QUEENSLAND INDIGENOUS FAMILY VIOLENCE LEGAL SERVICE

Submission to the Women's Safety and Justice Taskforce – Discussion Paper 3: Women and girls' experiences across the criminal justice system as victims-survivors of sexual violence and also as accused persons and offenders

14 April 2022

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Queensland Indigenous Family Violence Legal Service

The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the Women's Safety and Justice Taskforce – Discussion Paper 3: Women and girls' experiences across the criminal justice system as victims-survivors of sexual violence and also as accused persons and offenders.

Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ("QIFVLS") welcomes the opportunity to provide submissions in response to Discussion paper 3 of the Women's Safety and Justice Taskforce.

QIFVLS, is one of a total of fourteen (14) Family Violence Prevention Legal Services (FVPLSs) across Australia and one of the twelve (12) FVPLSs that are part of the National Family Violence Prevention Legal Service (NFVPLS) Forum. Accordingly, this submission draws on the experience of QIFVLS as one of two Aboriginal and Torres Strait Islander Community Controlled family violence prevention legal service providers (FVPLS) in Queensland. QIFVLS is 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 islands neighbouring Papua New Guinea. QIFVLS can be distinguished from Community Legal Centres and Legal Aid Commissions in that it has the advantage of providing assistance from the front-end via a wrap-around service that embraces early intervention and prevention.

QIFVLS is also a not-for-profit legal service formed under the Family Violence Prevention Legal Services Program ("FVPLSP") through the Indigenous Advancement Strategy ("IAS"). FVPLSP fill 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. FVPLS' are also recognised as one (1) of the four (4) legal service providers in Australia which also includes the Aboriginal and Torres Strait Islander Legal Services (ATSILS/ALS'); Community Legal Centres (CLCs) and Legal Aid Commissions (LACs).

In that regard, this submission is tailored to specifically respond from the perspective and experience of Aboriginal and Torres Strait Islander victim-survivors of family and sexual violence in Queensland. In addressing the issue of violence against women in the military, the former Chief of the Australian Army, LT Gen David Morrison famously stated that *"the standard you walk past is the standard you accept."*

Violence against First Nations women and girls goes beyond the mere rhetoric of being a crisis. It is wholly unacceptable for one of the world's leading developed nations to continue with a society where Aboriginal and Torres Strait Islander women and girls are grossly affected by family violence amidst a cocktail of intersecting factors which manifest themselves in First Nations women being:

- more likely to be hospitalised due to family violence; and
- unacceptably over-represented in the criminal justice system; and
- Faced with the trauma of having their children removed from their care at greater rates than other Australian women.

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85% of clients assisted by QIFVLS are female. Thus our observations are of a criminal legal system that is slow to help our clients, if at all, but burdensome in compounding the trauma that First Nations women and girls have had inflicted on them.

Considering the history of Australia's police services which have historically been used as agents of colonisation, our submission refers to deeper cultural issues within the Queensland criminal justice system[1]. In this regard, we cannot ignore Queensland and Australia's colonial history and the systemic racism and ongoing intergenerational trauma which daily conspire to make the criminal justice system turbulent to navigate for Aboriginal and Torres Strait Islander peoples especially our women and girls.

We will highlight our experiences and difficulties with reporting crimes to police and the barriers that have been erected which ultimately stymie progress. We draw upon our clients' ongoing and current history of poor interactions with government agencies. In our particular area when dealing with family violence and sexual assault, misidentification of offenders has set back our clients and played a significant role in the criminalisation of Aboriginal and Torres Strait Islander women and girls. QIFVLS experiences cases of misidentification by police of the *real victim* on a weekly basis! Our women and girls comprise the fastest growing prison population, outstripping First Nations men, when in many cases, we observe that they have been sentenced to custodial terms for minor offences – offences of poverty so to speak.

We are adamant that the solution lies in a trauma-informed model, holistic model, rather than a predominantly criminogenic response. A trauma-informed model would focus on improved training in cultural competency and embrace early intervention and prevention in concert with a tertiary response model. Accordingly, our submission will offer recommendations for change which mirror those provided by the Change The Record Coalition in its *Blueprint for Change*[2] alongside recommendations from the Australian Law Reform Commission's *Pathways to Justice Report*[3] and the Australian Human Rights Commission's *Wiyi Yani U Thangani Report*[4].

[1] https://www.abc.net.au/news/2022-03-31/police-misidentifying-domestic-violence-victims-perpetrators/100913268

[2] Change the Record (2022): Blueprint for Change - https://www.changetherecord.org.au/policy-framework-blueprint-for-change

[3] Australian Law Reform Commission (2017), Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples Report

[4] Australian Human Rights Commission (2020) *Wiyi Yani U Thangani Report*

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Summary of Recommendations

In response to the Discussion Paper 3, QIFVLS is pleased to provide the following recommendations, which mirror and support those made by the Change the Record Coalition's Blueprint for Change together with incorporating recommendations from the ALRC's Pathways to Justice and the Wiyi Yani U Thangani Report.

