

**COMMISSION OF INQUIRY INTO QUEENSLAND POLICE SERVICE RESPONSES TO DOMESTIC
AND FAMILY VIOLENCE**

*Commissions of Inquiry Act 1950
Section 5(1)(d)*

STATEMENT OF THELMA CAROLINE SCHWARTZ

Name of Witness:	Thelma Caroline Schwartz
Date of birth:	[REDACTED]
Current address:	[REDACTED]
Occupation:	Principal Legal Officer, Queensland Indigenous Family Violence Legal Service
Contact details (phone/email):	[REDACTED]
Statement taken by:	Anna Cappellano

I, Thelma Caroline Schwartz, make oath and state as follows:

1. I am the Principal Legal Officer at the Queensland Indigenous Family Violence Legal Service (QIFVLS).
2. 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. The FVPLSP fills a recognised gap in access to culturally appropriate legal services for Aboriginal and Torres Strait Islander victim/ survivors of family and domestic violence and sexual assault.
3. QIFVLS provides services in the areas of domestic and family violence; family law; child protection; sexual assault, Victims Assist Queensland applications and minor civil matters. QIFVLS supports its clients through all stages of the legal process: from legal advice to representation throughout court proceedings.

[REDACTED]

Witness signature



Justice of the Peace/Commissioner for Declarations/Lawyer

4. QIFVLS provides a culturally appropriate service response to meet and support our client needs through the legal processes as well as in relation to addressing and meeting non-legal needs.
5. QIFVLS has 8 offices across Queensland which provide services to more than 80 Aboriginal and Torres Strait Islander communities. Throughout 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.
6. On 24 June 2022, on behalf of QIFVLS, I forwarded a submission to the Commission of Inquiry. The evidence that I wish to give to the Commission is outlined in this submission.

A copy of the submission to the Commission from QVLS is attached as Annexure A.

OATHS ACT 1867 (DECLARATION)

I Thelma Schwartz do solemnly and sincerely declare that:

- (1) This written statement by me is true to the best of my knowledge and belief: and
- (2) I make this statement knowing that if it were admitted as evidence, I may be liable to prosecution for stating in it anything I know to be false.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

[Redacted Signature]

.....Signature

Taken and declared before me at Cairns this 18th day of July 2022

Taken By

[Handwritten Signature]

Justice of the Peace / Commissioner for Declarations / Lawyer

Isabella Giovanna Copetti

'Annexure A'



QUEENSLAND
INDIGENOUS FAMILY
VIOLENCE
LEGAL SERVICE

Submission to the Commission of Inquiry into QPS
responses to domestic and family violence

24 June 2022

Contents

Executive Summary	1
Summary of QIFVLS' recommendations	2
About QIFVLS	3
Family violence as the cornerstone	5
Historical and entrenched culture within the QPS.....	6
Misidentification of offenders	6
Barriers affecting relationships with police.....	7
Victoria's Royal Commission into Family Violence.....	9
Alternatives to custody	9
Mothers and children	9
Government inaction	10
Conclusion.....	10
References	11



The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the Commission of Inquiry into the Queensland Police Service responses to domestic and family violence

Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ('QIFVLS') welcomes the call for submissions to the Commission of Inquiry into Queensland Police Service ('QPS') responses to incidents of domestic and family violence ('DFV'). This submission complements issues identified in our submission to the Women's Safety and Justice Taskforce's Discussion Paper 3 dated 14 April 2022.

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. 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.

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 Commission of Inquiry. Our role frequently necessitates that we intervene or react on our clients' behalf to actions of government agencies. In that regard, we feel well placed to provide feedback from the standpoint of a family violence prevention legal service which provides a holistic model of attending to our communities' legal and non-legal needs.

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 have received from the QPS. QIFVLS understands that as first responders, police work in challenging circumstances, often in under-resourced communities where other essential services are severely lacking. We understand that there are many officers performing to their best and doing a good job in some cases. To this point, we are aware that some women have called for more police involvement and presence in communities¹.

Regrettably though, we have found ourselves all too often in the position of intervening where the police response has consisted of:

- The victim-survivor of DFV being misidentified as the offender/main offender;

¹ Australian Human Rights Commission (2020), *Wiyi U Thangani Report*, p157

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- Lacking urgency/inadequate investigation necessitating further investigation and follow-up by QIFVLS lawyers and case management officers; and
- Police disbelieving or disregarding issues reported.

