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*Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system*

Queensland Sentencing Advisory Council

GPO Box 2360

Brisbane Qld 4001

By Email: [submissions@sentencingcouncil.qld.gov.au](mailto:submissions@sentencingcouncil.qld.gov.au)

Dear Members of the Council

Re: Assessing the impacts of domestic and family violence sentencing reforms in Queensland

We welcome the opportunity to provide a submission to the Queensland Sentencing Advisory Council in relation to the impacts of domestic and family violence sentencing reforms in Queensland.

Sisters Inside is a proudly abolitionist, grassroots organisation led by criminalised and formerly incarcerated women and girls. For more than three decades, we have stood alongside our communities—especially Aboriginal girls and women and Torres Strait Islander girls and women—against the harms inflicted by the carceral system.

## **Our Submission**

### **Question 1: Impact of current sentencing laws treating domestic violence offences as aggravating**

*"You cannot incarcerate your way to safety—especially when the people being locked up are the victim-survivors themselves."*

The requirement that courts treat domestic and family violence (DFV) offences as aggravating in sentencing has not led to increased safety for those most at risk of violence. Instead, it entrenches carceral responses that disproportionately criminalise the very people that are most at risk — particularly Aboriginal women, and other marginalised groups such as Trans women and LGBTQIA+ people, Brotherboys and Sistergirls, people with disabilities and mental health differences, sex workers, people who use substances, those with limited English literacy, and poor or unhoused people. These laws do not increase safety, reduce violence, or deliver justice. Instead, they expand the punitive reach of the state and reinforce systemic inequalities.

Aboriginal women are consistently misidentified and named as respondents when domestic violence protection orders are first made<sup>1</sup>. They are then often incorrectly charged and prosecuted as primary

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<sup>1</sup> Nancarrow, H, Thomas, K, Ringland, V, Modini, T 2020, 'Accurately identifying the "person most in need of protection" in domestic and family violence law (Research report)', ANROWS, Sydney.

Royal Commission into Family Violence 2016 Royal Commission into Family Violence Summary and Recommendations, Parl Paper No 132. Melbourne, Australia.

Djirra 2021 'Submission to the Parliamentary Inquiry into Victoria's Criminal Justice System' Available online at <https://djirra.org.au/wp-content/uploads/2021/09/Djirras-submission-to-the-Parliamentary-Inquiry-into-Victorias-Criminal-Justice-System-September-2021-1.pdf>

aggressors<sup>2</sup>, particularly where they have prior police contact or criminal records. This misidentification is not incidental—it is systemic—and the aggravating factor, by increasing sentencing severity, compounds these injustices.

*“Aboriginal women are being misidentified, prosecuted and punished – again and again. This isn’t an error. It’s the system working as designed.”*

Police hold disproportionate power to determine and deny victimhood. This power is rarely exercised in favour of the people actually experiencing the highest rates of violence, those who exist at the intersections of racial, gendered, ableist and classist marginalisation. The capacity of the police to define who is a “real victim” directly influences who is charged, prosecuted, and punished<sup>3</sup>. It must be noted that communities that are hyper-surveilled and criminalised – Aboriginal, non-white and poor neighbourhoods, people who use drugs, those in short-term and transitional accommodations, and communities of people sleeping rough – exist in the perpetual cycle of being criminalised, experiencing DFV, being criminalised for DFV, and going unprotected from experiences of violence.

Survivors with criminal histories or who are reluctant to engage with police face a greater risk of being criminalised themselves<sup>4</sup>. Their reluctance to give evidence or cooperate with police<sup>5</sup>—often a rational act of self-protection in complex, coercive relationships—frequently results in women being labelled non-compliant or deceptive, increasing the likelihood they will be criminalised themselves<sup>6</sup> and being misidentified or charged as aggressors of domestic violence. Additionally, we often see aggressors in domestically violent relationships applying for domestic violence orders as the aggrieved and utilising their victim’s criminal histories as ‘evidence’ of their own innocence and their victim’s ‘deviance’.

The above misidentifications - and simplistic ascriptions of victimhood versus aggressor - are perpetuated by and further perpetuate the criminalisation of those who are already more likely to be criminalised and subjected to domestic violence. In short, harsher sentencing does not interrupt violence, it begets and fuels interpersonal and state violence.