Recommendation 1: Invest in local communities

Make use of existing Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) and existing models already in place, allowing space and flexibility for localised solutions. In making this recommendation, we note that women and girls require greater investment in culturally informed and community-led solutions for early intervention and diversion.

An investment in local communities, especially ACCOs is in accordance with the National Partnership Agreement on Closing the Gap Priority Reform Area 2.

Recommendation 2: Justice Reinvestment

Justice Reinvestment would be a step towards addressing the cycle of disadvantage that exists and contributes to the high levels of imprisonment among First Nations peoples.[5]

The Wiyi Yani U Thangani Report notes that Australia spent $110,230 per person in 2017-18 ($302 per day).[6] Their research showed that of the prisoners released in 2015-16, 45.6% returned to prison within two years while 54.2% returned to corrective services.[7] Justice Reinvestment would also acknowledge that increased spending on incarceration facilities combined with a tough-on-crime approach misses a genuine opportunity to address the drivers of crime.

Recommendation 3: The Queensland Government review current sentencing legislation and investigate legislating alternative sentencing options

A review of sentencing options would include providing greater scope for judicial officers to apply their discretion. A review of sentencing options should also take into account the impacts of prison on women, who have children , who will then on-flow into the Child Protection system as well as the Youth Justice system.

Recommendation 4: Greater investment in specialist courts

It is estimated that 95% of First Nations people appear in mainstream courts.[8] Specialist courts are thus limited in number. We know that the Murri Court has seen an increase in appearance rates[9], thus providing opportunities for access to rehabilitation services.

Recommendation 5: Greater investment in specialised and culturally safe frontline legal services

As we have seen from the 2022 federal budget, specialised and culturally safe frontline legal services are underfunded and overworked. Greater investment into our services, particularly in regional, rural and

[5] Australian Human Rights Commission (2020), p184
[6] Australian Human Rights Commission (2020), p182
[7] Australian Human Rights Commission (2020), p182
[8] Australian Human Rights Commission (2020), p186
[9] Evaluation of the Queensland Murri Court (2010) - https://apo.org.au/node/23026

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remote communities would be welcomed and would allow for our lawyers and case management officers to provide holistic legal services.

In addition, a common issue we have identified also relates to conflicts of interest. Quite often, ATSILS are unable to represent women due to a conflict of interest with a related or opposing party. This is problematic where family violence is involved and amplifies the need for services such as QIFVLS.

Recommendation 6: Cross-cultural training for government agencies and NGOs

The Wiyi Yani U Thangani Report noted the benefits of judicial officers engaging in cross-cultural training, including that judicial officers would develop a greater level of cultural awareness and understanding of social and historical influences on Aboriginal and Torres Strait Islander disadvantage, leading to a more flexible approach by the courts to divert offenders and address the disproportionate rate of First Nations people traversing the criminal justice system.[10]

Cultural awareness training is also vital to improve the cultural competency of police officers when dealing with members of the Aboriginal and Torres Strait Islander community.

Recommendation 7: Police focus on increased education, recruitment and retention of First Nations staff

That the police adopt education, training and recruitment practices that promote:

- Aboriginal and Torres Strait Islander women's employment and participation;
- More appropriate responses to Aboriginal and Torres Strait Islander women as victim-survivors and accused persons.[11]

Recommendation 8: Corrective services - connection with culture while incarcerated

One concern we have identified is the disconnection from culture, community and country while women and girls are incarcerated. Consideration should be given to increased funding to accommodate recruitment of Aboriginal and Torres Strait Islander staff and cultural support officers. This would help to create bonds between those in custody with social and emotional support. Additionally, such staff could

[10] Australian Human Rights Commission (2020), p185

[11] Human Rights Law Centre & Change the Record (2017), p7

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play a pivotal process in the prison through care system – that is being a centre point to support women transition from prison and back into mainstream.

We have seen in our communities the significant gap when Aboriginal and Torres Strait Islander women are released from prisons: there is little to no practical support, effectively setting up these women to fail and be returned to prison.

Access to cultural programs delivered by local community, (especially in formative years for juvenile detention) may also assist with support, understanding, mentorship, surrogate family.[12]

Recommendation 9: Develop consistent data collection systems that would track Aboriginal and Torres Strait Islander women's trajectory through the criminal justice system.

Ideally, the data should be disaggregated, including on the basis of race, sex, gender identity, age, disability, socio-economic status and family responsibilities[13].

This recommendation, especially the sharing of data is consistent the National Partnership Agreement on Closing the Gap Priority Reform Area 4.

