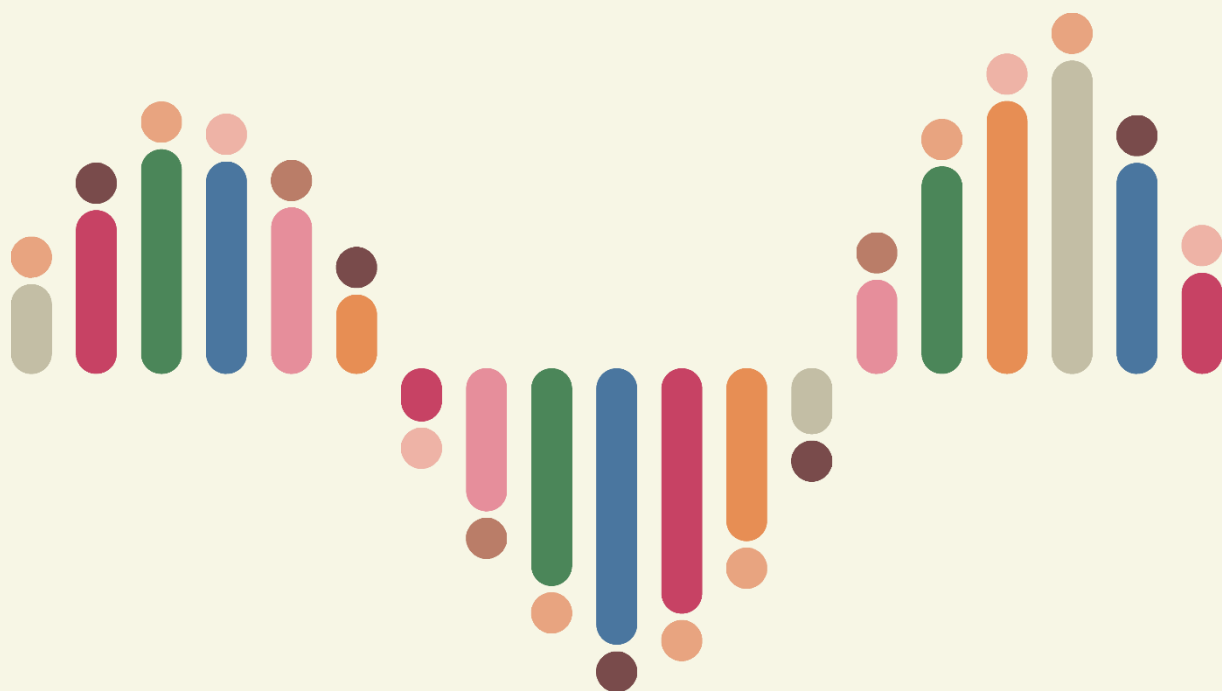


Office of the  
**Victims' Commissioner**

# Submission to Queensland Sentencing Advisory Council

Domestic and family violence sentencing reforms

May 2025



## Acknowledgement of Country

I pay my respects to the Aboriginal and Torres Strait Islander ancestors of this land, their spirits and their legacy. The foundations laid by these ancestors – our First Nations peoples – give strength, inspiration and courage to current and future generations towards creating a better Queensland.

## Victim recognition

I respectfully recognise all victims of crime.

I see you. I believe you. I acknowledge the harm you have suffered.

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

I 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, I offer my condolences, and acknowledge the ongoing hurt and pain you experience.

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

I value the experiences you have shared with me as they shape my work.

### Note on language

I use the terms 'victim' and 'victim-survivor' throughout this submission. I acknowledge the diverse preferences of individuals with lived 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 because it is a term commonly used in legal frameworks.

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# Introduction

Several inquiries and reviews in Queensland in recent years<sup>1</sup> have examined the experiences of victims of domestic and family violence interacting with criminal justice agencies and through court processes. Sentencing plays a critical role in ensuring perpetrators are held accountable, and victim-survivors are protected. However, concerns persist about whether current sentencing practices adequately reflect the seriousness of offending behaviour, and the harm caused to victim-survivors and their families.

It is my vision that all victims be respected, seen and heard in a justice system that anticipates their needs. To achieve this, we must consider how victims' needs are prioritised across five domains:

1. dignity, choice and control
2. accountability and learning
3. safety and protection
4. healing and support
5. system design.

While each victim has a unique understanding of what 'justice' means to them, access to justice and equity in justice are common threads in the experiences shared by victim-survivors with my office. Access to justice relates to victims having access to support following the harm they have experienced, as well as an ability to participate in the systems they have been propelled into. Equity means that, regardless of a victim's background or identity, their unique experiences and needs will be responded to, and their rights will be upheld.

