

# Impact Analysis Statement

## Summary IAS

### Details

<b>Lead department</b>	Department of Justice and Attorney-General
<b>Name of the proposal</b>	Powers of Victims' Commissioner and Sexual Violence Review Board to request information and make recommendations
<b>Submission type</b>	Summary IAS
<b>Title of related legislative or regulatory instrument</b>	Victims' Commissioner and Sexual Violence Review Board Bill 2024
<b>Date of issue</b>	March 2024

*For proposals noted in table below*

Proposal type	Details
<b>Regulatory proposals where no RIA is required</b>	<p>The Women's Safety and Justice Taskforce (Taskforce) stated in its second report, <i>Hear her voice – Report 2 – Women and girls' experiences across the criminal justice system</i>, that "to maintain confidence in the criminal justice and victim support systems, agencies and entities with responsibility for protecting and promoting the rights of victims should be held accountable. There should be an enduring independent mechanism for systemic issues and trends to be identified, addressed, and publicly reported on, beyond the term of the Taskforce". The Taskforce recommended the establishment of a Victims' Commissioner with the ability to identify systemic trends and issues, including in relation to policy, legislation, practice or procedure and potential responses to address these issues. The Taskforce also recommended the Victims' Commissioner have the ability to assist victims in their dealings with government agencies, including through oversight of how agencies respond to complaints.</p> <p>Further inquiries conducted by the Independent Commission of Inquiry into Queensland Police Services responses to domestic and family violence (QPS COI) and the Legal Affairs and Safety Committee Inquiry into support provided to victims of crime (LASC Inquiry) also identified a need, and supported the recommendation of the Taskforce, to establish an independent Victims' Commissioner to promote and protect the rights of victims of crime.</p> <p>The Taskforce made findings that there is no current system to adequately identify or respond to systemic issues in the prosecution of sexual offences and that a comprehensive and independent process is required to identify practice, policy and systemic issues as they arise. The Taskforce recommended the establishment of an independent sexual violence case review board chairs by the Victims' Commissioner be established. The Taskforce recommended this board have the ability to independently review sexual violence cases that are not progressed and to identify opportunities and make recommendations about practice, policy, performance and systemic improvements.</p>



	<p>The Victims' Commissioner and Sexual Violence Review Board Bill 2024 (the Bill) will:</p> <ul style="list-style-type: none"> <li>• establish the Victims' Commissioner as a statutory appointment with the main purpose to promote and protect victims' rights; and</li> <li>• establish the Sexual Violence Review Board (the Board) with the main purpose to review and identify systemic issues related to the reporting, investigation and prosecution of sexual offences.</li> </ul> <p>The establishment of the Victims' Commissioner and the Board are regulatory matters impacting on the internal management of the public sector. No regulatory impact analysis is required under the <i>Queensland Government Better Regulation Policy</i>.</p>
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**For all other proposals**

**What is the nature, size and scope of the problem? What are the objectives of government action?**

While the establishment of the Victims' Commissioner and the Board is excluded from further analysis under the Better Regulation Policy, there are two regulatory proposals within the Bill that may have impacts on government agencies and non-government entities that provide services to victims of crime and receive funding from the Commonwealth or Queensland Governments. These regulatory proposals provide for the Victims' Commissioner and the Board to:

- request information, including confidential information, that may be relevant to a systemic review conducted by the Victims' Commissioner or by the Board, or a complaint received by the Victims' Commissioner about an alleged contravention of the Charter, from a government entity, which includes government departments and statutory bodies, or a non-government entity that is funded by the Commonwealth or the State and that provides a service to victims as its primary function; and
- make recommendations to the Minister, government agencies or non-government entities about improvements that may be made to further promote and protect the rights of victims or support improvements to the reporting, investigation or prosecution of sexual violence offences in Queensland.

Access to information is critical to inform the Victims' Commissioner's systemic review and complaint functions and the review function of the Board. As the Victims' Commissioner and the Board may require access to information that is confidential and cannot be provided under existing legislative provisions, government action is required to allow the Victims' Commissioner and the Board to have access to this information.

The ability of the Victims' Commissioner and the Board to make recommendations related to their functions is important to support the main purposes of the Victims' Commissioner and the Board.

**What options were considered?**

*Requests for information*

The two viable options to allow the Victims' Commissioner and the Board to obtain information are a regulatory approach or a non-regulatory approach (status quo).

