

24 June 2022

Our ref: HS:MC

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

By email: [REDACTED]

Dear Commissioner

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

Thank you for the opportunity to make a submission to the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence. The Queensland Law Society (QLS) is pleased to provide feedback on this important issue.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This submission draws on the QLS submissions made to the Women's Safety and Justice Taskforce<sup>1</sup> and feedback from members of our Domestic and Family Violence, Family Law and Access to Justice committees.

Feedback from our members supports the findings of the Taskforce that have led to this inquiry: police responses to domestic and family violence are inconsistent.<sup>2</sup> In some instances people experiencing domestic and family violence are not receiving the police assistance they require. This can be because police are not contacted due to negative past experiences with police or a perception that police will not assist or because police are contacted but responses are

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<sup>1</sup> [QLS submission in response to the Taskforce's first discussion paper](#); [QLS submission in response to the Taskforce's third discussion paper](#).

<sup>2</sup> See the comments of the Honourable Margaret McMurdo AC in the foreword to *Hear her voice*: 'a Queensland woman seeking police help to stay safe from a perpetrator enters a raffle – she may get excellent assistance, or she may be turned away.'

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inadequate or inappropriate, sometimes doing more harm than good such as where victims are misidentified as perpetrators.<sup>3</sup>

Our members with relevant experience have identified a range of areas where police require additional training in order to play their part in keeping people experiencing domestic and family violence safe and bringing people who perpetrate domestic and family violence to account. This training must of course be supported by appropriate cultural and system improvements to ensure that best practice is enacted at every juncture and that trust in police can be built where it has been lost or never developed.

Appropriate training of police, together with strengthening of processes and culture, is essential to ensuring officers understand that policing domestic and family violence is a core part of their role, to be treated with the same seriousness and priority as other criminal behaviour.

### Need for additional police training

QLS submits that Queensland police require additional training and education in relation to domestic and family violence, specifically with regard to:

- recognising domestic and family violence, including as a pattern of conduct rather than purely incident-based,
- recognising and identifying the primary aggressor of domestic and family violence;
- understanding the impacts of trauma;
- cultural competency in respect of First Nations persons;
- use of interpreters where necessary to communicate with culturally and linguistically diverse people;
- recognising the needs of other vulnerable categories of victim survivor such as older persons, people with disability and LGBTIQ+ people and the unique abuse tactics which they may be subjected to;<sup>4</sup>
- providing appropriate referrals for support services;
- making better use of the range of available criminal offence provisions;
- properly assessing risk in the context of watch-house bail decisions and properly explaining bail conditions;<sup>5</sup>
- understanding processes such as restorative justice;<sup>6</sup>
- understanding and properly exercising police powers under the *Domestic and Family Violence Prevention Act 2012*. For example, QLS has received feedback that failure to afford natural justice under s101(1)(b) when issuing a police protection notice is a recurring problem.

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<sup>3</sup> QLS notes that this problem is evident across Australia, as illustrated by media reporting such as <https://www.abc.net.au/news/2022-03-31/police-misidentifying-domestic-violence-victims-perpetrators/100913268>

<sup>4</sup> See discussion at QLS response to questions 54 and 55 of the Taskforce's first discussion paper

<sup>5</sup> See QLS response to question 23 of the Taskforce's first discussion paper

<sup>6</sup> See QLS response to questions 11 and 12 the Taskforce's first discussion paper

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As stated in the QLS submission to the Taskforce's first discussion paper:

*There is scope for current powers, laws and protections to be implemented in a more effective and appropriate way.*

*As the point of entry into the criminal justice system, police play a critical role in protecting individuals experiencing coercive control and domestic violence. Police have significant discretionary powers and the operational decisions individual officers make in responding to domestic violence can have significant consequences. Improving first response systems, through education, training, specialised domestic violence sections within the police and embedding a culture of best practice is a critical aspect of protecting victims and keeping them safe.<sup>7</sup>*

and

*Police require tailored training on domestic and family violence that addresses the lived experience of victims and the deeply held beliefs of perpetrators which lead to the perpetration of domestic and family violence, including entitlement, power and control, disrespect for women, manipulation and the use of fear and degradation.*

*...Relevant topics for training include vicarious trauma, survivor adaptability, the complex dynamics of domestic and family violence and the impacts and manifestations of trauma.<sup>8</sup>*

Crucially, police need to understand domestic and family violence as a pattern of conduct which they must learn to recognise in order to reduce the risk of misidentifying perpetrator and victim, which can occur when viewing domestic and family violence only through an incident-based lens. As stated in the QLS response to the Taskforce's first discussion paper:

*We also recommend specialist training be developed specifically for police, given their critical role in identifying and responding to coercive control. Again, this training should focus on the importance of context in identifying offending and assessing risk.<sup>9</sup>*

In regard to best using existing laws to respond to conduct constituting domestic and family violence, police may require additional training and guidance regarding the most appropriate offence with which to charge perpetrators. As discussed in the QLS response to the Taskforce's first discussion paper:

*[P]olice may prosecute an offence of breaching a protection order where a more substantive, serious offence may be applicable. The result is that low penalties, relatively speaking, are applied to what is otherwise serious criminal behaviour.<sup>10</sup>*

Further, the QLS response identified:

*Many offences in the Criminal Code could be better utilised to more effectively prosecute conduct involving coercive control. Stalking, extortion, "revenge porn offences", use of a carriage service to menace, harass or cause offence and breach of a DVO are examples*

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<sup>7</sup> See QLS response to question 49 of the Taskforce's first discussion paper

<sup>8</sup> See QLS response to question 21 of the Taskforce's first discussion paper

<sup>9</sup> See QLS response to questions 24 and 25 of the Taskforce's first discussion paper

<sup>10</sup> See QLS response to question 18 of the Taskforce's first discussion paper

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*of offences which incorporate aspects of coercive control. Targeted training for police and prosecutors is the best way to facilitate better use existing criminal offence provisions.<sup>11</sup>*

QLS made the following remarks in the context of discussing the intersecting needs of victim-survivors of sexual violence in its response to the Taskforce's third discussion paper. QLS submits that these comments are equally applicable to police interactions with victim-survivors of domestic and family violence:

*Some members consider the following issues should be the subject of further review and improvement:*

- police failing to refer victim survivors to appropriate support services at the time of complaint (e.g. rape crisis counselling, 1800RESPECT/[DVCConnect] for safety planning), which some members report is a particular problem in regional, rural and remote communities;*
- police failing to obtain an adequate and comprehensive statement from the victim survivor, with some victim survivors reporting that police have discouraged them from making a statement;*
- a lack of access to a female interpreter or appropriately trained interpreter where English is not the victim survivor's native language;*
- training and education programs for those who come into contact with victim survivors throughout the criminal justice system;*
- engagement with the victim throughout the complaint process where currently, investigating officers and/or Victim Liaisons at the Department of Public Prosecutions (DPP) are relied on to keep victim survivors informed of the progress of their complaint and may send correspondence to young, First Nations or culturally and linguistically diverse complainants in language they cannot access and/or describing the court process in legalistic terms.<sup>12</sup>*

### **Misidentification of victims as perpetrators**

Police misidentification of victims and perpetrators can occur for a number of reasons, including lack of training in recognising domestic and family violence, bias, lack of understanding the impacts of trauma, inability to communicate with victims, and lack of regard to complex surrounding factors and previous history of violence within the relationship.<sup>13</sup> This is a matter which must be further examined by Queensland police.

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<sup>11</sup> See QLS response to question 30 Taskforce's first discussion paper

<sup>12</sup> QLS response to question 4 of the Taskforce's third discussion paper

<sup>13</sup> See for example the [case study of Tricia](#) published by the Domestic and Family Violence Death Review and Advisory Board, particularly the final section on holding perpetrators to account which describes failures to prevent ongoing violence against Tricia in former relationships and Tricia being served with a police application for protection of her abusive partner listing her as the respondent, while in hospital after being injured by him. Tricia's partner was not charged with breaching the protection order to which he was a respondent at the time. The [Domestic and Family Violence Death Review and Advisory Board 2020-2021 Annual Report](#) 2020-2021 Annual Report shows that service responses

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We note the previous comments by QLS:

*Our members report a tendency on the part of police officers, especially in the domestic violence context, to apply principles of strict equality rather than engaging with the broader and systemic issues that promote domestic violence and gender inequality. For example, women may be charged as the perpetrator or be the subject of a Police Protection Notice on the basis of assumptions formed at the scene of the incident, as opposed to considering the gendered dynamics of domestic violence or the application of coercive control. This police misidentification of the "primary aggressor" in domestic and family violence incidents is well documented in media reports. Recent research highlights that body worn cameras can improve police accountability, however further effective regulation of body worn cameras is required so as not to deprive courts of the best evidence available to them.<sup>14</sup>*

and

*Victims of family violence are sometimes misidentified as the primary aggressor. Mutualisation of violence through the use of terminology such as 'high conflict relationship', 'relationship characterised by violence', and 'conflictual relationship' is commonly used in matters involving domestic and family violence. This has the effect of mutualising violence in relationships, meaning that both parties are considered at blame for their involvement in the 'conflict'.<sup>15</sup>*

Misidentification of victim and perpetrator by police can occur particularly in relation to culturally and linguistically diverse women and First Nations women, who are already more vulnerable to the impacts of domestic and family violence.

