



**QIFVLS**

**Queensland Indigenous Family Violence Legal Service**

**Submissions to the Finance and Public References Committee  
Domestic Violence in Australia**

A white handprint graphic is positioned on the right side of the text, set against a background of vertical stripes in shades of blue, orange, and red. The handprint is stylized with a thumb pointing up and fingers spread.

**‘No Way,  
It’s Not Our Way’**





## **Domestic Violence in Australia**

**Queensland Indigenous Family Violence Legal Service Submissions to the Finance and  
Public Administration References Committee**

**Dated 31 July 2014**

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## 1 Introduction

The Finance and Public Administration References Committee (the **Committee**) is undertaking an inquiry into domestic violence in Australia (the **Inquiry**). The Inquiry will explore the adequacy of policy responses and the effects of policy settings regarding housing, legal services and women's economic independence on the ability to escape violence. The Committee will report on the Inquiry on or before 27 October 2014. The prevalence and impact of domestic violence as it affects Indigenous women was raised as a specific term of reference of the Inquiry.

Queensland Indigenous Family Violence Legal Service (**QIFVLS**) is committed to assisting Indigenous Australians who are victims of domestic and family violence and/or sexual assault. QIFVLS does this by delivering culturally appropriate, and free, legal services, support services, and community education services. QIFVLS has offices in Far North Queensland, North Queensland, the Gulf, West Queensland, Central Queensland and Brisbane.

QIFVLS experiences firsthand the impact that domestic and family violence has on Indigenous communities. This submission addresses how and why Indigenous Australians in particular are affected by domestic and family violence, and makes recommendations that, if implemented, will help to eliminate this violence.

## 2 Executive Summary

QIFVLS provides an overview of domestic and family violence in Australia, highlighting the particularly challenging aspects regarding Indigenous communities, in Section 3. The submissions detail the devastating impact on victims and the broader community, in particular social costs and costs associated with intervention and rehabilitation, in Section 4.

Against this background, QIFVLS raises the following issues and challenges in addressing domestic and family violence within Indigenous communities across Australia:

- (a) **Deficiencies in housing:** The overrepresentation of Indigenous Australians in public housing means Indigenous households are particularly susceptible to public housing policies. Tough enforcement of the three strikes rule can mean that victims of domestic abuse face an increased risk of homelessness. The lack of available housing options results in over capacity within houses, thereby increasing the number of incidents of 'anti-social behaviour' leading to 'strikes' against public housing tenants. (Section 5)
- (b) **Deficiencies in legal services:** Indigenous people are sparsely populated across Australia with a large number of Indigenous people living in regional, remote and rural areas. This location factor places strains on the availability of important services. Specific cultural differences between Indigenous and mainstream western values may emerge in the lawyer-client service delivery as Indigenous clients are often not familiar with an 'appointment' model of interaction. QIFVLS has identified a number of considerations in relation to the provision of legal services, including addressing language barriers and difficulties obtaining instructions; the need for ongoing relationships and a "whole-of-client" approach; issues associated with the dual representation of victims and perpetrators; and problems engaging and retaining suitably experienced staff. (Section 6)
- (c) **Deficiencies in available remedies:** There are difficulties managing the diverse coverage of domestic and family violence laws across Australia given the inconsistent remedies across each jurisdiction. Current laws vary in substance across jurisdictions, potentially resulting in victims being subject to different levels of protection depending upon where they live. Further, data indicates that domestic violence orders are not deterring perpetrators from carrying out acts of violence against victims. Perpetrators are often subject to civil law remedies, rather than criminal assault charges. The inconsistent



penalty regimes for domestic violence and assault do not reflect the serious nature of the violence experienced by victims of domestic violence. (Section 7)

- (d) **Deficiencies within the community:** Indigenous communities would benefit from improved community legal education about legal rights, particularly as they relate to domestic violence. Domestic violence is inherently a more difficult crime to uncover because victims are less likely to report their abusers to police or even to friends and family. The lack of police response, and (for the most part) the lack of media interest, demonstrates that domestic violence can be normalised, accepted, seen as somehow part of Indigenous communities and of less concern. (Section 8)

To focus on improving the status quo within Australia, in Section 9 QIFVLS considers a number of approaches used across various Australian jurisdictions. The submissions emphasise the importance of integrated responses to domestic and family violence in both the Australian Capital Territory and Tasmania. These models, which incorporate holistic and case management elements, have proven to be effective.

QIFVLS is focused on reducing the prevalence of domestic violence within Australia. The experience of QIFVLS allows insight into the problems currently experienced by Indigenous Australians. Many of these problems are exacerbated for people living in regional, rural and remote Australia. A summary of QIFVLS's recommendations for dealing with these issues are set out immediately below and more fully in section 10.

- (a) **Develop a coordinated and integrated policy reform response:** QIFVLS recommends the development and implementation of an integrated model the likes of which has been implemented in Tasmania and the Australian Capital Territory. This model should incorporate case management, and involve a range of services acting collaboratively and cooperatively.
- (b) **Increased funding targeting services to remote Indigenous communities:** QIFVLS recommends that the Commonwealth Government address the serious lack of access to justice in civil law matters experienced by Indigenous people in remote communities by providing sufficient funding to legal service providers, after consulting the various stakeholders to determine how this funding is best targeted.
- (c) **Training for CLC staff:** QIFVLS recommends the Commonwealth Government support increased training and recruitment programs for legal service providers working in regional and remote Aboriginal and Torres Strait Islander communities. Initiatives to assist CLC staff recruitment include establishing internship opportunities similar to those available through the Aurora program.
- (d) **Develop community legal education programs:** QIFVLS recommends the Commonwealth Government develop and support community legal education programs to inform and educate Indigenous Australians (particularly those in regional and remote community) about their civil law rights, especially as they relate to domestic and family violence.
- (e) **Develop community education programs:** QIFVLS recommends that the Commonwealth Government develop and support community education and support programs for victims and perpetrators.
- (f) **Develop cultural competency programs:** QIFVLS recommends that the Government develop cultural competency programs to be implemented by service providers working in the area of domestic and family violence. These programs should emphasise the importance of building a relationship of trust between Indigenous people and the justice system.



- (g) **Review Government department processes:** QIFVLS recommends that the Government conduct a review of the service providers that interact most commonly with Indigenous Australians in relation to domestic and family violence matters. The aim of any review will be to mitigate the difficulties faced by remote Indigenous Australians in dealing with Government departments and to facilitate greater access to justice for Indigenous Australians.
- (h) **Support separate legal services for victims of domestic violence:** QIFVLS recommends that the Government investigate and adequately fund separate legal services for victims of domestic and family violence.
- (i) **Working with men:** QIFVLS recommends that the Government take a national approach to working with Indigenous men to address violence against women. Initiatives such as the QIFVLS Men's Yarning Circle, which enables Indigenous men to take leadership across the country and take a stand in reducing family violence within Indigenous communities, should be encouraged.

### 3 Prevalence of Domestic and Family Violence in Australia

#### 3.1 Domestic and family violence generally

Domestic violence relates to acts of violence that occur between people who currently have, or have previously had, an intimate relationship in any domestic setting.<sup>1</sup> Domestic violence includes assault, personal injury (including sexual assault), intentional damage to a person's property, and threats of such behaviour.<sup>2</sup> Domestic violence can involve physical, sexual, emotional and psychological abuse.<sup>3</sup>

It is problematic that there is no common definition for domestic violence across Australia. Domestic violence is inconsistently defined across Australian jurisdictions. Definitions can include financial and economic abuse, intimidation, stalking, violence towards pets, behaviour that is threatening or coercive or action that controls or dominates and causes fear for oneself or another. This results in differential treatment of victims and inconsistency between service system responses.

While domestic violence generally occurs in the context of an intimate relationship, family violence is a broader term encompassing violence that may occur between family members as well as violence between intimate partners.<sup>4</sup> Family violence can take place in the context of complex kinship structures inherent in Indigenous communities. This submission deals with domestic violence and family violence and provides recommendations based on the experience of QIFVLS in its capacity as a regional and remote Queensland outreach service working to achieve justice and family wellbeing for all Indigenous people.

Domestic and family violence are the most common types of violence, and affect 30% of women worldwide.<sup>5</sup> Domestic violence is a significant problem within the Australian community. Research

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<sup>1</sup> Anthony Morgan and Hannah Chadwick, *Key issues in domestic violence, Summary paper, no. 7*, (Australian Institute of Criminology (AIC), Canberra, 2009), accessed at <[http://www.aic.gov.au/documents/5/6/E/%7B56E09295-AF88-4998-A083-B7CCD925B540%7Drip07\\_001.pdf](http://www.aic.gov.au/documents/5/6/E/%7B56E09295-AF88-4998-A083-B7CCD925B540%7Drip07_001.pdf)> on 29 July 2014.