A regulatory approach through a legislative provision in the Bill is an appropriate policy response as it will enable the Victims' Commissioner and the Board to request information relevant to their functions. The legislative provisions will overcome any restrictions in existing legislation on disclosure of confidential information. The legislative provisions compel a government or non-government entity to provide the requested information unless there is a reasonable excuse not to do so, such as where providing the information may breach legal professional privilege or would endanger a person's life or physical safety. The legislation outlines that any information requested must be relevant to the functions and powers of the Victims' Commissioner or the Board.

The alternative option is to rely on the voluntary disclosure of information by government agencies and non-government entities (status quo). This approach may enable the Victims' Commissioner or the Board to

obtain some information, however there is a risk that some entities may not provide information either because it is protected by another Act or law that prohibits disclosure or where it may expose the entity to scrutiny or identify issues within entity's business practices. These types of matters create a risk that the information provided to the Victims' Commissioner or the Board may not be complete or may create a biased view of a particular issue.

Therefore, to ensure that any relevant information is provided to support the Victims' Commissioner and the Board to effectively exercise their functions and powers, it is considered necessary to provide for a legislative power to compel the provision of information, including confidential information.

#### *Making of recommendations*

There are three options in relation to the proposal to provide the Victims' Commissioner or the Board with the power to make recommendations to the Minister, government agencies or non-government entities, being:

- providing the Victims' Commissioner and the Board with a power to make recommendations and seek to mandate compliance with any recommendations made;
- providing the Victims' Commissioner and the Board with a power to make recommendations and allowing for voluntary compliance with any recommendations made (the approach adopted in the Bill); or
- not provide the Victims' Commissioner and the Board with an ability to make recommendations and merely allow for comments and findings about issues within the criminal justice system relating to victims of crime or the reporting, investigation and prosecution of sexual offences (status quo).

A power to make recommendations and enforce compliance would enable the Victims' Commissioner and the Board to ensure any issues identified as part of an inquiry could be appropriately remedied. Mandating compliance with recommendations made by the Victims' Commissioner or the Board may result in significant regulatory impacts on government agencies and non-government entities as it would limit how these entities conduct their activities and may even impact on the viability of some non-government entities to continue to provide services to victims of crime. As such, this approach is not considered to be an appropriate regulatory response as it creates a risk of limiting the discretion of, government agencies and non-government entities in how they conduct their activities in response to a recommendation made by the Victims' Commissioner or the Board.

The second option is to provide the Victims' Commissioner and the Board with the ability to make recommendations but not mandate compliance. This option allows the Victims' Commissioner and the Board to provide advice on its recommended approach to resolving issues but does not limit discretion or force government agencies or non-government entities to act on the recommendations made. By not implementing a mandatory compliance requirement, entities will be able to determine the specific impacts in implementing the recommendations and/or resourcing required for implementation. The Victims' Commissioner and the Board will be able to report on or follow up with an entity about the steps they have taken to implement a recommendation. This does not limit the entity from deciding that it will not implement the recommendation based on a strategic, operational or resource-related decision of the entity. This regulatory approach is an appropriate and proportional response to achieve the policy intent of empowering the Victims' Commissioner and the Board to make and monitor recommendations for system improvements without imposing a burdensome or resource intensive compliance obligations on government agencies or non-government entities. It is considered this approach balances transparency and accountability with any potential compliance or resource implications on government or non-government entities.

The third option is to refrain from providing the Victims' Commissioner and the Board with the ability to make and monitor recommendations. This option would limit the ability of the Victims' Commissioner or the Board to provide informed recommendations about a way forward to respond to any issues that it may identify as part of an inquiry or exercising their functions and powers. While this would not impose any potential regulatory burden or requirement for an agency or non-government entity to advise of their implementation of a recommendation, this approach does not support the functions of the Victims' Commissioner and the Board to provide advice to the Minister and other entities on matters relating to their functions and how these issues may be resolved. As such, this option is not considered to be an appropriate or proportional response to achieve the policy objectives.



**What are the impacts?**

*Requests for information*

The power to request information will be used on an ad-hoc basis as part of a review by the Victims' Commissioner or the Board or in relation to the Victims' Commissioner's complaint function, as opposed to requiring an entity to report information or data or produce document on a frequent or ongoing basis.

