

Independent Review of the Queensland *Human Rights Act 2019*.

Full Stop Australia
July 2024



About Full Stop Australia

Full Stop Australia is grateful for the opportunity to provide input to the independent review ('the Review') of the Queensland *Human Rights Act 2019* ('the Act').

Full Stop Australia is a nationally focused not-for-profit organisation which has been working in the field of sexual, domestic, and family violence since 1971. We perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma.
- Conduct best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sectors.
- Advocate to governments and in the media for laws and systems better equipped to respond to, and ultimately prevent, gender-based violence.

Our advocacy is guided by the lived expertise of over 700 survivor-advocates in our [National Survivor Advocate Program](#) ('NSAP'), which gives victim-survivors of gender-based violence a platform to share their experiences in order to drive positive change. The NSAP gives survivors opportunities to share their stories in the media, weigh in on Full Stop Australia's submissions to Government, and engage directly with Government. We are committed to centring the voices of victim-survivors in our work and advocating for laws and systems that genuinely meet their needs.

About this submission

This submission was prepared by Emily Dale, Head of Advocacy and Taran Buckby, Legal & Policy Officer. If you have any questions in relation to this submission, please do not hesitate to contact Emily Dale at emilyd@fullstop.org.au.

Approach to this submission

This submission does not address every issue raised in the Terms of Reference to the Review. Instead, given Full Stop Australia's expertise, it focuses on the rights of victim-survivors of sexual, domestic and family violence and recommends changes to the Act that would strengthen those rights.

In addition to the issues raised in this submission, we have had the benefit of reviewing the Queensland Sexual Assault Network's ('QSAN') submission to the Review and endorse the points therein.

Terminology used in this submission

This submission uses the term *sexual violence* as a broad descriptor for any non-consensual acts of a sexual nature. This term is not limited to behaviour involving physical force or injury. We use the term *gender-based violence* to capture all forms of violence whose drivers are gendered, and which disproportionately affect women and children.

Those who have experienced sexual, domestic or family violence are referred to as *victim-survivors*.

The Act should protect and promote the human rights of victim-survivors of sexual, domestic and family violence

Full Stop Australia broadly supports Queensland's Human Rights Act. As noted by the Charter of Rights Campaign Coalition chaired by the Human Rights Law Centre—to which Full Stop Australia is a signatory—strong human rights legislation benefits the whole community by:

- Giving every citizen recourse to challenge human rights violations.
- Fostering a culture of understanding and respecting human rights.
- Requiring Governments to consider people's human rights when creating and amending laws and policies, and delivering important services—including housing, social services, disability support services, and education.¹

However, the Act could be strengthened through the introduction of provisions explicitly protecting and promoting the human rights of victim-survivors of sexual, domestic and family violence.

We have detailed below the rationale for this change, and proposed amendments to the Act.

Prevalence and impacts of sexual, domestic and family violence

The prevalence of sexual, domestic and family violence, its deeply harmful impacts, and the systemic lack of support experienced by victim-survivors, provide a strong rationale for increasing protection for victim-survivors under Queensland's human rights legislation.

These forms of violence are prevalent in the community. On average, one Australian woman is murdered every week by a current or former intimate partner.² The latest Australian Bureau of Statistics ('ABS') Personal Safety Survey shows that 1 in 5 Australian women have experienced sexual violence, and 1 in 4 have experienced intimate partner or family

¹ Human Rights Law Centre, *Charter of Rights*, <<https://charterofrights.org.au/charter-of-rights>>.

