

INQUIRY INTO SUPPORT PROVIDED TO VICTIMS OF CRIME

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The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the 57th Queensland Parliament Legal Affairs and Safety Committee regarding the Inquiry into support provided to Victims of Crime

Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ('QIFVLS') welcomes the opportunity to provide a submission to the Legal Affairs and Safety Committee's (the Committee) Inquiry into support provided to Victims of Crime.

As an Aboriginal and Torres Strait Islander Community Controlled Organisation, a Family Violence Prevention Legal Service provider, a member of the National Family Violence Prevention Legal Service Forum and member of the Coalition of Peak Aboriginal and Torres Strait Islander peak organisations (Coalition of Peaks), QIFVLS is dedicated to achieving the priority reforms and socio-economic targets outlined in the [National Agreement on Closing The Gap](#). In this context, QIFVLS is particularly dedicated to achieving Target 13 (reducing family violence against women and children by at least 50%, towards zero by 2031), in conjunction with the remaining targets and priority reforms. Accordingly, we wholeheartedly support any measures which contribute to achieving the safety of families, particularly women and children.

We believe this inquiry represents a valuable opportunity for our organisation to be part of a community-wide effort to develop better coordination of state-wide services to ensure that there is trauma-informed, victim-centric and timely support for victim-survivors from the time of the incident through to the criminal trial process.

Our perspective is derived from our work as a family violence prevention legal service (FVPLS) and an Aboriginal and Torres Strait Islander Community Controlled Organisation (ACCO), providing state-wide services to over 80 communities throughout Queensland.

Our submissions will lean quite heavily on the observations, consultations and findings of the Women's Safety and Justice Taskforce (the WSJT Taskforce) in their *Hear Her Voice* reports, namely *Hear Her Voice – Report Two – Women and girls' experiences across the criminal justice system*, released in June 2022. We believe the 188 recommendations made by the WSJT Taskforce in *Hear Her Voice Two* are the perfect starting point to approach the question of support for victims of crime from the perspective of female victim-survivors.

In fact, we note that processes are already underway to implement the recommendations from this Report. In January and February 2023, QIFVLS took part in state-wide consultations facilitated by the Department of Justice and Attorney-General (DJAG) to implement the second tranche of reforms arising from the *Hear Her Voice* reports. Some of the recommendations in the DJAG consultation process revolve around enhancing the experience of victim-survivors as they navigate the criminal trial process. Accordingly, we shortly expect future policy and legislative reform around recommendations:

- Progressing amendments to section 21 of the *Evidence Act 1977* to include examples of improper questions/cross-examination during court proceedings;
- Amendments to the *Evidence Act 1977* providing for jury directions to address misconceptions about sexual violence;
- Relating to the publication of sexual violence proceedings without the consent of the complainant.



In that regard, our submission will shine a light on a select number of key recommendations we believe would go towards ensuring better support services for victims of crime as well as giving ‘voice’ to victim-survivors in the criminal justice process.

Summary of QIFVLS submissions

QIFVLS offers the following feedback:

1. The Legal Affairs and Safety Committee should closely examine the recommendations outlined in *Hear Her Voice Report Two – Women and girls’ experiences across the criminal justice system*¹ including the Government’s response to the 188 recommendations.
2. The Committee supports the establishment of a Victims’ Commissioner as an independent statutory officer.
3. The Committee supports a one-stop non-legal victims’ advocate who provides assistance to a victim-survivor/complainant from the time of the police report, throughout the police investigation and during the criminal trial process.
4. Aboriginal and Torres Strait Islander victim-survivors requiring the support of a non-legal victim’s advocate should be provided an option of engaging the support of a victims’ advocate from a community-controlled organisation.
5. The Committee should closely consider Recommendation 8 of the Queensland Productivity Commission’s 2019 report into Imprisonment and Recidivism². This recommendation sought to adopt a victim-focused approach that would empower the victim-survivor/complainant and prioritise their claim.
6. From an Aboriginal and Torres Strait Islander perspective, victim-survivors need to be supported by culturally safe and trauma-informed services provided by government and non-government agencies. This extends to the judiciary, defence lawyers and prosecutors.
7. The timeliness of the VAQ application process and extensive delays reflect the lean resources available to the VAQ scheme. For victims of crime who are in violent situations, trying to escape violent relationships, delays in the VAQ process can compound their trauma and despair and increase mistrust in government.
8. We would be open to consider expanding the eligibility criteria to victims of home invasions, but we recommend that this be a review undertaken by the proposed new Victims’ Commissioner in their review of the *Victims of Crime Assistance Act 1999*.