In order to ensure that the Queensland Police Service and Aboriginal and Torres Strait Islander communities are working in partnership to close the gap, our submission highlights some of our clients' experiences whilst simultaneously suggesting courses of action which may ensure that the QPS is a nationwide leader in fulfilling its mission to stop crime, make the community safer and most importantly build relationships in the community.

Summary of QIFVLS' recommendations

At the outset, QIFVLS submit that the following recommendations are considered by the Commission:

Recommendation 1 - Greater investment in specialised and culturally safe police

This could consist of increased cultural training 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.

Recommendation 2 - Community-specific induction for police officers when attached to a new community²

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.³

Recommendation 3 - Review any current policies regarding cultural frameworks to ensure they are implemented, if not already, and effectively monitored

Recommendation 4 - Resourcing and funding required to achieve these issues

Under-resourcing of services and programs delivered to First Nations communities is part of the disadvantage experienced by First Nations communities. As noted in the Australian Human Rights Commission's *Wiyi 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
- that women need to be confident in seeking protection from them.⁴

Recommendation 5 - Priority given to address the misidentification of Aboriginal and Torres Strait Islander women who are victims of domestic violence as perpetrators and ensure police have guidance with identifying domestic violence primary aggressors

Recommendation 6 – Invest in communities and community-led solutions

Increase funding and resourcing for culturally appropriate and community-controlled services. 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.⁵

² Australian Human Rights Commission (2020), *Wiyi U Thangani Report*

³ Australian Human Rights Commission (2020), *Wiyi U Thangani Report*, p170

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

⁵ Change the Record (2021), *Pathways to Safety*, p7

Recommendation 7 – 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 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. What is also needed are expanded pathways for supporting communities driven by communities.

Recommendation 8 - Revisit and review Royal Commission Into Aboriginal Deaths In Custody (RCIADIC)(1987-1991) recommendations on policing

Revisit and review these recommendations to ensure they are being applied in a way that was originally intended.

Recommendation 9 - Institute an independent law enforcement monitor to prevent the public's perception of police investigating police**Recommendation 10 - 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, especially women, employment and participation; and
- More appropriate responses to Aboriginal and Torres Strait Islander women as victim-survivors and accused persons.⁶

Recommendation 11 - Establish a Domestic Violence Code of Practice for the Investigation of Domestic Violence matters

This would be similar to Victoria Police's Code of Practice for the Investigation of Family Violence matters.

Recommendation 12 - QPS to consider establishing a Domestic Violence Centre of Learning with external academic governance to improve domestic violence education at all levels.

We note this is a key foundation reform of Victoria Police arising from the Victorian Royal Commission into Family Violence. In the Victorian Royal Commission, it was recommended that the Family Violence Centre of Learning can recruit new staff, conduct training and construct curriculum, establish academic governance group.

About QIFVLS

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.

⁶ Human Rights Law Centre & Change the Record (2017), p7

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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.

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

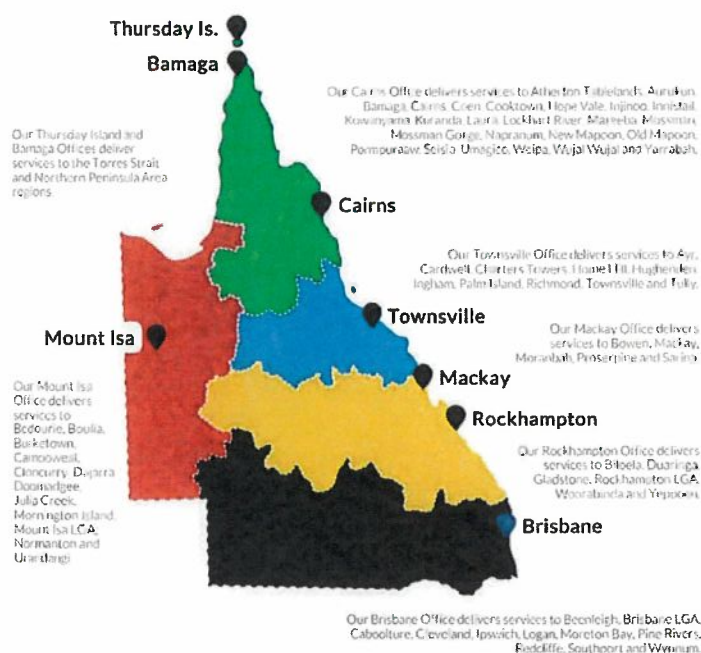
QIFVLS' Case Management Practice model

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 victim/survivors of family violence. The Case Management 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 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 Texas⁷. Bearing that in mind, QIFVLS has eight (8) offices across Queensland –

