



26 June 2023

The Honourable Mr John Robertson
Chair
Queensland Sentencing Advisory Council
By Email: submissions@sentencingcouncil.qld.gov.au

QIFVLS Preliminary Feedback regarding Review of sentencing for sexual violence offences and aggravating factor for domestic and family violence offences

Dear Chair,

Queensland Indigenous Family Violence Legal Service (QIFVLS) writes in response to your letter dated 26 May 2023, inviting preliminary feedback to assist the Queensland Sentencing Advisory Council (the Council) in identifying key issues that the Council should explore in responding to the Terms of Reference issued by the former Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence on 17 May 2023:

- Sentencing for sexual violence offences; and
- Domestic violence as an aggravating factor in sentencing under section 9(10A) of the *Penalties and Sentences Act 1992* (PSA).

We understand that this is preliminary feedback and that further opportunities for consultation and feedback will take place in the coming months and we signal our desire to be involved from the standpoint of an Aboriginal and Torres Strait Islander Community Controlled Organisation (ACCO) and Family Violence Prevention Legal Service (FVPLS).

About QIFVLS

The Queensland Indigenous Family Violence Legal Services Aboriginal Corporation (QIFVLS) is a Family Violence Prevention Legal Service (FVPLS) and Aboriginal and Torres Strait Islander Community Controlled Organisation (ACCO) that fills a recognised gap in access to culturally appropriate legal and wraparound support services for Aboriginal and Torres Strait Islander victim-survivors of family and domestic violence and sexual assault. We are a member of the Coalition of Peak Aboriginal and Torres Strait Islander peak organisations (Coalition of Peaks), and we are dedicated to achieving the priority reforms and socio-economic targets outlined in the [National Agreement on Closing The Gap](#).

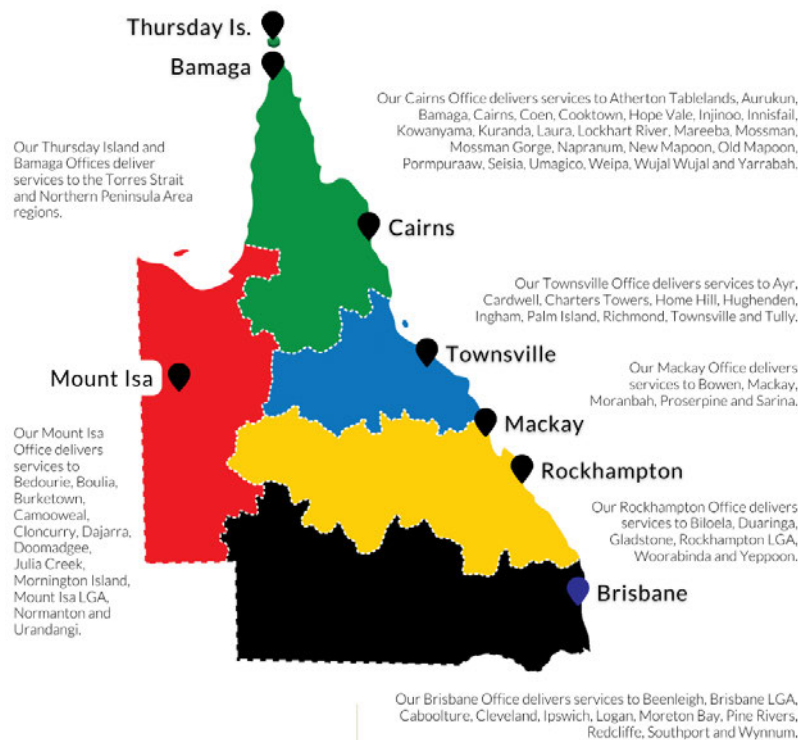
Of the 17 socio-economic targets outlined in the National Agreement, our paramount goal is to work with governments and the community to achieve Target 13 (ensuring families and households are safe and that domestic and family violence against Aboriginal and Torres Strait Islander women and children is reduced by at least 50% by 2031 as we progress towards zero) among the other inter-related targets. In the context of victim-survivors of domestic violence who have been hostage to coercive control and prolonged patterns of behaviour, including surveillance/unlawful stalking, we support these reforms.