In suggesting the above, we must ensure that any reform is made in consultation and partnership with Aboriginal and Torres Strait Islander communities and their representative organisations, including recognition of the unique expertise of ACCOs that specialise in supporting victim/survivors of family violence.

[12] Australian Human Rights Commission (2020), p188

[13] Human Rights Law Centre & Change the Record (2017), p6

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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 Minster 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 10-member board of directors – 8 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 a success in being 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 of 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 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 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

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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 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[14]. Bearing that in mind, QIFVLS has eight (8) offices in Queensland –

(1) a service delivery office and 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.

[14] https://www.qld.gov.au/about/about-queensland/statistics-facts/facts

QIFVLS believe that in order to act on the genuine will and consensus to reducing and eliminating family 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 families' 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 ACCOs) as well as specialised and culturally safe frontline legal services (such as those provided by the FVPLSs across Australia) for Aboriginal and Torres Strait Islander victims/survivors.

Moving away from siloed government responses, QIFVLS advocate for uniform and consistent strategies that improve responses in the policing and criminal justice system, the child protection system and corrective services. 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-established literature as being core social drivers giving rise to the over representation of Aboriginal and Torres Strait Islanders as victims/survivors of family violence and sexual assault.

The impact of Family Violence on the experiences of women and girls in the criminal justice system

With our background in assisting victim-survivors of family violence, the level of support and assistance provided to victim-survivors greatly affects their interactions with the criminal justice system either as victims or as the accused persons.

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[15] (ie domestic violence support services and shelters; actual police presence within a community).

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 people[16]. It is 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 women[17];

[15] 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.

[16] 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.

[17] 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.

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- Aboriginal and Torres Strait Islander women are 11 times more likely to die from violent assault than other women[18];
- Approximately 90% of violence against Aboriginal and Torres Strait Islander women is not reported[19];
- Family violence is the primary driver for the removal of Aboriginal and Torres Strait Islander children into out of home care[20];
- Aboriginal and Torres Strait Islander children represent 39% of the total of all children in out of home care despite comprising only 6% of the total population of children in Australia[21];
- In 2021, Aboriginal and Torres Strait Islander children were 10 times more likely to be removed and growing up in out-of-home care or on permanent care orders 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) years[22].

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.

QIFVLS supports a unified, co-ordinated and integrated approach that genuinely addresses 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 custody[23]. Our submissions make reference to a number of key reports including the Australian Law Reform Commission's '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."*[24] However, whilst the ALRC Report was formally tabled in Commonwealth Parliament on 28 March 2018, disappointingly, no response was provided by the Government.

Cross-cutting issues

We welcome the Taskforce's focus on the cross-cutting issues relevant to the discussion around women and girls' experiences both as victim-survivors of sexual violence and as accused persons or offenders in the criminal justice system. We have stated above that taking a siloed approach to resolving issues ignores

[18] 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.
[19] Australian Productivity Commission (2014), Overcoming Indigenous Disadvantage – Key Indicators, p 491
[20] Commissioner for Aboriginal Children and Young People (2015), Open Letter in response to 2015 *Report on Government Services*, 3 February 2015.
[21] Family Matters Report (2021), Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia – 2021 Snapshot Data.
[22] 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.
[23] National Family Violence Prevention Legal Services: www.nationalfvpls.org
[24] Australian Law Reform Commission (2017), at 11.20.

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the intersectional disadvantages experienced by Aboriginal and Torres Strait Islander women and girls as both victim-survivors and accused persons.

At the outset, we believe that the way for the experiences of Aboriginal and Torres Strait Islander women and girls to be seen, acknowledged and supported in the criminal justice system begins with addressing the *elephants* in the room.[25] These are systemic racism, sexism, lack of cultural awareness, and under-resourcing of services and programs delivered to and by Aboriginal and Torres Strait Islander communities. We have witnessed how an engrained culture of systemic racism has shaped the way police officers respond to acts of violence, particularly family violence and sexual violence, in indigenous communities. We often receive reports from women that even when they have found the courage to report abuse, it has been overlooked or not taken seriously.[26]