- (1) a service delivery office in addition to its Head Office located in Cairns, responsible for servicing Cape York communities, Cooktown; Atherton Tablelands, Innisfail and Yarrabah (and communities in between);
- (2) a service delivery office in Bamaga responsible for servicing Cape York communities as far north as Bamaga and Umagico;
- (3) a service delivery office on Thursday Island responsible for servicing communities stretching to the Outer Islands of the Torres Strait, neighbouring Papua New Guinea;
- (4) a service delivery office in Townsville responsible for servicing Townsville, Palm Island, Charters Towers, Richmond and Hughenden (and communities in between);
- (5) a service delivery office in 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

⁷ <https://www.qld.gov.au/about/about-queensland/statistics-facts/facts>

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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 relationship⁸ (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 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 QPS which specifically address Aboriginal and Torres Strait Islander families' needs, perspectives and barriers to obtaining assistance. This requires a tailored response from the Government and the QPS that includes long term investment in early intervention, prevention 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 advocate 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.

Historical and entrenched culture within the QPS

Queensland's history is marked by among other things, the state's historical use of the police as an agent of colonisation. Accordingly, we believe that 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.⁹ Entrenched cultures within the QPS have historically, and to the present day, shaped the way some police officers respond to acts of violence, particularly family violence and sexual violence, in indigenous communities. QIFVLS routinely receives reports from women that even when they have found the courage to report abuse, it has been overlooked or not taken seriously.¹⁰

Misidentification of offenders

The misidentification of offenders occurs for a variety of reasons including lack of cultural awareness, lack of training and either negative stereotypes and/or negative views of the victim-survivor. At QIFVLS, we witness on a weekly basis situations where police have misidentified an offender through a failure to adequately investigate a report of violence, be it sexual or family violence that does not have a sexual

⁸ 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.

⁹ <https://www.abc.net.au/news/2022-03-31/police-misidentifying-domestic-violence-victims-perpetrators/100913268>

¹⁰ <https://www.abc.net.au/news/2022-03-31/police-misidentifying-domestic-violence-victims-perpetrators/100913268>

component. On several occasions, it has been left to QIFVLS lawyers to undertake the investigative work and raise the clients' circumstances in the Magistrates Court thus forcing a reconsideration of the client's circumstances.

QIFVLS Case study – Anne's story

- Anne (not her real name) was in a long-term relationship with Bill (not his real name) but had been the victim of domestic violence during this relationship, including physical violence towards herself by Bill. As a result, Bill had a domestic violence order (DVO) against him to protect Anne, as taken out by police and in place for some time.
- One weekend Bill was due to go away for a trip, but due to the COVID lockdown in Cairns it was cancelled. Anne was looking forward to a break from Bill and became frustrated having him around. A verbal argument broke out one night, and police were called. Because Anne threw a saltshaker in frustration at the ground (not at Bill or hitting Bill) the police took out a DVO against her naming Bill as the victim and Anne as the perpetrator.
- Anne works in community and a DVO may impact her blue card which would impact her work. It also caused a lot of shame for her as well.
- We identified that Anne was the greater victim and her actions were out of frustration. We referred Anne to the DV counsellor to assist in identifying triggers and domestic violence in her relationship to help prevent herself getting into that situation in future.
- At the Magistrates Court, we appeared for Anne and we adjourned the court matter for Anne to engage in domestic violence counselling. We opened a file for Anne to remove the need for the client to come back to court as we could appear on her behalf which she was grateful for due to her work commitments.
- At the next court event, we again appeared for Anne and we were able to provide a letter of support from the DV counsellor and made submissions as to why the order was not necessary or desirable. The Magistrate agreed with us and dismissed the application.
- This was a great outcome for Anne. Anne was very happy and relieved with the result and continues to have counselling with the DV worker as she found great benefit in it.
- Without QIFVLS assistance and representation, an order would have been made against Anne even though Anne is the greater victim in need of protection.

