



# QUEENSLAND INDIGENOUS FAMILY VIOLENCE LEGAL SERVICE

Submission to the Review of Criminal Procedure in  
Queensland's Magistrates Courts

30 June 2022

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# The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the Review of Criminal Procedure in Queensland's Magistrates Courts

## Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ('QIFVLS') welcomes the opportunity to provide a submission to the Review of Criminal Procedure in Queensland's Magistrates Courts.

QIFVLS is one of fourteen (14) Family Violence Prevention Legal Services ('FVPLSs') across Australia and one of the thirteen (13) FVPLSs that are part of the National Family Violence Prevention Legal Service ('NFVPLS') Forum. Accordingly, this submission will draw on the experience of QIFVLS as one of two Aboriginal and Torres Strait Islander community-controlled family violence prevention legal service providers in Queensland. We 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 with a breadth and scope of services which stretch to the outer islands of the Torres Strait, neighbouring Papua New Guinea. Together with its legal services, QIFVLS can be distinguished from other legal assistance providers through its advantage in providing holistic assistance from the front-end via a wrap-around model that embraces early intervention and prevention.

As an Aboriginal and Torres Strait Islander Community-Controlled Organisation ('ACCO'), QIFVLS is uniquely positioned to comment on the matters to be addressed by the Review. Although we do not provide services with respect to criminal law matters, we find that there is an inextricable link between our various clients and the impact that the criminal justice system has had on their lives. Our clients find themselves as defendants, complainants and witnesses in the criminal jurisdiction. Most strikingly, we have been among a cohort of advocates who have been vocal in calling for rectifying the misidentification of offenders in domestic and family violence and assault matters. Accordingly, it is our long-held observation that family violence is an interlinking factor that connects our clients with the criminal justice system (adult crime and youth justice), child protection and family law.

In that regard, we are well placed to provide feedback from the unique vantage-point of a family violence prevention legal service which provides a holistic model of attending to our communities' legal and non-legal needs.

We understand the constraints of the Review however it would be remiss of us not to address the searing issue of the misidentification of offenders, namely the victim-survivors of domestic violence who act out in frustration, self-defence or violent resistance towards the primary aggressors of domestic and family violence.

Our submission reflects our clients' experiences as complainants, witnesses and as accused persons before the Magistrates Courts. We live in the communities and see and hear directly from our clients about their experiences. Significantly, this submission is characterised with an overarching fidelity to the Priority Reforms in the [National Agreement on Closing The Gap](#), namely Priority #3 (Transforming mainstream institutions).

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## Summary of QIFVLS' recommendations

QIFVLS submit that the Criminal Procedure Review Team ('CPRT') consider the following recommendations:

**Recommendation 1:** The Magistrates Court further investigates how technology can be used to improve access to justice for Aboriginal and Torres Strait Islander peoples, particularly those in remote and rural communities.

**Recommendation 2:** The Magistrates Court expands the use of Interpreters, particularly in remote and rural communities.

**Recommendation 3:** The state government consider expanding the scope of the Murri Court with a view to removing the eligibility requirement that a participant must be pleading guilty to an offence.

**Recommendation 4:** The government invest in diversion initiatives and amend legislation and policies to require the court, police and lawyers to prioritise diversionary options.

**Recommendation 5:** The law is changed to create a single Magistrates Court.

## 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 the Department of Prime Minister and Cabinet's Indigenous Advancement Strategy ('IAS'). The 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 (VAQ) 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 as in relation to addressing and meeting non-legal needs.

### QIFVLS' Case Management Practice model

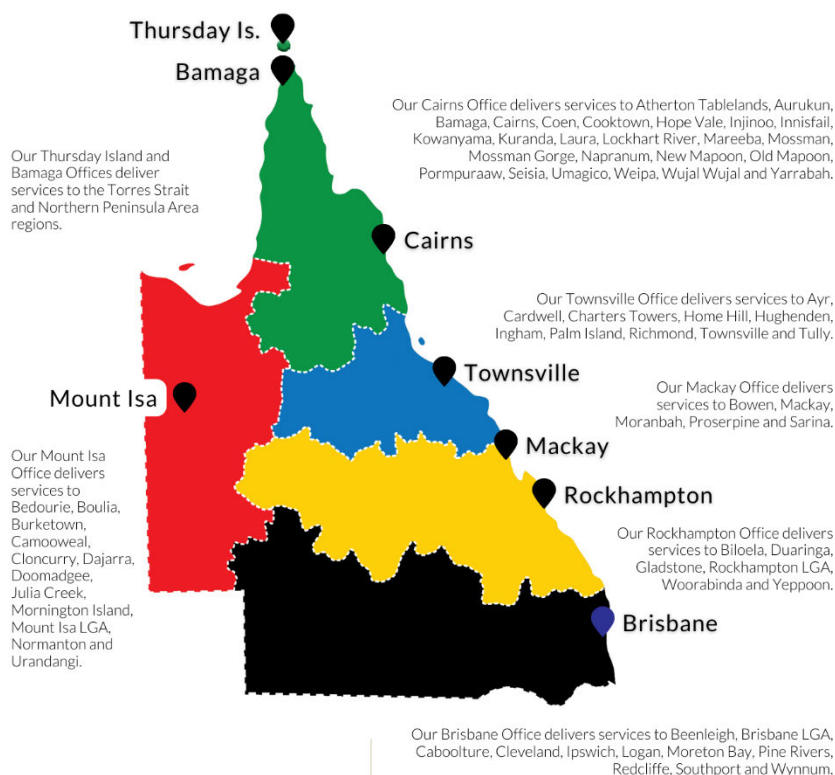
To address an area of unmet need, QIFVLS' within its current funding through the Department of Prime Minister and Cabinet and now, through the National Indigenous Australians Agency (NIAA), developed and implemented a Case Management Practice to complement and run alongside the legal practice. The case management practice was originally piloted in our Rockhampton office in 2016 and provided



