



QUEENSLAND
INDIGENOUS FAMILY
VIOLENCE
LEGAL SERVICE

Submission to the Parliamentary Inquiry
into Family, Domestic and Sexual Violence

July 2020

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The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the House of Representatives Standing Committee on Social, Policy and Legal Affairs Inquiry into ‘Family, Domestic and Sexual Violence’.

Executive Summary:

The Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation (“QIFVLS”) welcomes the opportunity to provide submissions to the House of Representatives Standing Committee on Social, Policy and Legal Affairs Inquiry into Family, Domestic and Sexual Violence.

QIFVLS, is one (1) of two (2) Aboriginal and Torres Strait Islander Community Controlled family violence prevention legal service providers (FVPLS) in Queensland, who are exclusively dedicated to providing legal and non-legal support services to assist Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault. QIFVLS is also one of a total of fourteen (14) FVPLS’ across Australia and one of the thirteen (13) FVPLS’ that are part of the National Family Violence Prevention Legal Service (NFVPLS) Forum. QIFVLS submissions will therefore, be tailored to specifically respond from the perspective and experience of Aboriginal and Torres Strait Islander victim/ survivors of family and sexual violence in Queensland as well as reiterating the recommendations made by our NFVPLS Forum.

There have been a plethora of recent reports that have been produced that recognise the sad reality that Aboriginal and Torres Strait Islander peoples are significantly more likely to experience ‘family violence’ than non-Indigenous people¹. The term ‘family violence’ is preferred when discussing matters impacting upon Aboriginal and Torres Strait Islander peoples compared to the narrower concept of ‘domestic violence’, which is confined to intimate partner violence. ‘Family Violence’ is more reflective of Aboriginal and Torres Strait Islander experience and “...in an Indigenous context, is used to describe the range of violence that takes place in Indigenous communities including the physical, emotional, sexual, social, spiritual, cultural, psychological and economic abuses that may be perpetrated within a family. The term also recognises the broader impacts of violence; on extended families, kinship networks and community relationships. It has also been used...to encompass acts of self-harm and suicide, and has become widely adopted as part of the shift towards addressing intra-familial violence in all its forms.”²

It is also widely accepted from recent reports that:

- Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised because of family violence than other women³;
- Aboriginal and Torres Strait Islander women are 11 times more likely to die from violent assault than other women⁴;

- Approximately 90% of violence against Aboriginal and Torres Strait Islander women is not reported⁵;
- Family violence is the primary driver for the removal of Aboriginal and Torres Strait Islander children into out of home care⁶;
- Aboriginal and Torres Strait Islander children represent 37.3% of the total of all children in out of home care despite comprising only 5.5% of the total population of children in Australia⁷;
- In 2018, Aboriginal and Torres Strait Islander children were 7 times more likely to be on a permanent care order until aged 18 years and at risk of permanent separation from their families, cultures and communities. Additionally, data projection suggested that in the absence of a corrective change in trajectory, the number of Aboriginal and Torres Strait Islander children in care will more than double in the next ten (10) years⁸.

The general statistics referred to above, paint a bleak picture for Aboriginal and Torres Strait Islander peoples especially women and children. Our NFVPLS Forum described the situation of *“Family Violence against Aboriginal and Torres Strait Islander women [as] a National Crisis”*. QIFVLS supports this statement of principle. As a front line legal service provider for Aboriginal and Torres Strait Islander peoples in regional, rural and remote Queensland, QIFVLS is ideally placed to speak to the devastating and far reaching impacts of family violence on Aboriginal and Torres Strait Islander peoples, communities and especially the impacts upon Aboriginal and Torres Strait Islander women and children. Through QIFVLS’ provision of legal advice, legal casework, and non-legal supports, QIFVLS has witnessed the multi-faceted impacts of family violence on a daily basis, including the intersection between family violence, family law, child protection, and the criminal justice system.

It is imperative therefore that there is a co-ordinated, integrated and unified multilayered government approach and response to reducing and eliminating family violence in general. However, this is a ‘must’ in relation to the bleak situation faced by Aboriginal and Torres Strait Islander peoples, communities and especially women and children for whom such violence is normalised and accepted as a way of life.

A unified, co-ordinated and integrated approach and response must also confront and genuinely address the key social drivers behind the over-representation of Aboriginal and Torres Strait Islander peoples within the criminal justice system (both as child offenders and adult offenders), especially the escalating rates of Aboriginal and Torres Strait Islander women in custody⁹. There have been a number of key reports including the Australian Law Reform Commissions ‘Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133), which examined the social drivers behind the incarceration of Aboriginal and Torres Strait Islander women importantly noting that *“The prevalence of family violence in Aboriginal and Torres Strait Islander communities, and the damaging effects of family violence and sexual abuse have been recognised as key drivers of the incarceration of Aboriginal and Torres Strait Islander men and, increasingly women. Family violence has been described as cyclical and intergenerational.”*¹⁰ However, whilst this ALRC Report was formally tabled in Commonwealth Parliament on 28 March 2018, disappointingly, no response was provided by the Government.

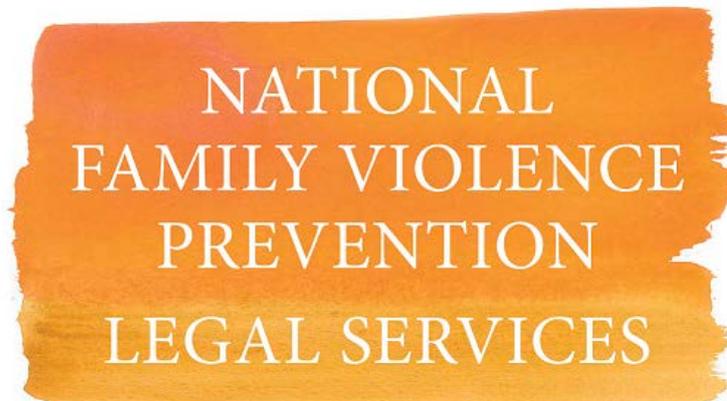
In addition, if there is a genuine will and consensus to reducing and eliminating family violence and sexual violence especially within Aboriginal and Torres Strait Islander communities, there must also be a genuine prioritisation of culturally safe and targeted approaches which specifically address Aboriginal and Torres Strait Islander women and children’s unique needs, perspectives and barriers to obtaining assistance. This requires a tailored response that includes long term investment in early intervention, prevention and community education approaches (developed in partnership with Aboriginal and Torres Strait Islander community organisations and led by Aboriginal Community Controlled Organisations) as well as specialised and culturally safe frontline legal services (such as those provided by the FVPLS units across Australia) for Aboriginal and Torres Strait Islander victims/survivors. There must also be uniform and

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consistent strategies that improve policing responses, responses from the courts in both the youth justice space and the adult criminal law space, the child protection system and corrections. The sustainability of a holistic and targeted response (as opposed to a piecemeal approach highlighting a lack of co-ordination and a number of 'key pieces operating in complete silos to each other') will require investment by Government at the *front end* – that is investing in areas that have been clearly identified in the well published literature as being core social drivers giving rise to the over representation of Aboriginal men, women and children being victims/survivors of family violence and sexual assault.