In their 2021 report, *Pathways to Safety*, Change the Record highlighted a 2017 review of domestic and family violence related deaths in Queensland which found that almost half of the women killed subject to the review had been identified as a respondent to a DV protection order on at least one occasion. In the case of Aboriginal and Torres Strait Islander women, that number rose to almost 100% of deceased women recorded as "both respondent and aggrieved prior to their death. The statistics point to a system which responds to Aboriginal and Torres Strait Islander women by criminalising them when they seek safety and failing to protect them when they are at risk of harm.¹¹

The failure by police to properly investigate and the subsequent misidentification have far reaching consequences, perpetuating cycles of incarceration, child removal, mental illness, homelessness and substance abuse. The solution lies in a cultural overhaul of policing strategies including training that embeds cultural competency and reviews investigative strategies.

Barriers affecting relationships with police

QIFVLS have observed a few barriers faced by our clients, notably women, reporting incidents of family and sexual violence. Sadly, these are largely couched in fear and include:

- Fear of reporting to police due to a history of not being believed.
- Fear that reporting may lead to the removal of children/the breakup of the family unit.

¹¹ Change the Record (2021), *Pathways to Safety*, p11

- Fear of negative repercussions, especially in small remote communities.
 - including fear of payback by the offender's family, stigmatisation or ostracization from the community.

Relationships with police

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. Regrettably, we report that in many situations, First Nations women and children do not consider the police to be a safe point of contact.

When our clients have reported to police, they have at times been met with an aggressive and heavy-handed response or alternatively, police inaction, disregard, disbelief and a lack of care.

We note that chronic under-policing and poor response times, particularly in remote communities, have formulated the experience and viewpoint that the police do not consider the protection and safety of Aboriginal and Torres Strait islander women and girls to be as worthy as other Australians. The Australian Human Rights Commission noted that poor police response times in communities can cause issues leading to some women taking matters into their own hands in the form of violent resistance and consequently becoming respondents to protection orders.¹²

Other factors behind a fear of reporting include previous negative experiences when reporting family violence or assaults to the police and concerns that either the person reporting and/or the offender, often a family member, may become a death in custody.

These fears are not misplaced and exist for good reason. Research noted in the Human Rights Law Centre and Change the Record's 2017 report, *Over-represented & Overlooked*, together with our observations 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. 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.¹³

QIFVLS Case Study - 'Mary' and 'Jane'

- QIFVLS solicitor and case management officer assisted a mother, 'Mary' (not her real name) from a remote community. Mary had filed an application for a domestic violence protection order on behalf of her 12-year daughter, 'Jane' (not her real name).
- Jane had been in a relationship for over one year with a man who was 19 years old. Jane had made disclosures to Mary about the violence she had been subjected to at the hands of her partner, including physical, sexual, verbal and emotional abuse.
- Attempts by Mary to engage and utilise service providers such as the Police and Child Safety were unsuccessful and Jane continued to suffer and sustain violence from her partner, even after the end of the relationship.
- In July 2020, Mary engaged with QIFVLS and an application for a domestic violence protection order was filed on Jane's behalf by Mary. Given the nature of the allegations contained in the application, the matter was heard on an urgent basis and a temporary protection order (TPO) was made. The TPO contained the mandatory terms and conditions but also additional conditions prohibiting the ex-partner from entering or attempting to enter a number of premises where Jane was, including her school; prohibiting him from locating or contacting or attempting to locate or contact Jane; prohibiting him from following or approaching Jane as well as prohibiting him from using social media and the internet to communicate with Jane and the named persons in the TPO.

¹² Australian Human Rights Commission (2020), p221

¹³ Human Rights Law Centre & Change the Record, (2017)

- The matter was then listed for a mention in September 2020 to allow service on the ex-partner. Prior to the mention date and following service on the ex-partner, he continued to breach the TPO against Jane. A breach was reported to police two days before the matter was mentioned in the September mention date.
- When the matter finally returned to court in September, the ex-partner failed to appear at Court. QIFVLS Solicitor and Case Management Officer, appeared for Mary and Jane. Submissions were made that all requirements for the making of a final protection order had been satisfied, including that Mary, as the mother of Jane, could make the application for a protection order on Jane's behalf, in the absence of the ex-partner.
- The Magistrates Court, in considering the severity of the allegations made by a 12-year-old Jane, the continued breaches of the TPO and the submissions made, made a final protection order for a period of 5 years, on the same terms and conditions as the TPO.
- We also provided support and further referrals to Mary and Jane to the appropriate services and stakeholders to seek on going counselling and guidance within the community.

The case study of Mary and Jane is an indicator of what we experience quite regularly in our practice. One of the most concerning elements in this case study, is the lack of action taken by Police or Child Safety when complaints of sexual violence are made.