Further, the intersection with family law significantly complicates DFV prosecutions. When custody disputes, child protection matters, or any other family law matters are ongoing, some women may be discouraged from reporting violence out of fear it will be used against them in family court proceedings.<sup>7</sup> The pursuit of criminal charges prioritises state prosecution over the complex realities of the survivor’s situation and in these contexts can have devastating consequences. This impact is not limited to family law matters either, allegations of domestic violence, police involvement and

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<sup>2</sup> Royal Commission into Family Violence 2016 *Royal Commission into Family Violence Summary and Recommendations*, Parl Paper No 132. Melbourne, Australia.

<sup>3</sup> ICRR & Sisters Inside 2021, ‘The State as Abuser: Coercive Control in the Colony - Joint Submission from Sisters Inside and the Institute for Collaborative Race Research, 16 July, <https://drive.google.com/file/d/1eyYeburuGdLn9mYhXF48nrlzPZNA88Vep/view>

<sup>4</sup> Royal Commission into Family Violence 2016 *Royal Commission into Family Violence Summary and Recommendations*, Parl Paper No 132. Melbourne, Australia.

<sup>5</sup> Dichter, ME 2013, ‘They Arrested Me—and I Was the Victim’: Women’s Experiences with Getting Arrested in the Context of Domestic Violence’, *Women & Criminal Justice*, 23, 8, 98

<sup>6</sup> Reeves, E 2023, ‘A Culture of Consent: Legal Practitioners’ Experiences of Representing Women Who Have Been Misidentified as Predominant Aggressors on Family Violence Intervention Orders in Victoria’, *Feminist Legal Studies*, vol. 31, pp. 369–390, <https://doi.org/10.1007/s10691-022-09506-5>

<sup>7</sup> Nancarrow, H, Thomas, K, Ringland, V, Modini, T 2020, ‘Accurately identifying the “person most in need of protection” in domestic and family violence law (Research report),’ ANROWS, Sydney.

surveillance, and criminal histories often trigger ‘Child Safety’ involvement framed as ‘concern’ for children being witness to domestic violence.

### *On the Framing of “Impact”*

We urge the Council to interrogate what it means to say a law is “having an impact.” If the only measurable outcomes are harsher penalties—longer prison terms, fewer community-based orders, or longer probation periods—this cannot be automatically interpreted as success. These metrics reflect punishment, not justice or safety.

Increased sentencing severity may simply reflect systemic bias and deepening criminalisation, rather than a principled judicial response to the complexities of domestic and family violence.

The colonial carceral assumption that more punishment equals less violence is fundamentally flawed. Victim-survivors do not experience safety simply because their partner is incarcerated. In many cases—particularly for marginalised victim-survivors—prison can escalate violence, sever support networks, and undermine economic and housing security.

Courts are inconsistent in applying the aggravating factor. While s9 (10A) is being used to increase sentencing outcomes, s9(10B)—which recognises that a person may be both an aggressor and a victim of domestic violence—is inconsistently applied and rarely results in mitigation. In practice, the court’s discretionary power often works against criminalised survivors, particularly those who do not conform to dominant narratives of white, cis, heteronormative victimhood.

Further, the role of police prosecutors in shaping sentencing submissions is highly variable. Their interpretations of aggravating circumstances are often accepted uncritically by courts, particularly when the accused is an Aboriginal woman or otherwise marginalised. This results in unequal application of the law, influenced more by police framing than by evidence or context.

### *Alternative Measures of Impact*

We urge the Council to assess the true impact of these sentencing reforms, and consider:

- How many people have been misidentified and criminalised as primary aggressors since the reform.
- Whether sentence enhancements have disproportionately impacted Aboriginal women and criminalised victim-survivors.
- The rate at which s9(10B) is raised and meaningfully considered by the court.
- The number of cases where the presence of the aggravating factor led to longer or harsher sentences without regard for the broader context of mutual or systemic violence.
- Whether those most affected by domestic and family violence—particularly those with lived experience—feel any safer or more supported as a result of these sentencing reforms.

