

Inquiry into the Decriminalisation of Certain Public Offences, and Health and Welfare Responses

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QIFVLS

Queensland Indigenous
Family Violence Legal Service

Submission to the Inquiry into the decriminalisation of certain
public offences and health and welfare responses

22 August 2022





The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the Inquiry into the decriminalisation of certain public offences, and health and welfare responses

Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ('QIFVLS') welcomes the opportunity to provide a submission regarding the decriminalisation of certain public offences and health and welfare responses.

QIFVLS is one of fourteen (14) Family Violence Prevention Legal Services ('FVPLSs') across Australia and one of the thirteen (13) FVPLSs that are part of the National Family Violence Prevention Legal Service ('NFVPLS') Forum. Accordingly, this submission will draw on the experience of QIFVLS as one of two Aboriginal and Torres Strait Islander community-controlled family violence prevention legal service providers in Queensland. We are exclusively dedicated to providing legal and non-legal support services to assist Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault with a breadth and scope of services which stretch to the outer islands of the Torres Strait, neighbouring Papua New Guinea. QIFVLS provides services to 80+ Aboriginal and Torres Strait Islander communities within Queensland and together with its legal services, QIFVLS can be distinguished from other legal assistance providers through its advantage in providing holistic assistance from the front-end via a wrap-around model that embraces early intervention and prevention.

At the outset, we wish to reinforce the spirit and sentiment of the *Uluru Statement from the Heart* which highlights the fact that Aboriginal and Torres Strait Islander people are not innately criminal¹. Rather, the soaring incarceration rates and associated intersecting factors reflect the structural nature of the problem and the inequalities faced by Indigenous people. As the Uluru Statement highlights: "*This is the torment of our powerlessness.*"

As an Aboriginal and Torres Strait Islander Community-Controlled Organisation ('ACCO'), QIFVLS is uniquely positioned to comment on the matters to be addressed by the Inquiry 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.

We categorically state that the punitive criminogenic approach utilised over the last 230 years has not worked as far as Aboriginal and Torres Strait Islander peoples are concerned. Instead, we believe that a combined whole-of-government approach prioritising a culturally competent and trauma-informed approach that is led by Aboriginal and Torres Strait Islander peoples provides leverage with which we can address the key social drivers behind overcriminalisation and the effects of spiralling incarceration rates and interconnected areas of disadvantage among 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 custody². We acknowledge that such an approach requires resources and bravery from the government in being willing to deviate from the accepted norms and approaches and target approaches that respond to the underlying drivers that bring Aboriginal and Torres Strait Islander peoples into contact with the criminal justice system in the first place.

Our submission reflects our clients' experiences and the matters in which they require assistance, notably in the areas of family violence, child protection, family law and the youth justice and adult criminal justice system. We live in the communities and see and hear directly from our clients about the range of services they receive, for the purposes of this submission, primarily from the Queensland Police Service (QPS). QIFVLS understands that as first responders, police work in challenging circumstances, often in under-resourced communities where other essential services are severely lacking. Despite these hurdles, we believe there is still room for improvement from all sectors of government, not just the QPS.

We believe that ultimately the key to addressing the over criminalisation lies in reducing unnecessary contact with the criminal justice system and the likelihood of future harm and incarceration. In this light, a combined approach prioritising culturally safe supports is one that we advocate and support.

¹ Uluru Statement from the Heart, 2017 <https://ulurustatement.org/the-statement/>

² National Family Violence Prevention Legal Services: www.nationalfvpls.org



Our submissions will make reference to a number of key reports including:

- The Queensland, Women's Safety and Justice Taskforce (the Taskforce) '*Hear Her Voice Reports 1 & 2*';
- Australian Human Rights Commission's '*Wiyi Yani U Thangani: Women's Voices*' Report;
- Australian Law Reform Commission's , '*Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*.
- Human Rights Law Centre and Change The Record's, '*Overrepresented and Overlooked*' Report.

