

# Submission to the Legal Affairs and Community Safety Committee

## Strategies to Prevent and Reduce Criminal Activity



**Queensland Indigenous Family  
Violence Legal Service**





## **Strategies to Prevent and Reduce Criminal Activity**

**Queensland Indigenous Family Violence Legal Service Submissions to the Legal Affairs and Community Safety Committee**

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## 1 Introduction

The Legal Affairs and Community Safety Committee (Committee) is undertaking an inquiry on strategies to prevent and reduce criminal activity in Queensland (the Inquiry).

The Committee is required to report to the House by 31 October 2014.

The terms of reference of the Inquiry do not specifically mention the experiences of Aboriginal and Torres Strait Islander Queenslanders. Queensland Indigenous Family Violence Legal Service (**QIFVLS**) would like to ensure that experiences of Aboriginal and Torres Strait Islander victims of family violence and sexual assault, including in regional and remote communities, are identified and considered in the inquiry.

QIFVLS is committed to assisting Indigenous Australians who are victims of domestic and family violence and/or sexual assault. QIFVLS does this by delivering culturally appropriate and free legal and support services and community education services. QIFVLS has offices in Far North Queensland, North Queensland, the Gulf and West Queensland, Central Queensland and Brisbane.

This submission will focus on prevention and reduction of crimes associated with domestic and family violence, and building safer communities for Indigenous Australians in regional and remote areas.

## 2 Executive Summary

Given the disadvantage facing Indigenous Australians today, and the severely harmful impacts of domestic and family violence on victims and the broader community, QIFVLS submits that the Committee ought to give proper consideration to the issues and recommendations raised in this submission in its Inquiry.

QIFVLS considers that there has not been a sufficient focus on facilitating meaningful involvement of Indigenous victims in the criminal justice system, particularly in the Magistrates Court. This shortfall is more pronounced for victims from regional, rural and remote communities who face significant cultural, financial, social and safety barriers to reporting crimes and participating in a meaningful way in court processes. The experiences of Indigenous victims of crimes related to domestic violence and sexual assault are detailed in this submission.

For these victims, there is a need for early intervention, including education about what constitutes domestic violence and sexual assault as opposed to healthy relationships. There is a need for strategies to encourage and support reporting of crimes, and a need for culturally appropriate responses once a crime is reported. QIFVLS recommends that the Queensland Government consider addressing these issues in the following ways:

- (a) **Increased funding targeting services to remote Indigenous communities:** QIFVLS recommends that the Queensland Government address the barriers faced by Indigenous victims in remote communities by providing sufficient funding to legal and support service providers, after consulting with the various stakeholders to determine how this funding is best targeted to assist victims.
- (b) **Development of community legal education programs:** QIFVLS recommends that the Queensland Government develop and support community legal education programs to inform and educate Indigenous Queenslanders (particularly those in regional and remote communities) about their rights and options as victims of crimes.



- (c) **Development of community education programs:** QFIVLS submits that the Queensland Government should also develop and support community education and support programs for communities and for potential victims. For example, culturally appropriate education about what constitutes a healthy relationship.
- (d) **Increased cultural sensitivity in the criminal justice system:** QFIVLS proposes that the Queensland Government conduct an analysis of the criminal justice system with a view to increasing the cultural sensitivity and appropriateness of court processes, and facilitating in practical ways the active involvement of Indigenous victims in the process.
- (e) **Review of Government Department processes:** QFIVLS recommends that the Queensland Government conduct a review of the processes implemented by State departments and service providers with the aim of assessing how existing processes may be changed to remove bureaucratic barriers and facilitate greater access to justice for Indigenous victims, particularly where geographic isolation is an issue.

### 3 Particular trends and type of criminal activity occurring in our region and across the State

The main types of criminal activity relating to domestic and family violence are violent crimes and assaults, including sexual assault, breaches of Domestic Violence Protection Orders, wilful damage to property, and threats of such behaviour.<sup>1</sup> While domestic violence occurs in the context of an intimate relationship, 'family violence' encompasses the violence that may occur in the context of complex kinship structures inherent in Indigenous communities.