In line with my statutory functions, my focus is on protecting and promoting victims' rights. In providing this submission, I seek to draw on what I have heard in my engagement with victims, their supporters and those who work with them. I have not provided detailed responses to each of the questions posed in the consultation paper. Rather, I have provided additional information for QSAC's consideration through the lens of these domains.

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<sup>1</sup> Including but 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 and the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence.

# Role of the Victims' Commissioner

My role is established under the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) (VCSVRBA) to promote and protect victims' rights.

Under section 6 of the VCSVRBA, a victim includes a person who suffers harm because a criminal offence (including domestic violence) is committed against the person. This includes:

- people who have a criminal offence committed against them directly
- family members or dependants of a person who has a criminal offence committed against them
- people who are harmed because they helped another person who had a criminal offence committed against them
- witnesses of crimes.<sup>2</sup>

The VCSVRBA defines harm as including physical, psychological or emotional harm, damage to or loss of property, and financial or economic loss.<sup>3</sup> This definition recognises the range of impacts that a crime can have on an individual.

In my role I must act independently and in the public interest. I must also have particular regard to victims who may be vulnerable to harm due to certain characteristics, including women, girls and children.<sup>4</sup>

My functions include:

- to identify and review systemic issues relating to victims
- to conduct research into matters affecting victims, including particular cohorts of victims
- 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
- to deal with complaints about alleged contraventions of the Charter of Victims' Rights
- to publish information in relation to the criminal justice system
- to promote the 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
- 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
- to monitor the implementation of recommendations made.

Through these functions, the purpose of my office is to ensure justice and victim support systems uphold the dignity and rights of victims of crime, within a culture of safety, transparency and accessibility.

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<sup>2</sup> *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 6.

<sup>3</sup> *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 6.

<sup>4</sup> *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 11.

# The Charter of Victims' Rights

The Charter of Victims' Rights (the Charter) is set out in schedule 1 of the VCSVRBA. The Charter describes the way in which a victim of violent crime should be treated, as far as practicable and appropriate, by government and non-government entities. It sets out the rights of an affected victim<sup>5</sup> that are to be upheld by prescribed persons<sup>6</sup> when dealing with the victim.

## Charter of Victims' Rights complaints

In September 2024, my office began receiving complaints from victims about their rights not being upheld under 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 VCSVRBA.

From 2 September 2024 to 30 April 2025, over 375 Queenslanders have had contact with my office, with over 570 Charter of Victims' Rights complaints, enquiries and feedback. 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.<sup>7</sup>

## Review of the Charter of Victims' Rights

In February 2025, I commenced a systemic review of the Charter of Victims' Rights, pursuant to my functions under section 9(a) of the VCSVRBA. The review aims to ensure the Charter of Victims' Rights effectively promotes and protects the rights of diverse victims of crime, in line with recommendations by the Taskforce<sup>8</sup> and the Legal Affairs and Safety Committee's Inquiry into support provided to victims of crime.<sup>9</sup> The review will be informed by engagement with victims of crime, their advocates, family members and professionals who work with victims of crime.

I will provide a report to the Minister for Youth Justice and Victim Support and Minister for Corrective Services by December 2026.

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<sup>5</sup> *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 dependant 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 s 38 and 39 of the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) for more detail.

<sup>6</sup> *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 *Victims' Commissioner and Sexual Violence Review Board Act 2024*).

<sup>7</sup> Department of Justice and the Attorney-General, Departmental Briefing Paper #6639836 to Legal Affairs and Safety Committee, Parliament of Queensland, *Inquiry into support provided for victims of crime*, (30 March 2023) 8.

<sup>8</sup> Women's Safety and Justice Taskforce. *Hear her voice: Women and girls' experiences across the criminal justice system* (Report 2, 2021) 14.

<sup>9</sup> Legal Affairs and Safety Committee, *Inquiry into support provided to victims of crime* (Report No. 48 to 57th Parliament, 2023) vi.

# Accountability

## Understanding the seriousness of offending behaviour

I regularly hear that many victims feel that sentences inadequately reflect the seriousness of the offending behaviour and how this continues to impact their lives and the lives of those around them. I note Recommendation 2 of the Queensland Sentencing Advisory Council's (QSAC) *Sentencing of Sexual Assault and Rape: The Ripple Effect* report (the QSAC report)<sup>10</sup> which aims to provide better recognition of victim harm in sentencing. I note there has not been a Government Response to that report.