Case study – Anne's story

- Anne (not her real name) was in a long term relationship with Bill (not his real name), but had been the victim of domestic violence during this relationship, including physical violence towards herself by Bill. As a result, Bill had a domestic violence order (DVO) against him to protect Anne, as taken out by police and in place for some time.
- One weekend Bill was due to go away for a trip, but due to the COVID lockdown in Cairns it was cancelled. Anne was looking forward to a break from Bill, and became frustrated having him around. A verbal argument broke out one night, and police were called. Because Anne threw a salt shaker in frustration at the ground (not at Bill or hitting Bill) the police took out a DVO against her naming Bill as the victim and Anne as the perpetrator.
- Anne works in community and a DVO may impact her blue card which would impact her work. It also caused a lot of shame for her as well.
- We identified that Anne was the greater victim and her actions were out of frustration. We referred Anne to the DV counsellor to assist in identifying triggers and domestic violence in her relationship to help prevent herself getting into that situation in future.
- At the Magistrates Court, we appeared for Anne and we adjourned the court matter for Anne to engage in domestic violence counselling. We opened a file for Anne to remove the need for the client to come back to court as we could appear on her behalf which she was grateful for due to her work commitments.
- At the next court event, we again appeared for Anne and we were able to provide a letter of support from the DV counsellor and made submissions as to why the order was not necessary or desirable. The Magistrate agreed with us and dismissed the application.
- This was a great outcome for Anne. Anne was very happy and relieved with the result, and continues to have counselling with the DV worker as she found great benefit in it.
- Without QIFVLS assistance and representation, an order would have been made against Anne even though Anne is the greater victim in need of protection.

We understand that cross-cutting issues are also reflected in data showing that between 57% and 90% of female prisoners have experienced sexual violence.[27]

[25] https://www.abc.net.au/news/2022-03-31/police-misidentifying-domestic-violence-victims-perpetrators/100913268

[26] https://www.abc.net.au/news/2022-03-31/police-misidentifying-domestic-violence-victims-perpetrators/100913268

[27] Stathopoulos & Quadara (2014), pp10-21

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Women and girls as victim-survivors of sexual violence

It is important and welcomed for the Taskforce to acknowledge that Aboriginal and Torres Strait Islander women and girls have been victims and survivors of sexual violence since the first days of Australia's colonisation. This acknowledgement is important to understanding the ongoing impacts of intergenerational trauma. Placed against this background, the current environment still results in First Nations women and girls experiencing sexual violence at a disproportionately higher rate than non-indigenous women and girls is cause for shame that must be addressed.

We urge the Taskforce to consider underlying causes including:

- The understanding of sexual violence and consent in the community;
- Effective reporting and barriers that prevent women and girls from approaching police;
- Misidentification of offenders;
- Police training and investigative processes; and
- Cultural awareness and competency of police.

Education around sexual violence and consent in the community

We have observed occasions in the past where a void in education around respect for women and consent has led to mistaken beliefs around sexuality, masculinity and consent. This has led to horrific circumstances involving the sexual assault of Aboriginal and Torres Strait Islander girls.

Case Study – 'Mary' and 'Jane'

- QIFVLS solicitor and case management officer assisted a Mother, 'Mary' (not her real name) from a remote community. Mary had filed an application for a domestic violence protection order on behalf of her 12-year daughter, 'Jane' (not her real name).
- Jane had been in a relationship for over one year with a man who was 19 years old. Jane had made disclosures to Mary about the violence she had been subjected to at the hands of her partner, including physical, sexual, verbal and emotional abuse.
- Attempts by Mary to engage and utilise service providers such as the Police and Child Safety were unsuccessful and Jane continued to suffer and sustain violence from her partner, even after the end of the relationship.
- In July 2020, Mary engaged with QIFVLS and an application for a domestic violence protection order was filed on Jane's behalf by Mary. Given the nature of the allegations contained in the application, the matter was heard on an urgent basis and a temporary protection order (TPO) was made. The TPO contained the mandatory terms and conditions but also additional conditions prohibiting the ex-partner from entering or attempting to enter a number of premises where Jane was, including her school; prohibiting him from locating or contacting or attempting to locate or contact Jane; prohibiting him from following or approaching Jane as well as prohibiting him from using social media and the internet to communicate with Jane and the named persons in the TPO.

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- The matter was then listed for a mention in September 2020 to allow service on the ex-partner. Prior to the mention date and following service on the ex-partner, he continued to breach the TPO against Jane. A breach was reported to police two days before the matter was mentioned in the September mention date.
- When the matter finally returned to court in September, the ex-partner failed to appear at Court. QIFVLS Solicitor and Case Management Officer, appeared for Mary and Jane. Submissions were made that all requirements for the making of a final protection order had been satisfied, including that Mary, as the mother of Jane, could make the application for a protection order on Jane's behalf, in the absence of the ex-partner.
- The Magistrates Court, in considering the severity of the allegations made by a 12-year-old Jane, the continued breaches of the TPO and the submissions made, made a final protection order for a period of 5 years, on the same terms and conditions as the TPO.
- We also provided support and further referrals to Mary and Jane to the appropriate services and stakeholders to seek on going counselling and guidance within the community.

The case study of Mary and Jane, is an indicator of what we experience quite regularly in our practice. One of the most concerning elements in this case study, is the lack of action taken by Police or Child Safety when complaints of sexual violence are made.

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 Case Management 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 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 non-legal needs.