Domestic and family violence is the most common type of violence and it affects 30 per cent of women worldwide.<sup>2</sup> The cost of domestic and family violence to the Australian economy reached \$14.7 billion in 2013 and this cost is expected to rise to \$15.6 billion by 2021.<sup>3</sup> The impact of domestic and family violence also affects children with one in four young Australians having witnessed violence against their mother.<sup>4</sup>

Domestic and family violence is a significant problem for Australia generally but the statistics of domestic violence in Indigenous communities are also alarming, considering that 90% of the violence is not disclosed.<sup>5</sup> Statistics reveal that Indigenous women are significantly more likely to be victims of domestic and family violence than non-Indigenous women.<sup>6</sup>

Indigenous women are 38 times more likely to be hospitalised for assault and 10 times more likely to die from assault than non-Indigenous women.<sup>7</sup> Indigenous people are three times more likely to report domestic or family violence as a neighbourhood or community problem.<sup>8</sup> Further, Indigenous people have higher rates of domestic and family violence order use than non-

<sup>1</sup> The National Council to Reduce Violence against Women and their Children, *Domestic Violence Laws in Australia* (Commonwealth of Australia, 2009), 15.

<sup>2</sup> World Health Organisation, *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner and non-partner sexual violence* (2013).

<sup>3</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The cost of Violence against Women and their children* (2013).

<sup>4</sup> Australian Institute of Criminology, *Young Australians and Domestic Violence, No 195* (2001).

<sup>5</sup> Nous Group, *Family violence Prevention Legal Services- Research and Needs Analysis Report* (Commonwealth Attorney-General's Department, 16 July 2013), 16.

<sup>6</sup> Nous Group, *Family violence Prevention Legal Services- Research and Needs Analysis Report* (Commonwealth Attorney-General's Department, 16 July 2013), 18.

<sup>7</sup> Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, *Family violence among Aboriginal and Torres Strait Islander peoples* (Australian Institute of Health and Welfare, November 2006), 35.

<sup>8</sup> Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey*, (cat. No. 4714.0m ABS).





Indigenous people.<sup>9</sup> However, they are much less likely to be the person applying for the order as police are the applicants in more than 95% of orders in many remote communities.<sup>10</sup>

The situation in Queensland reflects these broader trends in Australia. Whilst it is difficult to source accurate recent statistics specific to domestic violence in Queensland, Police statistics reflect that the 2011/12 financial year reported a 9% increase in the number of reported breaches of domestic violence protection orders in Queensland. Overall, the number of offences against the person increased by 3% in Queensland between 2010/11 and 2011/12.<sup>11</sup>

For all of the crimes that are typically associated with domestic violence, the Northern and Far Northern Regions of Queensland between them reported both the highest rates of these offences, and (where there was an increase), often reported the highest increase in those offences for the year 2011/2012. This applies to the categories of Offences against the person, Assault, Grievous Assault, Common Assault, Sexual Offences, Rape and Attempted Rape, Other Sexual Offences, and Other Property Damage.<sup>12</sup> The Far Northern and Northern Regions again recorded the highest rates of breach of domestic violence protection orders in 2011/2012, as has been the trend in recent years. The Northern Region recorded the largest increase in breach of domestic violence order offences (16%) and also recorded the highest rate (609 offences per 100,000 persons).<sup>13</sup> It is of note that the Northern and Far Northern Regions of Queensland cover the Cape York Communities and Torres Strait Islands, and in 2011, 41.5% of Queensland's Aboriginal and Torres Strait Islander population lived in the three Indigenous Regions of Cairns-Atherton, Townsville, Mackay and Rockhampton.<sup>14</sup>

In 2005, the Queensland Crime and Misconduct Commission noted that approximately 23 per cent of domestic violence victims Statewide were Indigenous, while 60 per cent of victims in the Far Northern Region and 55 per cent of victims in the Northern Region were Indigenous.<sup>15</sup> This of course represents a percentage far higher than the proportion of the population generally that identifies as Indigenous. These statistics combine to demonstrate the prevalence and increase of domestic violence offences across Queensland, and particularly in North and Far North Queensland. These statistics do not capture the domestic violence that remains unreported.

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<sup>9</sup> Nous Group, *Family violence Prevention Legal Services- Research and Needs Analysis Report* (Commonwealth Attorney-General's Department, 16 July 2013), 16.

<sup>10</sup> Nous Group, *Family violence Prevention Legal Services- Research and Needs Analysis Report* (Commonwealth Attorney-General's Department, 16 July 2013), 16.

<sup>11</sup> *Queensland Police Service, 2011-2012 Annual Statistical Review*, (Queensland Government, 2012), 9.

<sup>12</sup> *Queensland Police Service, 2011-2012 Annual Statistical Review*, (Queensland Government, 2012), 45-61.

<sup>13</sup> *Queensland Police Service, 2011-2012 Annual Statistical Review*, (Queensland Government, 2012), 61.

<sup>14</sup> Queensland Treasury and Trade Office of Economic and Statistical Research, *Census 2011: Aboriginal and Torres Strait Islander Population in Queensland*, 2<sup>nd</sup> ed, (Queensland Government, 2013), 1.