Summary of Recommendations

QIFVLS submit that the Inquiry consider the following recommendations:

Recommendation 1: Expand pathways for support and accountability beyond police and the courts

Together with culturally appropriate resourcing, consider increasing investment in support services including Family Violence Prevention Legal Services, such as QIFVLS, to match demand and geographical spread. The usual response of putting more police into communities is not the only solution given communities' long-held fear and mistrust of police. What is also needed are expanded pathways for supporting communities driven by communities.

Recommendation 2: Invest in diversionary initiatives

The government invest in diversion initiatives, including housing programs and amend legislation and policies to require the court, police and lawyers to prioritise diversionary options.

Recommendation 3: Invest in local communities and community-led solutions

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. An example is the community policing model in Broome, WA where the Kullarri Patrol, run by local community women, is used as an alternative to police and intervenes, deescalates and prevents family violence.³

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. We also note with particular concern the findings of the Queensland Sentencing Advisory Council, in its Report, *Engendering justice: the sentencing of women and girls in Queensland*, August 2022 – which found that Aboriginal and Torres Strait Islander women and girls were 7.7 times overrepresented and that nearly half of all sentenced girls identified as Aboriginal or Torres Strait Islander (46.9%) compared to 29.9% of sentenced women.

Recommendation 4: Greater investment in specialised and culturally safe police

This could consist of increased cultural training (delivered by trainers external to QPS) for police via a framework of training that is delivered over several days. Regular cultural awareness training is vital to improve the cultural competency of police officers when dealing with members of the Aboriginal and Torres Strait Islander community. This would greatly assist in developing a greater level of cultural awareness and understanding of social and historical influences on Aboriginal and Torres Strait Islander disadvantage.

As noted in the Australian Human Rights Commission's *Wiyi Yani U Thangani* report, it is vital that we provide resources and culturally appropriate training to police given that:

- they are so often first responders; and
- in family violence situations particularly, women need to be confident in seeking protection from them.⁴

³ Change the Record (2021), *Pathways to Safety*, p7

⁴ Australian Human Rights Commission (2020), *Wiyi U Thangani Report*, p158



Recommendation 5: Community-specific induction for police officers when attached to a new community⁵

Police require an understanding of the specific community including language, significant elders in the community, ceremonial law, ceremonial places and appropriate ways of interacting with community.⁶

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.⁷ The same approach could also be taken with other government agencies and NGOs providing services to Indigenous communities.

Recommendation 7: QPS to focus on increased support, recruitment and retention of Aboriginal and Torres Strait Islander staff with a particular focus on frontline police officers together with expanding the powers of PLO's

QPS should adopt education, training and recruitment practices that promote:

- Aboriginal and Torres Strait Islander employment and participation, especially that of women;
- The recruitment and retention of Aboriginal and Torres Strait Islander police officers.
- The recruitment of Aboriginal and Torres Strait Islander Police Liaison Officers (PLOs) with ties to their local communities; and
- More appropriate responses to Aboriginal and Torres Strait Islander women as victim-survivors and accused persons.⁸

About QIFVLS

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

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

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

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

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

⁵ Australian Human Rights Commission (2020), *Wiyi U Thangani Report*

⁶ Australian Human Rights Commission (2020), *Wiyi U Thangani Report*, p170

⁷ Australian Human Rights Commission (2020), p185

⁸ Human Rights Law Centre & Change the Record (2017), p7



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QIFVLS provides a culturally appropriate service response to meet and support our client's needs through the legal processes as well as in relation to addressing and meeting non-legal needs.

QIFVLS Case Management Practice model

To address an area of unmet need, QIFVLS' within its current funding through the Department of Prime Minister and Cabinet and now, through the National Indigenous Australians Agency (NIAA), developed and implemented a Case Management Practice to complement and run alongside the legal practice. The case management practice was originally piloted in our Rockhampton office in 2016 and provided success in being able to holistically respond to both legal and non-legal needs of victims/ survivors of family violence. The model was then expanded for trial in our Mount Isa office in 2018 and proved successful there. As a result, QIFVLS has now integrated and embedded the Case Management Practice across all QIFVLS offices across the state of Queensland.