Barriers to reporting

We have observed a variety of barriers to reporting sexual violence. These are largely couched in fear and include:

- Fear of reporting to police due to a history of not being believed;
- Fear that reporting may lead to the removal of children/the breakup of the family unit.
- Fear of negative repercussions, especially in small remote communities.

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- including fear of payback offender's family, stigmatisation or ostracization from the community.

Misidentification of offenders

The misidentification of offenders occurs for a variety of reasons including lack of cultural awareness, lack of training and either negative stereotypes and/or negative views of the victim-survivor. At QIFVLS, we witness on a weekly basis situations where police have misidentified an offender through a failure to adequately investigate a report of violence, be it sexual or family violence that does not have a sexual component. On a number of occasions, it has been left to QIFVLS lawyers to undertake the investigative work and raise the clients' circumstances in the Magistrates Court thus forcing a reconsideration of the client's circumstances.

The failure by police to properly investigate and the consequent naming of the woman or girl as the perpetrator in turn perpetuates cycles of incarceration, child removal, mental illness and substance abuse. The solution lies in a cultural overhaul of policing strategies including training that embeds cultural competency and reviews investigative strategies.

Laws around consent

QIFVLS acknowledges that the Queensland Law Reform Commission (QLRC) reviewed consent laws and the excuse of mistake of fact and delivered a raft of recommendations in its report released in June 2020. We are aware that the legislation giving effect to the QLRC's recommendations came into effect on 7 April 2021.

QIFVLS supports affirmative consent and would welcome a further review of mistake of fact and consent laws.

Review of similar fact and propensity evidence

QIVLS forms the view that the Taskforce has scope to examine the rules of evidence for admissibility of similar fact and propensity evidence in Queensland.

QIFVLS supports recommendations to reform rules of evidence for admissibility of similar fact and propensity evidence in Queensland.

There is a need to examine these technical rules of evidence as they contribute to (and compound) making the criminal legal system a non-supportive and non-trauma informed and unsafe space for victim/ survivors who find the courage to pursue their complaints through the criminal legal system.

Given the Case Management Practice Model utilised by QIFVLS, there may be avenues to explore regarding the provision of culturally safe supports for victim-survivors navigating the criminal justice system as complainants.

This could be necessary where the complainant/victim-survivor is living in a remote or rural location. 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. 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.

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Whether a complainant should receive independent legal representation outside of the prosecution
Discussion paper 3 raised the issue of independent legal representation for victim-survivors who are complainants in criminal proceedings. We acknowledge this would represent a seismic shift in the way criminal law trials are conducted in Queensland. Chief among these is a potential unbalancing of the scales in the current adversarial system of criminal justice.

In this regard, we acknowledge that a defendant, often from a disadvantaged background, would face the prospect of defending themselves against both the prosecution and the legal representative for the complainant. On the other hand, an independent legal practitioner for the complainant who is culturally competent could provide greater comfort and confidence to a complainant that they are being supported, understood and 'heard'. While it is true that there is already a prosecutor, an independent victim's legal representative could have added value as a safeguard to highlight issues that a prosecutor cannot focus on. An alternative scenario, were an independent legal representative to be considered, could lie in limiting the independent victim's legal representative's powers in court eg limiting their ability to cross-examine the defendant.

Alternative ways of delivering justice
QIFVLS would support the Taskforce examining the use of alternative ways of delivering justice for victim-survivors of sexual violence. At this juncture, we highlight that Priority Reform One of the National Partnership Agreement on Closing The Gap championed formal partnerships and shared decision-making. In that regard, QIFVLS advocates for alternative solutions to be community-led initiatives, developed by Aboriginal and Torres Strait Islander communities and community-controlled organisations. Such solutions could include a focus on healing and respecting family and cultural obligations instead of separating women and families from their communities.

Women and girls' experiences as accused persons and offenders

Aboriginal and Torres Strait Islander women and girls are more likely to be arrested, charged, detained and sentenced to imprisonment for the same offences and less likely to receive a non-custodial sentence than non-indigenous women.[28]

The failure of the tough-on-crime approach
We have observed over generations that governments often take the path of a tough-on-crime approach in a bid to win votes and mollify the broader mainstream of voters. Our submissions demonstrate however that such an approach has left our women and girls (and in a broad sense all Aboriginal and Torres Strait Islander peoples) as collateral damage in the sense that a trauma-informed approach guided by early intervention and prevention is superseded by catchier optics of increased arrests, increased charges and higher incarceration rates.

The focus on '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 was highlighted in the 2019 Queensland Productivity Commission Report on Imprisonment and Recidivism[29] with the following key findings made by the Queensland Productivity Commission (QPC)[30]:

[28] Human Rights Law Centre and Change The Record (2017)
[29] Queensland Productivity Commission (2019), Summary Report – Imprisonment and Recidivism, p.11
[30] Queensland Productivity Commission (2019), Summary Report – Imprisonment and Recidivism, p. 2.

