

Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024

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The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the 57th Queensland Parliament Community Support and Services Committee regarding the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024* (the Bill)

Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ('QIFVLS') welcomes the opportunity to provide a submission regarding the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024 (the Bill).

As a Family Violence Prevention Legal Service provider, a member of the National Family Violence Prevention Legal Service Forum and member of the Coalition of Peak Aboriginal and Torres Strait Islander peak organisations (Coalition of Peaks), QIFVLS is dedicated to achieving the priority reforms and socio-economic targets outlined in the [National Agreement on Closing The Gap](#) (the National Agreement). In this context, QIFVLS is particularly dedicated to achieving Target 13 (reducing family violence against women and children by at least 50%, towards zero by 2031), in conjunction with the remaining targets (especially targets 10, 11 and 12) and priority reforms.

QIFVLS welcomes the Bill and largely supports the reforms, noting that they implement the third major tranche of legislative reforms arising from the recommendations made by the Women's Safety and Justice Taskforce in its two reports, *Hear Her – Report One – Addressing coercive control and domestic and family violence in Queensland*, and *Hear Her Voice – Report Two – Women and girls' experiences across the criminal justice system*.

Our broad observations as an organisation are encapsulated in the 2020 Australian Human Rights Commission's (AHRC) report, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*. Among other achievements, this report revealed that 3 in 5 First Nations women have experienced physical or sexual violence¹. This speaks to the crisis that QIFVLS witnesses as a family violence prevention legal service daily across our offices in Queensland. In that regard, we support reforms that empower victim-survivors to be supported in coming forward and telling their truths. This needs to happen within a trauma-informed system that prioritises a victim-survivor and their family's healing and cultural safety. In line with the National Agreement, we see opportunities to work in partnership with government agencies and non-government agencies, particularly Aboriginal and Torres Strait Islander Community Controlled Organisations and communities to enable families and households, particularly women and children, to live lives free from all forms of violence.

As an Aboriginal and Torres Strait Islander Community-Controlled Organisation ('ACCO'), QIFVLS is uniquely positioned to provide feedback from the standpoint of a family violence prevention legal service which provides a holistic model of attending to our communities' legal and non-legal needs. In this regard, QIFVLS

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



wholeheartedly welcomes legislative provisions which go towards addressing the disadvantages experienced by victim-survivors of domestic, family and sexual violence.

Recommendations

In supporting the passage of the Bill, QIFVLS makes the following recommendations:

1. As part of the alternative arrangements for special witnesses to give evidence, emphasis should be placed on the holistic and culturally safe supports provided to special witnesses when giving evidence. This includes the facilitation of support from a victims' advocate/support person for Aboriginal and Torres Strait Islander special witnesses.
2. We highlight the need for capital upgrades enabling the quality recording of evidence to be available in all Queensland courts where proceedings involving special witnesses will take place.
3. The Explanatory Notes to the Bill have highlighted the potential for the proposed new two-limb tests for tendency evidence and coincidence evidence may intersect with the existing section 103CB of the *Evidence Act 1977 (Qld)* (relevant evidence of domestic violence). We believe courts need to be mindful for the potential overlap that may occur where there are incidences involving a misidentified perpetrator of domestic violence.
4. We welcome the proposed amendments regarding expert evidence in proceedings for sexual offences. We advocate for there to be a pre-requisite that experts on the sexual violence expert evidence panel possess cultural competence and capability and maintain ongoing training in relation to cultural competence and capability.