The case management practice was developed as it was initially observed in Rockhampton and in Mount Isa that our clients were presenting to QIFVLS as a result of their pressing unmet non-legal needs. The case management practice is a non-therapeutic model based on the principles of the Case Management Standards of Australia but tailored to be delivered by an ACCO for and by Aboriginal and Torres Strait Islander peoples.

Clients entering case management are assisted to address their non-legal needs whilst also responding and addressing their legal needs. This is a holistic, wrap-around service delivery model that utilises strong referral pathways with existing service providers in community, whilst allowing a client to set achievable goals at a pace determined by the client, thereby achieving self-efficacy and self-determination.

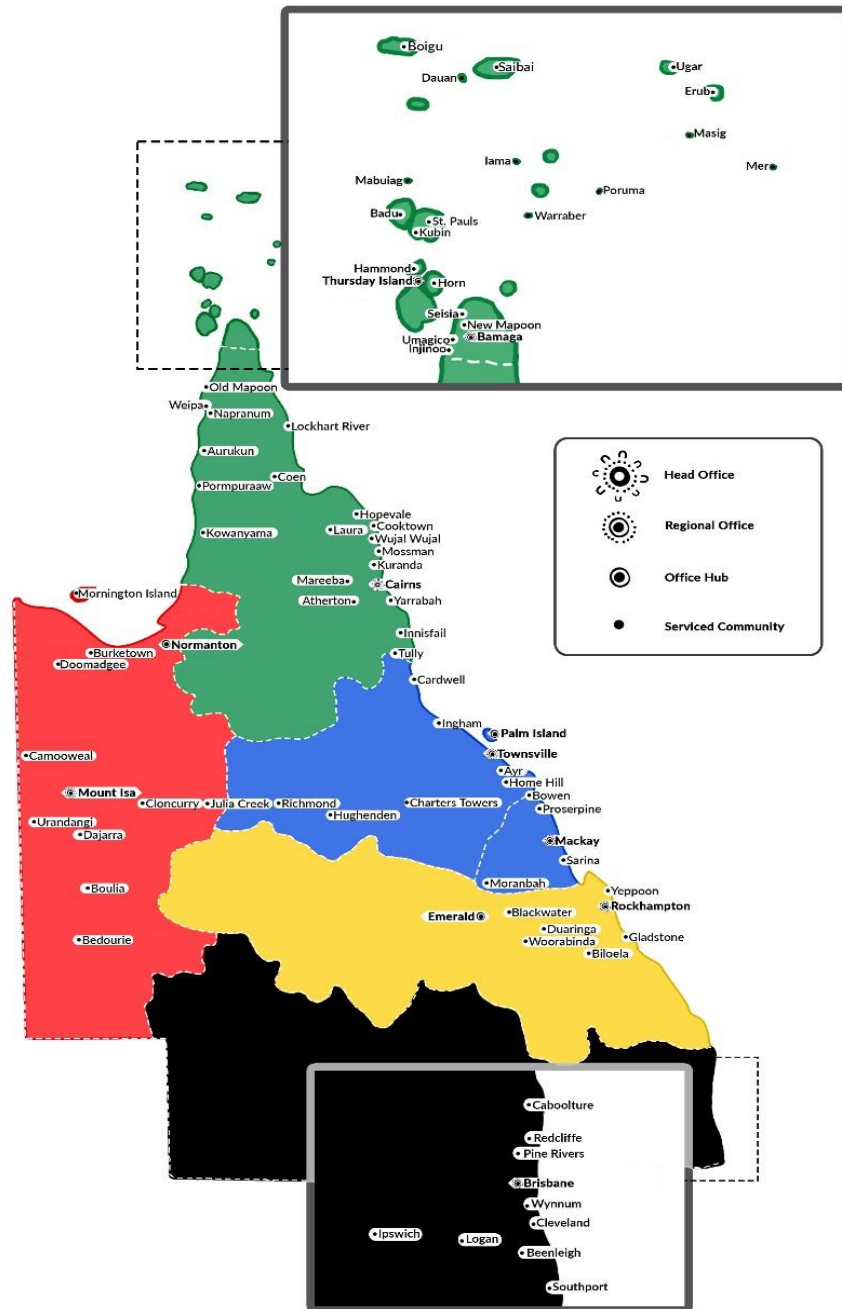
Another stand-out feature of QIFVLS Case Management Practice is that our Case Management Officers as well as our Case Management Practice Manager, are all identified roles. The case management support that is provided to QIFVLS clients is delivered by duly qualified Aboriginal and Torres Strait Islander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