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- 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 Human Rights Law Centre and Change The Record's joint May 2017 Report, Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment. Relevantly, the report 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 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."*[31]

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:

[31] Human Rights Law Centre and Change the Record (2017), p10-11

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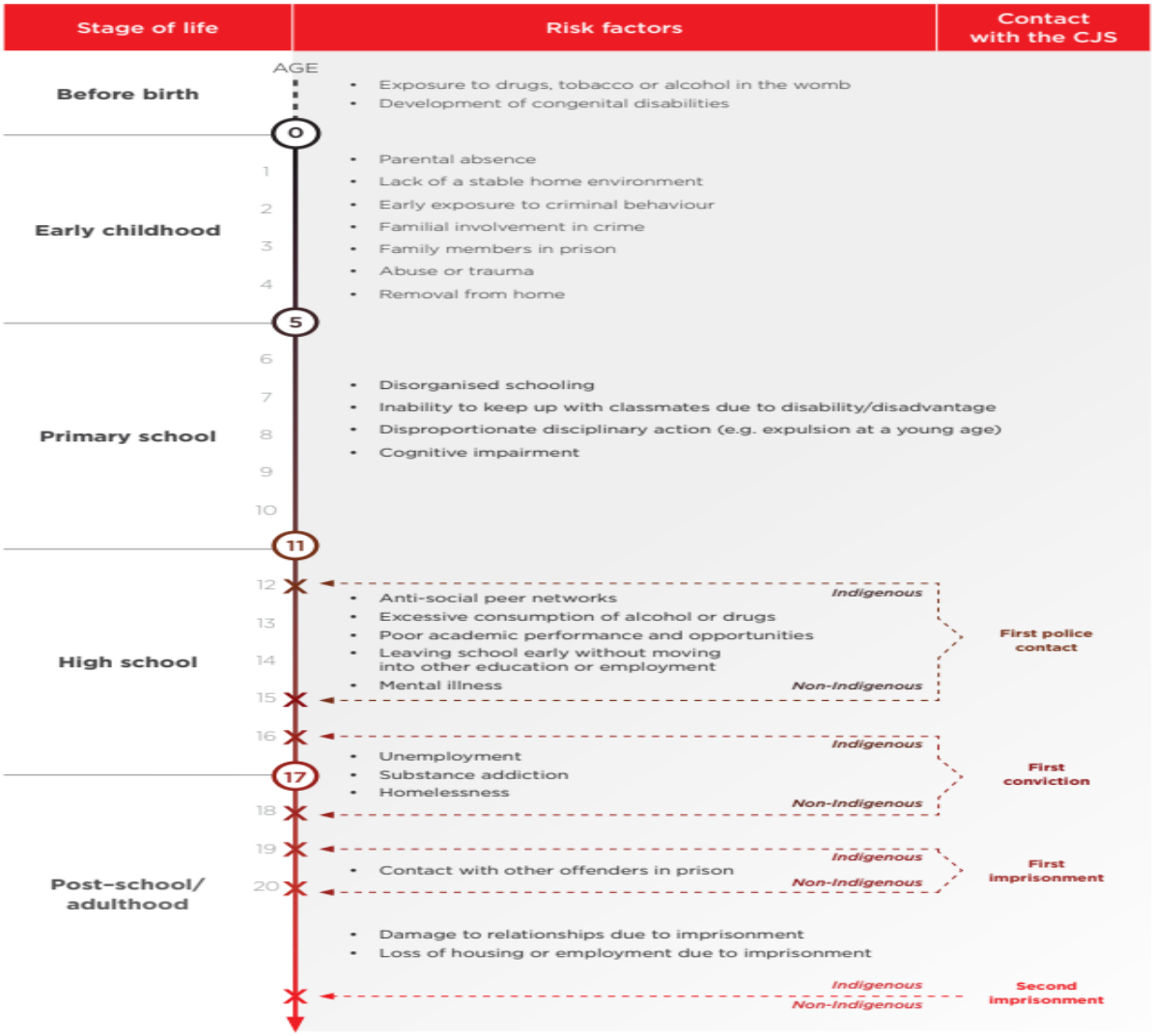
Figure 12 Risk factors and contact with the criminal justice system, Queensland



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 and advocacy of a trauma-informed and culturally safe system of resources designed to address early intervention and prevention.

Relationships with police

In our discussion above regarding barriers to reporting, we observed that relationships between First Nations women and girls on the one hand, and police are characterised as ones of mistrust and fear. In many situations, First Nations women and children do not consider the police to be a safe point of contact.[32] And alarming, in our experience, where they have reached out to the police to report offences of violence including sexual violence, police do not assist.