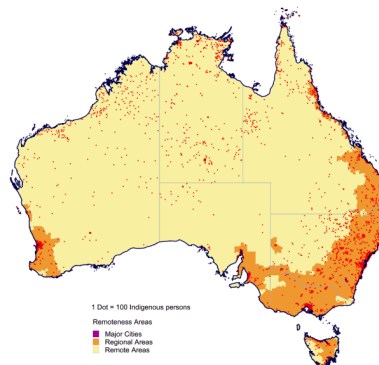
<sup>15</sup> Crime and Misconduct Commission Queensland, *Policing Domestic Violence in Queensland: Meeting the Challenges*, March 2005, 36.



#### 4 The key social and economic contributors to crime

Unique issues arise in the provision of justice in Queensland due to its size, diversity of population and the geographical isolation and remoteness of many Indigenous communities. Ensuring that Indigenous people (who are often quite isolated) are given the same opportunities as those in metropolitan areas to access a culturally appropriate legal system is an on-going challenge. Image 1 (below) illustrates how sparsely populated Indigenous Australians are (and how far apart the communities live, particularly in Queensland). The Australian Bureau of Statistics have recognised that Indigenous people in rural, regional and remote areas suffer disadvantages in education, work, health and housing when compared to Indigenous people living in metropolitan areas.<sup>16</sup>

**Image 1 – Indigenous Population Distribution and Remoteness Area (2006)<sup>17</sup>**



Related to the impacts of living in rural, regional and remote areas, the key social and economic contributors to crime for Indigenous Australians include a lack of affordable and appropriate housing, unemployment and underemployment, and financial disadvantage. Further, in some communities, there is a prevailing understanding that domestic and family violence is normal or that there are no options to get help or to stop the violence.

Lack of affordable housing or social housing reduces options available to victims living with domestic violence. This also leads to overcrowding, which can increase pressure on relationships and increase domestic violence episodes. Female victims are often dependent upon the earning capacity of their partner who is also the perpetrator. This can lead to a reluctance to report incidents or to actively engage in the criminal justice process as a victim. For example, a victim who has to continue to reside with the perpetrator out of financial and practical necessity is limited in their ability to safely give evidence against their partner, or to provide a Victim Impact Statement to a sentencing court. There is a valid and real fear of retribution after the criminal justice process is concluded.

#### 5 Social and economic impacts to families, businesses or the community

Something that is not necessarily always considered in relation to domestic and family violence is the impact on the broader community. Whilst a lot of research and reports focuses on the fact that impacts on victims, families and offenders must be addressed, there is also a broader social cost that is borne by society in rectifying the issues caused by domestic and family violence. The cost of domestic and family violence is not one that is only shouldered by victims, rather as Kerr and McLean stated as far back as 1996:<sup>18</sup>

<sup>16</sup> Australian Bureau of Statistics, *Australian Social Trends* (ABS cat no. 4102.0), 1.

<sup>17</sup> Australian Bureau of Statistics, *Australian Social Trends* (ABS cat no. 4102.0), 1.

<sup>18</sup> Cited by Lesley Laing, *Australian Studies of the Economic Costs of Domestic Violence* (The Australian Domestic & Family Violence Clearing House, 2001), 1.



Male violence against women is enormously costly – to the women who experience violence directly, to women generally whose lives are constrained by the fear of violence, and to governments whose expenditures are swollen by responding to some of the consequences of violence. Individual men, including those who are non-violent, also lose as a result of the barriers that are created by violence towards women.

One cost is that related to implementing intervention and prevention programs.<sup>19</sup> This can target specific communities where a prevalence is noted, or go so far as to isolate individuals who are most at risk of carrying out activities of domestic and family violence.

There is also the cost associated with rehabilitation. This might involve the provision of therapy and support services for victims and survivors of domestic or family violence, sometimes extending years after the incident itself (and reflecting the fact that instances of domestic or family violence may continue for years before they are uncovered).<sup>20</sup>

Access Economics, as part of the Australian Government Department of Social Services initiative into *The Cost of Domestic Violence to the Australian Economy*, identified several key costs that society bears because of instances of domestic and family violence, particularly:<sup>21</sup>