The proposed purpose of the Board is to review and make recommendations in relation to systemic issues about the reporting, investigation and prosecution of sexual offences. As these actions are carried out by government agencies (mainly the Queensland Police Service and the Office of the Director of Public Prosecutions), it is expected that the majority of information requests by the Board will be to government agencies. Similarly, it is expected that information requests by the Victims' Commissioner will largely be directed to government agencies as the Victims' Commissioner's functions are largely related to the activities of government agencies.

It is anticipated that information requests to non-government entities will be made in exceptional circumstances where a non-government service provider may hold information that is relevant to the scope of a review carried out by the Board or the Victims' Commissioner. Non-government entities will only be required to provide the information that is requested and in their possession, and this activity is not expected to be onerous.

*Making of recommendations*

The Bill outlines that recommendations made by the Victims' Commissioner or the Board will relate to their functions. As recommendations are intended to make improvements, it is anticipated that the implementation of recommendations will have a positive impact on entities to which they are directed. As recommendations are not binding, the relevant Minister, government agency or non-government entity will be able to consider potential impacts of implementation of recommendations made by the Victims' Commissioner or the Board prior to accepting and implementing the recommendations.

**Who was consulted?**

Extensive consultation was undertaken by the Taskforce during their inquiry, including with victim-survivors, government agencies and service system stakeholders. This included consultation on the establishment of a Victims' Commissioner and the functions and powers it would require to effectively promote and protect the rights of victims of crime. Further engagement was also undertaken by the QPS COI and LASC during their inquiries into issues impacting on victims and their consideration of the need for a victims' commissioner in Queensland.

Consultation was also undertaken by the Taskforce with victim-survivors, government agencies and service system stakeholders in considering the need for the establishment of the Board to review and inquire into the prosecution of sexual offences.

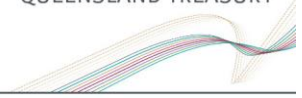
The Department of Justice and Attorney-General conducted targeted consultation with government and non-government stakeholders (including statutory bodies and stakeholders from the legal sector, domestic family and sexual violence sector and victim support and advocacy sectors) through consultation papers, virtual information sessions and the release of a consultation draft of the Bill for comment.

**What is the recommended option and why?**

*Requests for information*

The Bill provides the Victims' Commissioner and the Board with the ability to request information that is relevant to their functions from government entities and non-government entities. The information must be provided unless there is a reasonable excuse not to do so. This approach will support:

- the Victims' Commissioner and Board to obtain information they require to support them to exercise their functions and powers; and
- government agencies and non-government entities by including an express power in the Bill to allow for the disclosure of information to the Victims' Commissioner and Board, which in turn will allow them to comply with their information privacy and confidentiality obligations.



This approach is also considered to have a minimal impact on government agencies and non-government entities as it is not anticipated that these powers will be used on a regular or frequent basis but will be used in an ad hoc manner to support the Victims' Commissioner or the Board to inquire into a particular issue or respond to a matter of public interest as they arise. Therefore, the impacts are considered to be minor and provided only for the purposes of obtaining information to support the Victims' Commissioner and the Board to support the exercise of their functions and powers.

*Making of recommendations to non-government entities*

The power to make recommendations, including making recommendations about improvements that may be made in the provision of services to victims of crime by non-government entities, is essential to the functions of the Victims' Commissioner and the Board. The recommendations will be published by the Victims' Commissioner and the Board and may be followed up with the Minister, government agencies or non-government entities on the progress made in implementing a recommendation. However, the ultimate discretion to implement a recommendation and/or how the recommendations may be implemented will remain with the relevant individual or entity.

This option strikes an appropriate balance as the Victims' Commissioner and the Board will be empowered to make recommendations but the individual or entity will be able to consider the impacts of implementing the recommendations on their particular activities and make a determination. In this way, the individual or entity is able to consider and manage the potential impacts rather than imposing these impacts on an individual or an entity. Therefore, the proposed approach to enable the Victims' Commissioner and the Board to make recommendations and allowing voluntary compliance by individuals and entities is considered the most appropriate approach to achieve the policy intent.

**Impact assessment**

	First full year	First 10 years
<b>Direct costs – Compliance costs</b>	Unable to be quantified but expected to be minimal	Unable to be quantified but expected to be minimal
<b>Direct costs – Government costs</b>	Unable to be quantified but expected to be minimal	Unable to be quantified but expected to be minimal

**Signed**

Director-General  
Department of Justice and Attorney-General

Date: 20 February 2024

Attorney-General and Minister for Justice and  
Minister for the Prevention of Domestic and Family  
Violence

Date: 21 February 2024