About QIFVLS

QIFVLS is a not-for-profit legal service formed under the Family Violence Prevention Legal Services Program (‘FVPLSP’) through the Department of Prime Minister and Cabinet’s Indigenous Advancement Strategy (‘IAS’). FVPLSP fills a recognised gap in access to culturally appropriate legal services for Aboriginal and Torres Strait Islander victims of family and domestic violence and sexual assault.

QIFVLS is one of fourteen (14) Family Violence Prevention Legal Services (‘FVPLSs’) across Australia and one of the thirteen (13) FVPLSs that are part of the National Family Violence Prevention Legal Service (‘NFVPLS’) Forum. We are one of two Aboriginal and Torres Strait Islander community-controlled family violence prevention legal service providers in Queensland.

QIFVLS is exclusively dedicated to providing legal and non-legal support services to assist Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault with a breadth and scope of services which

¹ Women’s Safety and Justice Taskforce (2022), *Hear Her Voice Report Two*

https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf

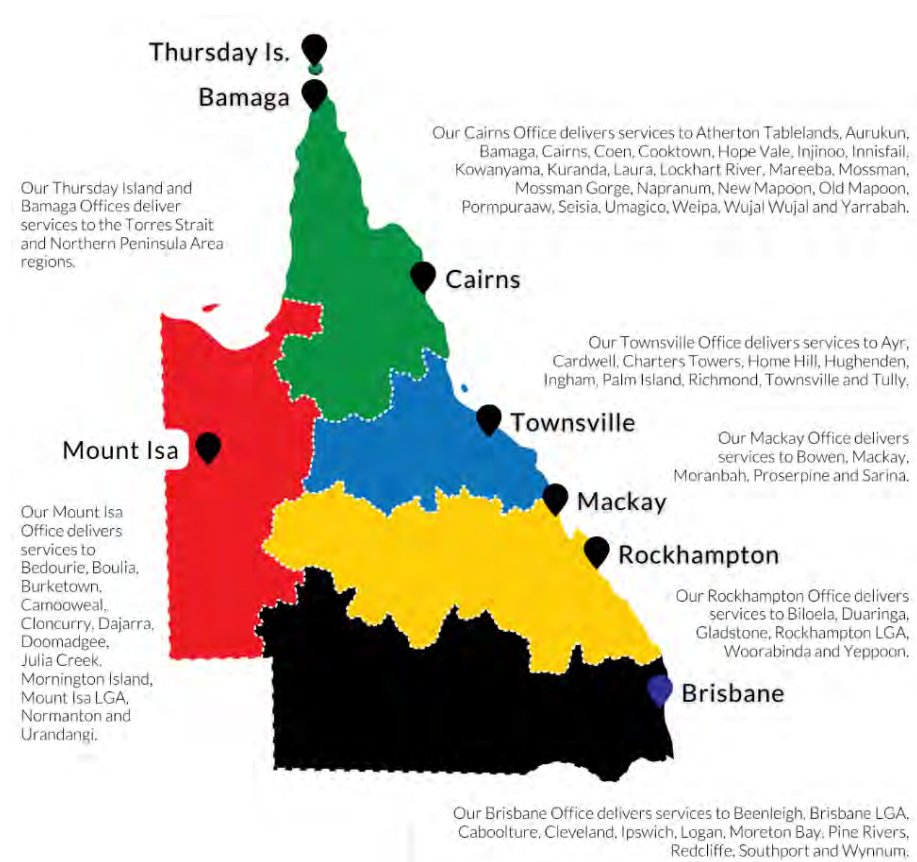
² Queensland Productivity Commission (2019), *Inquiry into Imprisonment and Recidivism*,

<https://s3.treasury.qld.gov.au/files/Imprisonment-Volume-2-final-report.pdf>



stretch to the outer islands of the Torres Strait, neighbouring Papua New Guinea. Together with its legal services, QIFVLS can be distinguished from other legal assistance providers through its advantage in providing unique, specialised, culturally safe and holistic assistance from the front-end via a wrap-around model that embraces early intervention and prevention. We advocate this model in supporting access to justice and keeping victim-survivors of family violence safe.