Endorsement Statement – National FVPLS Forum

The National Family Violence Prevention and Legal Services Forum (National FVPLS Forum) was formally established in May 2012. It is comprised of thirteen Family Violence Prevention Legal Service (FVPLS) member organisations across Australia that provide holistic, specialist, culturally safe legal and non-legal support to Aboriginal and Torres Strait Islander people experiencing or at risk of family violence – predominantly women and their children.



The National FVPLS Forum is pleased to endorse the recommendations made by Queensland Indigenous Family Violence Legal Service (QIFVLS) in their Submission to the House of Representatives Standing Committee on Social, Policy and Legal Affairs Inquiry into 'Family, Domestic and Sexual Violence'.

Summary of Recommendations:

In response to the terms of reference of this Inquiry, QIFVLS is pleased to provide the following recommendations, which mirror and support those made by our fellow FVPLS, Djirra as well as our National Family Violence Prevention Legal Service (NFVPLS) Forum:

Recommendations for Terms of reference (a) and (h):

- Long term funding for QIFVLS to expand its case management practice model across all of its sites in Queensland;

- Funding for QIFVLS to create, develop and expand its early intervention and prevention programs into further Queensland regions.
- Direct Long term continued funding (5-year service level agreements) from the Commonwealth for QIFVLS to continue its family violence prevention legal service work in Queensland.
- That a national Aboriginal and Torres Strait Islander child protection notification and referral system be established. The system would provide a nationally consistent mandatory notification and referral system (akin to the Custody Notification System) to refer Aboriginal and Torres Strait Islander families in contact with the child protection system to culturally appropriate supports and services, including independent legal advice, at the earliest possible opportunity. Note: An effective referral system relies on the availability of resourced, quality and culturally appropriate services to refer families to, and cannot be successful independent of other recommendations, particularly our recommendations under TOR c (below).

Recommendations for Terms of reference (c):

- **Longer-term (five yearly), increased funding from both State and Federal Governments** to enable QIFVLS to: (a) meet demand for our specialist, culturally safe, frontline legal assistance services, including through expansion to meet the currently unmet need for a dedicated Aboriginal and Torres Strait Islander victim specific family violence legal service providing services on Thursday Island and through the Torres Straits; (b) continue and expand our highly successful, culturally targeted early intervention prevention programs and community legal education programs; and (c) continue to provide high level policy advice and undertake advocacy and law reform activities to strengthen law and justice outcomes for Aboriginal and Torres Strait Islander victims/survivors of family violence.
- **Increased State Government responsibility for ensuring Aboriginal and Torres Strait Islander victims/survivors of family violence have access to culturally safe and specialist family violence legal services across Queensland, including metropolitan, regional and rural areas.** Funding for specialist family violence legal services such as QIFVLS would require funding for both lawyers, paralegal support workers and our case management officers to ensure that the holistic legal services model is accessible to victim survivors of family violence across Queensland.
- **Funding policies and priorities of both State and Federal Governments acknowledge that disadvantage experienced by Aboriginal victims/survivors of family violence is not limited to rural and remote Australia,** and strategies and resources must be dedicated to culturally safe and specialist urban service delivery for Aboriginal victims/survivors across metropolitan areas of Queensland including the greater Brisbane area.
- **Increased and secure funding for QIFVLS Case Management Practice Model:** This will allow the expansion of the case management practice model across all QIFVLS sites in Qld, providing a culturally safe and holistic response to a client’s legal and non-legal needs.

- The adequately funded and self-determined National body for Aboriginal and Torres Strait Islander people at risk or experiencing family violence and or sexual assault.

Recommendations for Terms of reference (d):

- Aboriginal and Torres Strait Islander people especially our women, across Australia (including in Queensland and Victoria) have access to culturally safe and specialist family violence supports, including multiple access points.

About QIFVLS:

QIFVLS was established in 2010 when four (4) legal services became one (1), Cape York Family Violence Prevention Legal Service, Indigenous Family Violence Legal Outreach Unit, Indigenous Families Support Unit and Helem Yumba Family Violence Prevention Legal Service. This was followed in 2014 with additional service delivery to the Brisbane Local Government Area.

QIFVLS is a not-for-profit legal service formed under the Family Violence Prevention Legal Services Program (“FVPLSP”) through Department of Prime Minister and Cabinet’s Indigenous Advancement Strategy (“IAS”). FVPLSP fills a recognised gap in access to culturally appropriate legal services for Aboriginal and Torres Strait Islander victims of family and domestic violence and sexual assault.

QIFVLS is an Aboriginal and Torres Strait Islander Community Controlled Organised (ACCO), comprised of a 9-member board of directors – 7 identify as Aboriginal and or Torres Strait Islander and 2 specialist directors in the areas of Legal and Finance.

QIFVLS is a unique, specialised and culturally safe frontline legal service that supports access to justice and keeps victims of family violence safe. QIFVLS addresses the need to reduce violence and increase safety in Indigenous communities.

QIFVLS provides services in the areas of domestic and family violence; family law; child protection; sexual assault and victims assist Queensland applications. QIFVLS supports its clients through all stages of the legal process: from legal advice to representation throughout court proceedings.