- (a) Pain, suffering and premature mortality: covering the years lost to victims of domestic violence and their families and friends because of the acts;
- (b) Health costs: specifically the public and private health costs associated with treating the effects of domestic violence (both mental and physical) for the offender, the victim and the children. QIFVLS also observes the lasting flow on effects of emotional trauma experienced by those people (particularly children) who witness domestic and family violence. Those people suffer the effects throughout their later life, which has longer term cost implications for the broader community (some of which are noted at point (e));
- (c) Production related costs: particularly for the community, including increased absenteeism, lost productivity of the victim and family, searching, hiring and retraining costs and lost wages, as well as a permanent loss of labour capacity;
- (d) Consumption related costs: including bad debts that the family is not able to pay out and property replacement due to acts of violence, subsequently causing poor economy in the running of the household and family;
- (e) Second generation costs: usually borne directly by the immediate family or by the broader community, and including childcare, school support services, therapy and counselling, child protection services, special or assisted education, increased future use of government services and a saddening increase to juvenile and adult crime from children of offenders;
- (f) Administrative or miscellaneous costs: including legal and forensic work funded by the State, temporary accommodation, permanent relocation and identity protection, interpreter services, therapy and counselling, perpetrator programs for dealing with offenders and (in the most unfortunate of cases) funeral services; and
- (g) Transfer costs: directly taken from the State and the broader community through victim compensation, income support, accommodation provision or subsidies, lost taxes,

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<sup>19</sup> Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, *Family violence among Aboriginal and Torres Strait Islander peoples* (Australian Institute of Health and Welfare, November 2006), 13.

<sup>20</sup> Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, *Family violence among Aboriginal and Torres Strait Islander peoples* (Australian Institute of Health and Welfare, November 2006), 72.

<sup>21</sup> Access Economics, *The Cost of Domestic Violence to the Australian Economy* (Australian Government Department of Social Services, 2004), 4.





financial assistance to victims and families for lengthy periods of time and child support including foster systems and state care.

Domestic and family violence is, of itself, a criminal law matter. The repercussions from domestic and family violence are far broader. They include unpaid debts (from phone bills, electricity or SPER debts) which families are subsequently unable to meet. Further concerns arise when victims and offenders cannot meet rental payments and are then evicted, placing a greater burden on homeless services and government housing. The current three strikes policy of social housing can also work to the detriment of a victim as domestic violence incidents can result in complaints and subsequent strikes, ultimately leading to eviction. These are real civil costs of domestic and family violence which rest with the public due to the inability or lack of capacity of victims and offenders to support themselves.

Without these essential services and government aid, many victims of domestic and family violence would suffer irreparable mental harm and many offenders would face no hope of rehabilitation. At the same time, these vital State services come at a cost and one that might be prevented if victims were able to receive greater access to an effective justice system and to receive assistance before family violence issues spiral out of control.

## **6 The effectiveness and cost-effectiveness of crime prevention strategies**

Alternative dispute resolution processes are fraught with difficulties and risk for victims of domestic violence, due to obvious power imbalances and fear. Imprisonment of the perpetrator can also cause difficulties for the victim who is left behind to care for the children. If the perpetrator is sentenced to a pecuniary penalty, the victim also often suffers financially as the fine imposed impacts the entire household, which can be a disincentive to report domestic violence incidents. A criminal justice process that actively involves Indigenous victims in safe and culturally appropriate ways would assist to identify and impose penalties that can limit these unintended impacts on the victim. Although the Murri Court and Indigenous Sentence List sought to impose culturally appropriate penalties, the models lack a focus on safe victim involvement.

Importantly, costs are reduced when action is taken early. The cost of preventing domestic and family violence through training, education programs in troubled areas, and therapy from an early stage of an individual's offending is significantly less than that attributable to having to deal with the aftermath of domestic or family violence. If nothing else, the scope of prevention is much smaller. For example, only the offender needs to be counselled and there are generally no physical injuries to be treated. Conversely, when offending reaches a later stage, the scope of rehabilitation extends to victims, families and importantly, to children.

Victims of domestic and family violence are often uninformed of the options available to them.<sup>22</sup> Victims commonly have a lack of awareness of legal concepts and often do not identify the acts committed against them as assaults.<sup>23</sup> Further, victims often do not identify the acts committed against them as being unacceptable. Crime prevention strategies that target at risk communities through education campaigns to address this lack of awareness are cost-effective options. For example, QIFVLS have experienced a significant demand for culturally appropriate community education about what constitutes a healthy relationship, particularly for young people and in schools. Such education is relatively low-cost, as one session reaches not only the immediate target group, but also has flow-on effects when young people share the information with their peer group and extended family.

<sup>22</sup> Aboriginal Family Violence Prevention Legal Service Victoria, *Strengthening on-the-ground- service provision for Aboriginal and Torres Strait islander victims. Survivors of family violence and sexual assault in Victoria* (2010).

<sup>23</sup> Aboriginal Family Violence Prevention Legal Service Victoria, *Strengthening on-the-ground- service provision for Aboriginal and Torres Strait islander victims. Survivors of family violence and sexual assault in Victoria* (2010).