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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 Texas⁹. Bearing that in mind, 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;

⁹ <https://www.qld.gov.au/about/about-queensland/statistics-facts/facts>



- (3) a service delivery office on Thursday Island responsible for servicing communities stretching to the Outer Islands of the Torres Strait, neighbouring Papua New Guinea;
- (4) a service delivery office in Townsville responsible for servicing Townsville, Palm Island, Charters Towers, Richmond and Hughenden (and communities in between);
- (5) a service delivery office in Rockhampton responsible for servicing Rockhampton, Woorabinda, Mt Morgan, Biloela (and communities in between);
- (6) a service delivery office in Mount Isa responsible for servicing Mount Isa, the Gulf of Carpentaria communities, as far south as Bedourie and across to Julia Creek (and communities in between);
- (7) a service delivery office in Brisbane responsible for servicing the Brisbane local government area.

Family violence as the cornerstone

QIFVLS' experience is that family violence is the corner stone or intersection, that links an Aboriginal and Torres Strait Islander person's connection to the child protection system, the youth justice system, the adult criminal justice system and the family law system. These 'connectors' are further compounded or exacerbated for those living in regional, rural and remote parts of Australia, where there are restrictions on the availability of actual on the ground services to assist a victim escaping a violent relationship¹⁰ (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, family law, child protection, and the criminal justice system. Our involvement with the criminal justice system has also been affected by our clients who are regularly misidentified as offenders in domestic violence-related matters.

We acknowledge Change the Record's *Pathway to Safety* report which highlighted that:

"the criminalisation of women for minor offending is in effect the criminalisation of their status as victim-survivors of family violence. Family violence drives and entrenches poverty, homelessness, addiction and trauma - all of which lead to behaviours which are targeted and criminalised by police and the criminal legal system. One stark and tragic example of the consequences of this system response is the case of 22 year old Yamatji woman Ms Dhu."¹¹

QIFVLS submission is undergirded by our belief that in order to act on the genuine will and consensus to reduce and eliminate family violence especially within Aboriginal and Torres Strait Islander communities, there must also be a genuine prioritisation of culturally safe and targeted approaches by the Government which specifically address Aboriginal and Torres Strait Islander families' needs, perspectives and barriers to obtaining assistance. This requires a tailored response from the Government that includes long term investment in early intervention, prevention, health and community education approaches (developed in partnership with Aboriginal and Torres Strait Islander community organisations and led by ACCOs) in addition to 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 advocates 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 Islander women, children and men being victims/survivors of family violence and sexual assault.

¹⁰ 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.

¹¹ Change The Record, *Pathway To Safety*, pg12



Public nuisance offences

We note this inquiry is a reflection on previous reports recommending that states and territories review the effect on Aboriginal and Torres Strait Islander peoples of legislative provisions criminalising public offences¹²¹³¹⁴. The ALRC's report noted that Aboriginal people in Queensland are up to 12 times more likely to be charged with or receive infringement notices for public nuisance than non-Indigenous people. In most cases the offensive language was directed at police officers. Of those matters which were dealt with judicially, Aboriginal and Torres Strait Islander people were more likely to receive a custodial sentence.¹⁵

For historical context, the 1991 Royal Commission into Aboriginal Deaths in Custody noted the apparent connection between police use of minor charges, such as offensive or obscene language, and a conflict of views over 'appropriate behaviour in women'¹⁶. The effect of such an approach was to ultimately incarcerate those who didn't have the resources to stay out of prison.