When our clients have reported to police, they have at times been met with an aggressive and heavy handed response or alternatively, police inaction, disregard, disbelief and a lack of care.

[32] Australian Human Rights Commission (2020), p189

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Chronic under-policing and poor response times, particularly in remote communities, has also formulated the experience and viewpoint that the police do not consider the protection and safety of Aboriginal and Torres Strait islander women and girls to be as worthy as other Australians.

Other factors behind a fear of reporting include previous negative experiences when reporting family violence or assaults to the police and concerns that either the person reporting and/or the offender, often a family member, may become a death in custody.

These fears are not misplaced and exist for good reason. The research and our observations demonstrate that the exponential growth in the proportion of First Nations women and girls is due to over-policing, racial profiling and targeting in First Nations communities. We have witnessed First Nations women and girls being detained and imprisoned for low level offences, the types of which do not receive the same targeting and detection in non-indigenous communities.[33]

The Wiyi Yani U Thangani Report detailed stories from women and girls about Aboriginal and Torres Strait Islander children being racially profiled by police, leading to disproportionate criminalisation.[34] This has the effect of further marginalising children, burdening them with a criminal record, and increasing the likelihood of targeted surveillance and future interactions with the police and the wider criminal justice system.[35]

Exorbitant costs of imprisonment

In an era when governments and the media are consumed by financial implications and appearances surrounding which major party is the better economic manager, the data speaks for itself. In 2019-20, it cost over $300 per day to detain one woman in a Queensland prison while it cost$1640 per day to hold a young person in detention in Queensland.[36] By way of contrast, community-based supervision costs $271 per young person per day.[37]

As we recommend above, alternative options to imprisonment are imperative. As it stands, 58% of young people held on remand in Australia are First Nations children while First Nations children account for 48% of young people being sentenced. This makes our children 26 times more likely to be sentenced to a custodial term of imprisonment.[38]

One option raised previously has been raising the age of criminal responsibility from 10 years old to 14 years old. In addition other options for diversion that have been raised include:

- Community conferencing,
- Diversionary conference
- Formal cautioning
- Family conference.

Despite these options, the data reveals that Aboriginal and Torres Strait Islander children are less likely to be diverted from criminal proceedings in comparison to non-indigenous children.[39]

[33] Human Rights Law Centre & Change The Record, (2017)
[34] Australian Human Rights Commission (2020), p199
[35] Australian Human Rights Commission (2020), p199
[36] Productivity Commission (2021), Tables 8A.2 & 8A.4
[37] Productivity Commission (2021), Table 17A.19
[38] Australian Institute of Health and Welfare (2018), www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2018/contents/table-of-contents
[39] Productivity Commission (2019), *Report on Government Services 2019:* *https://www.pc.gov.au/research/ongoing/report-on-government-services/2019*

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Justice Reinvestment

QIFVLS would support recommendations made by what was formerly the Anti-Discrimination Commission Qld (Recommendations 1 & 2)[40] and the ALRC (Recommendations 4-1 & 4-2)[41] in calling for the establishment of an independent Justice Reinvestment body which would promote the reinvestment of resources from the criminal justice system towards community-led, place-based initiatives that address the drivers of crime and incarceration.[42] QIFVLS supports the recommendation that the justice reinvestment body be overseen by a board with Aboriginal and Torres Strait Islander leadership.

Pursuing this path would mean Queensland is redirecting resources to strategies that can better address the causes of offending. These strategies can be both within and outside the criminal justice system. In any case, we reiterate that indigenous communities and the wider community would be better served by a commitment to invest in front-end strategies to prevent imprisonment among First Nations women and children.

Alternative sentencing options

QIFVLS believes that Queensland could better investigate decriminalising offences where the costs of criminalisation and incarceration outweigh the benefits.[43] Among its recommendations around sentencing, the ALRC supported provisions requiring sentencing courts to take a two-step approach – first, to consider the unique systemic and background factors affecting Aboriginal and Torres Strait Islander people and secondly to review evidence as to the effect on the particular offender.[44]

In a manner similar to the Gladue Reports in Canada, the ALRC recommends that courts facilitate the preparation of Indigenous Experience Reports for Aboriginal and Torres Strait Islander offenders appearing for sentence.[45] In Magistrates courts, the presentation of information about unique systemic and background factors that impact Aboriginal and Torres Strait Islander peoples would be sufficient in the eyes of the ALRC.[46]

Access to services

We have observed that women in custody have experienced a distinct lack of access to services. This has manifested in a lack of available services, restricted access to services and a substandard level of care provided by services within prison / detention.[47]

We have also been informed that upon entering prison, women are having their access to Medicare suspended. Section 30 of the *Human Rights Act 2019* provides that an accused person who is detained must be treated with humanity and respect[48]. Furthermore, those detained without charge must be treated in a way that is appropriate for a person who has not been convicted[49]. We urge the Taskforce to examine the application of s30 *HRA* as it relates to women and girls who are being held in custody.