<sup>2</sup> Commonwealth of Australia, *Domestic Violence Laws in Australia* (The National Council to Reduce Violence against Women and their Children, 2009) 15.

<sup>3</sup> Anthony Morgan and Hannah Chadwick, above n 1.

<sup>4</sup> Leisl Mitchell, *Domestic Violence in Australia—an Overview of the Issues* (Parliament of Australia, 2011) accessed at <[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2011-2012/DVAustralia](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/DVAustralia)> on 29 July 2014.

<sup>5</sup> World Health Organisation, *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner and Non-Partner Sexual Violence* (2013).





indicates that one in three Australian women has experienced some form of physical violence since the age of 15.<sup>6</sup>

The impact of domestic and family violence affects children, with one in four young Australians having witnessed violence against their mother.<sup>7</sup> The cost of domestic and family violence to the Australian economy reached \$14.7 billion in 2013 and this cost is expected to rise to \$15.6 billion by 2021.<sup>8</sup>

### 3.2 Domestic and family violence in Indigenous communities

Domestic and family violence is a significant problem for Australia generally, but is particularly prevalent in Indigenous communities. Statistics indicate that Indigenous women are significantly more likely to be victims of domestic and family violence than non-Indigenous women.<sup>9</sup> Indigenous women are 35 times more likely to be hospitalised for assault and 10 times more likely to die from assault than non-Indigenous women.<sup>10</sup>

The 2002 National Aboriginal and Torres Strait Islander Social Survey found that, within the twelve months prior to the survey, 24% of Indigenous people aged 15 years or over reported being a victim of physical or threatened violence. Significantly, the rate for an Indigenous person being a victim of physical or threatened violence was over twice the rate of non-Indigenous people.<sup>11</sup>

Indigenous people have higher rates of domestic and family violence order use than non-Indigenous people.<sup>12</sup> However they are much less likely to be the person applying for the order; police are the applicants in more than 95% of orders in many remote communities.<sup>13</sup>

These statistics are particularly alarming considering that 90% of the violence is not disclosed.<sup>14</sup> It is also concerning that Indigenous people are three times more likely to report domestic or family violence as a neighbourhood or community problem.<sup>15</sup>

### 3.3 Disincentives to Indigenous victims reporting

In general, disincentives to Indigenous victims reporting incidents of domestic and family violence include:

- (a) Victims are often fearful of the consequences of reporting family violence because of the lack of anonymity in Indigenous communities.<sup>16</sup>
- (b) Most victims will not have access to alternative accommodation and generally will stay with the perpetrator to protect their children.<sup>17</sup>

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<sup>6</sup> Commonwealth of Australia, *National Plan to Reduce Violence against Women and their Children* (Department of Social Services, 2012) 1.

<sup>7</sup> David Indermaur, *Young Australians and Domestic Violence, No 195* (Australian Institute of Criminology, 2001).

<sup>8</sup> Commonwealth of Australia, *The Cost of Violence against Women and their Children* (Department of Families, Housing, Community Services and Indigenous Affairs, 2013).

<sup>9</sup> Nous Group, *Family violence Prevention Legal Services- Research and Needs Analysis Report* (Commonwealth Attorney-General's Department, 2013) 18.

<sup>10</sup> Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, *Family violence among Aboriginal and Torres Strait Islander peoples* (Australian Institute of Health and Welfare, 2006) 35.

<sup>11</sup> *Ibid*, p(ix).

<sup>12</sup> Nous Group, above n 9, 16.

<sup>13</sup> Nous Group, above n 9, 16.

<sup>14</sup> Nous Group, above n 9, 16.

<sup>15</sup> Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey*, (cat. No. 4714.0).

<sup>16</sup> Matthew Willis, 'Non-disclosure of Violence in Australian Indigenous Communities' in *Trends & Issues in Crime and Criminal Justice no. 405* (Australian Institute of Criminology, 2011).



- (c) Due to the important structural and cultural issues in communities, there is a sense of solidarity amongst the community which overrides the interests of one individual.<sup>18</sup> This is a strong consideration for victims in reporting family violence, as victims believe it will bring shame to their children and extended families.<sup>19</sup>
- (d) Victims fear stigmatisation and being ostracised from family and the community members.<sup>20</sup> Shame is often given as a major reason for not disclosing family violence.<sup>21</sup> Further, it is not uncommon for those who do report violence to people outside the family to be criticised by their families and the community, thereby becoming increasingly isolated.<sup>22</sup>
- (e) The small percentage of victims that do report domestic or family violence will generally need to leave their communities because of fear of further violence or 'payback' or other culturally violent retribution.<sup>23</sup>
- (f) It has been found that some victims choose not to report because they do not want the perpetrator to be charged and imprisoned and to be taken out of their community.<sup>24</sup>

## **4 Impacts of Domestic and Family Violence**

### **4.1 Intervention and prevention costs**

There are a number of costs associated with domestic and family violence in Australia. One cost relates to implementing intervention and prevention programs.<sup>25</sup> These programs target specific communities where a prevalence is noted, or go so far as to isolate individuals who are most at risk of carrying out activities of domestic and family violence. Difficulties regarding the delivery of perpetrator programs are well documented. QIFVLS recognises that programs must properly target and manage risky offenders and include victim safety components in their design and implementation. There is a need to ensure that appropriate therapeutic techniques are utilised as these have proven efficacy in reducing future offending. In relation to Indigenous perpetrators, these programs must also be culturally appropriate in their design and implementation.

### **4.2 Rehabilitation costs**

The other side of the coin is the cost associated with rehabilitation. This might involve the provision of therapy, medical treatment and support services for victims and survivors of domestic or family violence, sometimes extending years after the incident itself (and reflecting the fact that instances of domestic or family violence may continue for years before they are uncovered).<sup>26</sup>

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<sup>17</sup> Matthew Willis, above n 16.

<sup>18</sup> Loretta Kelly, 'Using Restorative Justice Principles to Address Family Violence in Aboriginal Communities' in Heather Strang and John Braithwaite, eds., *Restorative Justice and Family Violence* (Cambridge University Press, 2002) 211.

<sup>19</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, 2000) 86.

<sup>20</sup> Matthew Willis, above n 16.

<sup>21</sup> Matthew Willis, above n 16.

<sup>22</sup> Dale Bagshaw, et al, above n 19.

<sup>23</sup> Matthew Willis, above n 16.

<sup>24</sup> Matthew Willis, above n 16.

<sup>25</sup> Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, above n 10, 13.

<sup>26</sup> Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, above n 10, 72.



#### 4.3 Community and social costs

Access Economics, as part of the Australian Government Department of Social Services initiative into *The Cost of Domestic Violence to the Australian Economy*, identified several key costs that society bears arising from instances of domestic and family violence, particularly:<sup>27</sup>

- (a) pain, suffering and premature mortality costs: covering the years lost to victims of domestic violence and their families and friends because of the acts;
- (b) health costs: specifically the public and private health costs associated with treating the effects of domestic violence (both mental and physical) for the offender, the victim and the children. On top of this, QIFVLS observes the ongoing flow on effects of emotional trauma experienced by those people (particularly children) who witness domestic and family violence. Those people suffer the effects throughout their later life, which has longer term cost implications for the broader community (some of which are noted at point (e));
- (c) production related costs: particularly for the community, including increased absenteeism, lost productivity of the victim and family, searching, hiring and retraining costs and lost wages, as well as a permanent loss of labour capacity;
- (d) consumption related costs: including bad debts that the family is not able to pay out and property replacement due to acts of violence, subsequently causing poor economy in the running of the household and family;
- (e) second generation costs: usually borne directly by the immediate family or by the broader community, and including childcare, school support services, therapy and counselling, child protection services, special or assisted education, increased future use of government services and a saddening increase to juvenile and adult crime from children of offenders;
- (f) administrative or miscellaneous costs: including legal and forensic work most often funded by the State, temporary accommodation, permanent relocation and identity protection, interpreter services, therapy and counselling, perpetrator programs for dealing with offenders and (in the most unfortunate of cases) funeral services; and
- (g) transfer costs: directly taken from the State and the broader community through victim compensation, income support, accommodation provision or subsidies, lost taxes, financial assistance to victims and families for lengthy periods of time and child support including foster systems and state care.