QIFVLS recommends that the Queensland Government develop and support community education and community legal education programs to inform Aboriginal and Torres Strait Islanders, particularly those in regional and remote communities, about unhealthy relationships, what domestic violence is, and victim rights. The allocation of such funding needs to be effected in a way to recognise the costs involved in delivering quality services in remote communities. In implementing this recommendation, the Government should consult and work closely with Indigenous legal service providers, Indigenous persons from communities and non-Indigenous personnel who provide support services to Indigenous persons. Any education programs which are developed should reflect feedback and recommendations received from the various parties who are consulted and the programs should be responsive to the needs of the various communities involved.

In addition to the need to develop and provide community legal education programs, QIFVLS submits that there is also a need to provide community education and support programs. Such programs seek to provide a forum in which community members can discuss the personal and social impacts stemming from legal matters. It is through such relationship building that community capacity to support and deal with violence and associated legal issues is developed. In addition to community education programs focused on victims and the broader community, programs also need to be made available to and accessible for perpetrators of domestic and family violence.

Unfortunately, it is often financial considerations which prevent victims and offenders from accessing vital programs, particularly healing programs. Programs such as the Red Dust Healing program, which focus on spiritual healing and re-connecting with Country are of great benefit to persons impacted by domestic and family violence. For these programs to be of greater effect, they need to be made available and accessible (financially) to more people. QIFVLS proposes that the Government consider providing funding and/or grants for victims and perpetrators to attend specific healing programs.

## **7 Experiences or observations of the Queensland criminal justice system, including experiences from victims of sexual violence and/or domestic violence**

The primary purpose of QIFVLS is to provide legal and support services to Indigenous Queenslanders suffering from the direct and indirect effects of domestic and family violence and sexual assault. QIFVLS is therefore well-placed to comment on the experiences of Indigenous victims of sexual violence and domestic violence.

Indigenous victims in regional and remote communities are particularly vulnerable as they face additional barriers to reporting domestic and family violence. Disincentives to indigenous victims reporting incidents of domestic and family violence include:

- (h) Victims are often fearful of the consequences of reporting family violence because of the lack of anonymity in Indigenous communities.<sup>24</sup>
- (i) Most victims will not have access to alternative accommodation and generally will stay with the perpetrator to protect their children.<sup>25</sup>
- (j) Due to the important structural and cultural issues in communities, there is a sense of solidarity amongst the community which overrides the interests of one individual.<sup>26</sup> This is

<sup>24</sup> Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' in *Trends & Issues in Crime and Criminal Justice no. 405* (Australian Institute of Criminology, 2011).

<sup>25</sup> Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' in *Trends & Issues in Crime and Criminal Justice no. 405* (Australian Institute of Criminology, 2011).

<sup>26</sup> Loretta Kelly, 'Using Restorative Justice Principles to Address Family Violence in Aboriginal Communities' in Heather Strang and John Braithwaite, eds., *Restorative Justice and Family Violence* (Cambridge University Press 2002), 211.



a strong consideration for victims in reporting family violence, as victims believe it will bring shame to their children and extended families.<sup>27</sup>

- (k) Victims fear stigmatisation and being ostracised from family and the community members.<sup>28</sup> Shame is often given as a major reason for not disclosing family violence.<sup>29</sup> Further, it is not uncommon for those who do report violence to people outside the family to be criticised by their families and the community, thereby becoming increasingly isolated.<sup>30</sup>
- (l) The small percentage of victims that do report domestic or family violence will generally need to leave their communities because of fear of further violence or 'payback' or other culturally violent retribution.<sup>31</sup>
- (m) It has been found that some victims choose not to report because they do not want the perpetrator to be charged and imprisoned and to be taken out of their community.<sup>32</sup>
- (n) In QIFVLS's experience, victims can be reluctant to report incidents because they fear that it will result in child safety authorities intervening and removing their children.

In addition to the disincentives to report, the following factors make Indigenous victims particularly vulnerable:

- (a) The majority do not have independent access to transport and therefore are controlled to the point of feeling imprisoned.<sup>33</sup> They cannot simply travel long distances to regional centres to seek help.<sup>34</sup>
- (b) Most victims are often financially dependent upon the perpetrator and family and do not have access to money.<sup>35</sup> This poverty forces victims to return to violent relationships especially if there are children involved.<sup>36</sup>
- (c) If a victim does have the opportunity to leave the community it can lead to homelessness as they will need to travel far distances to live in other regions, away from their family.
- (d) There is a significant power inequality which provides a strong disincentive for victims to leave an abusive relationship.<sup>37</sup>

Even if a victim is completely willing and able to be fully involved in the criminal justice system response to the offence committed against them, the system is limited in its level of involvement of victims, particularly in the sentencing process. Although there is legislative provision for such involvement, it does not translate into established practice. Victim Impact Statements (VIS) are not routinely obtained and provided in the lower courts. Victims are not always made aware of court dates and events, and not always made aware of their rights, such as to give and read a VIS to the Court. Consequently, the victim's voice and personal impacts upon them, are often lost in the process. This is evident from a Queensland crime victims survey, which reveals that the

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<sup>27</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 86.