Under the Charter of Victims' Rights, victims of violent crime or domestic and family violence, including family members or dependants of those harmed or killed, have the right to make a victim impact statement (VIS).<sup>11</sup> Providing a VIS is one way that victims can find dignity and exercise choice and control in a complex and often confronting environment. The capacity for victims to participate in this way in the justice process, and to voice their experience in their own words, is critical for their empowerment and healing. Victim impact statements are also important tools for judicial officers to hear and understand the physical, mental or emotional harm experienced by victims, the nature of the offence and how seriousness it was, as required by section 9(2)(c) of the *Penalties and Sentences Act 1992*.

The seriousness of offending, or harm caused by it, may not be reflected through the offences alone. For example, victims have shared with me how the abuse is often targeted at particular vulnerabilities and exploits the structural barriers they face outside the relationship. Victims have told me about how the structural inequities they experience more generally can limit their options for pursuing safety and seeking help. They describe how these aspects of their situations can be overlooked or dismissed by the criminal justice system, especially during reporting, having charges accurately reflect their experiences of violence and harm, and in the sentencing process.

QSAC has also identified issues in relation to the sentencing of non-physical violence contravention offences where the Court appears to view this as inherently less serious than physical violence contravention offences. QSAC have identified that generally, non-physical violence contravention offences receive lesser penalties than physical violence contravention offences. While this may be reflective of the Court's misunderstanding of the nature of domestic and family violence, it may also be a result of the Court not being provided adequate material relating to the seriousness of the offences and the harm caused to the victim.

There are mechanisms that could be introduced to improve the quality and increase the quantity of VISs being provided to Queensland courts, including adjournments to enable victim-survivors time to prepare a VIS, and expanded options for providing a VIS, such as having the option to pre-record.<sup>12</sup>

## Offending behaviour involving contravention offences and non-contravention offences

Divergent approaches by the Courts to sentencing conduct which constitutes both a non-contravention offence and contravention offence suggests that clear legislative guidance is necessary to ensure perpetrators are held accountable, and to avoid unnecessary trauma and distress to victim-survivors.

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<sup>10</sup> Queensland Sentencing Advisory Council, *Sentencing of Sexual Assault and Rape: The Ripple Effect*, (Final Report, December 2024) 258.

<sup>11</sup> *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 1.

<sup>12</sup> Office of the Victims' Commissioner, Submission 96 to the Justice, Integrity and Community Safety Committee *Making Queensland Safer Bill 2024* (December 2024) 10.

I note the case of *CDL v Commissioner of Police* [2024] QCA 245, where Bowskill CJ observed ‘If the conduct involved in contravening the order also constitutes another offence (such as assault, or assault occasioning bodily harm), the offender should be charged with that additional offence, and expect a penalty to be imposed which reflects that crime’. This is contrary to cases referred to in QSAC’s Consultation Paper.

I also note the recent case of *R v CDO* [2025] QCA 56 which dealt with the issue of double punishment in the instance where the applicant had plead guilty to three offences of contravening a domestic violence order and one offence of contravening a police protection notice which were then relied on by the prosecution in the District Court to amount to an offence of stalking. The Court of Appeal noted the difference in criminality between the contravention offences and the stalking offence: ‘the criminality of the Magistrates Court offences concerned a breach of order prohibiting the applicant from doing certain things’,<sup>13</sup> as opposed to the criminality of the stalking which ‘arises from the continued intentional conduct which causes fear or a detriment to the complainant’.<sup>14</sup> While there was factual overlap between the stalking charge and the contravention offences, the Court found that the punishable acts were not the same in a legal sense. The Court did determine however that section 16 of the *Criminal Code Act 1899* (Qld) applied to the circumstance of aggravation (being that the applicant contravened an order made by the Magistrates Court), which explicitly relied on acts already punished.

An offence of contravening a domestic violence order or police protection notice is distinct in its criminality – that criminality concerning the breach of orders prohibiting the respondent from doing certain things to protect an aggrieved. This is opposed to, for example, the criminality of conduct such as an assault, where the conduct causes physical harm. Conduct that constitutes both a contravention offence and a non-contravention offence should be capable of being dealt with in a way that reflects the relevant criminality and holds perpetrators to account.

## Recognising domestic violence in sentencing remarks

Recent sentencing remarks continue to illustrate that domestic violence is not consistently being recognised in all cases where it is present. For example, in *R v Slater* (District Court of Queensland, Indictment No 32 of 2025, 22 April 2025), while the Court identified the offences for which the offender was being dealt with, the Court did not refer to the fact that the offences were aggravated under section 9(10A) of the *Penalties and Sentences Act 1992* (PSA). The nature of these offences as domestic violence was made clear in subsequent media articles.