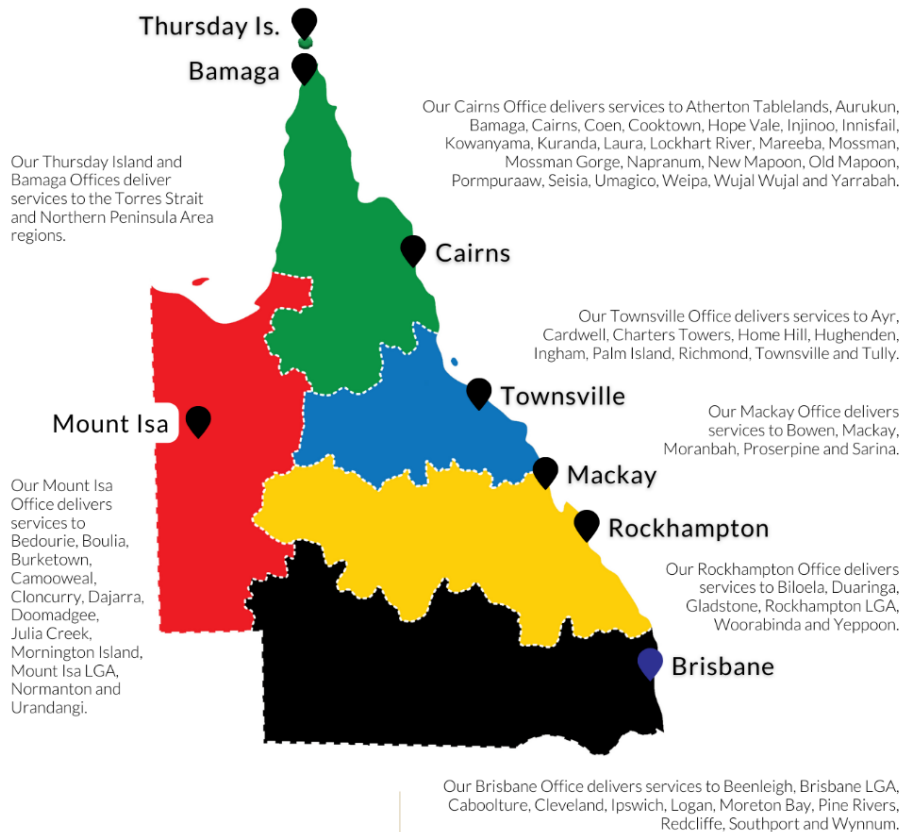
About QIFVLS

QIFVLS is a not-for-profit legal and non-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'). 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 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. We are one of two Aboriginal and Torres Strait Islander community-controlled family violence prevention legal service providers 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 state-wide breadth and scope of services which stretch to 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 unique, specialised, culturally safe and holistic assistance from the front-end via a wrap-around case management model that embraces early intervention and prevention. We advocate this model in supporting access to justice and keeping victim-survivors of family violence safe.

QIFVLS services 91+ communities across Queensland including the Outer Islands of the Torres Strait, neighbouring Papua New Guinea and 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. In addition, QIFVLS responds and addresses our clients' non-legal needs through our integrated non-therapeutic case management process, which is addressed through the identified role of the Case Management Officer. QIFVLS as a practice, provides a holistic service response to our clients' needs: addressing legal need and addressing non-legal needs, which have in most cases, brought our clients into contact with the justice system in the first place.



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 90+ Aboriginal and Torres Strait Islander communities throughout Queensland. Recognising 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 Texas², QIFVLS has eight (8) offices in Queensland –

- (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 Mackay responsible for servicing Mackay and Sarina (and communities in between).
- (6) a service delivery office in Rockhampton responsible for servicing Rockhampton, Woorabinda, Mt Morgan, Biloela (and communities in between).
- (7) 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).
- (8) a service delivery office in Brisbane responsible for servicing the Brisbane local government area.

² <https://www.qld.gov.au/about/about-queensland/statistics-facts/facts>



Family violence as the cornerstone

In supporting the proposed legislation, we have made suggestions that will require coordination and collaboration across government agencies and with local communities and non-government organisations, including Aboriginal and Torres Strait Islander Community Controlled Organisations (ACCOs).

The necessity of working collaboratively with diverse stakeholder groups reflects our observations that family violence is an intersecting point affecting 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.

Further to this point, the Australian Institute of Health and Welfare (AIHW) identified that family violence was 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 AIHW also 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 assault⁴.

The scale of this problem, however, is far greater because it is known that Aboriginal and Torres Strait Islander 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 of making reports and coming into contact with police.

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 relationship⁵ (i.e., domestic violence support services and shelters; actual police presence within a community).

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, housing, policing and criminal justice, corrective services and child protection system. 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 4 priority reform areas.

Position of authority amendments (recommendations 27 to 29 of the Royal Commission into Institutional Responses to Child Sexual Abuse and recommendation 42 of *Hear Her Voice – Report Two*)

We are supportive of the position of authority amendments in the Bill. We understand that these provisions aim to address the sexual exploitation of children aged 12 to 17 years by adults in a position of authority.

We welcome the fact that the categories of adults/occupations taken to have a child under their care, supervision or authority will not be constrained by the categories outlined under the proposed section 210A(3).

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 (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

⁵ 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.



Alternative arrangements for special witnesses (recommendations 52 and 53, *Hear Her Voice – Report Two*)

We support these amendments and believe they have the potential to significantly improve the experience of special witnesses in the courts process. One of the concerns we have observed in our clients is the harshness, loneliness and non-trauma-informed nature of the criminal trial process, especially for complainants/victim-survivors. This is further compounded by the fact that a victim is not a *party to the proceeding*.

To support these amendments, we feel it is imperative to emphasise the value of culturally safe and holistic supports for special witnesses. In April 2023, QIFVLS made a submission to the Legal Affairs and Safety Committee's Inquiry into support for victims of crime. That submission supported the establishment of a non-legal victims' advocate with the further recommendation that Aboriginal and Torres Strait Islander victim-survivors requiring the support be given the option of a support person/victim's advocate from an Aboriginal and Torres Strait Islander community-controlled organisation. This is a step that can be taken to further support special witnesses in the course of providing evidence.

Actions by the government, working in partnership with community-controlled organisations and stakeholders to enable this support would also reflect the government moving in line with Priority Reform 3 of the National Agreement (Transforming mainstream institutions).