Victoria's Royal Commission into Family Violence

We note that Victoria's Royal Commission into Family Violence, the first of its kind in Australia, was established in 2015. 227 recommendations were made, and we would support the Commission reviewing the Victorian Royal Commission's findings and recommendations as they relate to police responses to incidents of domestic and family violence. Some of our recommendations on pages 2 and 3 above, are drawn from the Victorian Family Violence Royal Commission.

Alternatives to custody

We have been observing the Victorian coronial inquest into the death of Veronica Nelson, whose death in custody while awaiting a court date for alleged shoplifting offences was sadly preventable¹⁴. With data of increasing rates of imprisonment of Aboriginal and Torres Strait Islander women and girls for minor offences, we strongly urge the Commission to consider how police could utilise alternatives to placing Aboriginal and Torres Strait Islander peoples in custody, particularly while on remand.

Mothers and children

80% of Aboriginal and Torres Strait Islander women in prison are mothers.¹⁵ Imprisoning this group of women hurts more than just the individual offender. As collateral damage, extended families and communities are worse off and in particular, children suffer with the consequences noted in our already over-represented child protection and youth justice systems.

Many Aboriginal and Torres Strait Islander mothers also have a realistic and well-supported fear that disclosing family violence and seeking help will lead to their children being forcibly taken from their care. This is a common thread, not only with QIFVLS clients, but also with the communities that QIFVLS services in rural and remote Queensland. This fear is quite real when one examines the findings of the Australian Institute of Health and Welfare, Child Protection in Australia, 2017-18 Report which found that:

¹⁴ [Veronica Nelson was a kind woman. An inquest heard she died an 'appallingly undignified' death in prison - ABC News](#)

¹⁵ Human Rights Law Centre and Change the Record (2017), p5

- Indigenous children were 8 times more likely than non-indigenous children to have received child protection services; and
- Children from very remote areas were 4 times more likely than those from major cities to be the subject of a child protection substantiation.

Government inaction

While the Commission scrutinises police responses to incidents of DFV, on a broader scale, we believe that responses from police also need to be placed in context with government inaction. There has been a repeated failure of successive governments to respond to recommendations of inquiries and reports on the conditions experienced by Aboriginal and Torres Strait Islander people. We do not wish to sound like a broken record but the factors contributing to over-representation of Aboriginal and Torres Strait Islander peoples among statistics for domestic violence, incarceration and child removal, have been known and voiced to governments of all persuasions. The inertia has triggered ongoing trauma and harm to Aboriginal and Torres Strait Islander communities in circumstances which have been largely preventable.

Conclusion

We take this opportunity to thank the Commission for considering our submission together with recommendations for improving QPS responses to incidents of domestic and family violence. We trust that the Commission 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 enhancing the way the Queensland Police Service responds to incidents of domestic violence in a way that will benefit Aboriginal and Torres Strait Islander people and communities together with the wider Queensland community.

References

1. Australian Human Rights Commission (2020) *Wiyi Yani U Thangani Report* at <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yanu-thangani>
2. 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.
3. Change The Record (2021), *Pathways to Safety* at <https://www.changetherecord.org.au/pathwaystosafety>
4. Commissioner for Aboriginal Children and Young People, Open Letter in response to 2015 *Report on Government Services*, 3 February 2015.
5. Human Rights Law Centre & Change the Record (2017) *Over-represented and Overlooked: The crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*, authors at <https://www.hlrc.org.au/reports/2017/5/18/report-over-represented-and-overlooked-the-crisis-of-aboriginal-and-torres-strait-islander-womens-growing-over-imprisonment>
6. 'Interesting facts about Queensland', Queensland Government - <https://www.qld.gov.au/about/about-queensland/statistics-facts/facts>
7. National Family Violence Prevention Legal Services: www.nationalfvpls.org
8. Our Watch (2018), *Changing the Picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children*.
9. *Police are still misjudging domestic violence and victims are suffering the consequences* (2022), ABC News, <https://www.abc.net.au/news/2022-03-31/police-misidentifying-domestic-violence-victims-perpetrators/100913268>
10. *Veronica Nelson was a kind woman. An inquest heard she died an 'appallingly undignified' death in prison* (2022), ABC News, <https://www.abc.net.au/news/2022-05-28/veronica-nelson-coronial-inquest-aboriginal-prison-death-custody/101103922>
11. Queensland Parliament, *Human Rights Act 2019* (QLD)
12. Queensland Productivity Commission, August 2019, Summary Report – Imprisonment and Recidivism