QIFVLS provides a culturally appropriate service response to meet and support our client needs through the legal processes as well in relation to addressing and meeting non-legal needs. QIFVLS does this within the legal practice by having a unique Solicitor/ Legal Support Officer team approach to help ensure that legal and non-legal services are provided in a culturally appropriate way. Our Legal Support Officers (LSOs) identify as being Aboriginal and/or Torres Strait Islander. They provide client support including in court support, support during the legal process internally with QIFVLS’ solicitors as well as being the centrepiece for referrals to specialist support services and counselling services as needed. Our LSOs are also pivotal in the co-ordination and contact with QIFVLS communities – maintaining up to date stakeholder registry’s (which support client referrals) as well as the delivery of our valued community education sessions within community. Whilst our LSOs are pivotal to culturally appropriate client support and community engagement, they are invaluable in the paralegal support that they provide to QIFVLS’ solicitors, who provide legal support and advocacy for QIFVLS clients throughout the entirety of the legal process (from intake, legal advice and full legal casework representation).

In addition, to address an area of unmet need, QIFVLS’ within its current funding through the Department of Prime Minister and Cabinet and now, through the National Indigenous Australians Agency (NIAA), developed and implemented to compliment and run alongside the legal practice, a Case Management Practice. The case management practice operates in Rockhampton, where it was initially conceived in 2016 and in Mount Isa.

QIFVLS developed a case management practice as it was observed in Rockhampton and in Mount Isa that our clients were presenting to QIFVLS as a result of their unmet non-legal needs. The case management practice is a non-therapeutic model based on the principles of the Case Management Standards of Australia but tailored to be delivered by an ACCO for and by Aboriginal and Torres Strait Islander peoples. Clients entering into case management are assisted to address their non-legal needs whilst also responding and addressing their legal needs. This is a holistic, wrap around service delivery model that

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utilises strong referral pathways with existing service providers in community, whilst allowing a client to set achievable goals at a pace determined by the client, thereby achieving self-efficacy and self-determination.

Another stand out feature of QIFVLS Case Management Practice is that our Case Management Officers as well as our Case Management Practice Manager, are all identified roles. The case management support that is provided to QIFVLS clients is delivered by duly qualified Aboriginal and Torres Strait Islander QIFVLS staff within a trauma informed and culturally safe manner.



As demonstrated by the above map QIFVLS is mainly an outreach service where our teams go into rural and remote communities to meet with clients. QIFVLS services over 50 Aboriginal and Torres Strait Islander communities throughout Queensland. It is recognised that Queensland is nearly five (5) times the size of Japan; seven (7) times the size of Great Britain and two and a half (2.5) times the size of Texas¹. Bearing that in mind, QIFVLS has five (5) offices in Queensland –

- (1) a service delivery office and its Head Office located in Cairns responsible for servicing Cape York communities as far north as Umagico and Bamaga; Cooktown; Atherton Tablelands, Innisfail and Yarrabah (and communities in between);
- (2) a service delivery office in Townsville responsible for servicing Townsville, Palm Island, Charters Towers, Richmond and Hughenden (and communities in between);
- (3) a service delivery office in Rockhampton responsible for servicing Rockhampton, Woorabinda, Mt Morgan, Biloela (and communities in between);
- (4) a service delivery office in Mount Isa responsible for servicing Mount Isa, the Gulf of Carpentaria communities, as far south as Bedourie and Birdsville and across to Julia Creek (and communities in between);
- (5) a service delivery office in Brisbane responsible for servicing the Brisbane local government area.

¹ <https://www.qld.gov.au/about/about-queensland/statistics-facts/facts>

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Addressing the Terms of Reference (TOR):

In relation to the twelve (12) TOR numbered (a) – (l) (inclusive), QIFVLS has provided submissions based on the TOR most relevant to its practice experience, namely: (a), (c), (d), and (h).

[TOR \(a\):](#)

Immediate and long term measures to prevent violence against women and their children, and improve gender equality.

[TOR \(h\):](#)

The experiences of all women, including Aboriginal and Torres Strait Islander women.

As a front line legal service provider for Aboriginal and Torres Strait Islander victim/survivors of family violence and sexual assault in regional, rural and remote Queensland, it is not trite nor alarmist to express that the situation facing Aboriginal and Torres Strait Islander victim/ survivors in Australia is at ‘national crisis’ and is a national shame.

All QIFVLS clients across Queensland have been or are a victim of Domestic and/or Family Violence. Additionally, with more than 85 percent of QIFVLS’ clients being female, we would be confident to say that upwards of 90 percent of our clients have children involved in their matters across the areas of Domestic Violence, Family Law, Child Protection and Victims Assistance applications. With all of our clients being exposed to Domestic and Family Violence coupled with the majority of Children being involved, and even considering the high numbers of Female aggrieved coming out of the Queensland Domestic Violence Courts, it is clear that the exposure of Domestic and or Family Violence to Children is high. In addition, it seems ominous that Queensland children are exposed to, not just Domestic and or Family Violence, but female targeted violence. This makes the probability of children replicating what is learnt or seen high.

When looking to tailor and implement immediate and long term measures to prevent violence against Aboriginal and Torres Strait Islander women and their children, it is important to recognise and accept that “[f]amily violence within Indigenous communities needs to be understood as both a cause and an effect of social disadvantage and intergenerational trauma.”¹¹ Social disadvantage and intergenerational trauma have their roots embedded within a history of destruction, disadvantage and dispossession from land, culture, family and community, stemming back to colonisation. Family violence is not part of Aboriginal or Torres Strait Islander culture nor is it limited to interactions only between Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander women experience family violence from both non Indigenous and Aboriginal and Torres Strait Islander peoples. This in turn leads to an Aboriginal and Torres Strait Islander woman having a disproportionate experience of ‘family violence’ – which is more than simply gender inequality, but rather a wider context of marginalisation¹², described in the following manner by the NFVPLS:

“As both women and as Aboriginal people, Aboriginal women experience multiple forms of discrimination and marginalisation. In the algebra of power, intersectional discrimination is best understood as a process of multiplication rather than addition. Rather than experiencing sexism

*and racism as being distinct and separate from one another, the two are often combined to form new and ugly forms of discrimination directed specifically at Aboriginal women.*¹³

The net practical effect of the experience for an Aboriginal and Torres Strait Islander person in relation to family violence therefore, is that *'...family violence is interwoven with all spheres of disadvantage and inequality...and remains one of the biggest challenges facing our children, families and communities.'*¹⁴

QIFVLS experience is that family violence is the corner stone or intersection, that links an Aboriginal and Torres Strait Islander person's connection to the child protection system; the youth justice system; the adult criminal justice system and the family law system. These 'connectors' are further compounded or exacerbated for those living in regional, rural and remote parts of Australia, where there are restrictions on the availability of actual *on the ground services* to assist a victim escaping a violent relationship¹⁵ (ie domestic violence support services and shelters; actual police presence within a community).