### **Question 2: Increased penalties for contravention of a Domestic Violence Order (DVO)**

*“Our frontline work tells us what the data can’t: these reforms are harming the very women they claim to help”*

The increase in maximum penalties for contravening a DVO has led to harsher sentencing outcomes in practice, often with devastating consequences for the most marginalised people—particularly Aboriginal women, poor women, and those who are misidentified as aggressors.

From the frontline work of Sisters Inside, we know that these increased penalties are not abstract policy decisions; they translate into real punishment and harm for criminalised women and girls. Women supported by us report receiving longer sentences, more time on remand, and facing higher thresholds to secure bail—all for breaches of DVOs that often stem from minor infractions, mutual conflict, coercive control by the other party, or misidentification.

*(a) Sentencing has become harsher, unnecessarily so*

*"Behind every DVO breach statistic is a woman already let down by every system meant to protect her."*

While sentencing practices have changed, they have not changed in ways that promote safety or justice. Rather than using discretion to consider the context of the breach or the power dynamics involved, courts often default to more punitive responses. The reforms have encouraged the use of imprisonment for breaches that would previously have attracted community-based orders. This shift disproportionately impacts women who are criminalised as a result of structural racism, poverty, and systemic neglect.

The very existence of these increased penalties legitimises an increased carceral response, even in situations where it is clearly not warranted. In many cases, women breach DVOs under duress, fear, or continued emotional entanglement with their partner—yet they are punished with little regard for these complexities.

*(b) Harsh penalties reflect state overreach, not improved safety*

To understand the “impact” of these reforms, the Council must look beyond sentencing data and consider the broader carceral ecosystem. The state's role in regulating family life has expanded dramatically: families are criminalised, incarcerated, and surveilled. Children are removed from their mothers—often after a DVO breach—and placed into “care,” where they are at increased risk of abuse, criminalisation, and long-term disconnection from community and culture.

These dynamics reinforce intergenerational cycles of incarceration and harm. Increased penalties contribute directly to forced child removal and deepen the surveillance and control of poor and racialised families.

*(c) Media distortion shapes public and judicial attitudes*

A further factor influencing the operation of these reforms is the distortion propagated by mainstream media, which sensationalises domestic violence in ways that reinforce punitive reflexes. Media narratives focus on exceptional or horrific cases, flattening the nuance of most DFV experiences and fuelling a public appetite for harsh punishment. This distorts judicial decision-making and pressures courts to appear “tough,” even when the facts of the case call for care, understanding, or support—not incarceration.

The Council must interrogate how media narratives, not just legal reform, shape sentencing culture and public perceptions of safety and justice.

*(d) Other Structural Factors Impacting Sentencing*

**Policing and Prosecution Shifts:** We are seeing changes at the front end—police are more likely to pursue charges for low-level or technical breaches, and prosecutors are less likely to exercise discretion. This reinforces a net-widening effect, especially impacting women who may be misidentified as respondents or are engaged in complex, mutual relationships with violence present on both sides.

**Pre-sentence custody:** Many women spend long periods on remand for DVO contraventions—particularly those with no access to safe housing or community supports. This is effectively leading to longer incarceration than the formal sentence would suggest.

*(e) Mandatory penalties must be rejected*

*“Justice must see context. If it doesn’t, it’s not justice. It’s just power wearing a robe.”*

We vehemently oppose any move toward mandatory sentencing for DVO contraventions. These measures strip courts of discretion, entrench injustice, and disproportionately punish the very women the system purports to protect. **Mandatory penalties will not keep us safe—they will only fill prisons and separate families.**

Key measures of impact of increased penalties should include:

- The number of women sentenced to prison for DVO breaches, disaggregated by race and gender.
- The rate of forced child removals following a DVO breach.
- The number of DVO breaches stemming from misidentification.
- Sentencing outcomes compared across similar cases pre- and post-reform.
- Whether the reforms have increased the number of people on remand or reduced access to diversionary options.
- The mental health, housing, and safety impacts on women who have been imprisoned for contravening DVOs.