[40] Anti-Discrimination Commission Queensland (2019), p13
[41] Australian Law Reform Commission (2017), p23
[42] Anti-Discrimination Commission Queensland (2019), p13
[43] Productivity Commission (2019), p3
[44] Australian Law Reform Commission (2017), p15
[45] Australian Law Reform Commission (2017), p24
[46] Australian Law Reform Commission (2017), p24
[47] Australian Human Rights Commission (2020), p203
[48] *Human Rights Act 2019* (QLD), s30(1)
[49] *Human Rights Act 2019* (QLD), s30(3)

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Parole

In relation to parole, we emphasise that Aboriginal and Torres Strait Islander people have greater difficulty in obtaining and completing parole, resulting in:

- lengthier custodial sentences than necessary;
- prison overpopulation; and
- reduced support upon release.[50]

The Wiyi Yani U Thangani report proposes that reintegration could include a supervised, non-custodial parole period as part of a prisoner's sentence.[51] We note that this would raise resourcing questions around the availability and accessibility of program options for those who qualify for parole.

Government inaction

Much has been made of the effects on women and girls of police inaction. This needs to be seen in concert with government inaction. There has been a repeated failure of successive governments to respond to recommendations of inquiries and reports on the conditions experienced by Aboriginal and Torres Strait Islander people in the criminal justice system.

At the risk of sounding like a broken record, the factors contributing to over-representation of Aboriginal and Torres Strait Islander women and girls have been known and voiced to governments of all persuasions. The inertia has led to ongoing trauma and harm to Aboriginal and Torres Strait Islander communities in circumstances which have been largely preventable.

Given the alarming rates of over-representation of Aboriginal and Torres Strait Islander Peoples within the criminal legal system, especially our women and girls, the time for inaction must end. Simply classifying these matters as to hard to address or fix is not good enough, especially against the back drop of the National Partnership Agreement on Closing the Gap.

Mothers and children

80% of Aboriginal and Torres Strait Islander women in prison are mothers.[52] Imprisoning these women hurts more than just the individual offender. As collateral damage, extended families and communities are worse off and in particular, children suffer with the consequences noted in our already over-represented child protection and youth justice systems.

Many Aboriginal and Torres Strait Islander mothers also have a realistic fear that disclosing and seeking help 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 than non-indigenous children to have received child protection services;
- Children from very remote areas were 4 times more likely than those from major cities to be the subject of a child protection substantiation.

[50] Australian Human Rights Commission (2020), p205

[51] Australian Human Rights Commission (2020), p205

[52] Human Rights Law Centre and Change The Record (2017), p5

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Case Study – Julia's story

- QIFVLS were contacted to assist a Mother, 'Julia' (not her real name) after the Director of Child Protection Litigation (DCPL) filed a short term custody order for 18 months application after she surrendered the care of her child after recognising that she was in a serious domestic and family violence relationship resulting in injury to the child. There was also drug use and housing concerns with Julia held by DCPL as another grounds for seeking the removal of the child.
- When we engaged with Julia, we were pleased to discover that Julia was supported by support agencies and had referrals to support service with counselling support for domestic and family violence as well as to ATODS. Julia was also supported to access Centacare and was completing parenting programs to better equip her parenting skills.
- With this knowledge and support letters in hand, we successfully negotiated the original 18 month short term custody order down to a short term custody order for 12 months application at the Court Ordered Conference. At the Court Ordered Conference, DOCS and DCPL acknowledged that Julia had taken significant steps to accessing stable housing, having very positive and consistent contact with her child, and was demonstrating that she was able to prioritise her safety and wellbeing (and the child) over her relationship with her ex-partner.
- DOCS and DCPL further indicated that reunification would occur within 4 months' of the Court Ordered Conference based on the progress of her contact.
- Julia was very happy with this result and with QIFVLS assistance.

Conclusion

We take the opportunity to thank the Women's Safety and Justice Taskforce for considering our submissions and our recommendations for improving the criminal justice system for First Nations women and girls who are victim-survivors and accused persons. We trust that the Taskforce appreciates our viewpoint as an Aboriginal and Torres Strait Islander Community Controlled Organisation.

We look forward to being involved in future consultations that will contribute to reforming the criminal justice system in a way that will benefit Aboriginal and Torres Strait islander women and girls, and ultimately their families.

The voices of Aboriginal and Torres Strait Islander women and girls must be elevated and placed at the centre of future plans that will improve the experiences of our mothers, sisters, daughters and granddaughters whilst also seeing that the objectives of the National Partnership Agreement on Closing the Gap are achieved.

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