QIFVLS' Case Management Practice Model

QIFVLS utilises a unique integrated case management practice model to support our clients to address legal and non-legal needs. With a joint team of Lawyer and Case Management Officer (CMO), QIFVLS clients entering non-therapeutic case management are assisted to address their non-legal needs whilst also responding to 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.

Given the geographical spread of Queensland, QIFVLS provides services to over 80 communities, from the urban south-eastern corner of the state, out west to Mount Isa, reaching the Northern Territory border, and north to the outer islands of the Torres Strait, neighbouring Papua New Guinea. The below map provides a visual of QIFVLS reach across Queensland:



Our staff's experiences and observations are shaped by the information provided by our clients and their families/communities. In the many diverse communities we service, the unique difficulties regional, rural and remote communities face in service delivery emphasise the necessity of governments and non-government agencies working together in a coordinated approach that empowers the many diverse local communities to develop solutions and systems to combat domestic, family and sexual violence.



Family violence as the cornerstone

It may be startling for some to learn that 3 in 5 First Nations women have experienced physical or sexual violence¹. This speaks to the crisis we witness as a family violence prevention legal service on a daily basis across our offices in Queensland.

The Australian Institute of Health and Welfare (AIHW) has found that First Nations women are 34 times more likely to be hospitalised due to family violence than non-Indigenous women and 11 times more likely to die due to assault². The AIHW also found that family violence is the primary driver of children being placed into the child protection system with 88% of First Nations children in care having experienced family violence³.

The scale of this problem however, is far greater because it is known that First Nations women are less likely than other women to report family violence or seek support because of a range of factors including judgment, discrimination, shame or fear. This depressing backdrop informs QIFVLS' experience that family violence is the cornerstone or intersection, which links an Aboriginal and Torres Strait Islander person's connection to the child protection system, the youth justice system, adult criminal justice system, housing and/or homelessness, health and the family law system.

We find that 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-survivor escaping a violent relationship⁴ (i.e., domestic violence support services and shelters; actual police presence within a community).

Through QIFVLS' provision of legal advice, legal casework, and non-legal supports, QIFVLS has witnessed the multi-faceted impacts of family violence daily, including the intersection between family violence, child protection, family law, and the criminal justice system.

In contrast to siloed government responses which have long been the standard practice, QIFVLS advocates for uniform, holistic and consistent strategies that will improve responses in the family violence, policing and criminal justice, child protection system, housing and corrective services. This approach aligns with achieving reductions in the Justice targets (Targets 10, 11, 12 and 13) of the National Agreement on Closing the Gap as well as meeting the overarching objectives of the four priority reform areas.

¹ Australian Human Rights Commission (2020), *Wiyi Yani U Thangani Report*, https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf, page 44

² Australian Institute of Health and Welfare (2019), *Family, domestic and sexual violence in Australia: continuing the national story*, <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>, page 113

³ Australian Institute of Health and Welfare (2019), *Family, domestic and sexual violence in Australia: continuing the national story*, <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>

⁴ Australian Institute of Health and Welfare (2016-17), *Alcohol and other drug use in regional; and remote Australia: consumption, harms, and access to treatment 2016-17*. Cat.no. HSE 212. Canberra.



Our preliminary feedback regarding the Review

Our feedback is informed by our experiences as an Aboriginal and Torres Strait Islander Community Controlled Organisation (ACCO) and Family Violence Prevention Legal Service (FVPLS). When considering that the Review aims to advise on the impact of any recommendation on the disproportionate representation of Aboriginal and Torres Strait Islander people in the criminal justice system, one aspect we would like the Review to consider is the ever-increasing rate of incarceration of Aboriginal and Torres Strait Islander women and girls and the nexus with the misidentification of women as perpetrators of domestic and family violence.