² Australian Institute of Criminology, *National Homicide Monitoring Program* (Cussen & Bryant, 2015).

violence.³ Meanwhile, the latest Australian Child Maltreatment Study, which surveyed 8,500 Australians aged 16-65+, found that 1 in 3 girls and 1 in 5 boys had experienced child sexual abuse.⁴

The impacts of these forms of violence are severe and far-reaching. According to research by VicHealth, intimate partner violence is responsible for more preventable ill-health and premature death in women under the age of 45 than any other of the well-known risk factors, including high blood pressure, obesity and smoking.⁵ Women who have been exposed to violence are at greater risk of developing a range of health problems, including stress, anxiety, depression, pain syndromes, phobias and somatic and medical symptoms, and report poorer physical health overall.⁶

Victim-survivors of sexual, domestic and family violence often report feeling disempowered and retraumatised by government systems, including the justice system. Victim-survivors who reported violence to police and engaged with the Court process told us they lacked agency, choice and support, and were made to feel like they were the ones on trial. This contributes to systemic under-reporting of sexual, domestic and family violence—for example, the latest ABS data on sexual violence shows that 92% of women who were sexually assaulted by a male perpetrator in the ten years leading up to the survey did not report to police.⁷

Proposed amendments to the Act

The following amendments would strengthen the Act by increasing protections for victim-survivors of sexual, domestic and family violence.

Create a standalone right to live free from sexual, domestic and family violence

A provision creating a standalone right to live free from sexual, domestic and family violence should be added to the Act.

As set out above, the prevalence and impacts of sexual, domestic and family violence are immense. The scale of violence, and extent to which existing laws and systems are inaccessible and retraumatising to victim-survivors, demonstrates the need for a standalone right to live free from sexual, domestic and family violence. This would highlight

³ Australian Bureau of Statistics. (2021-22). *Personal Safety, Australia*. ABS.

<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

⁴ Mathews B et al. (2023) 'The Prevalence of Child Maltreatment of Australia: Findings from a National Survey.' *Med J Aust*. 218 (6).

⁵ VicHealth. (2008). *Violence against women in Australia as a determinant of mental health and wellbeing*. Victorian Health Promotion Foundation. https://www.vichealth.vic.gov.au/sites/default/files/ResearchSummary_VAW.pdf.

⁶ World Health Organization. (2000). *Women and Mental Health: An Evidence Based Review*. World Health Organisation, Geneva.

⁷ Australian Bureau of Statistics. (2021, August 24). *Sexual Violence - Victimisation*. ABS.

<https://www.abs.gov.au/articles/sexual-violence-victimisation>.

the critical importance of ending sexual, domestic and family violence as a key priority for Queensland.

Although human rights with broader application provide some existing protection to victim-survivors of sexual, domestic and family violence—for example, the right to life⁸ and protection of families and children⁹—we nonetheless think there is justification for having a standalone right to live free from sexual, domestic and family violence. As well as offering substantive protection to victim-survivors, a standalone right would perform an educative and value-setting function for the community. This clarifies that these forms of violence are not only criminal, and socially sanctioned, but in fact, a human rights violation.

Introduce protections for victim-survivors of sexual, domestic and family violence in criminal proceedings

The Act should specifically protect the rights of victim-survivors of sexual, domestic and family violence in criminal proceedings and the justice system more broadly.

The Act protects the rights of the accused in criminal proceedings in several ways but does not contain corresponding protections for victim-survivors. For example, rights of the accused set out in the Act include the right to a fair trial, the right to legal assistance, the right to interpreter assistance, and the right for legal proceedings to be conducted without delay.¹⁰

This creates an imbalance that disadvantages victim-survivors. To address this, several recent inquiries have recommended amendments to existing human rights instruments to address protection gaps for victim-survivors. Of particular importance are the recommendations made by the Women’s Safety and Justice Taskforce, and Queensland Parliament’s Legal Affairs and Safety Committee, to incorporate victims’ rights into Queensland’s Human Rights Act.¹¹ Full Stop Australia strongly supports this recommendation.

Further, in Victoria, the Victorian Law Reform Commission has recommended that Victoria’s Charter of Human Rights be amended to include specific minimum guarantees for victims—including the right to be acknowledged as a participant with an interest in criminal proceedings, the right to be treated with respect, and the right to be protected from

⁸ *Human Rights Act 2019* (Qld) s 16.