QIFVLS services 80+ communities across Queensland including the Outer Islands of the Torres Strait, neighbouring Papua New Guinea and provides services in the areas of domestic and family violence; family law; child protection; sexual assault and Victims Assist Queensland (VAQ) applications. QIFVLS supports its clients through all stages of the legal process: from legal advice to representation throughout court proceedings. In addition, QIFVLS responds and addresses our clients' non-legal needs through our integrated non-therapeutic case management process, which is addressed through the identified role of the Case Management Officer. QIFVLS as a practice, provides a holistic service response to our clients' needs: addressing legal need and addressing non-legal needs, that have in most cases, brought our clients into contact with the justice system in the first place.



As demonstrated by the above map QIFVLS is mainly an outreach service where our teams go into rural and remote communities to meet with clients. QIFVLS services over 80+ Aboriginal and Torres Strait Islander communities throughout Queensland. Recognising that Queensland is nearly five (5) times the size of Japan; seven (7) times the size of Great Britain and two and a half (2.5) times the size of Texas³, QIFVLS has eight (8) offices in Queensland –

- (1) a service delivery office in addition to its Head Office located in Cairns, responsible for servicing Cape York communities, Cooktown; Atherton Tablelands, Innisfail, and Yarrabah (and communities in between);
- (2) a service delivery office in Bamaga responsible for servicing Cape York communities as far north as Bamaga and Umagico;
- (3) a service delivery office on Thursday Island responsible for servicing communities stretching to the Outer Islands of the Torres Strait, neighbouring Papua New Guinea;

³ <https://www.qld.gov.au/about/about-queensland/statistics-facts/facts>



- (4) a service delivery office in Townsville responsible for servicing Townsville, Palm Island, Charters Towers, Richmond, and Hughenden (and communities in between);
- (5) a service delivery office in Rockhampton responsible for servicing Rockhampton, Woorabinda, Mt Morgan, Biloela (and communities in between);
- (6) a service delivery office in Mount Isa responsible for servicing Mount Isa, the Gulf of Carpentaria communities, as far south as Bedourie and across to Julia Creek (and communities in between);
- (7) a service delivery office in Brisbane responsible for servicing the Brisbane local government area.

Family violence as the cornerstone

It may be startling for some to learn that 3 in 5 First Nations women have experienced physical or sexual violence⁴. This speaks to the crisis we witness as a family violence prevention legal service on a daily basis across our offices in Queensland.

The Australian Institute of Health and Welfare (AIHW) has found that First Nations women are 34 times more likely to be hospitalised due to family violence than non-Indigenous women and 11 times more likely to die due to assault⁵. The AIHW also found that family violence is the primary driver of children being placed into the child protection system with 88% of First Nations children in care having experienced family violence⁶.

The scale of this problem however, is far greater because it is known that First Nations women are less likely than other women to report family violence or seek support because of range of factors including judgment, discrimination, shame or fear. This depressing backdrop informs QIFVLS' experience that family violence is the cornerstone or intersection, that links an Aboriginal and Torres Strait Islander person's connection to the child protection system, the youth justice system, adult criminal justice system, housing and/or homelessness, health and the family law system.

We find that these 'connectors' are further compounded or exacerbated for those living in regional, rural, and remote parts of Australia, where there are restrictions on the availability of actual on the ground services to assist a victim-survivor escaping a violent relationship⁷ (i.e., domestic violence support services and shelters; actual police presence within a community).

Through QIFVLS' provision of legal advice, legal casework, and non-legal supports, QIFVLS has witnessed the multi-faceted impacts of family violence daily, including the intersection between family violence, child protection, family law, and the criminal justice system.