#### 4.4 Community change to reduce costs

Importantly, costs are reduced when action is taken early. The cost of preventing domestic and family violence through training, education programs and therapy from an early stage of an individual's offending is significantly less than that attributable to having to deal with the aftermath of domestic or family violence. If nothing else, the scope of prevention is much smaller. For example, only the offender needs to be counselled and there is generally little to no physical injuries to be treated. Conversely, when offending reaches a later stage, the scope of rehabilitation extends to victims, families and children – most importantly therapy for children in order to reduce the risk that they might become offenders or adult victims of domestic violence themselves.

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<sup>27</sup> Access Economics, *The Cost of Domestic Violence to the Australian Economy: Part 1 and 2* (Australian Government Department of Social Services, 2004) 4.



## 5 Deficiencies in Housing

### 5.1 The 'three strike' rule

According to 2013 data, Indigenous households make up 3% of the total number of households in Australia, but comprise 10% of households in public housing.<sup>28</sup> Across Australia, approximately 30% of Indigenous households live in public housing, whereas only 5% of non-Indigenous Australian households live in public housing.<sup>29</sup>

Public housing tenants are subject to the 'three strike' rule. This means that tenants can be evicted from public housing and denied the ability to apply for further public housing for three months if they have been caught engaging in 'anti-social behaviour' leading to three 'strikes' against them within a 12 month period. According to the Queensland Government, there are three types of 'anti-social behaviour' that can lead to a 'strike' against a public housing tenant:

- (a) minor general or nuisance behaviours that could disturb the peace, comfort or privacy of other tenants or neighbours (such as excessive noise from televisions or stereos, a loud party or an untidy yard);
- (b) serious behaviours that intentionally or recklessly disturb neighbours, or could reasonably cause concern for the safety or security of a tenant, household member, neighbour or their property, or damage to the public housing property (such as harassing neighbours, using aggressive or obscene language, or damaging departmental property); and
- (c) dangerous or severe behaviours that pose a risk to the safety or security of residents or property and may result in criminal charges, or significant damage to the public housing property (such as physical assault or acts of violence against other tenants or neighbours, or extensive malicious damage to departmental property).<sup>30</sup>

The three strike rule directly impacts victims of domestic and family violence, often resulting in Indigenous women and their children being evicted from public housing as a result of the perpetrator's violent behaviour. The policy is based on the premise that tenants have complete control over what happens in and around their property, which is not the case for victims of domestic violence.

Victims in remote communities also often find it difficult to find support to leave a relationship.<sup>31</sup> QIFVLS has found that:

- (a) victims can be reluctant to report incidents because of the fear that Child Safety authorities will intervene and remove their children;
- (b) there is often a lack of response by authorities when violence occurs in remote Queensland communities where the police are several hours away when a call for help is made; and
- (c) victims often fear police based on previous experiences, which is aggravated by a general distrust of police and the culturally insensitive manner in which police often respond to victims.<sup>32</sup>

<sup>28</sup> Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, above n 10, 7.

<sup>29</sup> Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, above n 10, 7.

<sup>30</sup> Queensland Government, *Tenant Behaviour – Information for Queensland Public Housing Tenants* (2013), accessed at <<http://www.qld.gov.au/housing/public-community-housing/tenant-behaviour/>> on 29 July 2014.

<sup>31</sup> Dale Bagshaw, et al, above n 19, 86.

<sup>32</sup> Matthew Willis, above n 16.



These factors indicate that victims are unable to control the behaviours of perpetrators, remove themselves from abusive and violent living situations, and prevent anti-social behaviour by perpetrators, leading to 'strikes' against the victim.

As a result of the three strike rule, Indigenous women who are the victims of domestic or family violence also face an increased risk of homelessness.

## **5.2 Lack of affordable and public housing**

According to 2011 data, 24% of homeless people in Queensland are Aboriginal or Torres Strait Islander,<sup>33</sup> while only 3.6% of the Queensland population are Aboriginal or Torres Strait Islander.<sup>34</sup>

The lack of available housing options and the overrepresentation of Indigenous people within the homeless population in Queensland means that homes in Indigenous communities are becoming overcrowded, with several families living under the same roof. This overcrowding can place pressure on relationships and increase domestic and family violence episodes. It is also common for victims of domestic and family violence who are able to leave the perpetrator to move into the homes of other family members or friends, or risk homelessness altogether.

By increasing the number of people living within the same house or unit, often beyond capacity, there is an increase in the number of incidents of 'anti-social behaviour' leading to 'strikes' against public housing tenants. Domestic violence may also lead to eviction from private rental properties, due to complaints about the noise and damage to the property. Victims of domestic violence in such circumstances will very often find themselves needing to find another place to live due to eviction caused by the perpetrator's behaviour.

With few, if any, alternative housing options available to domestic and family violence victims attempting to leave abusive relationships it is more likely that victims will stay with the perpetrator, especially if there are children involved.

## **5.3 Lack of shelters and emergency housing**

The current policy response to domestic violence is the provision of shelters and facilitating the victim to leave the home. There are serious deficiencies in this current policy response. There is a serious lack of women's accommodation and crisis shelters, especially in remote communities.<sup>35</sup> As a result, victims are denied access to shelters and emergency accommodation if they need to remove themselves (and their children) from violence, and often continue to be subjected to abuse and interference from perpetrators simply because of their proximity to this theoretically "safe" space.

The necessity of emergency housing, especially in remote communities, is amplified by the following factors:

- (a) most victims will not have access to alternative accommodation and generally will stay with the perpetrator to protect their children;<sup>36</sup>
- (b) most victims are often financially dependent on the perpetrator and family and do not have access to money.<sup>37</sup> This poverty forces victims to return to violent relationships especially if there are children involved;<sup>38</sup> and

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<sup>33</sup> Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (ABS cat no. 2049.0).

<sup>34</sup> Australian Bureau of Statistics, *2011 Census Counts – Aboriginal and Torres Strait Islander Peoples* (ABS cat no. 2075.0).

<sup>35</sup> Dale Bagshaw, et al, above n 19, 86.

<sup>36</sup> Matthew Willis, above n 16.

<sup>37</sup> Dale Bagshaw, et al, above n 19, 88.



- (c) if a victim does have the opportunity to leave the community to escape the violent relationship, it can lead to homelessness because they will have to travel long distances to live in other regions away from their family.<sup>39</sup>

#### 5.4 Lack of culturally appropriate shelters and emergency housing

Each Indigenous community has its own complexities (be they cultural, social, historical, political or otherwise) and services must be developed in response to the needs of each community.

Currently in Queensland, particularly in remote and regional areas, the limited emergency and crisis accommodation available does not adequately address the different cultural backgrounds of victims. Regard must be had to the complexities associated with dealing with various communities which are often made up of Indigenous persons from differing family and language groups who may or may not have customs in common. In QIFVLS' experience, victims feel more comfortable in accessing culturally specific support services, including shelters. However, due to funding pressures, there are very limited spaces available in culturally specific shelters. There are even fewer services that accommodate children, particularly male children. Shelters generally do not have the capacity to accommodate victims with more than three children.

### 6 Deficiencies in Legal Services

#### 6.1 The regional, remote and rural factor

Indigenous people are sparsely populated over the country, and in Queensland, a high number of Indigenous people live in regional, remote and rural areas (**RRR**). At 30 June 2006:

- (a) 32% (165, 800 people) of Aboriginal and Torres Strait Islander Australians lived in major cities;
- (b) 21% (110,600 people) lived in inner regional areas;
- (c) 22% (113,300 people) lived in outer regional areas;
- (d) 9% (47,900 people) lived in remote areas; and
- (e) 15% (79,500 people) lived in very remote areas.

The Indigenous regions with the highest proportion of Aboriginal and Torres Strait Islander residents, which were outside major population centres, included the Torres Strait Indigenous Region in Queensland (85%) and the Apatula and Jabiru Indigenous Regions in the Northern Territory (80% and 79% respectively).<sup>40</sup>

The Australian Bureau of Statistics has recognised that Indigenous people in RRR areas suffer disadvantages in education, work, health and housing when compared to Indigenous people living in metropolitan areas.<sup>41</sup>

Ensuring that Indigenous people (who are often quite isolated) are given the same opportunities as those in metropolitan areas to access a culturally appropriate legal system is an ongoing challenge. Presently, Indigenous victims residing in RRR areas have a much more limited range of services open to them.

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<sup>38</sup> Dale Bagshaw, et al, above n 19, 88.

<sup>39</sup> Dale Bagshaw, et al, above n 19, 88.