⁹ *Ibid*, s 26.

¹⁰ *Ibid*, ss 31-32.

¹¹ Queensland Government, *Response to the report of the Queensland Women’s Safety and Justice Taskforce, Hear Her Voice — Report two: Women and girls’ experienced across the criminal justice system*, 21 November 2022, p 13, <www.publications.qld.gov.au/dataset/wsjtaskforceresponse/resource/a0705c73-62bd-4263-ab2c-694e5735d058>; Queensland Government, *Inquiry into support provided to victims of crime: Queensland Government response*, 19 May 2023, accessed 4 February 2024, p 4, <documents.parliament.qld.gov.au/com/LASC-C96E/202324BE-8296/Government%20Response%20to%20LASC%20Report%20No.%2048,%20Inquiry%20into%20support%20provided%20i nto%20victims%20of%20crime.pdf>.

unnecessary trauma, intimidation and distress when giving evidence.¹² Full Stop Australia supports these recommendations and would support equivalent amendments being made to the Queensland Act.

Similar concerns are raised in QSAN's submission. QSAN identifies structural, legislative and cultural barriers that continue to obstruct victim-survivors of sexual violence from seeking support in the criminal justice system, due to the prioritisation of the rights of the accused.¹³ Full Stop Australia endorses this position and echoes QSAN's position that more must be done to improve victim-survivor engagement with, and support in, the criminal justice system. As set out in QSAN's submission, because the Act doesn't explicitly set out the rights of victim-survivors of sexual, domestic and family violence in the criminal justice system, the rights of victim-survivors are subjugated to the rights of the accused:

We are aware that the rights of victim-survivors in the criminal process may be recognised to a limited extent by other provisions in the [Act], however, the lack of specific reference to the protection of victim-survivor rights, whilst specifically recognising the specific rights of the accused, is problematic because:

- *It reinforces the historical focus in the criminal justice system on the accused's rights to the detriment of the victim survivor in gendered crimes. This reinforces problematic messaging to legal professionals and the courts that the accused's rights in decision making should be prioritised over and above the victim-survivor's rights in the criminal justice system.*
- *It contributes to the invalidation of victim-survivor's rights and contributes to making them "invisible in the system."*
- *... Specific clauses tend to be given precedence in interpretation than generalised protections. The specific focus on the rights of the accused has a broader impact in the criminal justice system, as human rights in the criminal justice system may be interpreted as only meaning the protection of the human rights of the accused by other agencies and the community at large.¹⁴*

This state of affairs reinforces the notion that within the criminal justice system, the accused's rights should take precedence over a victim-survivor's rights. It contributes to perpetuating a system in which victim-survivors feel systemically unsupported, unheard, disempowered and retraumatised.

To address these concerns, we support recommendations of the Women's Safety and Justice Taskforce¹⁵ and Legal Affairs and Safety Committee¹⁶ to incorporate victims' rights listed in the Charter of Victims' Rights¹⁷ into the Act. This would create enforceable victims'

¹² Victorian Law Reform Commission, *Victims in the criminal trial process: report*, 22 November 2016, chapter 3, <www.lawreform.vic.gov.au/publication/the-role-of-victims-of-crime-in-the-criminal-trial-process-report-2/>.

¹³ Queensland Sexual Assault Network ('QSAN'), *Review of Human Rights Act Qld Submission*, p 2.

¹⁴ *Ibid*, p 4.

¹⁵ See *Hear her voice (Report two): Women and girls' experiences across the criminal justice system*.

¹⁶ See *Report on the Inquiry into Support provided to Victims of Crime* (Report No. 48, 57th Parliament, May 2023).