For there to be success in implementing long term measures to prevent violence against women and their children, there must also be a corresponding genuine will and consensus to reducing and eliminating family violence and sexual violence within Aboriginal and Torres Strait Islander communities. This will involve a genuine prioritisation of culturally safe and targeted approaches which specifically address Aboriginal and Torres Strait Islander women and children's unique needs, perspectives and barriers to obtaining assistance. This requires a tailored response that includes long term investment in early intervention, prevention and community education approaches (developed in partnership with Aboriginal and Torres Strait Islander community organisations) as well as specialised and culturally safe frontline legal services (such as those provided by the FVPLS units across Australia) for Aboriginal and Torres Strait Islander victims/survivors.

QIFVLS approach to implementing long term measures to prevent violence against Aboriginal and Torres Strait Islander women and children has been in the creation and delivery of culturally appropriate community education (CE) and community legal education sessions (CLEs) in rural, regional and remote Queensland. Embedded within the core of the CEs and CLEs is education around healthy and unhealthy relationships, with an emphasis on empowering gender equality. Our stand alone CE on 'Healthy and unhealthy relationships' is geared towards school aged children (pre-teens and teenagers) and can be delivered within a school setting environment. QIFVLS has identified in the mapping of the effectiveness of its community education programs, that long term effective change is generational and must start with our young people. In that vein, QIFVLS has now developed an internal stream to allow its Legal Support Officers to be trained as facilitators to deliver the *Love Bites Training*.

The QIFVLS service delivery model (spoken to in the 'About QIFVLS' section at pages 5-6 above) and includes our integrated case management practice model) is such that QIFVLS lawyers are supported to deliver purposeful legal services in a holistic, wrap around practice with the assistance of the identified roles of the LSO and Case Management Officers. QIFVLS integrated practice model ensures that tailored support is provided to a vulnerable Aboriginal and Torres Strait Islander client to meet her legal and non-legal needs.

In relation to QIFVLS' Case Management Practice Model, at its centre is the embedded concept that by building the self-efficacy of the client, through case planning and the achievement of case goals (at a pace that the client can achieve), within a strong referral framework, a client will reach a point of self-determination, breaking out of the cycle of violence, thereby reducing and eliminating their contact with the child protection system and criminal justice system. By positively influencing the trajectory of the client, the flow on effect is the reduction and ultimate elimination of contact with the child protection system and criminal justice system. QIFVLS' case management practice model at its heart, is focused on generational change, strongly driven by an Aboriginal and Torres Strait Islander Community Controlled

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Organisation, whilst supporting the self-efficacy and self-determination of Aboriginal and Torres Strait Islander people but especially Aboriginal and Torres Strait Islander women and their children.

QIFVLS observation in relation to TOR(a) is that whatever measures that are planned to be implemented must be done so on the basis of effecting generational change. This in turn will require commitments to long term funding measures and a focus on achieving ‘outcomes’ as opposed to being output orientated. Evaluation frameworks will also need to be established to monitor and track the achieved outcomes.

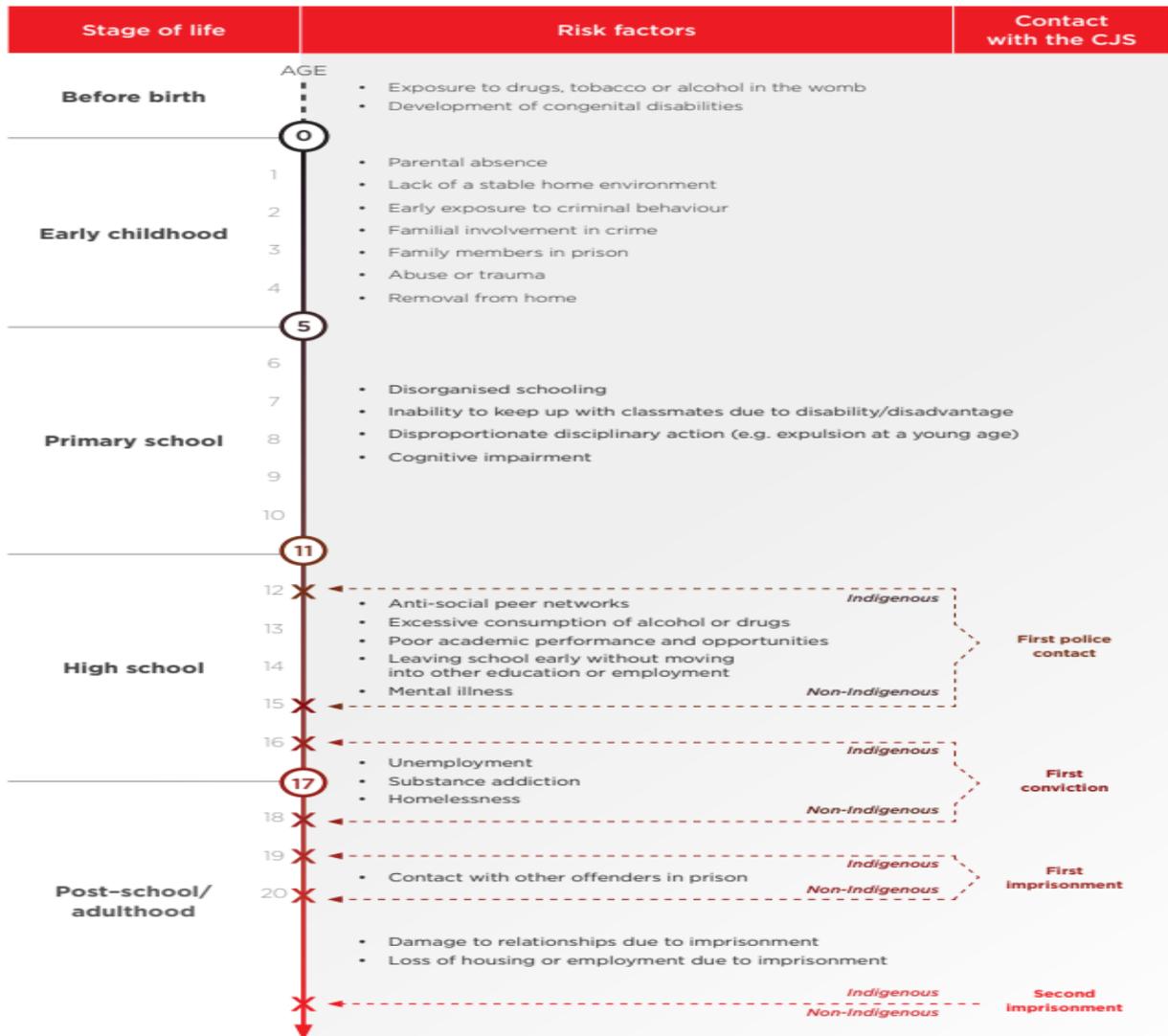
Additionally, the focus of ‘preventative measures’ must shift away from a tertiary response – that is the more punitive criminal justice type response as well as the child protection response – to a focus on bolstering at the *front end* in relation to early intervention and prevention. This focus on a shift away from tertiary responses to front end early intervention and prevention has been recently highlighted in the 2019 Queensland Productivity Commission Report on Imprisonment and Recidivism¹⁶ with the following key findings made by the Queensland Productivity Commission (QPC)¹⁷:

- social and economic disadvantage is strongly associated with imprisonment, around 50% of prisoners had a prior hospitalisation for mental health issue and/or were subject to a child protection. However, for female indigenous prisoners, this figure rose to 75%;
- In Queensland, the rate of imprisonment has increased by more than 160% since 1992. The costs of imprisonment is likely to outweigh the benefits, with increasing imprisonment working to reduce community safety over time given that it costs approximately \$111,000 per year to house a prisoner; prisons are not effective at rehabilitation, and can increase the likelihood of reoffending;
- High indigenous incarceration rates undermine efforts to solve disadvantage – currently an Indigenous male in Queensland has almost a 30% chance of being imprisoned by the age of 25. Long term structural and economic reforms that devolve responsibility and accountability to Indigenous communities are required. Independent oversight of reforms is essential.
- The reforms suggested by the QPC, required as an essential first step, the overhaul of the decision-making architecture of the criminal justice system, including the establishment of an independent Justice Reform Office to provide a greater focus on longer term outcomes and evidence based policy making.
- The rate of Indigenous imprisonment is continuing to grow – increasing by 45% between 2008 and 2018. This rate of growth was 50% faster than for non-Indigenous people. Additionally, whilst women in Queensland were imprisoned at much lower rates than men, it was found that female imprisonment rates in Queensland had increased by more than 60% over the last decade. This finding by the QPC correlates to the findings made in the May 2017 Report, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment, which relevantly found that nationally “Aboriginal and Torres Strait Islander women make up 34 percent of the adult female prison population but only 2 per cent of the adult female Australian population...The imprisonment rate of Aboriginal and Torres Strait Islander women has increased 248% since 1991 and Aboriginal and Torres Strait Islander women are currently imprisoned at the 21 times the rate of non-Indigenous women. From 2000 to 2016, their imprisonment rate increased at over double the rate of Aboriginal and Torres Strait Islander men.*

Aboriginal and Torres Strait Islander women enter the justice system at an earlier age and are almost twice as likely to return to prison after release compared to non-Indigenous women.”¹⁸

The QPC went further in their report, creating a visual time line highlighting the stark reality of successive government policy that has focused on tertiary responses and the risk factors that gave rise to a person’s contact with the criminal justice system in Queensland, especially if that person was an Aboriginal and or Torres Strait Islander:

Figure 12 Risk factors and contact with the criminal justice system, Queensland



Source: QPC analysis.

Early intervention and prevention strategies and programs, based on the trajectory by the QPC, must be targeted, before birth. This focus aligns with QIFVLS long term strategy of early intervention and prevention.

Recommendation:

- long term funding for QIFVLS to expand its case management practice model across all of its sites in Queensland;

- funding for QIFVLS to create, develop and expand its early intervention and prevention programs into further Queensland regions.
- Direct Long term continued funding (5-year service level agreements) from the Commonwealth for QIFVLS to continue its family violence prevention legal service work in Queensland.

Family Violence and Child removal:

There is a clear nexus between the rates of family violence experienced by Aboriginal and Torres Strait Islander peoples and the rate of child removal. The key findings to be reiterated here are:

- Family violence is the primary driver for the removal of Aboriginal and Torres Strait Islander children into out of home care¹⁹;
- Aboriginal and Torres Strait Islander children represent 37.3% of the total of all children in out of home care despite comprising only 5.5% of the total population of children in Australia²⁰;
- In 2018, Aboriginal and Torres Strait Islander children were 7 times more likely to be on a permanent care order until aged 18 years and at risk of permanent separation from their families, cultures and communities. Additionally, data projection suggested that in the absence of a corrective change in trajectory, the number of Aboriginal and Torres Strait Islander children in care will more than double in the next ten (10) years²¹.

In addition, to actually see a reduction in the disproportionate and escalating rates of family violence driven child removal, there must be a greater focus on front end support for Aboriginal and Torres Strait Islander people especially mothers. This is clearly highlighted in the timeline created by the QPC (referred to at page 10 above). The earlier that an Aboriginal land Torres Strait Islander woman is linked in with a specialist Aboriginal and Torres Strait Islander community controlled organisation with family violence expertise, the better the outcomes are for her and her children. Early referral to specialist, culturally safe and preventative legal and non-legal support from an Aboriginal and Torres Strait Islander community controlled organisation with family violence expertise, such as QIFVLS, is an essential step to support Aboriginal and Torres Strait Islander mothers to take proactive action and engage early with culturally safe and specialist supports to address interrelated mental health, family violence and child protection concerns.

QIFVLS frontline experience indicates that many Aboriginal and Torres Strait Islander families, particularly mothers experiencing or at risk of family violence, do not recognise child protection intervention as a legal issue until it is 'too late'. This is despite the fact in Queensland that there has been major legislative and policy reform in relation to Aboriginal and Torres Strait Islander peoples interaction with the child protection system²² aimed at:

- Embedding Case planning to include permanency goals including transitioning to adulthood
- Embedding principles that recognise the right to self-determination of Aboriginal and Torres Strait Islander peoples and a requirement to consider long term effects of a decision on identity and connection to culture for an Aboriginal and Torres Strait Islander child;
- Incorporating the 5 elements of the Child Placement Principle in the administration of the Act;
- Removes recognised entities and introduces the Independent Entity to support child/ family decision making. This role is particularly important in the family participation program and

family led decision making. The family participation program provides for an independent Aboriginal and Torres Strait Islander facilitator to support a family in family led decision making;

- Family led decision making allows parties to have a say in the case plan/ family plan; strategies to keep children connected to culture and country or plans to return children to parents or other family members.