success in being able to holistically respond to both legal and non-legal needs of victim/ survivors of family violence. The Case Management Model was then expanded for trial in our Mount Isa office in 2018 and proved successful there. As a result, QIFVLS has now integrated and embedded the Case Management Practice across all QIFVLS offices across the state of Queensland.

The case management practice was developed as it was initially 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 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 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 80+ 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 Texas<sup>1</sup>. Bearing that in mind, QIFVLS has eight (8) offices in Queensland –

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

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

## Family violence as the cornerstone

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 relationship<sup>2</sup> (ie domestic violence support services and shelters; actual police presence within a community). QIFVLS has witnessed the multi-faceted impacts of family violence daily, including the intersection between family violence and in this instance the criminal justice system. Our involvement with the criminal justice system has also been affected by our clients who are regularly misidentified as offenders in domestic violence-related matters. Accordingly we realise that although this Review has constraints, the solutions lie in whole-of-government approach characterised by adequate resourcing and shared partnerships and decision-making between governments and Aboriginal and Torres Strait Islander communities.

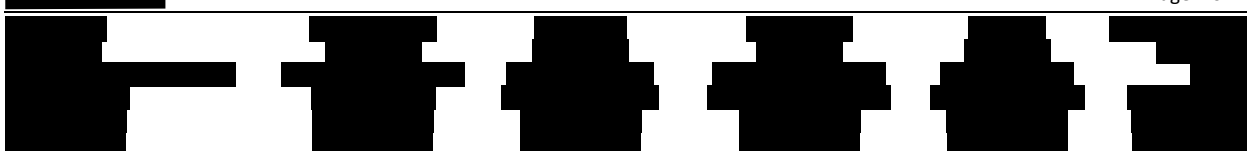
## Contemporary and effective court procedures

One way courts could proceed with contemporary and effective procedures is in the form of criminal matters involving female complainants and witnesses, particularly in matters involving violence against women. In this regard, we note that the recent Queensland State Budget has included spending measures in response to the Women's Safety and Justice Taskforce's *Hear Her Voice* Report. We are particularly interested in announcements regarding the upgrading of court infrastructure in order to ensure the safety of women who are complainants and/or witnesses in Breach of DVO and assault proceedings.

Additionally, we are aware of and keenly await the results of the recently pilot programs in Southport and Ipswich regarding the use of police body worn cameras as evidence-in-chief in domestic violence and Breach of Domestic Violence Order proceedings. We note the potential role this reform could play in the enhancement of access to justice for women and children like our clients.

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<sup>2</sup> Australian Institute of Health and Welfare (AIHW), Alcohol and other drug use in regional; and remote Australia: consumption, harms and access to treatment 2016-17. Cat.no. HSE 212. Canberra.





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## Accommodating the needs of a diverse population

From QIFVLS' perspective, we would submit that the Review consider Recommendation 10-1, arising from the Australian Law Reform Commission's ('ALRC') Pathways to Justice report<sup>3</sup>. Recommendation 10-1 provides that state and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to establish interpreter services within the criminal justice system where needed and monitor and evaluate their use<sup>4</sup>. QIFVLS services clients from many remote and rural communities and our observations are in line with the ALRC's findings that many Aboriginal and Torres Strait Islander people are often multilingual with English being a second or third language for people from isolated communities. In these situations, courts and mainstream institutions have failed to understand how a combination of a limited understanding of English and arcane legal procedures have a deleterious effect on a vulnerable person's experience with the criminal justice system.