<sup>28</sup> Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' in *Trends & Issues in Crime and Criminal Justice no. 405* (Australian Institute of Criminology, 2011).

<sup>29</sup> Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' in *Trends & Issues in Crime and Criminal Justice no. 405* (Australian Institute of Criminology, 2011).

<sup>30</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 86.

<sup>31</sup> Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' in *Trends & Issues in Crime and Criminal Justice no. 405* (Australian Institute of Criminology, 2011).

<sup>32</sup> Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' in *Trends & Issues in Crime and Criminal Justice no. 405* (Australian Institute of Criminology, 2011).

<sup>33</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 87.

<sup>34</sup> Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' in *Trends & Issues in Crime and Criminal Justice no. 405* (Australian Institute of Criminology, 2011).

<sup>35</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 88.

<sup>36</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 88.

<sup>37</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 88.



most common reasons for dissatisfaction with the service provided by police were that police 'Didn't do enough' and secondly, 'Didn't keep me informed'.<sup>38</sup> Further, victims of sexual offences, assaults and personal crimes, were found to be less satisfied with the service received from police than victims of other types of crimes such as property crime.<sup>39</sup>

Victims are commonly unaware that they have a right to be on the Victims Register and have a say in court during certain proceedings such as parole hearings. QIFVLS recently assisted one of its clients (a victim of domestic violence) to make submissions to the parole board considering the release of the perpetrator of the domestic violence. QIFVLS was able to inform the client about this option and assist in the client making the submission because of the ongoing relationship with the client. Without QIFVLS' ongoing involvement and relationship with this client, they would not have been aware that this option was available to them.

Added to this general failure to ensure that victims feel informed and included in the process, are the practical impediments to the victim being involved in the trial and sentence process. For victims in remote communities, if the perpetrator is remanded in custody, proceedings are often transferred to another centre located closer to the prison (e.g. from Kowanyama to Cairns). This further limits the ability of a victim to participate in the court process, and there appears to be limited processes or assistance in place at present to facilitate and encourage that to occur (such as funding flights and accommodation of victims to assist them to attend sentencing hearings).

Victims have expressed difficulties in obtaining and paying for transport to court, especially when they have children, and also child care to enable them to participate in the court process in a meaningful way, without having to worry about what their children will see and hear. There is generally no child care provided at court, and QIFVLS' clients often have several children to care for, and limited funds to pay for babysitting. Victims also often do not feel able to attend and participate in the court process because of concerns for their personal safety. Protection offered to victims at court is limited. This all contributes to an expressed feeling that it is all too hard, and easier not to attend or participate in court proceedings.

## **8 Interactions with the Queensland Police Service, the courts, prosecuting authorities, legal and support services and compensation processes**

Victims do not have enough support in remote communities and victims of family violence often find it difficult to find support to leave a relationship.<sup>40</sup> Remote communities have a lack of emergency assistance (such as police, women's accommodation and crisis shelters).<sup>41</sup> Victims often fear contact with police based on past experiences and this is aggravated by a general distrust of police felt in many communities and the culturally insensitive ways police often respond to victims, if they respond at all.<sup>42</sup> This is reflected in the Queensland victims of crime survey, where one of the top three reasons for dissatisfaction with police was that they appeared 'Not interested/didn't want to listen'.<sup>43</sup>

QIFVLS has found that there is often a lack of response when violence occurs in Queensland Indigenous communities particularly when police are a number of hours away. In one recent case involving a QIFVLS client who was the victim of repeated assaults by her former partner, the offender repeatedly breached a protection order that was taken out against him, but the police

<sup>38</sup> Office of Economic and Statistical Research, Office of the Government Statistician, *Crime Victims Surveys 1996-2011: Results and Trends for Queensland* (Queensland Government, 23 April 2012), 29.

<sup>39</sup> Office of Economic and Statistical Research, Office of the Government Statistician, *Crime Victims Surveys 1996-2011: Results and Trends for Queensland* (Queensland Government, 23 April 2012), 26.

<sup>40</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 86.

<sup>41</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 86.

<sup>42</sup> Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' in *Trends & Issues in Crime and Criminal Justice no. 405* (Australian Institute of Criminology, 2011).