<sup>40</sup> According to the ABS, the 'Torres Strait Indigenous Region' is the grouping of Census Collection Districts (CDs), comprising islands in the seas between Cape York and the coast of Papua New Guinea, which make up the 'Torres Strait Indigenous Region' according to the Australian Indigenous Geographical Classification (AIGC). The region's geographical area is equivalent to the former ATSI classification 'Torres Strait Area'.

<sup>41</sup> Australian Bureau of Statistics, *Australian Social Trends* (ABS cat no. 4102.0) 1.



## 6.2 Lack of culturally appropriate services

Indigenous Australian victims of violence exhibit a lack of trust in victims' services and the courts, as evidenced by the lack of applications for family violence orders. Rates of non-disclosure of violent victimisation is much higher in Indigenous than non-Indigenous communities, with some studies indicating that around 90% of violence against Indigenous women is not disclosed.<sup>42</sup>

Indigenous Australians and their relationship with the law is complex and grounded in a history of violence. As such, assisting Indigenous clients takes time and resources. In Queensland, particularly in regional and remote areas, there are very limited resources dedicated to assisting Indigenous people navigate the criminal justice system and address associated civil law issues. Service providers must have a deep understanding of the history of colonisation, its impact on Indigenous people, and the importance of developing a relationship of trust between Indigenous people and the justice system.

Cultural awareness is vital to effective communications and the delivery of effective legal services to Indigenous Australians. Communicating with Indigenous people presents unique challenges for non-Indigenous people. Cross cultural issues include a broad range of matters affecting interactions and relevant to establishing lawyer-client relationships: for example, who has the right to speak, kinship relations, eye contact, and temporal and spatial definitions. The legal service provider must have cultural awareness and skill, as well as sufficient confidence to respectfully determine a client's cultural background and how it has impacted the client's actions. As such, the ability to train and retain suitably skilled and qualified lawyers is essential to providing Indigenous victims of domestic violence with access to justice.

Specific cultural differences between Indigenous and mainstream western values may emerge in the lawyer-client interaction. Indigenous clients are often not familiar with an 'appointment' model of interaction. Owing to their differing concepts of time and space, clients find it difficult to make and meet appointments. Culturally, an Indigenous person's orientation is to community and country, not time. Therefore, services need to be readily responsive to clients – particularly in matters where clients need immediate representation; for example, following an assault.

Beyond the immediate lawyer-client relationship, there are also issues resulting from the inappropriateness of the justice system in dealing with Indigenous people generally. It is well recognised that the mainstream justice system is not suitable for dealing with Indigenous people. Particularly, court formalities can lead to a distrust of the legal system, which in turn may cause Indigenous Australians to avoid seeking legal services in the first place.<sup>43</sup>

## 6.3 Language and difficulty obtaining instructions

Improving service provision can mitigate the impacts of social and geographical isolation by strengthening the supports around victims of domestic violence and reducing perpetrator violence.<sup>44</sup>

Unfortunately, it is very difficult to contact and to obtain adequate instructions from Indigenous people who live in highly mobile and traditional communities. This is particularly so for legal service providers who do not have local staff available to support the lawyers visiting the area.

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<sup>42</sup> Taylor, Natalie and Judy Putt, 'Adult Sexual Violence in Indigenous and Culturally and Linguistically Diverse Communities in Australia' (Australian Institute of Criminology, 2007), accessed at

<<http://www.aic.gov.au/documents/1/D/F/%7B1DF7DB51-E301-4666-BEB2-78763EE00B71%7Dtandi345.pdf>> on 22 July 2014.

<sup>43</sup> National Pro Bono Resource Centre, *ATSILS Pro Bono Guide* (2009) 115.

<sup>44</sup> Commonwealth of Australia, *Domestic Violence Laws in Australia* (The National Council to Reduce Violence against Women and their Children, 2009).



In some Indigenous communities, English is a second, third or even fourth language and is not spoken at home. This presents obvious difficulties in communicating effectively and providing effective legal services. The direct link between language difficulties and miscarriages of justice is well established. Where English skills are poor, interpreters become crucial to accessing justice. However, in remote communities, it can be close to impossible to access an interpreter. If an interpreter can be found, it can be time consuming and obviously impacts on service provider's resources.<sup>45</sup>

These types of communication difficulties may be able to be overcome by consultation with individual communities. For example, by speaking with members of a particular community or non-Indigenous personnel who have constant interaction with communities, suitable community members may be able to be identified who are willing to act as translators or liaisons. Such arrangements may address communication difficulties and assist in building trust in communities when dealing with a legal service provider.

On the other hand, QIFVLS have experienced difficulties with the use of locally based interpreters, with clients being concerned about divulging confidential information to a fellow community member. For cultural reasons clients may also be reluctant to disclose confidential information to an interpreter of the opposite sex. QIFVLS has found that in such cases, using a Client Support Officer (**CSO**) together with the solicitor has alleviated the need for an interpreter as the CSO is able to communicate with the client in Creole or Broken-English, while understanding the need to respect confidentiality.

#### **6.4 Need for ongoing relationships and holistic services**

QIFVLS has found that in regional and remote areas there is a need for ongoing legal support, rather than a one-off provision of services. Indigenous clients need to be guided and supported through legal processes; it is not sufficient to merely point them in the right direction at the beginning and expect that they will follow through the process without further assistance. Further, absent a holistic approach to case management, it is often difficult to keep a client engaged. This involves ongoing practical support, not just legal support.

One way that QIFVLS addresses this need for ongoing legal support and a "whole-of-client" approach is by linking QIFVLS' legal practitioners with CSOs who are Aboriginal or Torres Strait Islanders. This model ensures that a client is treated holistically, as the practical and welfare needs of the client are addressed in addition to their legal needs. This approach also provides a culturally appropriate service, with the CSO working with the client and the solicitor to reduce any language and/or cultural barriers. This ensures that the client's instructions are properly understood and acted upon by the solicitor.

Victims of domestic violence are vulnerable. Domestic violence law is often complex, and cases are usually emotionally charged and accompanied by current or past trauma. QIFVLS considers the team approach (CSO and solicitor) beneficial to the client as it provides a supportive environment wherein the client can feel safe to tell their story.

#### **6.5 Bureaucratic barriers to accessing legal services**

As a general principle, departments and agencies should strive to reduce red tape and bureaucracy that hinders the provision of legal services, and should strive to facilitate legal representation at every opportunity.

It is the practice of some Government departments and agencies to require individuals to complete standard forms to authorise legal representatives to speak on their behalf, which can be

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<sup>45</sup> Melanie Schwartz and Chris Cunneen, 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access' (2008) 32 *Crim LJ* 38.





difficult when clients are located in remote areas. Providing written authorisation forms should not be necessary; a simple notice in writing or a verbal instruction from the client, informing the department or agency of the lawyer-client relationship and the lawyer's authority to act should suffice. Verbal authorisation will reduce difficulties associated with obtaining written correspondence from clients in remote communities, where scanning and internet facilities may not be available and mail may be interrupted by the wet season.

An example of government formalities preventing access to justice or unnecessarily increasing the difficulties experienced by QIFVLS clients is the situation of Client A, who was medically evacuated out of her community after being the victim of a domestic assault. As a result of being evacuated and hospitalised, Client A could not make her Centrelink appointment and her payments were cut-off. The midwife that treated Client A provided her with a medical certificate but because it was not the in 'correct form' Centrelink would not accept it and discontinued her payments until a medical certificate in the correct form was provided.

## **6.6 Technology is not a substitute for face to face services**

QIFVLS is a regional Queensland outreach service and challenges the perception that domestic violence is in any way normal or acceptable. QIFVLS' services are most effective when provided face to face with clients. The availability of face to face legal services significantly improves access to justice and support for clients impacted by domestic violence. This is particularly important for providing effective legal services to Indigenous Australians.

Face to face services are particularly important regarding victims compensation claims for domestic violence and in dealing with secondary issues resulting from domestic violence, which may not otherwise be recognised as legal issues. QIFVLS' experience supports the statement that improved access to justice is beneficial when dealing with domestic violence.

Geographical isolation is a significant barrier to access to justice for Indigenous Australians. Unfortunately, this barrier cannot be overcome through the use of technologies such as telephone and internet. Remote services rendered via phone or internet are not an adequate substitute for in person legal services.