## Expanding Murri Court

We also submit that another way the Magistrates Court could ensure a process that considers Aboriginal and Torres Strait Islander peoples is via expanding the scope of the Murri Court. The Murri Court was subject to an evaluation report in June 2019<sup>5</sup>. A number of recommendations were made for strengthening the Murri Court program. While we understand the Murri Court is a sentencing court and that this review will not consider sentencing, we request that the Review Team consider Recommendation 5 (Eligibility Criteria). There it was recommended that the eligibility criteria be reassessed by DJAG and at a minimum, the following eligibility criteria is removed – *that the defendant must plead guilty or there is an intention to plead guilty*<sup>6</sup>. Accordingly, we suggest the Review team consider the recommendations in full from the Murri Court with a view to establishing how they could be incorporated into the review of Magistrates Court criminal procedures and legislation.

## A single Magistrates Court of Queensland

Changing the law to create a single Magistrates Court represents a sensible option creating uniformity alongside Queensland's single District Court and single Supreme Court. From QIFVLS' vantage-point, we service up to 80 communities throughout Queensland and we note that our clients frequently cross between remote/rural areas and larger provincial centres/cities. Instead of the current system beset by complications about where proceedings for some offences can be heard, a single court promotes flexibility and allows for the easy transfer of matters between court locations. As noted in the Review paper, a single Magistrates Court could improve the court's efficiency and registry administration.

## Utilising technology in the 21<sup>st</sup> century

We support any measures which would allow for court processes to reflect increasing efficiency provided by technology. QIFVLS is particularly interested in measures that would improve the court process for our vulnerable clients. We note the work of the Women's Safety and Justice Taskforce and await the results of the pilot programs allowing for police body-worn cameras to be used as evidence-in-chief in domestic and family violence related proceedings, including proceedings for breach of DVO. We understand that the Review does not aim to duplicate the work of the Taskforce, however we wish to add our voice to measures that would allow aggrieved parties, complainants and witnesses to appear remotely via video and/or telephone where feasible.

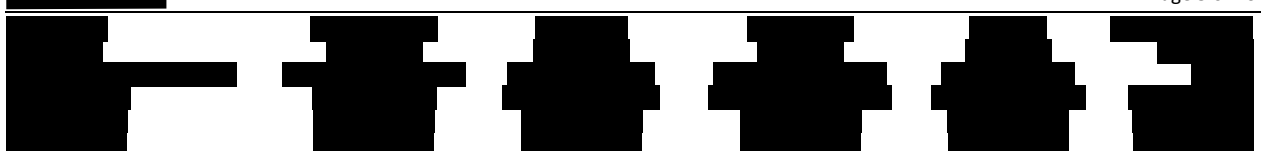
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<sup>3</sup> Australian Law Reform Commission (2017), *Pathways to Justice*

<sup>4</sup> Australian Law Reform Commission (2017), p320

<sup>5</sup> Evaluation of the Murri Court: Main Report (2019)

<sup>6</sup> Evaluation of the Murri Court: Main Report (2019), p113



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## Conducting summary hearings remotely

We would support summary hearings being conducted remotely within reason and provided logistics and technology could be arranged in such a way that parties are not disadvantaged. Given the number of QIFVLS' clients who live in remote and rural areas, such measures would play a part in shifting the balance back towards fairness and justice for the vulnerable.

## Diversiónary options

### The case for expanded diversionary options

Although out of scope, Queensland is due for a discussion about the nature of offences for which we are criminalising people, with a particular focus on Aboriginal and Torres Strait Islander peoples. A combination of data, literature and our own observations have established that the growing prison population of Aboriginal and Torres Strait Islander peoples, especially women, are there largely due to low-level offending. The Australian Human Rights Commission ('AHRC') noted that Aboriginal and Torres Strait Islander incarceration was characterised by low-level offending including justice procedure offences and failure to pay fines.<sup>7</sup>

The Queensland Productivity Commission's ('QPC') 2019 report on imprisonment and recidivism addressed the criminalisation of offences and whether criminal sanctions were the best mechanism for addressing harmful behaviours. We understand that assessing whether to reduce the scope of criminal offences is out of the Review's remit, however, it is important that the Review consider alternatives to court proceedings. The Human Rights Law Centre and Change the Record's 2017 report, *Overrepresented and Overlooked*, addressed this point in two of its recommendations.<sup>8</sup> Recommendation 12 calls for government to invest in diversion initiatives for Aboriginal and Torres Strait Islander women while Recommendation 13 calls for governments to amend criminal procedure laws and policies to require police, lawyers, courts and correctional officers to prioritise diversionary options.