As stated in the QLS response to the Taskforce's first discussion paper:

*The impact of violence experienced by women from culturally and linguistically diverse (CALD) backgrounds can be exacerbated by a range of factors including language barriers and reliance on interpreters to seek help, lack of familiarity with Australian laws and processes, mistrust of police, isolation from family and wider societal supports and a concern that speaking out would betray or bring shame to their extended family and community.*

*Women from CALD backgrounds are particularly vulnerable to forms of coercive control, including dowry abuse and other financial abuse as well as abuse from extended family members. The inability of temporary visa holders to access social supports can exacerbate the impacts of this abuse. Temporary visa holders report higher patterns of migration-related abuse and threats. The COVID-19 pandemic has exacerbated these challenges.<sup>16</sup>*

A concrete example of a CALD woman being misidentified as a perpetrator of domestic violence due to lack of an interpreter can be found in [Applicant SIL v Victims Assist Queensland \[2021\] QCAT 237](#) where a Mandarin speaking wife called the police claiming to have been attacked

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remain inconsistent and inadequate police understanding continues to result in incidences of victims being named as respondents to applications for protection orders (see page 86).

<sup>14</sup> QLS response to question 18 of the Taskforce's third discussion paper

<sup>15</sup> QLS response to question 60 of the Taskforce's first discussion paper

<sup>16</sup> QLS response to questions 54 and 55 of the Taskforce's first discussion paper

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with a knife by the husband. The police arrived and asked whether she spoke English. After she replied 'yes, but not very well', the police spoke only to the husband. On the basis of what the husband told them, the police proceeded to characterise the wife as the perpetrator.

QCAT found the wife to be credible in the proceedings before it and went so far as to say that she was effectively denied a voice on the night in question by the police. As the QCAT member said in his decision, women cannot be believed until they have at least been heard.

Police need to be trained to recognise when to use an interpreter and be required to do so in order that they can hear a person's account before reaching any conclusions. The importance of police engaging with CALD victims and properly understanding the situation is heightened by the risk that CALD victims' residence in Australia be subject to spousal visas which are dependent upon the relationship continuing unless there is a judicial finding of domestic and family violence or evidence to satisfy the Immigration Minister that the visa holder has been subjected to domestic and family violence. If police do not engage appropriately, the victim's chance of leaving the relationship but maintaining a visa are seriously impacted, leaving them in an extremely vulnerable position.

In respect of First Nations women, QLS has submitted to the Taskforce:

*Currently, mainstream legal systems and services are not designed or delivered in a way that recognises the lived experiences of First Nations Peoples. Engagement with the legal system, including reluctance to engage and mistrust of police and other authorities, must be viewed within the historical context of colonisation, dispossession and forced removal from country, intergenerational trauma and systemic disadvantage. This historical context means that First Nations women are less likely to report violence to police or seek support through social services.*

*Aboriginal and Torres Strait Islander women who experience violence are more likely to engage in resistant behaviours and use retaliatory violence as a survival method. Unfortunately, as a result, when police respond to a single incident of violence in these circumstances, there is a significant risk of police misidentifying the victim and the perpetrator. ...*

*... it is important to recognise the role systemic racism and discrimination play a role in the poor response to First Nations women and children experiencing violence. In the experience of our members, Aboriginal and Torres Strait Islander women are routinely misidentified as the primary aggressor and may be charged with minor offences when police attend a domestic violence incident if they are not cooperative. ...<sup>17</sup>*

and

*Our members working with First Nations women across issues including family violence and sexual assault report a mistrust of the police due to lack of cultural competence, even in areas like Palm Island where the entire population comprises First Nations people. First Nations women may experience racism from police which manifests as:*

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<sup>17</sup> QLS response to question 60 of the Taskforce's first discussion paper

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*indifference to their reporting of crimes; misidentification of perpetrators in family violence matters...*<sup>18</sup>

It is critical that all police in Queensland be culturally competent and appropriately trained to engage with First Nations people in respect of domestic and family violence matters.

### **Police as perpetrators**

QLS notes concern within the community regarding the difficulties of victims subjected to domestic and family violence by police officers.<sup>19</sup>

QLS has received feedback from members that there needs to be better training and processes where an alleged perpetrator is a police officer or other emergency service personnel. There is a danger that without proper training, unconscious bias in favour of colleagues will influence the investigation of victims' complaints.

Additionally, perception within the community that camaraderie between police and other emergency services personnel will hamper effective consideration of any complaint may discourage victims from coming forward.

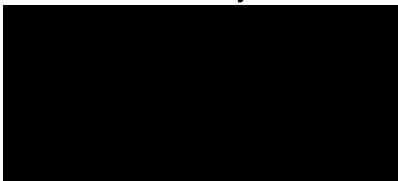
Police processes and training must be sufficient that the community can be confident that no perpetrator is above the law.

### **Complaints about police handling of domestic violence matters**

Members have expressed support for a streamlined process for complaints about the handling of domestic violence matters by police, both from the perspective of respondents/defendants and complainants/aggrieveds. This is particularly the case for regional and remote areas where there would be a significant benefit to the complaints process and any review being conducted outside of the area that was handling the matter in the first instance.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

Yours faithfully



Kara Thomson  
**President**

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<sup>18</sup> QLS response to question 27 of the Taskforce's third discussion paper

<sup>19</sup> See for example <https://www.abc.net.au/news/2022-06-09/queensland-police-service-increase-domestic-violence-officers/101133908>