In QIFVLS' experience, some communities actively disengage with technologically provided services. It is necessary to engage with the community to determine the method for provision of services which is appropriate for their needs and situation. While telephone services that provide legal information are available, they do not provide an effective or culturally appropriate means of giving legal advice to Indigenous Australians. Many Indigenous people in remote communities do not own a telephone or cannot easily access a public phone. Many remote communities do not have reliable mobile phone coverage and some communities have only one shared public phone. The use of public or council phones does not guarantee privacy and waiting for return phone calls often involves lengthy time periods and delays to services.

Given the low literacy rates among Indigenous Australians in remote communities and the overarching lack of knowledge and understanding regarding the Australian legal system, the potential efficacy of internet based information is limited. Even for those people who have access to the internet and have sufficient literacy levels, the internet can never improve access to legal services if the services themselves are not made more accessible to the remote communities.

Services that are provided via telephone or internet will never be an adequate substitute for face to face service. This is particularly the case with Indigenous clients whose cultural customs affect interaction and communications. If services are provided remotely via telephone, it is more difficult to foster a relationship of trust with the client, making it more difficult to develop an effective lawyer-client relationship.



To build the level of trust required to provide effective legal and support services, QIFVLS requires a presence in the community, and must not be seen as merely a 'fly-in fly-out' service. In those instances where QIFVLS has been able to sustain a long-standing relationship with a client (rather than merely provide a one-off advice), QIFVLS has identified and resolved a variety of legal issues that were not readily apparent when the client first engaged with the service.

By recognising that the community desires face to face legal services, QIFVLS has been able to increase engagement with the service in certain communities. Unfortunately, QIFVLS' funding and resource position is inadequate to enable it to provide a similar level of face to face legal services across all of the communities that require assistance.

## **6.7 Dual representation of victims and perpetrators**

Though the legal services open to Indigenous victims of domestic and family violence are few, there are even fewer services available to victims alone. A one size fits all model, whereby both the victim and the perpetrator are serviced by the same legal service, might be more cost effective, but in QIFVLS' experience it presents as a barrier to many victims.

The idea that they might be in the vicinity of, and possibly even encounter, their abuser is a deterrent for many. Even if the abuser is not there, friends or relatives may be, and may pass on the victim's whereabouts. There are legitimate concerns about conflicts of interest; the efficacy of information barriers; and the maintenance of a victim's confidentiality. A service that helps perpetrators equally with victims is unlikely to have the same victim-centred focus, understanding and sensitivities that a specialist victim-specific service provides. In order to ensure that legal services are utilised most effectively by victims, QIFVLS submits that separate services for victims should be supported and encouraged.

In 1993, the Family Violence Prevention Legal Services was introduced to recognise the gap in access to legal services for Aboriginal victims and survivors of family violence and sexual assault. FVPLS works to address the high number of legal conflicts within Aboriginal and Torres Strait Islander Legal Services and the high rates of family violence in Aboriginal communities. Further, the Equality before the Law: Justice for Women Report by the Australian Law Reform Commission and the Productivity Commission's Access to Justice Arrangements Draft Report found that specialised legal assistance services for Aboriginal and Torres Strait Islander people are beneficial and remain justified.

## **6.8 Engaging and retaining staff**

Many not-for-profit legal service providers suffer from funding deficits or under resourcing, and the inability to employ highly skilled staff is a major concern. Although QIFVLS, and other legal service organisations, provide essential services to underprivileged and disadvantaged individuals, the quality of services is hampered by the inability to attract highly educated and experienced personnel.

The result of this difficulty engaging and retaining staff is that not-for-profit legal service providers are often forced to recruit under skilled or inexperienced staff who require significant levels of supervision and training from within the organisation. When dealing with the large caseload level that these not-for-profit legal service providers experience, investing time and resources to train inexperienced staff is costly to the quality of service, compared with that level of service which experienced staff can provide.

Conversely, not training these new recruits presents similar problems, as the quality of service provided by inexperienced individuals does not improve without attention and development. This issue presents the quintessential 'catch-22': training new recruits takes time away from the service provided by high level staff; and not training new recruits degrades the service provided by the organisation as a whole. The lack of experienced staff has flow on effects, which



significantly affect Indigenous clients due to an existing unfamiliarity with the legal system and the significance of cultural and historical issues.

The Productivity Commission has already considered the problems associated with not-for-profit organisations attracting and retaining quality staff. In its 2010 report on the Contribution of the Not-for-Profit Sector, the Productivity Commission noted that three of the major issues associated with staffing in these organisations are:<sup>46</sup>

- (a) difficulties attracting and retaining employees due to low wages;
- (b) high levels of employee turnover; and
- (c) a lack of career paths and training opportunities.

These issues sadly reflect on the profile of many not-for-profit organisations. In the case of domestic and family violence prevention legal services such as QIFVLS, these issues reduce the chance of individual victims to receive appropriate access to the Australian justice system.

The Voice of Non-profit Talent review into the perceptions of diversity in the workplace<sup>47</sup> showed that the service offering of an organisation increased by diversity of employees. The retention of the organisation was increased as employees were better suited to addressing the issues raised by clients and more often able to connect and generate a positive outcome for those clients. This improves the fulfilment and work ethic of the individual employees and increases their overall job satisfaction with these often difficult roles.

Due to Indigenous cultural concepts of "men's" and "women's" business, the lack of representation of males in the sector creates further complexities when dealing with often sensitive issues within and between Indigenous communities and families. For example, a male client may feel embarrassed about, or may be prohibited from disclosing, certain details pertaining to a matter to a female lawyer due to cultural norms and customs. Adding to this issue is the fact that these cultural norms and customs may vary widely amongst different Indigenous groups existing within a single community.

## 6.9 Geographic distribution of staff

It is significant that some of the most underprivileged and difficult clients are located in regional and remote areas. As staffing location is generally premised on the experience and qualifications of the individual staff member, the more valuable employees tend to be located in areas that the staff find more preferable. These areas are generally closer to cities and major centres where access to services of all kinds is greater.

Unfortunately, this does not necessarily correlate to the most efficient use of highly experienced or educated staff. In QIFVLS' particular service area, the issues that require staff with the greatest experience and qualifications tend to arise in remote areas of Queensland where QIFVLS does not have large numbers of employees. In order to adequately staff these remote areas, services are required to send inexperienced staff to remote areas to ensure there is at least some level of service provision. This does not adequately deal with many of the issues arising in those remote areas as more junior staff are forced to address major issues that require the attention of senior experienced employees. For QIFVLS, engaging and retaining staff in regional areas of Queensland is an ongoing challenge.

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<sup>46</sup> Commonwealth Government, *Research Report: Contribution of the Not-for-Profit Sector* (Productivity Commission, 2010) 260.

<sup>47</sup> While this was an American report, it addresses the same issues of diversity that might be faced by not for profit employees attempting to provide services to victims of family violence from extremely varied backgrounds, including the numerous Indigenous Australian cultures faced by QIFVLS.



This is also a cause for concern for QIFVLS clients themselves. While the staff might not be experienced at dealing with the major issues of clients, some of the most vulnerable clients are also located in regional and remote areas of Queensland. These clients are often unable to escape horrific domestic situations or see a way through their concerns because they are isolated from assistance. While they understand that QIFVLS can provide some assistance they become increasingly aware that the services that they are receiving are not adequate to deal with their problems. This undermines confidence in the organisation, and the Australian justice system as a whole. Not only do clients need access to adequate legal services as a basic human right, they are also in need of broader ongoing support services to assist them in their circumstances.

Providing greater bonuses and transfer systems as incentives for staff in regional and remote areas would assist to rectify this concern. Recognising that regional and remote areas have particularly vulnerable clients who require the attention of experienced and properly qualified individuals is the first step to redirecting government funding of the justice system and CLCs toward these troubled areas. Any government policy that can focus the attention of qualified individuals on regional and remote areas as an attractive working environment takes the first step toward attracting the right staff.

It is not simply a question of more funding, although that is a necessary step, but also how the funding that is allocated to organisations such as QIFVLS is distributed so as to provide adequate services most efficiently where they are needed most. QIFVLS considers that there is room for improvement in the Government mapping of regional and remote Indigenous communities in Queensland. For example, Australia's largest Indigenous community is Yarrabah, located approximately 50 kilometres east of Cairns. However, despite its relative proximity to Cairns and the QIFVLS office there, it was not allocated by the Government as a community serviced by QIFVLS. QIFVLS services this community unfunded by either the Commonwealth or State Governments.