Our view is that diversionary programs can play an important role in reducing the number of Aboriginal and Torres Strait Islander peoples entering the criminal justice system<sup>9</sup>. QIFVLS subscribe to the position that diversion can reduce adverse impacts through:

- Providing a more proportionate response to low harm offending (nearly 30% of adult offenders do not go on to re-offend or offend infrequently with potential savings of \$2,105 per diversion from avoided courts<sup>10</sup>; and
- Diverting offenders to treatment that addresses factors driving their offending – recidivists have elevated incidence of drug abuse, mental health, homelessness and cognitive impairment – with potential savings of \$9,200 per diversion from reduced re-offending.<sup>11</sup>

The QPC noted that in comparison to other states, Queensland makes little use of non-court proceedings (17% of all proceedings compared to 29-59% in other states)<sup>12</sup>. Thus QIFVLS supports new laws and policies that would expand diversionary options, in line with Recommendations 34 to 36 of the QPC's report on imprisonment and recidivism. Recommendations 34 – 36 provide a significant

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<sup>7</sup> Australian Human Rights Commission (2020), p170

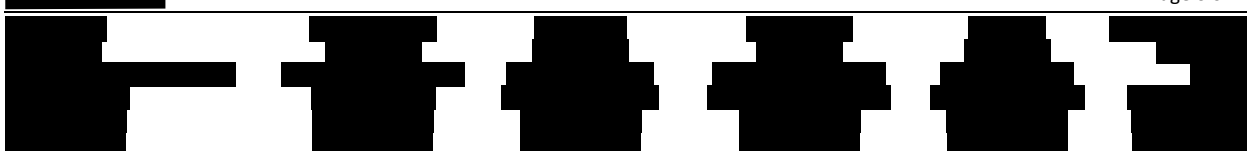
<sup>8</sup> Human Rights Law Centre & Change the Record (2017), *Overrepresented and Overlooked*

<sup>9</sup> Australian Human Rights Commission (2020), p181

<sup>10</sup> Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, p154

<sup>11</sup> Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, p154

<sup>12</sup> Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, p155





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opportunity for the Review team to reform criminal procedure in ways that would impact Aboriginal and Torres Strait Islander communities. A keen focus should be placed on the following:

- Adult cautions for first or infrequent offences;
- Multi-stage caution and diversion scheme for drug possession;
- Three-tiered deferred prosecution;
  - We are mindful of the QPC's findings that deferred prosecution has an advantage over court-based diversion as it avoids complex court processes and provides more certainty to the offender;<sup>13</sup> and
- Local policing plans based on problem and community-oriented policing practices, developed in partnership with community groups.<sup>14</sup>

In remote Aboriginal and Torres Strait Islander communities, we would also encourage a greater uptake of mediation and restorative justice where it is appropriate to do so. In saying this, we note that much will depend on the specific case.

We add a note of caution that for diversionary programs to succeed, the police should be incentivised to pursue said diversionary options where doing so would carry little risk or would lead to high payoffs in terms of future avoided harms.<sup>15</sup>

## Greater role for victim

QIFVLS provides assistance to clients with applications through Victim Assist Queensland ('VAQ'). We believe there is a role for the interests of victim-survivors to be incorporated into Magistrates Court criminal procedures. We support providing victim-survivors with greater roles in the court process/prosecution. Recommendation 8 of the QPC's report focuses on ensuring restitution and restoration for victims in sentencing. It also provides that victims should be given the option of engaging in the process of restitution or restoration with an offender prior to sentencing. We stress that the decision whether to engage should lie solely with the victim. Where a victim-survivor chooses not to pursue restitution or restoration or where no agreement can be reached with the offender, it is sensible for normal court processes to proceed.<sup>16</sup>

## Conclusion

We take this opportunity to thank the Commission for considering our submission together with recommendations for improving criminal procedures in the Magistrates Court. Despite not representing criminal law defendants, we trust that the Commission appreciates our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and Family Violence Prevention Legal Service.

We would be grateful to be involved in future consultations that will contribute to enhancing the way the Queensland population and in particular, Aboriginal and Torres Strait Islander peoples, access justice in the Magistrates Courts.

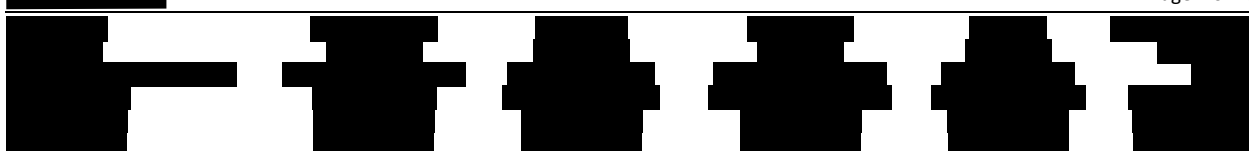
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<sup>13</sup> Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, page xli

<sup>14</sup> Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, page lvi

<sup>15</sup> Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, p161

<sup>16</sup> Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, p276



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