**Question 3: Human Rights Compatibility Concerns with the Aggravating Factor (s 9 (10A) PSA)**

The mandatory aggravating factor in s 9 (10A) of the *Penalties and Sentences Act 1992* (Qld), which requires a court to treat the fact that an offence is a domestic violence offence as aggravating (unless there are “exceptional circumstances”), raises serious concerns in relation to its compatibility with the *Human Rights Act 2019* (Qld) and relevant international human rights instruments, including the UN Convention on the Rights of Persons with Disabilities<sup>8</sup> (CRPD).

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<sup>8</sup> <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

This provision undermines the principle of individualised justice. By mandating an aggravating response to any offence labelled as domestic violence, the law fails to allow proper consideration of the complex and often overlapping dynamics of violence and victimhood. Women, particularly Aboriginal women and women with disabilities, are frequently misidentified as perpetrators of violence when they are in fact criminalised survivors<sup>9</sup>. Section 9 (10A) entrenches this misidentification by preventing courts from adequately considering a person's lived experience, especially where they have used force in the context of prolonged abuse or coercive control.

The mandatory nature of the aggravation is also in tension with s 9 (10B) of the Act, which directs courts to consider whether the aggressor is also a victim of domestic violence. These two provisions operate in conflict, with the aggravating factor often overriding the mitigating one, especially when “exceptional circumstances” is applied narrowly. This results in disproportionately harsh outcomes for criminalised women and limits the ability of courts to achieve just and appropriate sentencing outcomes.

From a human rights perspective, the provision risks breaching the right to equality before the law<sup>10</sup> (s15 of the HRA), the right to liberty and security of the person (s 29)<sup>11</sup>, and the right to a fair hearing (s 31)<sup>12</sup>. People with cognitive or psychosocial disabilities are particularly vulnerable to criminalisation in the context of DFV and often experience discrimination throughout the legal process<sup>13</sup>. The blanket application of the aggravating factor is likely to be incompatible with Articles 13 and 14 of the CRPD<sup>14</sup>, which affirm the right to equal access to justice and liberty for people with disabilities.

To ensure compatibility with human rights and promote more just outcomes, we recommend that the aggravating factor under s 9 (10A) be repealed. The framing of “exceptional circumstances” should also be removed to ensure victim-survivors are not punished further by the system. Any legislative guidance must be developed in consultation with criminalised women and people with lived experience of violence and incarceration.

#### **Question 4: Systemic disadvantage and cultural considerations**

The Council must recognise that domestic violence sentencing reforms do not operate in a vacuum— they intersect with systemic disadvantage, carceral logic, and deeply embedded social inequalities. While these reforms are often introduced under the guise of protecting victim-survivors, in practice, they can further entrench the criminalisation of already marginalised communities, particularly Aboriginal women and girls, women with disabilities, and those living in poverty.

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<sup>9</sup> Royal Commission into Family Violence 2016 *Royal Commission into Family Violence Summary and Recommendations*, Parl Paper No 132. Melbourne, Australia.

<sup>10</sup> Human Rights Act 2019 - SECT 15: Recognition and equality before the law:  
[https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0007/22021/QHRC\\_A3Poster\\_QldHRA.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0007/22021/QHRC_A3Poster_QldHRA.pdf)

<sup>11</sup> Human Rights Act 2019 - SECT 29: Right to liberty and security of person:  
[https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0007/22021/QHRC\\_A3Poster\\_QldHRA.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0007/22021/QHRC_A3Poster_QldHRA.pdf)

<sup>12</sup> Human Rights Act 2019 - SECT 31: Fair Hearing  
[https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0007/22021/QHRC\\_A3Poster\\_QldHRA.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0007/22021/QHRC_A3Poster_QldHRA.pdf)

<sup>13</sup> PWDA 2021, 'Women with Disability and Domestic and Family Violence: A Guide for Policy and Practice', Domestic Violence NSW, Redfern, NSW, <https://pwd.org.au/wp-content/uploads/2021/07/Women-with-Disability-and-Domestic-and-Family-Violence-A-Guide-for-Policy-and-Practice.pdf>

<sup>14</sup> <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

For Aboriginal people—especially women and girls—these reforms are operating within the broader context of colonial violence, racism, surveillance, and over-policing. Mandatory responses and harsher penalties for DVO contraventions have resulted in increased incarceration of Aboriginal women, many of whom are themselves victim-survivors<sup>15</sup>. We consistently see women misidentified as perpetrators by police or criminalised for actions taken in self-defence and -preservation or in complex contexts of coercive control. These reforms fail to account for Aboriginal ways of knowing, family structures, and community responses to harm, and ultimately reproduce state violence through punitive means<sup>16</sup>.