These high rates have been ascribed to mixture of factors including housing affordability, family violence and/or sexual assault and mental health and disability. The results leading to a higher likelihood of Aboriginal and Torres Strait Islander people being out in public leading to an increase in police interaction. This reinforces the necessity of a whole-of-government approach for once contact is made with the criminal justice system, it is extremely difficult to escape it.¹⁷

Public intoxication

QIFVLS supports the decriminalisation of public intoxication offences. In doing so, we note the Taskforce's observations that the form of protective custody legislation introduced by other states and territories is questionable with a Victorian review finding that the protective custody regime fails to address the risks of deaths in custody.¹⁸

A common submission by criminal lawyers in Magistrates Courts pleas in mitigation involve an explanation that a client's offending should be viewed in the context of particular problems – situational or mental health – which led the client to *self-medicate* via alcohol or other illicit substances. A situation where such a form of self-medication should lead to increased exposure to the police and criminal justice system should be a stark reminder that dealing with public intoxication and public offences in general require a global, holistic health based approach rather than a purely criminogenic response.

Victims of the *tough-on-crime* approach

At QIFVLS, we are mindful that 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.¹⁹

We have observed over generations that governments often take the path of a *tough-on-crime* approach in a bid to win votes and appeal to 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 Islanders) as victims, in a sense, of this approach.

¹² Australian Law Reform Commission, 2017, *Pathways to Justice*, p423

¹³ Queensland Productivity Commission Report, 2019, p204

¹⁴ Women's Safety and Justice Taskforce, *Hear Her Voice Report Two*, 2022, p475

¹⁵ Australian Law Reform Commission, 2017, *Pathways to Justice*, pg424

¹⁶ *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 15 April 1991) <<http://www.austlii.edu.au/au/other/IndigLRes/ciadac/national/vol2/101.html>> vol 2 [13.4.58].

¹⁷ Australian Human Rights Commission, 2020 p165

¹⁸ Women's Safety and Justice Taskforce, *Hear Her Voice Report Two*, pg471

¹⁹ Human Rights Law Centre and Change The Record (2017); see also Queensland Sentencing Advisory Council, *Engendering justice: the sentencing of women and girls in Queensland Report*, August 2022.



