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The Commission of Inquiry into Queensland Police Service responses to domestic and family violence
PO Box 12264
George Street Qld 4003

By email: documents@gpsdfvinquiry.qld.gov.au

Dear Commissioner

Inquiry into Queensland Police Service responses to domestic and family violence

I refer to the summary terms of reference of the Inquiry:

- whether there are any cultural issues within the Queensland Police Service that negatively affect police investigations of DFV
- if there are any cultural issues, whether they have contributed to the overrepresentation of First Nations people in the criminal justice system
- the capability, capacity and structure of the Queensland Police Service to respond to DFV, and
- the adequacy of the current conduct and complaints handling processes against police officers.

Due to the short time frame for this Inquiry, the Queensland Human Rights Commission (QHRC) is only able to provide a limited and general response to the issues raised by the terms of reference.

Human rights of victims of domestic violence

The human rights of victims of domestic violence are relevant to the terms of reference in this Inquiry. The *Human Rights Act 2019* (Qld), the HRA, protects the rights of victims of domestic violence in the following manner.

Recognition and equality before the law: Section 15 HRA

In a victim's dealings with police, they have the right to enjoy their human rights without discrimination regardless of their sex, age, sexuality, race, social class, or disability¹.

¹ [Opuz v Turkey \[2009\] ECHR 870](#); [Talpis v Italy \[2017\] ECHR 224](#).

Victims have a right to equal and effective protection against discrimination, and police have a positive duty to see that some groups or classes of people do not receive inferior service or treatment.

Victims should be offered the free assistance of an interpreter if they do not understand or speak English well enough to follow what is going on. If they have a disability, they should be offered free assistance or specialised communication technology, trauma-informed approaches, and other accommodations that they need.²

In one discrimination matter that was heard by the Court of Appeal, the repeated failure of the Queensland Police Service (QPS) to provide an Auslan interpreter, and the dismissive nature of the handling of her internal complaint, suggested that there may be culture within the QPS of not taking the needs of female victims of violence seriously.³

Right to life: Section 16 HRA

The right to life is the most fundamental human right and public entities, including the police, have an obligation to take steps to protect the lives of individuals, as well as controlling and limiting the circumstances which may result in the loss of life.⁴ Where a person is a victim of domestic abuse and it becomes clear that their life is in danger as a result of ongoing threats or violence, the police must take adequate steps to protect that life. A failure to protect that person may be an unjustifiable limitation on the right to life.

Right to liberty and security of person: Section 29 HRA

Individuals have the right to be free and safe. Public entities need to take adequate steps to ensure people who are exposed to risk are safe. For example, if an individual makes a call to the police because someone has threatened to hurt them, the police need to take adequate steps to ensure that the threat is not carried out.

Protection from torture and cruel, inhuman and degrading treatment: Section 17 HRA

A person should not be treated in a cruel, inhuman, or degrading way, or be subjected to torture. Cruel, inhuman, or degrading treatment or torture involves severe mental or physical pain or suffering that is either intentionally or unintentionally inflicted, or treatment that degrades by virtue of the humiliation caused. For example, if an individual has a domestic violence order that is being repeatedly breached by a perpetrator, but when they call to report this, no action is taken by police, this may be a breach of this right.

Police have a duty of care to take complaints seriously and investigate crimes accordingly

In a case from the United Kingdom,⁵ a taxi driver committed many sexual offences on women over a period of 5 years. Two victims of his crimes complained that the police had failed to properly investigate the crimes in violation of their right to be free from torture, cruel, inhuman or degrading treatment. While not every failure to investigate will be a breach of

² A recent reported incident involving QPS interaction a young person with cerebral palsy potentially illustrates a non-trauma informed approach. See Lily Nothling, "[Teenage girl with cerebral palsy tasered by police at Townsville school](#)", *ABC News* (online, 28 February 2020).

³ [Woodforth v State of Queensland \[2017\] QCA 100](#)

⁴ [Kontrova v Slovakia \[2007\] ECHR 419](#); [Branko Tomasic and Others v Croatia \[2009\] ECHR 79](#).

⁵ [Commissioner of Police of the Metropolis v DSD & Anor \[2018\] UKSC 11](#).

human rights, the court decided that as these were serious crimes a proper investigation was required. Where there are obvious and significant shortcomings with a police investigation, the court said that it might amount to a breach of rights.

Protection of families and children: Section 26 HRA

Families are the fundamental group unit of society and are entitled to be protected by society and the state. The law recognises the diversity of families. What constitutes a family should take account of the cultural context and kinship arrangements, especially for Aboriginal peoples and Torres Strait Islander peoples.