<sup>43</sup> Office of Economic and Statistical Research, Office of the Government Statistician, *Crime Victims Surveys 1996-2011: Results and Trends for Queensland* (Queensland Government, 23 April 2012), 29.





consistently failed to respond. It was only when QIFVLS sought a variation to the protection order (as a strategy to address the repeated violations) that the Magistrate ordered the police to investigate the past violations.

For some remote communities, it is not just the mistrust of the police or the lack of police response that is at issue but the fact that there is no adequate police service and judicial presence to support victims. For example, the remote community of Mapoon has no police station and the nearest police station, which is in Weipa, is not accessible by road during the wet season. Further, in the time between monthly circuit court sittings, matters are dealt with through the Remote Justices of the Peace (Magistrates Courts) Program (**JP Courts**). In QIFVLS' experience, victims are often reluctant to have their matters heard in these JP Courts as the person determining the matter is a local who could very well be related to the defendant. In such instances, victims often do not feel that they will be adequately heard or protected.

It is also difficult protecting confidentiality and privacy of offenders and victims in communities.<sup>44</sup> In QIFVLS' experience, the general reluctance of victims to access support services is multiplied in many communities where the limited available service providers are staffed by family members of both victim and defendant. A (perceived) lack of confidentiality often leads to conflicts, as victims feel their story is being spread through the community and beyond. Further, confidentiality is not always practicable in communities where interview rooms are limited and preference for available private spaces is given to defendants. The victim is unable to give instructions in a confidential and safe environment.

Where English skills are poor, interpreters become crucial to accessing justice. However, in remote communities, it can be close to impossible to access an interpreter. If an interpreter can be found, it can be time consuming and obviously impacts on service provider's resources.<sup>45</sup> QIFVLS has experienced difficulties with the use of locally based interpreters, with clients being concerned about divulging confidential information to a fellow community member. For cultural reasons clients may also be reluctant to disclose confidential information to an interpreter of the opposite sex.

In addition, there are limitations on the types of interventions due to programs being generic in focus or not available due to location.<sup>46</sup> There is a lack of financially viable 'perpetrator programs' and education sessions to provide the safety to victims to speak out about the violence and for the peer group to ensure this behaviour is not seen as acceptable. Victims also experience difficulties accessing shelters in remote communities. Where crisis shelters exist at all, they are located within the community, meaning victims often are subjected to continued abuse and interference from perpetrators simply due to their proximity.

QIFVLS considers that access to justice for Indigenous Australians is further frustrated by the lack of familiarity and awareness of some judiciary to the cultural sensitivities of, and difficulties experienced in participating as a victim in the criminal justice system. For example, one Queensland Magistrate expressed frustration that QIFVLS represents victims and not the perpetrators 'who really need it'. There appears to be a fundamental undervaluing of the involvement of, and particularly legal representation of, victims in the justice system.

There are also issues resulting from the inappropriateness of the justice system in dealing with Indigenous people generally. It is well recognised that the mainstream justice system is not suitable for dealing with Indigenous people. Court formalities, in particular, can lead to a distrust

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<sup>44</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 86.

<sup>45</sup> Melanie Schwartz and Chris Cunneen, 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of equity and access' (2008) 32 *Crim LJ* 38.

<sup>46</sup> Dale Bagshaw, et al, *Reshaping Responses to Domestic Violence Final Report* (University of South Australia, April 2000), 86.





of the legal system, which in turn may cause Indigenous Australians to avoid seeking legal services in the first place.<sup>47</sup>

In terms of victim compensation, the value of victim's compensation is well recognised. Not only does it compensate victims for their actual loss, it also sends an important message to victims that the community cares about them and that the harm caused to them is not acceptable. It may also empower the victim by restoring their sense of control and giving them sufficient funds to escape the violent relationship.<sup>48</sup> In QIFVLS' experience the compensation process is most effective if it has the flexibility to provide practical compensation, for example to change locks or provide a new washing machine if the victim's one is damaged during an incident.

Mistrust of the justice system, and the 'government' in general, affects all aspects of the interaction between Indigenous Australians and access to justice. This includes Centrelink, Child Safety Services, health, victims of violence and the lack of trust in victims' services and courts (and the lack of applications for family violence orders). Bureaucratic requirements make these processes even less accessible. For example, the application form to apply for crime victim's compensation is lengthy, arduous, and almost impossible for many QIFVLS clients to complete without assistance.

## **9 Possible strategies to increase collaboration and co-operation between various participants in the criminal justice system**

QIFVLS recommends increased cultural sensitivity in the criminal justice system, and an increased focus on involving victims in the process. Ideally, it would not be left to time-poor Queensland Police Service arresting officers to ensure that victim liaison is undertaken effectively and in a culturally appropriate way.