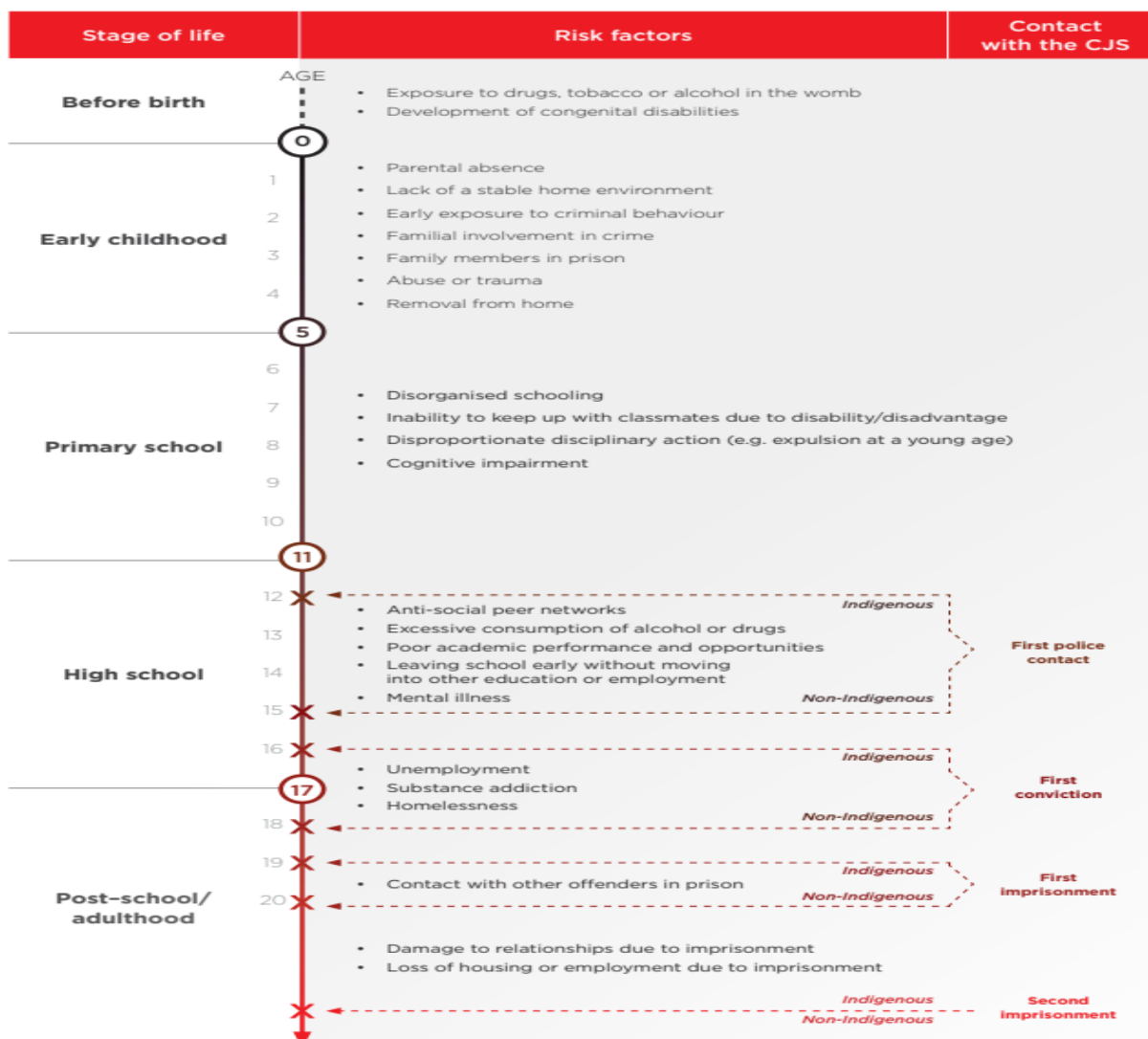
In supporting the Taskforce's call to shift away from the tertiary response and towards a health and welfare approach, we advocate that the government place a focus on bolstering at the *front end* in relation to early intervention and prevention. This focus on a shift away from tertiary responses to front end early intervention and prevention was highlighted in the 2019 Queensland Productivity Commission Report on *Imprisonment and Recidivism*ⁱ with the following key findings made by the Queensland Productivity Commission (QPC)ⁱⁱ:

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

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



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



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

The relationship between the community and the QPS

From viewing our summary of recommendations above, it is clear that much is required in the way of building relationships between the QPS and First Nations communities. We have observed that relationships between our clients, particularly women and girls, on the one hand and police are characterised as ones of mistrust and fear. The path to acknowledging our clients’ experiences begins with addressing historical and entrenched cultures of systemic racism, lack of cultural awareness, sexism and under-resourcing of services and programs delivered to Aboriginal and Torres Strait Islander communities.²⁰

Regrettably, we report that in many situations, First Nations women and children do not consider the police to be a safe point of contact. Research noted in the Human Rights Law Centre and Change the Record’s 2017 report, *Over-represented & Overlooked*, together with our observations on the ground demonstrate that the exponential growth in the proportion of First Nations women and girls in prison is due to over-policing, racial profiling and targeting in First Nations communities.