Current approaches to recognising children’s victimisation within sentencing remarks currently falls short of our understanding of the impact of domestic and family violence on children, including the harm caused to children directly. For example, the sentencing remarks in *R v Peniamina* paid little attention to understanding the domestic and family violence committed against Mr Peniamina’s four children or recognising the killing of their mother as an act of domestic and family violence against the children.<sup>15</sup> No mention was made of the fact that the children witnessed the event, or the fact that this was a form of domestic and family violence in and of itself.

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<sup>13</sup> *R v CDO* [2025] QCA 56, [56].

<sup>14</sup> *Ibid* [63].

<sup>15</sup> *R v Peniamina* (n 2) [2021] QSC 282.



Where children's 'exposure' to domestic and family violence is recognised, I am also concerned that it may be being minimised by the Courts. For example, the Court in *R v WHV* [2025] QDCSR 190 stated:

But it seems to me in circumstances where, **although** you have exposed a child or children to domestic violence against the complainant in the past, **but there is no allegation of you otherwise being violent towards them** or exposing them to other violence, and where the order will prohibit your contact with the complainant, that such an order may not be necessary for the purposes of the Domestic and Family Violence Protection Act, and may have the undesirable effect of prohibiting the possible contact of you with your children in a way which does not otherwise breach the order.

I recognise that amendments to the PSA which will require the Court to treat the fact that a child was exposed to domestic and family violence as aggravated will commence on 26 May 2025.

Sentencing remarks serve as an important public record for victim-survivors, and the broader community. Explicit recognition of offending as occurring in a domestic and family violence context, and therefore being aggravated, is critical. These examples demonstrate that examination of how comprehensively judicial officers are recognising section 9(10A) and domestic and family violence in sentencing is warranted.

While recent cases appear to be explicitly recognising section 9(10B) of the PSA, exploration of this may provide a greater understanding about how judicial officers are responding to offenders who have experienced domestic and family violence, especially women and girls.

## Judicial education

Several superior court cases have commented on judicial understanding relating to domestic and family violence. This suggests that further consideration should be had to the effectiveness of current training and education available to judicial officers.

Training and education should adopt a social entrapment framework lens, which may support increased recognition of the nature of domestic and family violence, providing a better understanding of patterns of controlling behaviour. This is particularly important ahead of the commencement of certain provisions of the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, which introduce the offence of coercive control.

The continuing absence of an independent Judicial Commission in Queensland means there is very little transparency about what training is provided to or attended by Queensland's judicial officers.

## Safety and protection

Section 42 of the *Domestic and Family Violence Protection Act 2012* (DFVPA) enables a court to make or vary a domestic violence order if the court convicts a person of a domestic violence offence.

Further consideration should be had to current practices of prosecuting authorities and the judiciary with respect to section 42 to understand whether it is operating as intended to protect victim-survivors. Regard should also be had to policies and procedures designed to support prosecutors in seeking variations at sentence hearings.

## System Design

Victims have shared with my office their challenges when contravention offences are being dealt with simultaneously across several Magistrates Courts locations. Such an approach not only impacts upon a victim-survivor's experience of the criminal justice system, but also significantly limits a Court's ability to understand the true nature and extent of offending behaviour, the seriousness of the offences, and their impact on a victim-survivor.

I note the recent review of the *Justices Act 1886* which made recommendations to establish a unified, single Magistrates Court. While that review commented on how the dispersed structure of the Magistrates Court causes unnecessary hardship for defendants, this structure also causes unnecessary distress and confusion for victim-survivors and may impact upon the Court's understanding of offending behaviour.

Further exploration of this issue would provide a greater understanding of the practical barriers to sentencing people who have committed domestic and family violence.

## Concluding remarks

My expectation, and that of the Queensland community, is that all victims be respected, seen and heard in a criminal justice system that anticipates their needs.

Addressing the complexities of sentencing in cases involving domestic and family violence requires a multifaceted approach that prioritises victim-survivor safety, dignity, and justice. The recognition of victim harm underscores the importance of victim impact statements in empowering victims and informing judicial officers of the full extent of harm caused. Inconsistencies in recognising domestic and family violence in sentencing remarks, as well as divergent approaches to dealing with contravention and non-contravention offences, highlight the need for clearer legislative guidance and judicial education.

Systemic reforms, such as the establishment of a unified Magistrates Court, could address the fragmented handling of domestic and family violence offences. Prosecutorial practices, including the use of section 42 of the DFVPA to vary domestic violence orders at sentencing, should also be reviewed to ensure they align with the intended protective purpose of the legislation.

Ultimately, a coordinated and victim-centred approach is necessary to enhance perpetrator accountability, ensure sentencing reflects the seriousness of offending behaviour, and provide victim-survivors with the recognition and protection they deserve.