#### **6.10 Changing Governments and lack of commitment to particular areas of concern**

Based on QIFVLS' experience, and available information regarding funding for access to justice in Indigenous communities, the major focus for the provision of legal assistance to Indigenous people is in the context of criminal law matters. Although some priority is given to family law matters (for example QIFVLS itself), little attention is paid to providing civil justice assistance, which presents as a hurdle in addressing incidents of domestic and family violence. QIFVLS understands that the emphasis on criminal matters has eventuated because of the over-representation of Indigenous people in the criminal justice system (especially in regional and remote areas), which has become the corresponding focus of the provision of legal services to Indigenous Australians. However, there is a significant and growing demand for assistance with family and civil law matters, like domestic and family violence, and legal service providers are unable to service clients due to insufficient funding for these areas.

QIFVLS considers that this lack of focus is brought about a misunderstanding by governments as to those issues that are of concern for Indigenous Australians. The connection between unresolved civil law issues and criminal offending is not properly recognised. Focusing all government funding and service provision on the criminal system (and ignoring the associated civil and family law issues) does not provide Indigenous Australians with the legal services that they require. In some cases, it leads to further criminal offending, including domestic and family violence offences.

There is also an unrealistic expectation of domestic and family violence being reduced by the provision of increased funding. The same expectation does not appear to be held in relation to the reduction of criminal offending and recidivism. QIFVLS considers that there needs to be realistic expectations regarding the various challenges associated with addressing domestic and



family violent behaviour and associated impacts, as well as a recognition that merely providing additional financial resources is not sufficient.

In light of the above considerations, QIFVLS submits that governments need to change the way funding is allocated for the provision of legal services to regional and remote Indigenous communities. Governments need to consider the disadvantages that Indigenous Australians face due to a lack of access to civil and family services and ensure that assistance is directed toward not-for-profit organisations and community legal centres (**CLCs**) servicing these issues. Without that direction, the funding will continue to only bolster provision of criminal justice services for Indigenous Australians and ignore the vital need for holistic access to justice.

In addition to increasing the attention paid to the provision of civil and family law services to Indigenous Australians in regional and remote areas, further work must be done to increase community awareness. Simply providing access to services for civil and family law matters in Indigenous areas does not address the general lack of knowledge that Indigenous people have about civil and family law and the rights and options available to them. Community education initiatives are needed to increase awareness about civil and family law within Indigenous communities and ensure that those services which are provided are fully utilised.

## **7 Deficiencies in Available Remedies**

### **7.1 Inconsistent remedies across jurisdictions**

The protection of victims of domestic and family violence is predominantly covered under State and Territory laws. Each Australian jurisdiction has a variety of laws, programs and policies: the range of interactions involves at least eight family violence laws, eight child protection laws, nine criminal laws and at least one federal law, the *Family Law Act 1975* (Cth).<sup>48</sup> These laws vary in substance across jurisdictions, potentially resulting in victims being subject to different levels of protection depending upon where they live. There is currently no single judicial forum that can provide a comprehensive response to domestic disputes.<sup>49</sup>

The primary mechanism exercised at State and Territory level is that of protection orders under family violence legislation, variously described as: domestic violence orders, apprehended violence orders, family violence intervention orders, violence restraining orders, family violence orders, and domestic violence restraining orders. They are a civil law response to immediate concerns of safety, though police involvement is common. As a result, there have been problems recognising and enforcing these protection orders across state and territory borders.<sup>50</sup> QIFVLS acknowledges and supports the current steps being taken towards instant recognition and enforcement of interstate protection orders across jurisdictions.

Further, there is variation across jurisdictions in the approach taken to other important issues, such as the police's investigatory obligations, the provision of counselling or rehabilitation referral programs, and the maximum penalties imposed for a breach of a domestic violence protection order.<sup>51</sup>

QIFVLS submits that a referral of powers should be given so that federal family courts can have concurrent jurisdiction with state and territory courts to deal with all domestic violence matters,

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<sup>48</sup> Rosalind Croucher, *Fractured Families, Fragmented Responsibilities—Responding to Family Violence in a Federal System* (Australian Law Reform Commission, 2010).

<sup>49</sup> Ibid.

<sup>50</sup> Rosalind Croucher, 'Family law: Challenges for Responding to Family Violence in a Federal System' in Alan Hayes and Daryl Higgins eds. *Families, Policy and the Law* (Australian Institute of Family Studies, Melbourne, 2014).

<sup>51</sup> Australian Government, 'Government Response to the Australian and NSW Law Reform Commissions' (2013), accessed at <<http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Documents/AusGovernmentResponsetotheAusandNSWLRReportFamilyViolence-anationallegalresponse.PDF>> on 22 July 2014.



including child protection and parenting orders. Increasing police powers or penalties will not address the underlying flaws in the existing model. QIFVLS instead recommends a new model incorporating an integrated, coordinated service system response that recognises the seriousness of domestic violence and places victim safety in their home as paramount.

## 7.2 Ineffectiveness of domestic violence orders

Domestic violence orders (and the like) are ineffective at preventing further acts of violence by perpetrators and protecting victims of abuse from further violence. According to 2012 data from the Australian Bureau of Statistics, 1.5% of women over the age of 18 experienced domestic violence in the previous 12 months.<sup>52</sup> This rate is unchanged since the last Personal Safety Survey was carried out in 2005, despite the population of Australia increasing over time.<sup>53</sup> Of the women who are victims of domestic violence, 82% experienced multiple acts of abuse.<sup>54</sup> Based on 2012 Queensland Police annual statistical data, there was a 9% increase in the number of domestic violence order breaches from the previous year.<sup>55</sup>

This data demonstrates that the penalties imposed for domestic violence offences are not deterring perpetrators from carrying out acts of violence against victims, whether it is a first offence or repeated offences. The increase in the number of domestic violence order breaches is particularly concerning, as it indicates that even if a perpetrator is penalised for their violent and abusive behaviour, that penalty will not necessarily lessen the risk of repeat violence against a victim.

## 7.3 Inadequate police service and judicial presence

Another inadequacy of the current policy response, with its focus on protection orders and police reactive intervention, is that QIFVLS has found there is often a lack of response when violence occurs in communities. This is particularly prevalent in regional and remote areas of Queensland, where police are often a number of hours away when a call for help is made. Victims often fear contact with police based on past experiences and this is aggravated by a general distrust of police felt in many communities and the culturally insensitive way police can respond to victims, if they respond at all.<sup>56</sup>

In one recent case involving a QIFVLS client who was the victim of repeated assaults by her former partner, the offender repeatedly breached a protection order that was taken out against him, but the police consistently failed to respond. It was only when QIFVLS sought a variation to the protection order (as a strategy to address the repeated violations) that the Magistrate ordered the police to investigate the past violations.

For some remote communities it is not just the mistrust of the police or the lack of police response that is at issue but the fact that there is no adequate police service and judicial presence to support victims. For example, the remote community of Mapoon has no police station and the nearest police station, which is in Weipa, is not accessible by road during the wet season. Further, in the time between monthly circuit court sittings, matters are dealt with through the Remote Justices of the Peace (Magistrates Courts) Program (**JP Courts**). In QIFVLS' experience, victims are often reluctant to have their matters heard in these JP Courts as the

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<sup>52</sup> Australian Bureau of Statistics, *Personal Safety Australia 2012 – Changes in Prevalence of Partner Violence over Time* (ABS cat no. 4906.0).

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Queensland Police Service, *Annual Statistical Review 2011-12 (Breach of Domestic Violence Protection Orders)* (2012) accessed at <<http://www.police.qld.gov.au/Resources/Internet/services/reportsPublications/statisticalReview/1112/documents/StatReview2011-12.pdf>> on 29 July 2014.

<sup>56</sup> Matthew Willis, above n 16.



person determining the matter is a local who could very well be related to the defendant. In such instances, victims often do not feel that they will be adequately heard or protected.

#### **7.4 Inadequate penalties for perpetrators**

The current policy response to domestic violence involves a civil law mechanism. The first time that a victim reports domestic violence it is typically dealt with by way of an application for a protection order. This approach reinforces the perception that domestic violence is a private issue and not a crime. If a woman is assaulted by a stranger on the street, the offence is seen as somehow more serious than if the same woman is assaulted in her own home by her partner or a family member.

A domestic violence order does not immediately result in a perpetrator being incarcerated. Rather, it is a protection order imposing conditions such as requiring the perpetrator be of good behaviour and not commit domestic violence. Arguably, these are conditions that should apply and be enforced in the absence of a specific order. If a protection order is breached, the perpetrators can then be subject to criminal charges. Even so, the penalties associated with breach of domestic violence orders are significantly softer than sentences for assault. If a perpetrator breaches a domestic violence order twice in a five year period, the maximum sentence they can receive is three years imprisonment. Domestic violence breaches are not indictable. However, if an offender is convicted of common assault, which includes making threats or inflicting minor injuries on another person as a result of a dispute, the maximum sentence in Queensland is seven years imprisonment. Common assault can constitute behaviour that is much less violent than what is experienced by victims of domestic violence, and, unlike most cases of domestic and family violence, is a single act.