Every child has the right to protection that is in their best interests. Public entities (including police) should ensure that children's human rights are protected, and that arrangements best suit the child's needs and circumstances.

Privacy and reputation: Section 25 HRA

A victim has the right to have their privacy protected, and their reputation should not be unlawfully attacked. Privacy includes use of personal information, data collection, and correspondence. This is relevant to policing powers and record-keeping, the sharing of documents in legal proceedings, as well as access to information during court proceedings.

If a police officer shares information from an internal database on the whereabouts of a domestic violence victim to a member of the public, that officer is in breach of that victim's right to privacy. This breach may also violate the victim's right to liberty and security, and in some cases, the right to life.

Freedom of expression: Section 21 HRA

Freedom of expression includes the right to hold and express an opinion, as well as the right to seek out and receive information.

A victim of crime should expect to be kept informed about such things as:

- progress of a police investigation
- decisions about the prosecution of the accused person
- warrants that have been issued
- court processes and hearing dates
- details of the sentence
- outcomes of bail application, and
- arrangements for release of the accused person.

Cultural rights generally: Section 27 HRA

Whatever a victim's cultural, religious, racial, or linguistic background, they have the right to practice their culture and religion and use their language with others in their community.

Police prosecutors must recognise the cultural and linguistic backgrounds of witnesses, and should consider the type and way questions are asked, and in some cases, who is in the court room may have to be limited due to cultural considerations.

Cultural rights (Aboriginal peoples and Torres Strait Islander peoples): Section 28 HRA

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. An Aboriginal person or Torres Strait Islander must not be denied the right to practise their culture and to maintain their identity, connection to country, language, and kinship ties.

Public entities must consider these rights when providing services to Aboriginal or Torres Strait Islander clients. For example, police and prosecutors who come into contact with sexual abuse survivors should take into account relevant cultural safety issues and work sensitively with Aboriginal and Torres Strait Islander groups. Training may be required to build cultural competence and sensitivity.

Recruitment of Aboriginal and Torres Strait Islander personnel and formal structures for meaningful engagement between QPS and Aboriginal and Torres Strait Islander communities should form part of the inquiry process.

The capability, capacity, and structure of the Queensland Police Service to respond to DFV

The QHRC conducted a detailed examination of the CCC's Investigation Arista report. The premise upon which the CCC conducted the investigation was concerning, including the CCC's apparent failure to consider the effect of the equal opportunity measures exemption in section 105 (equal opportunity measures) of the *Anti-Discrimination Act 1991* on the recruitment process under investigation. In my view, most actions taken by QPS recruitment officers within the authority of the Police Commissioner's directive, were protected by the blanket exemption, and would not amount to unlawful discrimination. From the information available, only a very small number of male applicants were displaced by female applicants who received assistance that went beyond that authorised by the Commissioner Stewart.

However, the Queensland Police Union and others labelled the strategy as 'woke pandering nonsense'.⁶ I am of the view that this illustrates systemic problems within QPS indicating cultural resistance to supporting the recruitment of adequate numbers of women officers to appropriately service the community, including victims of domestic violence.

The adequacy of the current conduct and complaints-handling processes against police officers.

In relation to complaints-handling processes against police officers, I am of the view that Queensland would benefit from the establishment of a Victims of Crime Commissioner similar to those established in Victoria and the ACT.⁷ Their role is to promote and protect the rights of people who experience crime and to ensure they can access the support they need. The role has an advocacy and education function including:

⁶ [Interview with Ian Leavers, Qld Police Union president](#), (Craig Zonka and Loretta Ryan, ABC Brisbane Breakfast, 13 May 2021).

⁷ 'Victims of Crime Commissioner', *ACT Human Rights Commission* (Web Page) < <https://hrc.act.gov.au/victims-support-act/victims-of-crime-commissioner/> >; *Victims of Crime Commissioner* (Web Page) < <https://www.victimsofcrimecommissioner.vic.gov.au/> >.

The Commission of Inquiry into Queensland Police Service responses to domestic and family violence

- advocating for individuals who experience crime
- advocating for reforms to the justice system
- consulting with victims of crime and promoting reforms to meet their needs; and
- advising the Attorney General on matters in relation to victims of crime.

Victims of domestic violence who believe they have received an inadequate response to their complaints by the QPS could approach such an entity for support in dealing with their issues on both an individual and systemic level.

Thank you for the opportunity to make a submission to this Inquiry.

Yours sincerely



Scott McDougall
Commissioner