Accordingly, we would like to see the Review consider the following:

1. The Review scrutinises any discrepancies or distinctions between the following data—
 - Sentences imposed where the victim-survivor identifies as an Aboriginal and/or Torres Strait Islander person.
 - Sentences imposed on female offenders who identify as Aboriginal and/or Torres Strait Islander persons.
 - Sentences imposed where the offender is non-Indigenous vs sentences imposed where the offender is an Aboriginal and/or Torres Strait Islander person.
 - Sentences imposed on Aboriginal and/or Torres Strait Islander males, including where the victim-survivor is either Aboriginal and/or Torres Strait Islander or non-Indigenous.
2. The Review examines cases involving offenders who receive lengthier terms of imprisonment and any relationship with the offender's significant criminal history.
3. The Review's access to and examination of sentencing remarks and sentencing submissions addressing the antecedents and background circumstances of the complainant/victim-survivor and the offender.
 - Noting that roughly 85% of our clientele are female, we are interested in sentences imposed on female offenders who have been subjected to coercive control and have been misidentified as perpetrators of domestic and family violence.
4. The relationship between sentences imposed and the availability and resourcing of frontline legal and cultural support services, especially in regional, rural and remote communities.
5. The efficacy of judicial training and awareness regarding trauma-informed practices and cultural competency.

1. Examining data regarding sentences imposed on offenders

Recommendation 73 of *Hear Her Voice – Report One*⁵ seeks to identify differences in the application of the aggravating factor for offences involving non-physical violence. From the perspective of QIFVLS, any data that reveal trends, consistencies or deviations in the sentences imposed for domestic violence related offences enlivening the operation of section 9(10A) of the PSA in the manner we suggest would be useful in reviewing the impact on Aboriginal and Torres Strait Islander peoples whose sentences have involved the application of section 9(10A).

⁵ Women's Safety and Justice Taskforce (2022), *Hear Her Voice Report One, Volume Three* https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0015/700602/volume-3-the-journey-we-must-go-on-as-a-community.pdf page 718



2. Examining cases involving lengthier terms of imprisonment and the relationship with significant criminal history

We would like to see the Review research cases where lengthier terms of imprisonment have been imposed, on either male or female defendants, and what relationship if any there may be with those offenders having significant criminal histories. We note that in their 2018 report, *Pathways to Justice*, the Australian Law Reform Commission (ALRC) observed that Aboriginal and Torres Strait Islander offenders are more likely to have prior convictions and to have served a term of imprisonment than non-Indigenous offenders, and that this history may influence the sentencing decision⁶.

3. Accessibility and examination of sentencing remarks and sentencing submissions, if possible, addressing the background circumstances of the complainant/victim-survivor and the defendant

We would be interested in whether the Review can access transcripts of sentencing remarks from judicial officers together with sentencing submissions from legal representatives on behalf of the police/Crown and the defendants. Considering the background circumstances and histories, including criminal histories, of offenders would be valuable in evaluating the impacts on Aboriginal and Torres Strait Islander offenders and accused persons. We note that the Council's 2022 report on the sentencing profile of women and girls, *Engendering Justice*, highlighted that violent offences such as common assault are often related to women's resistance or retaliation to violence and abuse or response to trauma⁷. In that regard, any sentencing submissions or remarks teasing out background circumstances relating to offenders who have subjected their victims to coercive control and other non-physical forms of domestic violence would go to the heart of Recommendation 73 in the Taskforce's *Hear Her Voice: Report One*.

In their report, *Pathways to Safety*⁸, Change The Record and the National Family Violence Prevention Legal Services Forum highlighted findings by ANROWS that Aboriginal and Torres Strait Islander women very often do not fit the ideal victim stereotype and were more likely than other women to engage in self-defence. Furthermore, the report noted they did not cooperate with police due to colonial and ongoing, fraught relationships between First Nations peoples and police. These factors lead to our women being named on domestic violence orders, charged with contraventions of DVOs and being significantly more likely than non-Indigenous people to receive a sentence of imprisonment for a contravention of a DVO compared to non-Indigenous people, with Aboriginal and Torres Strait Islander women being particularly over-represented in the system.