The inconsistent penalty regimes for domestic violence and assault do not reflect the serious nature of the violence experienced by victims of domestic violence. A perpetrator of domestic or family violence will not necessarily be charged criminally, and if they ever are charged, incarceration is unlikely unless they carry out repeated acts of physical abuse against the victim.

### **8 Deficiencies Within the Community**

#### **8.1 Lack of knowledge about legal rights in Indigenous communities**

Indigenous victims of domestic and family violence are often uninformed of the options available to them, lack awareness about legal concepts, and often do not identify the acts committed as assaults, or as even being unacceptable.<sup>57</sup>

This is attributable to the nearly universal void of knowledge amongst remote and regional Indigenous Australians in relation to their legal rights. Indigenous Australians will most likely be unaware that they have a legal problem for which they can and should seek legal advice.<sup>58</sup>

This lack of knowledge is a serious problem. It has been suggested that unaddressed civil law needs can progress into criminal law problems.<sup>59</sup> Together with the already significant over-representation of Indigenous Australians in the criminal system, this means that substantially more resources are needed and justified in improving knowledge and access to justice in family and other civil law matters for Indigenous Australians.

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<sup>57</sup> Aboriginal Family Violence Prevention Legal Service Victoria, *Strengthening On-The-Ground-Service Provision for Aboriginal and Torres Strait Islander Victims/Survivors of Family Violence and Sexual Assault in Victoria* (2010).

<sup>58</sup> Melanie Schwartz and Chris Cunneen 'Civil and Family Law Needs of Indigenous People in New South Wales: The Priority Areas' (2009) 32 *UNSWLJ* 725.

<sup>59</sup> *Ibid* 744.



Domestic and family violence victims are also commonly unaware that they have a right to be on the Victims Register and have a say in court during certain proceedings such as parole hearings. QIFVLS recently assisted a victim of domestic violence to make submissions to the parole board considering the release of the perpetrator. QIFVLS was able to inform the client about this option and assist in the client making the submission because of the ongoing relationship with the client. Absent QIFVLS' ongoing involvement, the client would not have been aware that this option was available to them.

Educating Indigenous Australians about their legal rights (including how to access legal representation or assistance) is crucial, as unrepresented persons often do not receive adequate response from government departments regarding their concerns and issues. In QIFVLS' experience, a recent example of this arose in circumstances where a grandmother was originally deemed suitable by DOCS to care for her grandchildren, but the children were subsequently removed from her care. Prior to the woman seeking our assistance, she had on numerous occasions over a nearly 18 months period attempted to contact DOCS to discuss their reasons for removing the children from her care, but received no response.

In QIFVLS' experience, many people are surprised to learn that they are entitled to legal representation, and have often not been informed about their ability to access legal assistance.

Indigenous communities would benefit from improved community legal education about legal rights, particularly as they relate to domestic and family violence.<sup>60</sup>

## 8.2 Lack of employment or sustainable employment

QIFVLS sees firsthand how unemployment plays a role in domestic and family violence. If the victim is unemployed, it naturally limits his or her capacity to escape the violence. Economic abuse is one of the recognised types of domestic violence as control of the family finances, by the perpetrator, can effectively trap a victim. The stresses caused by unemployment can also contribute to domestic violence by the perpetrator. Further, a policy response that expects the victim to leave the family home and relocate results in a practical inability for them to sustain employment.

Unfortunately, within the rural and remote Indigenous communities in Queensland, unemployment is rife.

Participation in the workforce by Indigenous Australians residing in Queensland is much lower than non-Indigenous residents in Queensland, and the unemployment rate in Queensland for Indigenous Australians is much higher than for non-Indigenous Australians.

Based on 2011 census data:

- (a) 59.7% of Indigenous Queensland residents of working age (16 to 54 years old) participated in the labour force, compared to 77.8% of non-Indigenous Queensland residents;<sup>61</sup>
- (b) of the 59.7% participating Indigenous Queensland residents, 20.2% were unemployed;<sup>62</sup>
- (c) of the 77.8% participating non-Indigenous Queensland residents, only 5.9% were unemployed;<sup>63</sup>

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<sup>60</sup> Melanie Schwartz and Chris Cunneen, 'From Crisis to Crime: The Escalation of Civil and Family Law Issues to Criminal Matters in Aboriginal Communities in NSW' (2009) 7(15) *ILB* 18.

<sup>61</sup> Queensland Treasury and Trade, 2011 Census: Labour Force and Education Characteristics of Queensland's Aboriginal and Torres Strait Islander Persons (Government Statistician, 2011), p 1.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*





- (d) the highest levels of Indigenous unemployment by region in Queensland is found in the remote regions of Cape York (30.1%), Cairns/Atherton (29.2%), and the Torres Strait (28.0%), whereas non-Indigenous unemployment in these areas ranges from 3% to 6%;<sup>64</sup> and
- (e) the lowest rate of Indigenous unemployment is in Brisbane (15.7%), where only 6.2% of non-Indigenous residents are unemployed.<sup>65</sup>

### 8.3 Invisibility of domestic violence against Indigenous women

Despite the recent and tragic occurrence of homicides resulting from domestic violence against Indigenous women, there has been little to no media coverage or public outcry in response. In 2013, an hour after a call for help was made, police arrived at a home in Edge Hill, Cairns, where a woman was pronounced dead at the scene. Later enquiries revealed the woman was Aboriginal. Her name was never released and her tragic circumstances were never published by the media. By contrast, the murder of Allison Baden-Clay, a non-Indigenous woman killed in Brisbane by her husband, was given a significant amount of media attention. Most members of the public throughout Australia would know her name and the circumstances of her death.

Another example occurred in April 2014. Jo La Spina was tragically found in a Bingil Bay flat murdered by a work colleague. She was non-Indigenous and her murder received extensive media coverage. On the same night as the Jo La Spina death, an Aboriginal woman was killed by her ex-partner in her unit in Woree, Cairns. The circumstances of this death were not publicised and there was very little media interest. While most Australians can name a non-Indigenous woman who was killed by her partner, the general public would struggle to name an Indigenous woman who has met the same fate.

Domestic violence is inherently a more difficult crime to uncover because victims are less likely to report their abusers to police or even to friends and family. The lack of police response, and the lack of media interest, demonstrates that domestic violence can be normalised, accepted, seen as somehow part of Indigenous communities and of less concern. The reaction to domestic violence against Indigenous women seems to be different to the reaction to violence against non-Indigenous women. In that context, Indigenous women are even less likely to come forward.

Media coverage of domestic violence against Indigenous women can help other victims to feel empowered enough to come forward to report their abusers, and seek help to remove themselves from a violent relationship. There is safety in numbers, with a victim being more likely to expose a perpetrator if the victim feels like there is community support behind them, and recourse available against the perpetrator.

## 9 Lessons from Other Australian Jurisdictions

A number of States and Territories have demonstrated the effectiveness of integrated responses to domestic violence within the last 15 years. In the ACT, the Family Violence Intervention Program (*FVIP*) involves many key agencies,<sup>66</sup> and aims to:

- '[ensure the agencies] work co-operatively together;
- maximise safety and protection for victims of family violence;
- provide opportunities for offender accountability and rehabilitation; and

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<sup>64</sup> Queensland Treasury and Trade, above n 61, 2.

<sup>65</sup> Queensland Treasury and Trade, above n 61, 2.

<sup>66</sup> See, for example, the Australian Federal Police (ACT Policing); Office of the Director of Public Prosecutions (ODPP); ACT Magistrates Court; ACT Corrective Services; Domestic Violence Crisis Service (DVCS); Office for Children, Youth and Family Support; the Department of Justice and Community Safety; and the Office of the Victims of Crime Coordinator.



- work towards continual improvement of the FVIP.<sup>67</sup>

The program is achieving these objectives.<sup>68</sup>

In Tasmania, the Safe at Home program consists of 16 funded initiatives across the Departments of Justice; Police and Public Safety; Health and Human Services; and Premier and Cabinet. The program was found by an independent review to be achieving its objectives of:

- reducing the level of family violence in the medium to long term;
- improving safety for adult and child victims of family violence; and
- changing the offending behaviour of those responsible for the violence.<sup>69</sup>

One of the recommendations made to improve the program was to introduce 'case management for victims and offenders in high risk situations.'<sup>70</sup> This recommendation has since been followed.<sup>71</sup>

QIFVLS submits that this type of model, incorporating holistic and case management elements, is the most effective, and should be adopted at a Federal level, and encouraged in the remaining States and Territories.