In relation to the Queensland’s child protection reform agenda, this started with a 10 year in 2017. In relation to Aboriginal and Torres Strait Islander family led decision making, this was first trialled in Queensland in 2016-2017, with the Queensland Government, as part of its child protection reform agenda, rolling out the family participation program across Queensland commencing in 2018. Additionally, the Queensland Government also provided funding to 15 Aboriginal and Torres Strait Islander Community Controlled Organisations to support family led decision making. The legislative reform agenda also provided, similar to that in Victoria, for the statutory basis for the delegation of statutory powers to Aboriginal and Torres Strait Islander community control organisations for Aboriginal and Torres Strait Islander children.

According to the Queensland *Report of Government Services* covering the period 2018-2019, the rates of Aboriginal and Torres Strait Islander children in out of home care was below the national average of 54.2 per 1000 children, equating to 37 per 1000 children.

However, it is still very early days in relation to tracking the overall effectiveness of the child protection reforms in Queensland. QIFVLS initial experience has been that although the policy reform and legislative reform embedding the Child Placement Principle and encouraging family led decision making and the use of the independent entity are welcome steps within the legislative and policy frameworks, we are not seeing this translate on the ground with uniform application by staff of the Department of Child Safety. QIFVLS experience has been that we are advised by our clients, usually at the latter stage of a notification and intervention by the Court, that the client was either discouraged from nor never advised by child safety workers that they should seek independent legal advice.

A Child Protection Notification and Referral Scheme

QIFVLS, as a member of the NFVPLS Forum repeats and adopts the submissions made by our sister FVPLS, Djirra, in relation to the creation of a child protection notification and referral scheme²³, namely:

- To avoid or minimise the escalation of child protection matters and keep Aboriginal and Torres Strait Islander children in Queensland safe and strong in their families, communities and culture, an Aboriginal and Torres Strait Islander and Child Protection Notification and Referral Scheme (similar to the existing Custody Notification Service) should be established. This would require child protection workers to provide warm referrals to QIFVLS or another Aboriginal and Torres Strait Islander community controlled organisation with relevant expertise for all Aboriginal and Torres Strait Islander parents and carers in contact with the child protection system to independent, culturally safe, specialist and preventative legal advice and ongoing culturally safe wraparound support at the earliest possible opportunity, especially where family violence is a factor in potential child removal. The referrals should be made at the earliest possible stage, as soon as the family comes to the attention of the child protection system.
- Many Aboriginal and Torres Strait Islander mothers have a realistic fear that disclosing and seeking help for family violence will lead to their children being forcibly taken from their care. This is a common thread, not only with QIFVLS clients, but also with the communities that QIFVLS provides services to in rural and remote Queensland. This fear is quite real when one

examines the findings of the Australian Institute of Health and Welfare, Child Protection in Australia, 2017-18 Report which found that:

- Indigenous children were 8 times more likely as non-indigenous children to have received child protection services;
- Children from very remote areas were 4 times more likely as those from Major cities to be the subject of a child protection substantiation.

Recommendations:

- That a national Aboriginal and Torres Strait Islander child protection notification and referral system be established. The system would provide a nationally consistent mandatory notification and referral system (akin to the Custody Notification System) to refer Aboriginal and Torres Strait Islander families in contact with the child protection system to culturally appropriate supports and services, including independent legal advice, at the earliest possible opportunity. Note: An effective referral system relies on the availability of resourced, quality and culturally appropriate services to refer families to, and cannot be successful independent of other recommendations, particularly our recommendations under TOR c (below).

TOR (c):

[The level and impact of coordination, accountability for, and access to services and policy responses across the Commonwealth, state and territory governments, local governments, non-government and community organisations and business.](#)

On QIFVLS analysis, there are three (3) key features to this TOR:

- i. Uniformity of approach;
- ii. Co-ordination of approach and implementation;
- iii. Access to services.

In QIFVLS experience, one of the key barriers facing Aboriginal and Torres Strait Islander people in regional, rural and remote Queensland, especially, women and children is access to on the ground, specialist, culturally appropriate and safe services. In this regard, we agree and mirror the statements of experience made by our sister FVPLS unit, Djirra, in their submission²⁴ namely that ‘access to specialist, culturally safe legal services like QIFVLS, is critical to ensuring accessibility of the legal system for Aboriginal and Torres Strait Islander women seeking supports in the areas of family violence protection orders, child protection, family law and victims of crime assistance Queensland (VAQ).

QIFVLS, like Djirra, has seen some positive investment in culturally appropriate legal services, however funding gaps also remain in some rural and regional areas of Queensland, which are generally viewed as the responsibility of the Federal Government. QIFVLS, like Djirra has not received a real increase in Federal funding in the past 6 years to properly meet increased costs of vital frontline services for in many rural and remote areas in Queensland.

The QIFVLS service delivery model (spoken to in the ‘About QIFVLS’ section at pages 5-6 and 8-9 above) and includes our integrated case management practice model) is a holistic, intensive client service delivery

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model with QIFVLS lawyers being supported to deliver purposeful legal services in a holistic, wrap around practice with the assistance of the identified roles of the LSO and Case Management Officers. QIFVLS integrated practice model ensures that tailored support is provided to a vulnerable Aboriginal and Torres Strait Islander client to meet their legal and pressing non-legal needs. As at 30 June 2020, QIFVLS had provided legal case work assistance to 400 clients; provided 678 legal advices and 312 non-legal supports.

Whilst QIFVLS clients face the natural barriers imposed by the fact that they are located in regional, remote and rural areas of Queensland, another limitation is the lack of adequate and long term funding from both the Commonwealth and the State. This in turn limits QIFVLS ability to assist those most vulnerable and in need, through its holistic and specialist service. In some rural and remote communities in Queensland, QIFVLS is the only victim specific Aboriginal and Torres Strait Islander family violence legal service provider that regularly physically engages with community providing face to face legal and non-legal supports and early intervention programs. Like Djirra, it is QIFVLS experience that if Aboriginal and Torres Strait Islander people, especially women are not able to access mainstream services, or are not comfortable to do so, they are effectively denied access to justice. This in turn compounds the current alarming rates of overrepresentation across the legal system in both criminal law and child protection.