Requirements for recommendation 49 of *Hear Her Voice – Report One to be completed*

We note that the recommendation to enable special witnesses to give evidence in a remote room or by alternative arrangements will not commence until recommendation 49 of *Hear Her Voice – Report One* is implemented (upgrading the technology in courtrooms throughout Queensland, to facilitate victim-survivors giving audio-visual link and telephone evidence.)

We call on the government to prioritise the necessary capital upgrades in all courts across Queensland to enable the quality recording of evidence given by special witnesses in sexual offence proceedings, such that they may be used in any retrial.

Tendency evidence and coincidence evidence (rec 75 *Hear Her Voice – Report Two*)

We understand that these proposed amendments give effect to recommendation 75 of *Hear Her Voice – Report Two*, which called for the codification of the admission of tendency and coincidence evidence in Queensland, bringing it into line with the Uniform Evidence law jurisdictions.

Page 20 of the Explanatory Notes to the Bill highlights the potential for interaction between the proposed new Part 7A (*Part 7A includes the provisions creating the two-limb tests for tendency and coincidence evidence*) and the existing section 103CB of the *Evidence Act 1977* (*relevant evidence of domestic violence is admissible as evidence in criminal proceedings*). We note the following passage from the Explanatory Notes:

“Given tendency evidence and coincidence evidence might be captured by both section 103CB and new Part 7A of the Evidence Act, it will be necessary to carefully consider how such evidence is intended to be used by a jury.

For example, where the evidence is relevant evidence of domestic violence that also happens to show a tendency but is not led for the purpose of tendency evidence, section 103CB will apply.



By comparison, where the evidence is led as circumstantial evidence in proof of the facts charged and therefore amounts to tendency evidence, it will be necessary to apply the two-limbed test for admissibility in new Part 7A of the Evidence Act.”

We note that section 103CA(1) of the *Evidence Act* provides that evidence of domestic violence may include the history of the domestic relationship between a person and an intimate partner of a family member of the person, including domestic violence committed by the intimate partner of family member against the person or domestic violence committed against the intimate partner or family by the person.

An additional factor we raise for consideration is borne from our observations of the experiences of our clients. Courts will need to consider the perspective of Aboriginal and Torres Strait Islander parties to proceedings and how the above provisions may overlap with the circumstances of a person who has been misidentified as the perpetrator of domestic violence.

Determining what is relevant evidence under section 103CB of the *Evidence Act*, including considering the evidence given by an expert on domestic violence, will be important considerations for the court.

Inadmissibility of admissions made during programs while prisoners are on remand – *Corrective Services Act* (recommendation 149 – *Hear Her Voice – Report Two*)

We support these amendments and the impact they will have on liberating people to make disclosures while having the opportunity to participate in rehabilitation programs.

We note the Women’s Safety and Justice Taskforce’s findings that:

- the indeterminate period that women and girls remain on remand is resulting in priority for placement in rehabilitation programs being given to women serving sentences, who have greater certainty about the minimum time in custody; and
- that incarcerated women and their support networks are fearful that participation in programs which often require admitting offending behaviour might detrimentally impact their defence.

Expert evidence in proceedings for sexual offences (rec 77 *Hear Her Voice – Report Two*)

We welcome the proposed amendments regarding expert evidence in proceedings for sexual offences. We believe it is a vital and necessary step to help clear misconceptions, rape myths and negative stereotypes about the nature of sexual offences and factors that might affect the behaviour of victims.

We note that the proposed section 103ZZGE allows for either party to call an expert to give evidence about the nature of sexual offences and factors that might affect the behaviour of victim-survivors.

We also acknowledge the significance of the proposed section 103ZZH(4) (*in determining whether to appoint a person to the sexual offence expert evidence panel, the chief executive may have regard to the cultural competence and capability of the person, including whether the person can demonstrate knowledge and understanding of a particular group*) as a means for ensuring that panel members are armed with cultural awareness. We propose in our submission to take a step further and call for cultural competence and capability to be a pre-requisite for inclusion on the expert panel given the significant cohort of Aboriginal and Torres Strait Islander victim-survivors.

We further outline that it will be equally important to understand how the Chief Executive of the Department determines that a prospective panel member possesses the requisite cultural competence and capability.



In this regard, we see opportunities for enhanced collaboration and partnership between the Department and stakeholders in this field, including Aboriginal and Torres Strait Islander peak bodies for domestic, family and sexual violence.

Whether the person giving expert evidence is a member of the expert evidence panel

We note that the proposed s103ZZGE(1) provides that the expert engaged by a party to the criminal proceeding to give evidence need not be included on the sexual offence expert evidence panel.

Unless there are unusual circumstances, our preference would be for the parties to the proceedings to engage experts from the expert panel, in the same manner that a court in a relevant proceeding is required to engage an expert from the expert panel, under s103ZZGE(2).

Conclusion

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