In contrast to siloed government responses which have long been the standard practice, QIFVLS advocates for uniform, holistic and consistent strategies that will improve responses in the family violence, policing and criminal justice, child protection system, housing and corrective services. This approach aligns with achieving reductions in the Justice targets (Targets 10, 11, 12 and 13) of the National Agreement on Closing the Gap as well as meeting the overarching objectives of the 4 priority reform areas.

⁴ Australian Human Rights Commission (2020), *Wiyi Yani U Thangani Report*, https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf, page 44

⁵ Australian Institute of Health and Welfare (2019), *Family, domestic and sexual violence in Australia: continuing the national story*, <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>, page 113

⁶ Australian Institute of Health and Welfare (2019), *Family, domestic and sexual violence in Australia: continuing the national story*, <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>

⁷ Australian Institute of Health and Welfare (2016-17), *Alcohol and other drug use in regional; and remote Australia: consumption, harms, and access to treatment 2016-17*. Cat.no. HSE 212. Canberra.



Culturally appropriate services

In 2020, the ground-breaking *Wiyi Yani U Thangani: Women's Voices* Report found that Aboriginal and Torres Strait Islander women and girls wanted culturally appropriate, trauma-informed and strengths-based services⁸. The Women's Safety and Justice Taskforce supported and reinforced this finding. The WSJT Taskforce engaged in extensive consultations, travelling to Aboriginal and Torres Strait Islander communities in Queensland and hearing of the importance of culturally appropriate services. This serves to highlight the importance of service providers, including the judiciary and legal practitioners, particularly prosecutors being mindful of cultural considerations and improving their awareness and understanding of culturally appropriate engagement in Aboriginal and Torres Strait Islander communities.

Women's Safety and Justice Taskforce – *Hear Her Voice Report Two*

We recommend that the Committee closely examine the recommendations outlined in *Hear Her Voice Report Two – Women and girls' experiences across the criminal justice system*⁹. This report focuses on the experiences of women and girls as victim-survivors of sexually violent offences and as accused persons and offenders before the courts. The report investigates the experiences of female victim-survivors and the supports provided to them as they navigate the criminal process from police investigation to criminal trials, interactions in prison/ detention and post release.

Establishing a Victims' Commissioner

Recommendation 18 of *Hear Her Voice Report Two* called for the establishment of a Victims' Commissioner to promote and protect the needs and rights of victims of all violent offences.

18. The Queensland Government establish a victims' commissioner as an independent statutory officer to promote and protect the needs of victims of all violent offences. The commissioner's functions will 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
- other functions recommended throughout this report.

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 South Australian model).

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.

The WSJT Taskforce found that the establishment of a victims' commissioner as an independent statutory officer would fill a significant gap in the protection and promotion of victims' rights in Queensland¹⁰. We understand that the government announced that it supports this recommendation in principle and is working with stakeholders to determine the most appropriate model.

⁸ Australian Human Rights Commission (2020), *Wiyi Yani U Thangani Report*, https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf

⁹ Women's Safety and Justice Taskforce (2022), *Hear Her Voice Report Two* https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf

¹⁰ Women's Safety and Justice Taskforce (2022), *Hear Her Voice Report Two* https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf, page 138



Non-legal Victims' Advocate

Chapter 2.4 of the WSJT Taskforce's report recommended significant enhancements to the support service systems for victim-survivors with a major recommendation being the development and implementation of a non-legal victims' advocate who would provide impartial information and support to a victim-survivor as they traverse the criminal justice system.

The Taskforce found that utilising a non-legal advocate would help to improve the experience of victim-survivors both in the lead-up to trial and during the trial. The ideal situation would see victim-survivors being equipped with better information about their options, be linked in with services, including lawyers who could support them as necessary.