Further, QIFVLS experience consistently across the state is that more often than not our client – normally a woman with children – will flee a violence relationship with nothing more than the clothes on her back and the children in tow. She will not have an independent economic means nor will she have identified independent housing means. She will be shunned by extended family and parts of the community. She will have nowhere and no one to turn to. There will be issues of alcohol and/or drug misuse. In addition to her pressing non-legal issues, she will be faced with the intervention by the Department of Child Safety to remove her children from her care on the basis that she has failed to protect them from harm by exposing them to domestic violence and cannot offer her children a safe home environment. In some instances, she will be named as the Respondent in an application for a domestic violence protection order by Police. The type of services that QIFVLS provide this type of client is invaluable as it holistically responds to the clients need in a culturally safe manner focusing on the social determinants (family violence/alcohol/drug misuse/homelessness/poverty), whilst providing a tailored legal response.

Recommendations:

- **Longer-term (five yearly), increased funding from both State and Federal Governments** to enable QIFVLS to: (a) meet demand for our specialist, culturally safe, frontline legal assistance services, including through expansion to meet the currently unmet need for a dedicated Aboriginal and Torres Strait Islander victim specific family violence legal service providing services on Thursday Island and through the Torres Straits; (b) continue and expand our highly successful, culturally targeted early intervention prevention programs and community legal education programs; and (c) continue to provide high level policy advice and undertake advocacy and law reform activities to strengthen law and justice outcomes for Aboriginal and Torres Strait Islander victims/survivors of family violence.
- **Increased State Government responsibility for ensuring Aboriginal and Torres Strait Islander victims/survivors of family violence have access to culturally safe and specialist family violence legal services across Queensland, including metropolitan, regional and rural areas.** Funding for specialist family violence legal services such as QIFVLS would require funding for both lawyers, paralegal support workers and our case management officers to ensure that the holistic legal services model is accessible to victim survivors of family violence across Queensland.

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- **Funding policies and priorities of both State and Federal Governments acknowledge that disadvantage experienced by Aboriginal victims/survivors of family violence is not limited to rural and remote Australia**, and strategies and resources must be dedicated to culturally safe and specialist urban service delivery for Aboriginal victims/survivors across metropolitan areas of Queensland including the greater Brisbane area.
- **Increased and secure funding for QIFVLS Case Management Practice Model:** This will allow the expansion of the case management practice model across all QIFVLS sites in Qld, providing a culturally safe and holistic response to a client’s legal and non-legal needs.

Further, as detailed above, QIFVLS is a member of the NFVPLS Forum. Accessibility and policy reform involving Aboriginal and Torres Strait Islander voices requires a national voice for Aboriginal and Torres Strait Islander people experiencing family violence. In this regard, QIFVLS adopts the statements of principle made by our sister FVPLS, Djirra, in their submission to the Inquiry that:

“The National Family Violence Prevention and Legal Services Forum (National FVPLS Forum) was formally established in May 2012. It is comprised of thirteen Family Violence Prevention Legal Service (FVPLS) member organisations across Australia, including Djirra [and QIFVLS], that provide holistic, specialist, culturally safe legal and non-legal support to Aboriginal and Torres Strait Islander people experiencing or at risk of family violence – predominantly women and their children.

In November 2019, the National Indigenous Australians Agency (NIAA) told us that funding for our National FVPLS Forum Secretariat would not continue as of 30 June 2020, a decision which would effectively take Aboriginal and Torres Strait Islander victim/survivors voices out of national conversations and compromise self-determination. In December 2019, we were told our annual funding of \$244,000 would be returned to FVPLSs, not as a direct allocation to our National Secretariat but instead redistributed across the member FVPLSs individually. This amounts to less than \$17,500 for each individual FVPLS. We feel this is a divisive approach that doesn’t provide support for a united national voice for our sector and for Aboriginal and Torres Strait Islander women impacted by family violence - women who face multiple layers of disadvantage and who rely on our National FVPLS Forum to make their voices heard and advocate for their safety. Due to the COVID-19 crisis, the NIAA has approved an extension of Secretariat funding but only until 31 December 2020.

The continuity of the National FVPLS Forum beyond 31 December 2020 is vital to eradicating our country’s shameful rates of family violence against Aboriginal and Torres Strait Islander women. As the only national peak body for Aboriginal and Torres Strait Islander victim/survivors of family violence and sexual assault it is a crucial organisation, giving services who every day provide vital support to women all over the country a voice in critical national conversations around family violence.

We call for an adequately funded and self-determined National body for Aboriginal and Torres Strait Islander people at risk or experiencing family violence. Sustained and long term funding will enable the National FVPLS Forum to continue capacity building and giving voice to Aboriginal and Torres Strait Islander victims and survivors on a national platform.”²⁵

Recommendation:

- **We call for an adequately funded and self-determined National body for Aboriginal and Torres Strait Islander people at risk or experiencing family violence.**

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[TOR \(d\): The way that health, housing access to services, including legal services, and women’s economic independence impact on the ability of women to escape domestic](#)

As stated in response to TOR (c) above, it is not uncommon for a client seeking to access QIFVLS having the following identifying features:

- They are fleeing a violent household;
- They are women and will have the children with them;
- They are homeless;
- There are issues of alcohol misuse and drugs;
- They do not have independent financial means to support themselves;
- They have come to the attention of the Department of Child Safety, who wish to commence proceedings to remove the children as the Department will allege that they have failed to protect the children from harm by exposing them to domestic violence and cannot offer the children a safe and stable home environment.
- In some instances, she will be named as the Respondent in an application for a domestic violence protection order by Police.

The QIFVLS response will be targeted at providing the immediate support to address the non-legal drivers (housing/urgent shelter/obtaining income) whilst triaging and responding to the legal issues (the child safety intervention and the domestic violence order. Discussions will also commence around the parenting plans/parenting orders). If this client type were seen in our Rockhampton or Mount Isa Office, they would also be supported through our case management practice arm. A QIFVLS Case Study that speaks to this TOR comes from our Gulf and Western Queensland Office:

Case Study

An elderly woman had been the subject of family violence spanning a long period of her life including recent physical abuse at the hands of her husband and adult son. She – ‘Susan’ (not her real name) – made the decision to leave her family home of over 35 years as she could not endure the abuse any more, which included being assaulted by her son. After leaving home with nothing, Susan’s adult children changed the locks, stole food she was stocking up for Christmas and blamed her for the disharmony and disruption to the routine of their physically and mentally impaired father.