People with disabilities or mental illness are similarly impacted. Many criminalised women supported by our organisation experience cognitive impairment, have an acquired brain injury, or a psychiatric disability—often directly resulting from sustained violence. The legal system frequently misinterprets behaviours related to trauma or disability as aggression or non-compliance and uses criminalisation in place of care<sup>17</sup>. Rather than trauma-informed, therapeutic approaches, women face incarceration and court-mandated programs they cannot access or complete. This creates a pipeline into deeper entrenchment with the criminal legal system rather than safety or healing.

Reforms must also be examined for their impact on migrant and refugee women, LGBTQIA+ people, and those from culturally and racially marginalised backgrounds. These groups often experience unique forms of violence and discrimination, and face significant barriers to justice, including language, fear of deportation, homophobic or transphobic policing, and a lack of culturally safe services. Mandatory interventions can escalate harm by forcing involvement with systems that have historically excluded or punished them.

Sentencing reforms must not continue to rely on incarceration as the measure of justice. True transformation must begin by listening to those who have been most harmed by both interpersonal and state violence. It must value the expertise of criminalised women and girls, and shift investment away from punishment toward holistic, community-led support that address the drivers of violence and harm—poverty, racism, ableism, transphobia, and colonial control.

#### **Question 4: Anomalies and complexities**

##### *Transformative Justice Solutions*

There are significant barriers preventing the current laws from functioning in a way that delivers safety or justice—particularly for criminalised and marginalised women. From our experience supporting women who are victim-survivors of domestic and family violence, we hear consistently that they do not want harsher sentences for their partners or aggressors. What they are asking for are transformative

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<sup>15</sup> Queensland Women's Safety and Justice Taskforce 2022, 'Women's Safety and Justice Taskforce: Discussion Paper 3', Queensland Law Society, [https://www.qls.com.au/getattachment/eaaf3536-5344-4942-a98e-8480a4713aca/4540-qls-submission-women-s-safety-and-justice-taskforce-discussion-paper-3\\_redacted.pdf](https://www.qls.com.au/getattachment/eaaf3536-5344-4942-a98e-8480a4713aca/4540-qls-submission-women-s-safety-and-justice-taskforce-discussion-paper-3_redacted.pdf)

<sup>16</sup> First Nations Advocates Against Violence 2025, 'The First Nations Advocates Against Family Violence submission on the Domestic and Family Violence and Victims Legislation Amendment Bill 2025', [https://parliament.nt.gov.au/\\_\\_data/assets/pdf\\_file/0003/1508970/Submission-No.-6-First-Nations-Advocates-Against-Family-Violence.pdf](https://parliament.nt.gov.au/__data/assets/pdf_file/0003/1508970/Submission-No.-6-First-Nations-Advocates-Against-Family-Violence.pdf)

<sup>17</sup> Law Council of Australia 2020, 'The Criminal Justice System – Issues Paper Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', <https://lawcouncil.au/publicassets/debc0259-86e2-ea11-9434-005056be13b5/3861%20-%20The%20Criminal%20Justice%20System%20%20%20Issues%20Paper.pdf>

justice responses: support to change the material conditions that cause harm in the first place, access to housing, healthcare, safety, healing, and genuine accountability that does not rely on punitive state intervention. The assumption that victim-survivors want longer prison terms misrepresents their needs and limits the possibilities for meaningful change, or genuine transformation in our communities.

### *Criminalisation of Coercive Control*

One of the most urgent concerns is the recent legislation criminalising coercive control. Sisters Inside, along with the Institute for Collaborative Race Research (ICRR), opposed this criminalisation in our joint submission<sup>18</sup>, warning of the likely consequences for women—particularly Aboriginal women and other women already subject to state surveillance. We expect that the number of criminalised women will increase exponentially as a result of this reform, in part because of the high rates of police misidentification of the person most in need of protection. Criminalising coercive control will not prevent violence; it will only widen the net of criminalisation, often catching the very women the laws claim to protect.