At present, Community Justice Groups are utilised to enhance cultural appropriateness of criminal proceedings, usually on behalf of the defendant. If a victim seeks assistance from the Community Justice Group, there is often a real conflict of interest for the Group who are already engaging with the defendant. Consequently, the victim is often left without access to culturally appropriate support in the criminal justice process.

QIFVLS recommends that the Queensland Government consider the funding of culturally appropriate victim-specific services to assist and represent victims in the criminal justice process. This is particularly needed in the lower courts, to improve victim engagement, and to ensure that Victim Impact Statements are obtained and utilised on a consistent basis.

Remote services rendered via phone or internet are not an adequate substitute for in-person legal services, particularly for victims dealing with such personal issues as sexual assault and domestic violence. While telephone services that provide legal information are available, they do not provide an effective or culturally appropriate means of giving legal advice to Indigenous Australians. Many Indigenous people in remote communities do not own a telephone or cannot easily access a public phone. Many remote communities may not have reliable mobile phone coverage and some communities have only one shared public phone. The use of public or council phones might not guarantee privacy and waiting for return phone calls may involve lengthy time periods.<sup>49</sup> Given the low literacy rates among Indigenous Australians in remote communities and the overarching lack of knowledge and understanding when it comes to the legal system, the potential efficacy of internet based information is limited.

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<sup>47</sup> National Pro Bono Resource Centre, *ATSILS Pro Bono Guide* (2009), 115.

<sup>48</sup> Nous Group, *Family violence Prevention Legal Services- Research and Needs Analysis Report* (Commonwealth Attorney-General's Department, 16 July 2013).

<sup>49</sup> ARC Centre of Excellence for Creative Industries and Innovation, the Centre for Appropriate Technology and the Central Land Council, *Home Internet for Remote Communities* (2011), 11, available at <http://www.cci.edu.au/sites/default/files/mcummins/Home%20internet%20for%20remote%20Indigenous%20communities.pdf>.



In QIFVLS' experience, many people who enquire about their services are surprised to learn that they are entitled to legal representation and often have not been informed about their ability to access legal assistance. This is of course not always the case, and there are many instances in which Government Departments or others alert QIFVLS to a potential client who requires assistance and representation prior to proceedings being commenced.

QIFVLS finds that in regional and remote areas there is a need for ongoing legal support, rather than a one-off provision of services. Indigenous clients need to be guided and supported through legal processes; it is not sufficient to merely point them in the right direction at the beginning and expect that they will follow through the process without further assistance. Further, absent a holistic approach to case management, it is often difficult to keep a client engaged. This involves ongoing practical support, not just legal support.

It is the practice of some Government departments and agencies, such as Centrelink, Medicare, the Australian Prudential Regulation Authority, the Australian Tax Office and the State Penalty Enforcement Registry, to require individuals to complete standard forms to authorise legal representatives to speak on their behalf. This can be difficult when clients are located in remote areas. Providing written authorisation forms should not be necessary; a simple notice in writing or a verbal instruction from the client, informing the department or agency of the lawyer-client relationship and the lawyer's authority to act, should suffice. Verbal authorisation will reduce difficulties associated with obtaining written correspondence from clients in remote communities, where scanning and internet facilities may not be available and mail may be interrupted by the wet season.

A recent example of government formalities preventing access to justice or unnecessarily increasing the difficulties experienced by QIFVLS clients is the situation of Client A, who was medically evacuated out of her community after being the victim of a domestic assault. As a result of being evacuated and hospitalised, Client A could not make her Centrelink appointment and her payments were cut-off. The midwife that treated Client A provided her with a medical certificate but because it was not in the 'correct form' Centrelink would not accept it and discontinued her payments until a medical certificate in the correct form was provided.

In light of the above considerations, QIFVLS submits that governments need to change the way funding is allocated for the provision of legal services to regional and remote Indigenous communities. Governments need to consider the disadvantages that Indigenous Australians face due to a lack of access to civil and family services and ensure that assistance is directed toward not-for-profit organisations and community legal centres (**CLCs**) servicing these issues. Without that direction, the funding will continue to only bolster provision of criminal justice services for perpetrators and ignore the vital need for holistic access to justice for victims.

In implementing this recommendation, the Australian Government should consult and work closely with QIFVLS, other Indigenous legal and non-legal service providers and Indigenous elders from various communities, to determine how the funding would be best targeted.

QIFVLS recommends that Government conduct a review of the processes of various departments and service providers that interact most commonly with Indigenous Australians in relation to legal matters. The aim of the review being to assess how those departments and service providers might be able to change their existing processes to mitigate the difficulties faced by remote Indigenous Australians in dealing with them and, ultimately, to facilitate greater access to justice for Indigenous Australians.



## Schedule 1

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