Accordingly, we are of the view that identifying the antecedents and history of offenders, who themselves have been subject to coercive control and have been misidentified as perpetrators of domestic and family violence, would add a further dimension to the Council's research brief into the

⁶ Australian Law Reform Commission (2017), *Pathways to Justice*, <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>, page 14

⁷ Queensland Sentencing Advisory Council (2022), *Engendering Justice – Sentencing profile on women and girls*, https://www.sentencingcouncil.qld.gov.au/data/assets/pdf_file/0008/735425/Sentencing-profile-on-womens-and-girls.pdf, page 19

⁸ Change The Record and NFVPLS (2021), *Pathways to Safety*, <https://www.changetherecord.org.au/pathwaystosafety>



impact of domestic violence as an aggravating factor at sentence⁹, assisting the Council in preparing its report and recommendations.

4. Availability and resourcing of frontline legal and wraparound cultural support services

In reviewing sentencing practices and sentences imposed, we are keenly interested in how access to legal services and wraparound cultural supports has affected sentences imposed on offenders, particularly those convicted of domestic violence related offences. *A Call for Change 2022*, the final report of the independent Commission of Inquiry into Queensland Police Service responses to incidents of domestic and family violence, found that inadequate access to legal representation and assistance is more prevalent in regional and remote communities with the subsequent effect of compounding the systemic disadvantages faced by Aboriginal and Torres Strait Islander peoples who live in these communities¹⁰.

From our perspective this is relevant to both complainants and defendants. If it is the case that complainants and defendants have had experiences in not being able to suitably have their circumstances and background experiences, relayed to the courts, would that distort the sentencing outcomes and sentences imposed by judicial officers? In that regard, we are interested in the Review's findings about the reliance on exceptional circumstances when applying section 9(10A) of the PSA.

5. Efficacy of judicial training and awareness regarding trauma-informed practices and cultural competency.

While the Council's research brief¹¹ made positive findings that courts are treating domestic violence offences as more serious offending, with greater use of custodial sentences, we are interested in the use of judicial discretion when sentencing offenders, particularly where section 9(10A) of the PSA is in operation. We believe that any judicial discretion must be used in conjunction with strong and frequent cultural awareness training together with an appreciation of historic and current community factors to mitigate against discrimination¹².

The issue of judicial training is related to the available data regarding sentencing remarks and submissions made on behalf of complainants and offenders in sentencing proceedings. To that end, The Australian Law Reform Commission identified that Aboriginal and Torres Strait Islander female offending occurs within the context of experiences of intergenerational trauma, family and sexual violence, child removal, mental illness and disability, and poverty. The ALRC argued that addressing

⁹ Queensland Sentencing Advisory Council (2021), *The impact of domestic violence as an aggravating factor on sentencing outcomes*,

https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0003/685308/research-brief-impact-of-domestic-violence-as-an-aggravating-factor-on-sentencing-outcomes.pdf

¹⁰ 'A Call for Change', Final Report, Commission of Inquiry into Queensland Police Service responses to domestic and family violence (2022), <https://www.qpsdfvinquiry.qld.gov.au/about/assets/commission-of-inquiry-dpsdfv-report.pdf>, page 254

¹¹ Queensland Sentencing Advisory Council (2021), *The impact of domestic violence as an aggravating factor on sentencing outcomes*,

https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0003/685308/research-brief-impact-of-domestic-violence-as-an-aggravating-factor-on-sentencing-outcomes.pdf

¹² Australian Human Rights Commission (2020), *Wiyi Yani U Thangani Report*, page 184



offending by Aboriginal and Torres Strait Islander women must take a trauma-informed and culturally appropriate approach. The ALRC further recommended all criminal justice responses should be developed with and delivered by Aboriginal and Torres Strait Islander women¹³.

We believe that obtaining the results of the above sentencing remarks would be valuable in further deliberations regarding professional development and training for judicial officers regarding cultural awareness and trauma-informed practices for women and girls who have histories as victim-survivors of domestic, family violence and/or sexual violence.

Conclusion

We take this opportunity to thank you for considering our preliminary feedback. We trust that you appreciate our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and Family Violence Prevention Legal Service.

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Yours faithfully

Queensland Indigenous Family Violence Legal Service

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¹³ Australian Law Reform Commission (2017), *Pathways to Justice*, page 17