²⁰ <https://www.abc.net.au/news/2022-03-31/police-misidentifying-domestic-violence-victims-perpetrators/100913268>



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.²¹

Together with increased training in cultural awareness, improved recruitment and retention practices for First Nations police officers and PLOs, we support legislative amendments encouraging courts, police and lawyers to prioritise diversionary options where feasible. Especially where the diversionary option is aimed at addressing the underlying health and other drivers that have prompted the contact with the QPS and the criminal justice system.

Financial contradictions – the exorbitant costs of imprisonment

In an era when governments and the media are consumed by financial implications and efficiencies, the numbers speak for themselves. In 2019-20, it costed over \$300 per day to detain one woman in a Queensland prison while it costed \$1640 per day to hold a young person in detention in Queensland.²² By way of contrast, community-based supervision costs \$271 per young person per day.²³

With the link between overcriminalisation and imprisonment, 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.²⁴

We are aware that processes around issues such as raising the age of criminal responsibility from 10 years old to 14 years old are currently being dealt with. We also note that the Criminal Procedure Review of the Magistrates Court, being led by Retired Judge Shanahan is also looking at a range of options including diversion.

Despite these options, we emphasise that the current data reveals that Aboriginal and Torres Strait Islander children are less likely to be diverted from criminal proceedings in comparison to non-indigenous children.²⁵ There is clearly, through a pure fiscal lens, merit, in community based supervision and alternates to imprisonment.

What more can be done?

The Queensland Productivity Commission found that while there is a relatively strong justification for the criminal law in relation to traditional common law offences involving high levels of harm to others, the justification for criminalising offences based on extensions of the harm principle are weaker.²⁶ In advocating for a review of criminal law offences they posited that various alternative approaches are often available that may produce better outcomes, including reducing undesirable behaviours over the long term.²⁷

Hear Her Voice – Report Two

Chapter 3.3 of the Taskforce's report provide a guideline for how to address the issue of overcriminalisation. The report reinforces a need to include a specific focus on Aboriginal and Torres Strait Islander women and girls as part of this important area. With a client base of approximately 85% of clients who identify as female, this resonates deeply with QIFVLS.

We note the Taskforce's findings that a review into the *Summary Offences Act* and *Regulatory Offences Act* should consider the disproportionate impact on women of low-level offences for which the benefits do not outweigh the costs.²⁸ This finding by the Taskforce has been further compounded by the findings by the Queensland Sentencing Advisory Council in their August 2022 Report, *Engendering justice: the sentencing of women and girls in Queensland*.

²¹ Human Rights Law Centre & Change the Record, (2017)

²² Productivity Commission (2021), Tables 8A.2 & 8A.4

²³ Productivity Commission (2021), Table 17A.19

²⁴ Australian Institute of Health and Welfare (2018), www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2018/contents/table-of-contents

²⁵ Productivity Commission (2019), *Report on Government Services 2019*: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2019>

²⁶ Queensland Productivity Commission Report, 2019, pg202

²⁷ Queensland Productivity Commission Report, 2019, pg 202

²⁸ Women's Safety and Justice Taskforce, *Hear Her Voice Report Two*, pg 474



We support the Taskforce's findings that in decriminalising public intoxication and begging, the government should adopt a health-based response and be mindful of the lessons learned from other jurisdictions. In this light we also raise the findings in the *Wiyi Yani U Thangani Report* that criminalised women and girls have exceptionally high levels of mental health and cognitive disability compared with the general population. Wiyi Yani U Thangani report notes that a study of Aboriginal and Torres Strait Islander prisoners in Victoria found that 92% of Aboriginal and Torres Strait islander women in incarceration had previously been diagnosed with a mental illness and almost half met the criteria for PTSD.²⁹

Human rights considerations

In relation to human rights considerations under the *Human Rights Act*, we note that the Taskforce in their Hear Her Voice Report 2, examined this issue through a human rights lens and balanced their recommendations taking into account the *Human Rights Act*.