### *Accessibility*

We also raise concerns about the clarity and accessibility of the laws. These sentencing reforms are complex, legalistic, and difficult to navigate—especially for people with limited legal literacy, disabilities, or those for whom English is not a first language. This includes many of the women we work with, who often feel confused, misinformed, or disempowered throughout the process. When legal responses are neither transparent nor responsive to the lived realities of those affected, they risk reinforcing harm rather than addressing it.

### **Conclusion and Recommendations**

The current sentencing framework in Queensland—particularly the mandatory consideration of domestic violence (DV) offences as aggravating under s 9 (10A) of the *Penalties and Sentences Act 1992*—not only fails to increase safety but actively compounds injustice. These reforms entrench a carceral logic that punishes marginalised victim-survivors rather than supporting them, and creates a system in which the discretion of courts is overridden by the blunt force of mandatory sentencing aggravation. Rather than producing just or protective outcomes, these measures exacerbate systemic racialised bias, especially against Aboriginal women, and erode the capacity of the legal system to respond to domestic and family violence with the nuance, care, and flexibility it requires.

The current sentencing regime disproportionately targets criminalised victim-survivors—particularly Aboriginal women, women with disabilities, poor and unhoused women, sex workers, and people who use drugs—by increasing the likelihood and severity of imprisonment for conduct that often arises in contexts of survival, coercion, or state neglect. Sentencing reforms such as the increased penalties for DVO contraventions and mandatory aggravating considerations have directly contributed to a rise in remand rates, harsher bail conditions, and longer periods of incarceration. These outcomes are not

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<sup>18</sup> ICRR & Sisters Inside 2021, 'The State as Abuser: Coercive Control in the Colony - Joint Submission from Sisters Inside and the Institute for Collaborative Race Research, 16 July, <https://drive.google.com/file/d/1eyYebruGdLn9mYhXF48nrlzPZNA88Vep/view>

isolated missteps but indicative of a deliberate systemic refusal to recognise and centre the lived realities of victim-survivors, particularly those at the sharpest edge of multiple, intersecting forms of oppression.

Moreover, these reforms risk violating human rights protections guaranteed under the *Human Rights Act 2019 (Qld)* and international treaties including the CRPD. They undermine the principle of individualised justice, reduce judicial discretion, and entrench discriminatory treatment against those most vulnerable to systemic criminalisation. **The law's presumption that greater punishment correlates with greater safety is not only unsupported by evidence but is actively harmful.**

## Recommendations

1. End the use of mandatory sentencing in any form for DVO contraventions or related offences. Mandatory penalties override the court's ability to consider context, motivation, and background, and contribute to unjust and disproportionate outcomes.
2. Conduct a full independent review of the impact of these sentencing reforms, including:
  - Disaggregated data on who is being sentenced under these provisions (with particular attention to race, gender, disability, and housing status).
  - The number and outcomes of cases involving misidentification.
  - The use and impact of s 9 (10B).
  - The mental health, housing, family, and safety consequences for those sentenced under the reforms.
3. Invest in non-carceral solutions that centre the voices of criminalised victim-survivors. This includes funding for community-led, culturally safe, trauma-informed services, housing, health care, and economic support—rather than relying on police, courts, and prisons.
4. Ensure proper legal representation and interpreters for people with limited English literacy, cognitive disabilities, or mental health differences to reduce misidentification and enable fairer outcomes.
5. Develop media accountability frameworks to reduce the distortion of public discourse on domestic and family violence and invest in public education that reflects the complexity of DFV and the realities faced by marginalised victim-survivors.

**Ultimately, safety cannot be legislated through harsher punishment.** It must be built through community, through access to resources, and through legal systems that recognise the full humanity and complexity of those they claim to protect. If the Council is serious about addressing domestic and family violence, it must begin by listening to and learning from those who have been most harmed - not by individuals, but by the system itself.

Yours sincerely



Tia Richards, President  
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