consulting and Cordis Bright and Local Government Association UK, *The Relationship Between Family Violence and Youth Offending* (2018)

⁸ Queensland Government Statistician's Office, *The Victim-Offender Overlap Among Young People in Queensland*, Report (2024) 15.

⁹ Queensland Family and Child Commission, *Growing up in Queensland*, Report (2024) 47, citing Department of Child Safety, Seniors and Disability Services, *Youth Justice Census*, Census (2022) 58.

Making Queensland Safer Bill

Human Rights

I note that the amendments in the Bill which abolish the principle of detention as a last resort for children are incompatible with the human rights protected by the *Human Rights Act 2019* and are in conflict with international standards regarding the best interests of the child with respect to children in justice system. Further, it is noted that the amendments are expected to have a greater impact on Aboriginal and/or Torres Strait Islander children who are already disproportionately represented in the youth justice system.

The Human Rights Statement of Compatibility also recognises that there are less restrictive options available to achieve the stated purpose of the Bill. I note that the override of human rights is in the name of 'growing community concern and outrage'. I urge the Committee to fully explore these less restrictive alternatives. Such an approach should respect victims' experiences, uphold the rights of all Queenslanders, and be grounded in the best available evidence.

Definition of 'victim'

A focus on victims within these amendments presents an opportunity to provide greater clarity within the *Childrens Court Act 1992* ('CCA') and *Youth Justice Act 1992* ('YJA') as to who a 'victim' is. This is especially so noting that:

- there exist varying definitions of 'victim' across legislation
- provisions within the CCA refer to 'victim' in the context of the right to be present in court hearings
- the right to provide a Victim Impact Statement is limited to 'affected victims' as defined in the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

Providing clear guidance as to the definition of 'victim' would provide clarity to victims, people supporting victims and criminal justice agencies. This could be achieved by clarifying that 'victim' within the CCA and YJA means a 'victim' as defined in section 6 of the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

'Opt out' eligible persons register for victims (Clause 54)

I support the proposed amendments to dispense with the need for an application from victims and immediate family members of deceased victims to be on the youth justice victim register. Victims are frequently required to engage with multiple agencies and navigate a range of administrative processes in order to claim their rights. I am in favour of approaches which streamline this process for victims, while still providing choice.

The proposed amendments will make it easier for victims of violent or sexual offences committed by a child or young person who is ordered to a period of detention to be placed on the register and receive information about the offender.

To avoid creating disparity between victims of child or young offenders, and those of adult offenders, it would be appropriate to consider making similar changes to enable an 'opt-out' system for victims of adult offenders.

Implementation of these proposed amendments will require government investment and clear communication and coordination between criminal justice agencies and victims to ensure they understand what registration means, their option to 'opt-out' and how they go about accessing this option should they choose. Poor implementation may disempower and re-traumatise victims.

Sentencing principles

I support in principle the Bill's intent to ensuring that the harm caused to victims is recognised and given due weight in the sentencing process.

Sentencing is a complex consideration of various factors, including the purposes of sentencing, the principles set out in relevant legislation and case law, and factors relating to the offender, victim, and offence. The process of 'instinctive synthesis' requires a court to consider these many factors, giving each factor due weight, and determining a sentence which is just and appropriate.

The Bill elevates existing section 150(1)(j) of the YJA, providing that in sentencing a child for an offence, the court must have primary regard to any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court under the *Penalties and Sentences Act 1992* ('PSA'), section 179K. I note that similar provisions exist in relation to the sentencing of adult offenders guilty of violent offences and sexual offences committed against a child under 16. For example, in relation to offenders guilty of sexual offences committed against a child under 16, the court must have regard primarily to, inter alia, 'the effect of the offence on the child'.¹⁰ Other considerations which the court are to 'primarily regard' also include factors specific to the protection and safety of the community and the offender.¹¹

The current laws require the court to have regard to any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court under Victim Impact Statements. The court is required to consider this factor in conjunction with the other factors set out in section 150 of the YJA equally, noting there are specific factors which must be considered in certain cases, as well as 'special considerations'. The right to provide information about the harm experienced by a victim of violent crime is also protected in the Charter of Victims' Rights.

The proposed amendments to section 150 creates incongruity with section 9 of the PSA – where the court in sentencing children must have primary regard to the harm caused to victims for all offences, but in sentencing adults (for violent and particular sexual offences) must have regard primarily to victim harm in conjunction with other factors relating to the safety and protection of the community.

Overwhelmingly, the Bill's purpose is centred on community safety. The Committee should consider the inclusion of additional factors which the court should have primary regard to, including factors relevant to the safety and protection of the community and appropriate factors specific to the offender concerning vulnerability, including an offender's history of victimisation,

¹⁰ *Penalties and Sentences Act 1992*, s 9(6)(a).

¹¹ *Ibid* s 9(3), 9(6).

and the effect of systemic disadvantage and intergenerational trauma on children who are Aboriginal and/or Torres Strait Islander.

Victim impact statements

Victims of violent crime, or domestic and family violence, including family members or dependents of those harmed or killed, have the right to make a victim impact statement (VIS).¹² The exercising of this right is often dependent on whether the victim is informed and supported to prepare a victim impact statement that is admissible in court.

I recognise the valuable work of organisations, volunteers, friends, and family members who provide support to victims in preparing a VIS. However, I have heard that this support is fragmented and limited due to the lack of awareness and proactive provision of information to victims on their right to make a VIS.

The success of the proposed amendments requires adequate information and accessible and timely support to be provided to victims. There are also other mechanisms which may enable improved information being provided to the court about a victim's harm.