Recommendation 9 of *Hear Her Voice Two* directly relates to a non-legal victim's advocate:

9. The Queensland Government, in consultation with people with lived experience, Aboriginal and Torres Strait Islander peoples, service and legal system stakeholders, develop, fund and implement a state-wide model for the delivery of a professional victim advocate service. Victim advocates will provide individualised, culturally safe, trauma-informed support to victims of sexual violence to help them navigate through the service and criminal justice systems and beyond. The role of victim advocates will include:

- providing impartial information to victim-survivors about the service and criminal justice systems and options available to them
- supporting victim-survivors to understand and exercise their rights
- identifying and assisting victim-survivors to address their individual needs including through referrals to services
- liaise across the service and criminal justice systems on behalf of victim-survivors, and be the consistent point of contact for victim-survivors throughout their criminal justice system journey.

The model will:

- aim to empower those experiencing sexual violence
- enable advocates to provide holistic, individualised and specialised support, including specialised expertise and understanding of working with children and young people
- provide support regardless of whether a person chooses to engage with the criminal justice system
- give priority to people who are under-served and/or who face the most complex interactions between services and systems

At QIFVLS, we would recommend that considering the different liaison services available, there should ideally be a one-stop agency or hub. A possible course of action may be to consider increased investment into Victim Assist Queensland such that a victims' advocate can assist the victim-survivor/complainant from the time of the incident/police report and remain alongside the victim-survivor through to the conclusion of the criminal trial process.

As an Aboriginal and Torres Strait Islander Community-Controlled Organisation and a Family Violence Prevention Legal Service, we would emphasise the necessity of providing a culturally safe wraparound support system for victim-survivors. Further to that point, where there are First Nations victim-survivors, we believe they should be given the option of requesting support from a victim's advocate from a community-controlled organisation, such as QIFVLS for example. For this to be realised, resourcing and building the expertise of victims' advocates in community-controlled organisations is much needed. This would align with affecting Priority Reform 2 (building the community-controlled sector) to the National Agreement on Closing the Gap.



Independent legal assistance for victim-survivor/complainants

The WSJT Taskforce considered that once the impact of the non-legal victims' advocate and other reforms as recommended are implemented, it would then revisit the issue of independent legal assistance for victim-survivors/complainants.

We understand that Knowmore Legal Service would be able to support complainants in child sexual offence proceedings having access to independent legal assistance and representation throughout the court process. We support this point of view.

Like the WSJT Taskforce, we believe that independent legal assistance for victim-survivors/complainants should be considered. This is primarily because in the criminal litigation process, victims have no standing as a party to the proceeding. Equally as the WSJT Taskforce observed, we note it would represent a significant paradigm shift in the operation of the criminal law adversarial process and further deliberations, studies and pilots need to take place, in addition to awaiting the impact of immediate recommendations made by the WSJT Taskforce.

One suggestion from QIFVLS would be that an independent legal practitioner who is culturally competent and operates in a trauma-informed model of practice could provide greater comfort and confidence to a victim-survivor/complainant that they are being understood and heard. While a prosecutor is already present, an independent legal representative for the complainant could provide added value as a safeguard to highlight issues that a prosecutor cannot turn their mind to. Given the disruption to the adversarial process, an alternative consideration would be to limit the independent legal representative's powers in court eg limiting their ability to cross-examine the defendant / only permitting them to be heard in exceptional circumstances on a section 590AA application (a voir dire etc.)

Certainly, *Hear Her Voice Two* identified that no common-law jurisdiction provides legal representation for victims presently, although some jurisdictions are providing partial or limited legal assistance¹¹. Any future decisions regarding an independent legal representative would need to factor in significant resource implications and questions about government or legal aid funding for an independent legal representative.

Prioritising a victim-focused system – Queensland Productivity Commission

The Queensland Productivity Commission's (QPC) ground-breaking report on Imprisonment and Recidivism identified that victims remain peripheral to the criminal justice and sentencing system. The report noted that reduced incentives to report crime led to inefficient sentencing¹². Thus, QPC's report sought to illuminate a proposal which would prioritise the victim's claim, including the right to seek restoration prior to sentencing by a court.