Susan reported the assault to police and pressed charges against her son. However, the police did not at the same time, take out a police application for a domestic violence protection order on her behalf. Susan was distraught by this and contacted QIFVLS as she was wanting assistance claiming her possessions from the family home.

One of the primary difficulties we face in servicing clients in remote Queensland is that (a) contact was difficult – it was being managed through a third party, Susan’s supportive daughter & (b) activating community supports (within a small community) as there were divided alignments for the family and there situation was well known within the community resulting in fear of becoming involved because of the volatility of the abusers; & (c) the Police perception in not seeing and dealing with this elderly woman as a victim of family violence but being perceived as being culpable for her own actions in the family dynamics. Despite these hurdles, Susan was able to complete our intake processes; was assigned a solicitor to address her legal matters and was assigned a CMO to address her urgent non-legal needs.

Susan was reliant on the support of 1 daughter and her other son who lived in another town. With the engagement and support of the CMO, discussion began around relocating Susan to another town where her supportive children lived. However, whilst Susan supported this, she was adamant to claim her possessions in the family home.

After having spent a week in limbo, we were able to lodge an urgent application for a domestic violence protection order, which included an ouster condition as well as a complete no contact condition. On the filing of the application, the Court heard and approved the making of a temporary protection order in favour of Susan. The temporary protection order included the ouster condition of the husband and other named persons. QIFVLS argued successfully that there was overwhelming evidence of a significant risk of harm if Susan returned to the home without police intervention. A final court date was then affixed to determine the making of a final order.

However, a few days before the final hearing, one of Susan’s adult daughter’s physically attended at our QIFVLS Office. She was the daughter who had had the locks changed. She was agitated and demanded to know of Susan’s legal proceedings as she believed the father was being unfairly treated. QIFVLS staff, including our CMO, spoke with the daughter and reinforced to her Susan’s rights to confidentiality as well as her right to take action against the violence. The daughter left vowing to disrupt the court proceedings.

Susan was highly shaken by this behaviour and was afraid to attend Court fearful of the retribution that she would face. Susan was supported not only by our Solicitor but our CMO who supported Susan in the Court appearance which was conducted by telephone at the Court house. In relation to the final orders, given the level of support and trust that had been established with our CMO, an in depth statement was provided by Susan, which supported the Court proceedings. The Court was satisfied that final orders should be made in Susan’s favour which included the complete ouster of Susan’s former husband from the matrimonial home and no contact. Given the outcome of the matter, Susan was absolutely terrified of remaining at the Court precinct and our CMO ensured her safety by removing her from that environment back to our Office where she was to be collected by her supportive daughter.

Susan’s case highlights a few things: (a) the resilience of the victim in wanting to live a life free of violence and finally having the courage and support to walk away from it; (b) the nature of Aboriginal and or Torres Strait Islander family dynamics and the *blaming* of the at fault party with the dividing of family into alignments for either the Mother or the Father; (c) the in action of Police and community over a long period of time evidenced by the minimisation of the abuse; (d) QIFVLS’ need to strategise a flexible service response for a remote/regional client; (e) the importance of the adherence to the principles of confidentiality in both the legal and case management practices and (f) Case Management allows for follow up to ensure appropriate levels of safety and supports are in place.

Without this level of intensive, culturally meaningful and holistic support provided by QIFVLS, Susan would not have been able to gain her freedom from a vicious cycle of family violence initially perpetrated by her husband and then, some of her children.

QIFVLS, repeats and adopts the statements of principle made by our sister FVPLS, Djirra²⁶ in that:

- many Aboriginal and Torres Strait Islander people have a genuine fear and resistance to accessing mainstream services due to discriminatory government policies and practices. Too often, mainstream service providers do not have experience providing holistic and intensive assistance to complex clients who are in crisis and dealing with multiple, sensitive and

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challenging situations; They do not recognise that they need to invest more time in their services because of the need to build trust and support culturally safe communication and ‘story telling’; They are not equipped to deal with the complexity of client matters which frequently include multiple, interlocking legal and non-legal issues for each client; They do not understand that for Aboriginal people, family violence must be understood in the context of a history of colonisation, racial discrimination, criminalisation and inter-generational trauma. Like Djirra, all of QIFVLS’ programs and service models are developed with an understanding of this framework.

- all Aboriginal and Torres Strait Islander women have the right to culturally safe and specialist family violence support, including multiple access points. Like Djirra, QIFVLS is a unique, culturally safe and specialist pathway to safety and healing for Aboriginal and Torres Strait Islander victim/survivors of family violence and plays a key role in overcoming the barriers to accessing the system. Our services and programs are designed and delivered through the mechanism of an Aboriginal Community Controlled organisation, for Aboriginal and Torres Strait Islander people. This emphasis on self-determination carries throughout the organisation.

Recommendation:

- Aboriginal and Torres Strait Islander people especially our women, across Australia (including in Queensland and Victoria) have access to culturally safe and specialist family violence supports, including multiple access points.

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- ¹ For example - Our Watch (2018), *Changing the Picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children*; The Family Matters Report (2019), *Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*; The Law Council of Australia, *The Justice Project Final Report – Part 1: Aboriginal and Torres Strait Islander People*, August 2018; Australian Institute of Health and Welfare (AIHW), *Family, domestic and sexual violence in Australia: continuing the national story 2019*.
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- ⁶ Commissioner for Aboriginal Children and Young People, *Open Letter in response to 2015 Report on Government Services*, 3 February 2015.
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- ¹⁶ Queensland Productivity Commission, August 2019, *Summary Report – Imprisonment and Recidivism*, p.11
- ¹⁷ Queensland Productivity Commission, August 2019, *Summary Report – Imprisonment and Recidivism*, p. 2.
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- ²² Through the enactment of the *Child Protection Reform Amendment Act 2017 (Qld)*, which commenced in October 2018.
- ²³ Djirra’s Submission to the Parliamentary Inquiry into Family, Domestic and Sexual Violence, July 2020, p.26.
- ²⁴ Djirra’s Submission to the Parliamentary Inquiry into Family, Domestic and Sexual Violence, July 2020, p.15
- ²⁵ Djirra’s Submission to the Parliamentary Inquiry into Family, Domestic and Sexual Violence, July 2020, p.18
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