



Queensland
Indigenous
Family Violence
Legal Service

Your ref: A577837

Our ref: PLO/Submission_Qld_Ailan Kustom.

31 July 2020

Committee Secretary
Health, Communities, Disability Services and
Domestic and Family Violence Prevention
Committee
Parliament House
GEORGE STREET
BRISBANE QLD 4000

Email only: health@parliament.qld.gov.au

Dear Committee Secretary,

The Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020 (Qld) (the Bill):

I refer to your letter of 17 July 2020 inviting written submissions on the Bill. The Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ("QIFVLS") welcomes the opportunity to provide submissions to the Health, Communities, Disability Services and Domestic Violence Prevention Committee for consideration.

QIFVLS, is one (1) of two (2) Aboriginal and Torres Strait Islander Community Controlled family violence prevention legal service providers (FVPLS) in Queensland, who 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. QIFVLS is also one of a total of fourteen (14) FVPLS' across Australia and one of the thirteen (13) FVPLS' that are part of the National Family Violence Prevention Legal Service (NFVPLS) Forum. QIFVLS submissions will therefore, be tailored to specifically respond from the perspective and experience of Aboriginal and Torres Strait Islander victim/ survivors of family and sexual violence in Queensland as well as reiterating the recommendations made by our NFVPLS Forum.

Who we are:

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 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 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 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 in relation to addressing and meeting non-legal needs. QIFVLS does this within the legal practice by having a unique Solicitor/ Legal Support Officer team approach to help ensure that legal and non-legal services are provided in a culturally appropriate way. Our Legal Support Officers (LSOs) identify as being Aboriginal and/or Torres Strait Islander. They provide client support including in court support, support during the legal process internally with QIFVLS' solicitors, as well as being the centrepiece for referrals to specialist support services and counselling services as needed. Our LSOs are also pivotal in the co-ordination and contact with QIFVLS communities – maintaining up to date stakeholder registries (which support client referrals) as well as the delivery of our valued community education sessions within community. Whilst our LSOs are pivotal to culturally appropriate client support and community engagement, they are invaluable in the paralegal support role that they provide to QIFVLS' solicitors, who provide legal support and advocacy for QIFVLS clients throughout the entirety of the legal process (from intake, legal advice and full legal casework representation).

In addition, to address an area of unmet need, QIFVLS' within its current funding through the National Indigenous Australians Agency (NIAA), developed and implemented to compliment and run alongside the legal practice, a Case Management Practice. The case management practice operates in Rockhampton, where it was initially conceived in 2016 and in Mount Isa.

QIFVLS developed a case management practice as it was 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 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 framework.



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 50 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 Texas¹. Bearing that in mind, QIFVLS has five (5) offices in Queensland –

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

However, QIFVLS is not currently funded to provide legal services on Thursday Island or throughout the Torres Straits. QIFVLS has identified that there is unmet legal need on Thursday Island and the Torres Strait Islands.

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

HEAD OFFICE	FAR NORTH QLD	NORTH QLD	CENTRAL QLD	BRISBANE	GULF & WEST QLD
PO Box 4628	PO Box 4643	PO Box 2005	PO Box 690	PO Box 126	PO Box 3073
Lvl 1, Ste 5, 101-111 Spence St	Lvl 2, 101-111 Spence St	Lvl 2, 61-73 Sturt St	Lvl 2A 130 Victoria Pde	201 Wickham Tce	19 Isa St
Cairns QLD 4870	Cairns QLD 4870	Townsville QLD 4810	Rockhampton QLD 4700	Spring Hill QLD 4004	Mt Isa QLD 4825
P: 07 4045 7500	P: 07 4030 0400	P: 07 4721 0600	P: 07 4927 6453	P: 07 3839 6857	P: 07 4749 5944
F: 07 4027 1728	F: 07 4027 9430	F: 07 4764 5171	F: 07 4807 6162	F: 07 3319 6250	F: 07 4749 5955

Our views on the Bill:

The recognition of traditional Ailan Kustom child rearing practice

On review of the Explanatory Notes, the Statement of Compatibility and the Bill itself, the policy objective is clear: to legally recognise within a Western legal system, traditional child rearing practices of Torres Strait Islander peoples, which have been practiced and passed down since time immemorial.

This is a historic piece of legislation for Queensland and a first in Australia, creating a decision making framework and process to legally recognise Ailan Kustom. QIFVLS, as a proud Aboriginal Community Controlled Organisation welcomes and supports the introduction of this Bill, which at its heart supports and clearly enunciates the cultural rights and connection to custom and practices of Aboriginal and Torres Strait Islander peoples (pursuant to the provisions of section 28 of the *Human Rights Act 2019* (Qld)) as well as affording legal recognition and protection for the culturally distinct Torres Strait Islander child rearing practice and family structure (giving practical effect to the words of section 26(1) of the *Human Rights Act 2019* (Qld)).

A decision making body (The Commissioner) and cultural recognition orders.

The Bill clearly sets out the framework for a statutorily appointed and independent Commissioner to exercise administrative power to either make or not to make a cultural recognition order. Where the Commissioner makes a cultural recognition order, the effect of this order is the transfer of parentage from the birth parents to the cultural parents. This creates legal permanency for the child with the cultural parents. Clause 56 of the Bill sets out the criteria that must be met prior to a decision to make or not to make a cultural recognition order. One of the issues that the Commissioner must be satisfied about is *informed consent*.

A concern that QIFVLS has from a practice perspective relates to two (2) of the fundamental key principles of our Rule of Law namely:

- The Law must be both readily known and available, and certain and clear; and
- Everyone should have the access to competent and independent legal advice. Most relevant to this tenet is that lawyers should be given timely access to relevant information and documents about their client in order for them to provide effective legal assistance;

Given that this Bill will create a new Office and a statutorily appointed and independent Commissioner to discharge their administrative functions, QIFVLS would strongly encourage a concerted (and funded) campaign of education sessions across Queensland but especially so in the Torres Strait Islands to raise awareness of this Law and how Torres Strait Islanders can access this law. This should include face to face education sessions as well as brochures (especially in Torres Strait Islander Creole).

In addition, given the complexity of some of the legal issues that a Commissioner must be satisfied of prior to discharging their administrative functions in accordance with the Bill ie informed consent, duress etc, as well as the Bill creating a structure for the internal review of a decision of the Commissioner; acknowledging the availability of judicial review by the Supreme Court; coupled with the ability of the Children's Court to make an order dispensing with consent (and the option of appeals), it is with respect pivotal that birth parents and cultural parents should have the availability to access early on competent and independent legal advice. Given the sensitivity of the cultural information at the heart of the child rearing practice, that legal advice and legal and non-legal support should be provided (and funded separately) primarily by an Aboriginal Community Controlled Organisation, such as QIFVLS for example, who already operate within a culturally and trauma informed practice model.

QIFVLS makes this suggestion given its experience that when the *Human Rights Act 2019 (Qld)* Act came into operation in Queensland in 2020, no express thought had been provided as to which legal service organisations within Queensland would provide legal advice and legal assistance (and whether they would receive funding to do this) to those seeking to access this legislation. Legal service providers should be funded to provide separate and distinct legal work that is over and above the scope of funding under existing State and Commonwealth service level agreements.

Another than the very narrow practical matters raised above, QIFVLS supports the introduction and the subsequent implementation of the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020* into law in Queensland.

If you require any further assistance or would like to discuss this further, please feel free to contact on [REDACTED] or [REDACTED]

Yours faithfully
Queensland Indigenous Family Violence Legal Service



Thelma Schwartz
Principal Legal Officer