The Committee should consider Recommendation 8 of the Queensland Productivity Commission's 2019 report into Imprisonment and Recidivism¹³. Recommendation 8 provides that:

Recommendation 8

The Queensland Government should introduce victim-focused restitution and restoration into the sentencing process. This system should:

- **give victims the option of engaging in a process of restitution and restoration with the offender prior to sentencing.**

¹¹ Women's Safety and Justice Taskforce (2022), *Hear Her Voice Report Two*
https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf,
Page 275

¹² Queensland Productivity Commission (2019), *Inquiry into Imprisonment and Recidivism*,
<https://s3.treasury.qld.gov.au/files/Imprisonment-Volume-2-final-report.pdf>, Page 250

¹³ Queensland Productivity Commission (2019), *Inquiry into Imprisonment and Recidivism*,
<https://s3.treasury.qld.gov.au/files/Imprisonment-Volume-2-final-report.pdf>



- provide victims and offenders with sufficient options for achieving restoration for harms inflicted, including financial and non-financial compensation.
- take into account, through charging and/or the sentencing process, agreements that are reached between the victim and offender.
- provide mechanisms to ensure that courts consider any residual public interest in final sentencing.
- allow normal court processes to proceed where victims choose not to pursue restitution or restoration, or where victims and offenders cannot reach agreement.
- include appropriate protections for victims and offenders.
- be supported by inclusion of restorative justice principles into the *Penalties and Sentences Act 1992*. Victim-focused restitution and restoration should be made available for any offence where a victim is identifiable.

A key feature of this recommendation is that prior to a case being brought before court, the victim-survivor is given an opportunity to choose between whether sentencing should proceed under a mediated restitution and restoration process, or under the normal court process. The QPC found that the proposal for a more victim-focused system should apply for all types of offending involving harm to an identifiable victim. Under reasonable assumptions, the QPC found that the proposal may reduce average imprisonment levels by 453 persons by 2030-31, thereby reducing government expenditures by upwards of \$40 million.

The QPC's report was notable in the manner in which it combined economic analysis of social policy. Encouraging a victim-focused sentencing process is an approach that would empower the victim-survivor/complainant and prioritise their claim.

Common issues apparent with VAQ applications

We are aware that the application process for assistance via VAQ is burdened with delays. This has seen applicants wait for periods longer than eight (8) months while waiting to receive a special assistance payment from VAQ. This has a compounding effect, particularly for victim-survivors of family and domestic violence. We understand that applications to VAQ for assistance rose by up to 16% last financial year, with the increased demand causing extensive delays¹⁴.

We have noted above, our concerns and observations about the significant cases of underreporting of family violence by Aboriginal and Torres Strait Islander women, due to a range of factors. Having to manage extensive delays in the VAQ process while escaping a violent relationship and juggling housing/homelessness and health concerns places victim-survivors and their families at risk and provides a window into the challenges faced by victim-survivors when bravely coming forward.

Victims of Crime Assistance Act 2009 - Expanding the eligible victim's category to include home invasion

We would be open to consider expanding the eligible victim's category to include victims of home invasion. We state this, noting that we have clients who have been the victims of home invasions, albeit generally in the process of intimate/family relationships characterised by domestic violence. Some of these home invasions also reflect breaches of existing domestic violence orders.

The Act, however, already considers non-violent forms of domestic violence. Accordingly, if this category were to be extended to include home invasions by a stranger and there was no bodily injury suffered by the applicant when

¹⁴ <https://www.theguardian.com/australia-news/2022/apr/04/almost-400-queenslanders-have-waited-two-years-for-a-decision-on-domestic-violence-assistance>



applying for assistance via VAQ, then our reading of the legislation is that section 27 (defining an injury) may need to be reviewed.

While Recommendation 18 of *Hear Her Voice Two*, noted above in this submission called for the establishment of a victims' commissioner, Recommendation 19 of *Hear Her Voice Two* called for the Queensland Government to review the *Charter of victims' rights* in the *Victims of Crime Assistance Act 2009*.

Thus, we suggest that the proposed new Victims' Commissioner should be tasked with undertaking a review into expanding the eligible victims' category in the course of reviewing the *Victims of Crime Assistance Act 2009*.

Conclusion

We take this opportunity to thank the Committee for considering our feedback. We trust the Committee appreciates our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and Family Violence Prevention Legal Service.

We are interested in being involved in the review process and we would be grateful to be kept informed about opportunities for future consultations and feedback.