Adjournments to enable victim-survivors time to prepare a VIS

Legislative amendments which would permit the prosecutor to seek, and the court to allow, an adjournment to enable a victim to prepare a VIS or permit the prosecutor to make further enquiries regarding victim harm would manage some of the challenges associated with having adequate time to prepare a victim impact statement. Similar provisions exist in the Australian Capital Territory and Canada,¹³ and were recently recommended by the Victorian Victims of Crime Commissioner.¹⁴

Inadmissibility of Victim Impact Statement material

I understand that victims may have their VIS material edited when it contains inadmissible material. The *Victorian Sentencing Act 1992* enables the court to 'receive the whole of a VIS, even where it contains inadmissible material'. Such provisions better reflect the underlying purposes of victim impact statements, including in being a 'communicative or expressive tool, providing a victim survivor with the cathartic opportunity to tell the court, offender and public the harm caused to them'.¹⁵

Where the striking-out of inadmissible content does occur prior to tendering, consideration should be had to whether it is feasible for this to occur in collaboration with the victim-survivor, ensuring they are made aware of the reasons why the content cannot be considered by the Court. Alternatively, a victim-survivor could be provided with an opportunity to write an amended VIS enabling them to remove the inadmissible content themselves, thereby providing them with choice and control.

Options for providing a VIS

There may also be opportunities to improve the options available to victim-survivors about how a VIS can be provided to court. While the current legislation provides for a VIS to be read aloud during sentencing by a victim-survivor, it does not contemplate the option of a pre-recorded VIS. I note that recorded victim impact statements are utilised in other jurisdictions, including Canada¹⁶ and South Australia.¹⁷ Such an approach would be consistent with trauma-

¹² *Victims' Commissioner and Sexual Violence Review Board Act 2024*, Schedule 1.

¹³ *Crimes (Sentencing) Act 2005* (ACT) s 51A.

¹⁴ Victims of Crime Commissioner (Victoria), *Silenced and Sidelined: Systemic Inquiry into Victim*

¹⁵ Queensland Sentencing Advisory Council, *Consultation Paper: Issues and Questions* (2024) 62.

¹⁶ Government of Canada, *Victims' Rights in Canada* (Web page) < [Victim Impact Statement \(justice.gc.ca\)](https://www.justice.gc.ca/vic/vic-statement)>

¹⁷ *Sentencing Act 2017* (SA) s 14(3)(a).

informed principles to provide choice and empowerment to a victim-survivor, enabling victim-survivors to tell the court, offender, and the public the harm caused to them in their own way.

The court record

Sentencing remarks serve an important role in forming the public court record. Where there is only a cursory reference to the presence of a VIS within sentencing remarks, this risks the court record being deficient with respect to the victim's voice and the harm suffered by the victim. There may be opportunities to ensuring a victim-survivor's voice is accurately and wholly reflected within the court record by judicial officers. I recognise that it may be appropriate to consult with a victim-survivor about whether they have particular wishes about the extent to which their VIS is read into the record.

Reflecting broader community harm through Community Impact Statements

I note the use of Community Impact Statements in jurisdictions such as South Australia,¹⁸ which enables the South Australian Commissioner for Victims' Rights to provide a sentencing court with a neighbourhood impact statement or social impact statement about the effect of the offence in a specific location or community. Where it is identified that an offence has had a specific or significant impact on a certain community, including Aboriginal or Torres Strait Islander communities or culturally and linguistically diverse communities, consideration could be had to amendments which would enable suitably qualified groups (such as Community Justice Groups) to provide the court with information about the harm caused to the victim or community. Such amendments would however require the consideration of sensitive and complex matters, noting the potential for varying impacts on community members, the potential impact of the sentencing outcome (as well as the crime itself) impacting community members, and the position of the group preparing the statement where the offender and the victim is within the same community.

Childrens court amendments (Who may be present at a proceeding)

I endorse an approach that supports the rights of victims to be present at hearings of criminal proceedings against a child and the principle of open justice, while also recognising the need to balance youth justice principles.

I support the amendments to section 20(1)(c) to include a relative of the victim among the class of persons able to be present during criminal proceedings. I also support an approach which provides greater flexibility to this term in order to recognise the broad range of family relationships which exist. For example, this could be achieved through inserting a subsection to s 20(1)(c) which would enable the court to allow a person who could demonstrate a close familial-type relationship with the victim to be present.

However, the proposed removal of section 20(2) of the CCA fails to recognise that there may be appropriate and justified reasons to exclude certain parties from a hearing of a criminal proceeding of a child. For example, there may be circumstances where it is appropriate, having regard to the relevant tests set out in section 20(2) of the CCA, to exclude a person where there are family and domestic violence dynamics which are a relevant factor in the proceedings and where it is necessary to protect the child offender, having regard to their particular vulnerabilities. Section 20(2) provides for consideration of the safety of "any person" including the child. Given the complexity of matters before the court, the removal of the section may also adversely impact victims' wellbeing during proceedings.

¹⁸ *Sentencing Act 2017 (SA)* s 15.

Having regard to the importance of balancing youth justice principles, the rights of victims and the closed court nature of children's matters which do not proceed on indictment, I am of the view that the court must be able to retain the discretion to exclude media entities from proceedings where it is necessary to do so to prevent prejudice to the proper administration of justice or for the safety of any person, including the child or victim.

While access to court hearings may promote understanding of the youth justice system by victims, their family, and representatives, it is critical that consideration be had to the necessary and appropriate support that would properly enable this and I note the government's commitment to a victim advocacy service for all victims.

Review

It is imperative that the impact of any amendments be considered by an appropriate independent agency within 3 years. A legislative provision requiring a review of the changes must be included in the Bill.