Legislating for a priority on diversionary options

Queensland has been long overdue for a discussion about the nature of offences for which we are criminalising people, with a particular focus on Aboriginal and Torres Strait Islander peoples. Consistent with our observations, the Australian Human Rights Commission ('AHRC') noted that Aboriginal and Torres Strait Islander incarceration was characterised by low-level offending including justice procedure offences and failure to pay fines.³⁰

The Queensland Productivity Commission's ('QPC') 2019 report on imprisonment and recidivism addressed the criminalisation of offences and whether criminal sanctions were the best mechanism for addressing the underlying, driving harmful behaviours. In this light, we note that the Human Rights Law Centre and Change the Record made the following recommendations:³¹

- Recommendation 12 calls for government to invest in diversion initiatives for Aboriginal and Torres Strait Islander women.
- Recommendation 13 calls for governments to amend criminal procedure laws and policies to require police, lawyers, courts and correctional officers to prioritise diversionary options.

Our view is that diversionary programs can play an important role in reducing the number of Aboriginal and Torres Strait Islander peoples entering the criminal justice system³². QIFVLS subscribe to the position that diversion can reduce adverse impacts through:

- Providing a more proportionate response to low harm offending (nearly 30% of adult offenders do not go on to re-offend or offend infrequently with potential savings of \$2,105 per diversion from avoided courts³³; and
- Diverting offenders to treatment that addresses factors driving their offending – recidivists have elevated incidence of drug abuse, mental health, homelessness and cognitive impairment – with potential savings of \$9,200 per diversion from reduced re-offending.³⁴

The QPC noted that in comparison to other states, Queensland makes little use of non-court proceedings (17% of all proceedings compared to 29-59% in other states)³⁵. Thus QIFVLS supports new laws and policies that would expand diversionary options. This expansion of diversionary options which actually focus on addressing the underlying causes of the behaviour (as opposed to a pure criminogenic response), align with meeting the

²⁹ Australian Human Rights Commission, pg172

³⁰ Australian Human Rights Commission (2020), p170

³¹ Human Rights Law Centre & Change the Record (2017), *Overrepresented and Overlooked*

³² Australian Human Rights Commission (2020), p181

³³ Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, p154

³⁴ Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, p154

³⁵ Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, p155



reductions of overrepresentation of Aboriginal and Torres Strait Islander youth (Target 10) and adults (Target 11) of the National Agreement on Closing the Gap, 2020.

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

We add a note of caution that for diversionary programs to succeed, the police should be incentivised to pursue said diversionary options where doing so would carry little risk or would lead to high payoffs in terms of future avoided harms.³⁶

Justice Reinvestment

QIFVLS would support recommendations made by what was formerly the Anti-Discrimination Commission Qld (Recommendations 1 & 2)³⁷ and the ALRC (Recommendations 4-1 & 4-2)³⁸ 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.³⁹ 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 underlying causes of offending, thus truly striving to break the cycle of recidivism. 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.

We must stress that we do not believe that this should be an either-or proposition. On the contrary, the goal would be to have police supported by culturally safe services who can provide the specialist trauma-informed assistance that would complement the work of the police.

Conclusion

We take this opportunity to thank the Community Support and Services Committee for considering our submissions and recommendations regarding the decriminalisation of certain public offences and health and welfare responses. We trust the Committee appreciates our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and Family Violence Prevention Legal Service.

We look forward to being involved in future consultations that will contribute to reforming the criminal justice system in such a manner that will benefit Aboriginal and Torres Strait Islander peoples, particularly women and girls and their families.

ⁱ Queensland Productivity Commission, August 2019, Summary Report – Imprisonment and Recidivism, p.11

ⁱⁱ Queensland Productivity Commission, August 2019, Summary Report – Imprisonment and Recidivism, p. 2.

ⁱⁱⁱ May 2017 Report, Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment, The Human Rights Law Centre and Change the Record: p.10-11.

³⁶ Queensland Productivity Commission (2019), Final Report – Imprisonment and Recidivism, p161

³⁷ Anti-Discrimination Commission Queensland (2019), p13

³⁸ Australian Law Reform Commission (2017), p23

³⁹ Anti-Discrimination Commission Queensland (2019), p13