¹⁷ See *Victims of Crime Assistance Act 2009* (Qld), Schedule 1AA.

rights—whereas rights in the Charter of Victims’ Rights are not enforceable.¹⁸ Without an enforcement mechanism, any statement of rights becomes ‘more an aspirational document than one which affords strong protection for the rights of victims of crime.’¹⁹ Listing victims’ rights in the Act would give victim-survivors a mechanism to enforce their rights, thereby increasing meaningful protection for victim-survivors.

In addition to the rights listed in the Charter of Victims’ rights, we think it’s important that the Act explicitly protects the following victim-survivor rights:

- The right to be protected from unnecessary trauma, intimidation and distress when giving evidence.
- The right to standing to appear in legal proceedings, either themselves or through a legal representative, in relation to aspects of the criminal process that impact them.
- The right to free legal assistance, to understand their rights and the criminal justice process.
- The right to access trauma-informed and culturally safe support services while navigating the justice system.
- The right to access translation and other communication support services where required.
- The right to have proceedings that impact them completed without delay.

We make the following further comments about these rights.

In relation to protection from unnecessary trauma when giving evidence, 2021 research by Professors Luke McNamara and Julia Quilter shows that, even in jurisdictions that have introduced affirmative consent laws, cross-examination is often still conducted in a way that’s unnecessarily retraumatizing, distressing and humiliating to complainants. According to McNamara and Quilter’s research, cross-examination that runs contrary to affirmative consent legislation remains common—with defence counsel questioning why victim-survivors ‘didn’t just say no,’ and casting doubt on victim-survivors’ credibility over imperfect recall of (often trivial) events.²⁰ In this context, we consider it important that victim-survivors be protected by a standalone right to give evidence in a way that’s safe and trauma-informed.

In relation to the right to standing in legal proceedings, we note that many victim-survivors report feeling disempowered by their lack of voice and agency in the criminal system. There

¹⁸ Ibid, s 7.

¹⁹ Janet Loughman. (10 September 2009). *Consultation on Strengthening the NSW Charter of Victims Rights*. Letter from Women’s Legal Services NSW to Director, NSW Victims Services. http://www.wlsnsw.org.au/downloads/law-reform/2009WLSNSW_VictimsServices_CharterOfVictimsRights.pdf.

²⁰ Dr Luke McNamara and Dr Julia Quilter, *Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry on Current and proposed sexual consent laws in Australia*, 2023, (Submission 17).

isn't a reliable mechanism for receiving victim-survivors' input on matters that directly impact them. Gaps in relation to these matters include:

- While victim-survivors may be informed of bail outcomes, this is not an enforceable right.²¹ Victim-survivors also have no right to be consulted during the risk assessment process to determine if bail should be granted—the best they can hope for is to be informed of decisions after the fact, even though bail decisions can significantly impact victim-survivor safety. We recommend giving victim-survivors an explicit and enforceable right to be consulted on, and informed about the outcome of, bail decisions.
- There is no requirement under Queensland law for victims to be made aware of applications by the defence to ask questions or admit evidence of a victim's past sexual activities, and victims do not have standing to challenge such applications.
- In general, there is no party specifically allocated to advocate for the interests of victims, on matters that affect them, in proceedings involving sexual, domestic or family violence. Meanwhile, the accused has defence counsel, and the prosecution's interests may not align with a victim-survivor's interests.

In relation to the proposed right to legal assistance to navigate the justice system, a 2023 survey of victim-survivors in Full Stop's NSAP showed that struggles accessing legal support negatively impacted survivors' experience of the justice system.²² 84% of survey respondents reported they were unable to access legal services, with many reporting barriers such as cost, limited services in rural areas, long wait lists, discrimination in service provision, and the lack of a clear pathway to legal services. As a result, many reported feeling like they didn't understand the justice system, being retraumatised and alone, and experiencing a general lack of control over outcomes. Survey respondents said they would have found legal support useful to better understand the justice system, and advocate for their interests within that system. Respondents noted the importance of legal support being trauma-informed, culturally safe and accessible—including being freely available to those who could not otherwise afford it. Establishing a right to legal assistance for victim-survivors of sexual, domestic and family violence would make the justice system more responsive to that cohort's justice needs.