## 10 Recommendations

QIFVLS submits that the following recommendations, if implemented, will best support, contribute to and drive the social, cultural and behavioural shifts required to eliminate domestic and family violence in Indigenous communities.

### 10.1 Develop a coordinated and integrated policy reform response

QIFVLS recommends that the Commonwealth Government responds to domestic and family violence using an integrated model like those discussed above. This model should incorporate case management, and involve a range of services acting collaboratively and cooperatively. Tasmania and the Australian Capital Territory have already demonstrated the positive effects that flow from this type of model, and these stand to be amplified if such a model is adopted at a Federal level. Such a model recognises the seriousness and prevalence of the problem of domestic and family violence and addresses the flaws in the existing policy response.

The current policy response in many jurisdictions focuses on supporting the victim to leave the family home. This expectation contributes to a culture of victim-blaming. This is the idea that if a victim does not leave then they deserve what they get. Such a policy response ignores many social, cultural, financial and practical reasons that a victim cannot simply leave the family home to escape violence. It is illogical that the victim should be further punished by being the one removed from their own home.

This response is flawed, and should be replaced with a response that focuses on keeping victims and children safe in their own home. There are many advantages to such an approach. The cost of relocating or rehousing victims and children is saved. If we are to remove anyone, it makes more sense to remove one perpetrator than to remove the victim and all of the children. There is less disruption to the lives of the victim and children, including to the children's education. The

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<sup>67</sup> Tracy Cussen and Matthew Lyneham, *ACT Family Violence Intervention Program review – AIC Reports Technical and Background Paper No 52* (Australian Institute of Criminology, 2012).

<sup>68</sup> See Urbis Keys Young, *Evaluation of the ACT Family Violence Intervention Program Phase II* (2001).

<sup>69</sup> Successworks, *Review of the Integrated Response to Family Violence: Final Report* (2009), 3.

<sup>70</sup> *Ibid* 4.

<sup>71</sup> Safe at Home Tasmania, *The Tasmanian Family Violence Offender Intervention Program* (2014), accessed at <<http://www.safeathome.tas.gov.au/offenders/fvoip>> on 29 July 2014.



disincentives to reporting violence are reduced. A model that focuses on building resilience and capacity of women whilst investing in men's groups strengthens the family unit and, consequently, strengthens communities.

Legislative and justice system amendments informed by this policy response would represent a culture shift from the current 'innocent until proven guilty' protection of the offender towards a focus always on the safety of victims and children as paramount.

## **10.2 Increased funding targeting services to remote Indigenous communities**

QIFVLS recommends that the Commonwealth Government address the serious lack of access to justice in domestic and family violence matters experienced by Indigenous people in remote locations. This can only be achieved if sufficient funding is received by the relevant legal service providers. It is recommended that the Government provide funding certainty to the FVPLS program, which is currently only funded until June 2015 and allocate increased funding, on the basis of assessed needs, to QIFVLS and other Indigenous legal and support service providers for the provision of domestic violence legal services to Indigenous Australians in regional and remote communities where very few! If any, other legal services providers exist. Greater resources are needed to support the expansion of these service providers to enable them to effectively provide legal services to those in need. Providing sufficient resources would help address many of the difficulties that currently obstruct delivery of legal services to remote Indigenous communities.

In implementing this recommendation, the Australian Government should consult and work closely with QIFVLS, other Indigenous legal and non-legal service providers and Indigenous elders from various communities, to determine how the funding would be best targeted.

## **10.3 Training for CLC staff**

QIFVLS submits that the Commonwealth Government should support increased training and recruitment programs for legal service providers that operate in Aboriginal and Torres Strait Islander communities and assist in domestic and family violence matters. Such programs may include increased cultural awareness training by community members themselves and/or relevant anthropologists or sociologists. This training should cover the particular aspects of Indigenous lore which may arise in the context of the CLCs' services as relevant to the different groups present in the community.

Initiatives to support recruitment may include establishing internship opportunities similar to those available through the Aurora program. The Aurora program focuses on the development of staff for Native Title Representative Bodies through the placement of university students as interns in a number of organisations. QIFVLS considers that a similar program could be implemented for the placement of staff with civil law legal services that operate in Indigenous communities and assist in domestic violence matters.

## **10.4 Develop community legal education programs**

QIFVLS recommends that the Commonwealth Government develop community legal education programs to inform and educate Indigenous Australians – particularly in remote communities – to enhance their understanding about their civil law rights, especially as they relate to domestic violence.

In implementing this recommendation, the Government should consult and work closely with Indigenous legal service providers, Indigenous persons from communities and non-Indigenous personnel who provide relevant support services to Indigenous persons, and who interact with Indigenous communities on a daily basis. Any education programs which are developed should reflect feedback and recommendations received from the various parties who are consulted and the programs should be responsive to the needs of the various communities involved.



### **10.5 Develop community education programs**

In addition to the need to develop and provide community legal education programs, QIFVLS submits that there is also a need to provide community education and support programs. Such programs seek to provide a forum in which community members can discuss the personal and social impacts stemming from legal matters. It is through such relationship building that community capacity to support and deal with domestic and family violence and associated legal issues is developed. In addition to community education programs focused on victims and the broader community, programs also need to be made available to and accessible for perpetrators of domestic and family violence.

Unfortunately, it is often financial considerations which prevent victims and offenders from accessing vital programs, particularly healing programs. Programs such as the Red Dust Healing program, which focus on spiritual healing and re-connecting with country are of great benefit to persons impacted by domestic and family violence. For these programs to be of greater effect, they need to be made available and accessible (financially) to more people. QIFVLS proposes that the Commonwealth Government consider providing funding and/or grants for victims and perpetrators to attend healing programs.

### **10.6 Develop cultural competency programs**

QIFVLS recommends that the Government develop cultural competency programs to be implemented by service providers working in the area of domestic and family violence. Indigenous Australians and their relationship with the law is complex and grounded in a history of violence. As such, assisting Indigenous clients takes time and resources. Service providers need to have a deep understanding of the history of colonisation, its impact on Indigenous people and the importance of building a relationship of trust between Indigenous people and the justice system. Cultural competency programs will foster this understanding, and enable service providers to effectively service Indigenous victims and perpetrators of domestic violence.

### **10.7 Review Government department processes**

QIFVLS recommends that the Commonwealth Government conduct a review of the processes of various Federal departments and service providers that interact most commonly with Indigenous Australians in relation to domestic violence matters (and encourage State Governments to conduct similar reviews). The aim of the review should be to assess how those departments and service providers might be able to change their existing processes to mitigate the difficulties faced by remote Indigenous Australians in dealing with them and, ultimately, to facilitate greater access to justice for Indigenous Australians.

### **10.8 Support separate legal services for victims of domestic violence**

As stated there is currently no funding certainty for the FVPLS program beyond June 2015, and a recent move of the program from the Attorney-Generals Department to the Department of the Prime Minister and Cabinet separate to the Commonwealth's other three legal services (CLCs, Legal Aid and ATSILS) is a cause for concern and fractures the provision of seamless legal services for Aboriginal and Torres Strait Islander people.

QIFVLS recommends that the Government continue to adequately fund separate legal services for victims of domestic and family violence from services provided to perpetrators, by recognising the consideration of both the reasons behind the introduction of the separate victim services, together with the recent recommendations of the Productivity Commission.



## **10.9 Working with Men**

QIFVLS recommends that, as part of the integrated response, the Government take a national approach to working with Indigenous men to address violence against women. A key strategy for change is for Indigenous men to take leadership across the country to make a stand in reducing family violence in our Indigenous communities.

As way of example, QIFVLS hosted a Men's Yarning Circle in Townsville in November 2013. The aim of this forum was to bring together various men's yarning groups and support programs for men (for example, Red Dust Healing) and work collaboratively and cooperatively as a unified body to address domestic and family violence in Indigenous communities.

In addition, QIFVLS is supportive of the concept of the National White Ribbon campaign, including its ambassador program and recommends the government support a similar approach dedicated to Indigenous family violence.

QIFVLS would be pleased to expand upon these actions, and our other submissions and recommendations, if given the opportunity.



## Schedule 1

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