Finally, in relation to the right to access trauma-informed and culturally safe supports, we note that cultural safety is necessary to ensure the justice system is accessible by all. Currently, this is often not the case. For example, Women's Legal Service NSW noted in its submission to the 2023 Federal Parliamentary inquiry into Australia's Human Rights Framework that its clients have reported having 'a limited understanding of, and provision

²¹ *Victims of Crime Assistance Act 2009* (Qld) s 7 and Schedule 1AA, Division 2, Item 4.

²² For more information on survey results, see Full Stop Australia, *Submission to the Attorney-General's Department: Scoping the Development of Specialised and Trauma-Informed Legal Services for Victims and Survivors of Sexual Assault*, 12 May 2023, available at: <https://fullstop.org.au/uploads/main/AGD-Submission-FINAL.pdf>.

for cultural safety in [legal] processes, particularly in court-ordered processes.²³ Meanwhile, it's necessary to specifically provide for a right to trauma-informed supports—to address the prevalence of retraumatisation through justice system processes.

Introduce protections for victim-survivors' rights in civil proceedings

We think the above rights should apply not only in criminal proceedings, but also in the range of civil proceedings in which victim-survivors of sexual, domestic and family violence are commonly involved.

As noted in Women's Legal Service NSW's submission to the 2023 Federal Parliamentary inquiry into Australia's Human Rights Framework:

'Women who have experienced gender-based violence in family law, immigration law, employment law, social security and other areas of civil law, (as well as in state/territory-based issues such as protection orders and tenancy) [experience] similar human rights implications [to those involved in criminal proceedings] ... It is our experience that our clients and their children suffer when they do not have access to early and adequate legal assistance [in these areas]. We have clients who have felt forced by the police and judicial officers to agree to parenting plans with violent partners on the day of a final hearing for a protection order, and have been told those plans have the effect of parenting orders, without having access to family law [advice].'²⁴

Extending relevant rights to civil as well as criminal proceedings would increase victim-survivor agency and reduce retraumatisation.

Create a right to timely, accessible and victim-centric support

Full Stop Australia notes the difficulties victims of crime currently face accessing support and compensation. According to victim-survivors in Full Stop Australia's NSAP, victims' experience of Government systems—including the justice system, Courts, health, mental health and social services—is too often marred by:

- Delays
- Referral 'roundabouts'
- Lack of victim-centric and trauma-informed processes
- Poor understanding of reasons why victims might disengage from services—including the impacts of child sexual abuse, which may lead to victim-survivors not trusting institutions, making it difficult for them to access services

Specific protection, in a human rights instrument, of the right of victims of crime to access timely, accessible and victim-centric support is an important step towards addressing

²³ Women's Legal Service NSW, *Submission to the Parliamentary Joint Committee on Human Rights Inquiry into Australia's Human Rights Framework*, 2023, (Submission 97).

²⁴ Ibid.

these gaps. The Queensland Human Rights Commission has acknowledged the importance of specifically protecting victims' rights in human rights legislation:

*'It has been noted that promoting rights for victims is an attempt to address the persistent difficulties experienced by institutions and professionals to adequately meet the expectations of victims of crime. Having violence inflicted on them and experienced victimisation separates victims from their usual place in society. It disrupts the sense of trust and belonging people generally (though variably) have in others.'*²⁵

This would play two important roles—first, it would raise awareness and influence values in the broader community regarding victims' rights and experiences, and second, it would support victims to assert their rights when engaging with Government systems.

²⁵ Queensland Human Rights Commission, *Submission to the inquiry into Australia's human rights framework*, 3 July 2023, p 51, paragraph 265, <www.aph.gov.au/DocumentStore.ashx?id=b3699ab7-9b83-4b0f-b47b-a45ba35794da&subId=745481>.