

Queensland Indigenous Family Violence Legal Service

Please treat this submission as* Public

This submission is on behalf of an organisation

Name of organisation Queensland Indigenous Family Violence Legal Service

Person submitting

Phone number

Email

Would you like to ... Use this form to answer questions

Question 1

Question 2

Question 3

This can be done through more funding to CLCs who are already servicing regional and remote areas to be able to provide Community Legal Education to give people the knowledge they need in relation to family law matters. State-wide organisations such as Legal Aid Queensland can also provide information systems which are targeted at the general population and not only to legal professions. QIFVLS already provides CLEs but this can be limited due to funding and the inability to access certain communities due to remoteness. Extra funding can go towards improving this and making sure that Aboriginal and Torres Strait Islander clients are aware of their rights when it comes to accessing the family law related services.

Question 4

Given the demographic that QIFVLS service is predominately Aboriginal and Torres Strait Islander people who are in regional and remote areas of Queensland; it would be helpful to see a Family Law system that embraces their needs and vulnerabilities. This can be in the form of a Cultural Liaison Officer who will be present at Court and provide the extra assistance as needed.

Question 5

Aboriginal and Torres Strait Islander people and their relationship with the law is complex. As such, assisting Aboriginal and Torres Strait Islander clients takes time and resources. In Queensland, particularly in regional and remote areas, there are very limited resources dedicated to assisting Aboriginal and Torres Strait Islander peoples navigate the family law system and address associated law issues. Service providers must have a deep understanding of the history of colonisation, its impact on Aboriginal and Torres Strait Islander people, and the importance of developing a relationship of trust between Aboriginal and Torres Strait Islander people and the justice system. QIFVLS has found that for Aboriginal and Torres Strait Islander people there is a need for ongoing legal support, rather than a one-off provision of services. Aboriginal and Torres Strait Islander 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 (self-represent). 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. Given the low literacy rates among Aboriginal and Torres Strait Islander people and the overarching lack of knowledge and understanding regarding the Australian legal system, the potential efficacy of internet based information is limited. Services that are provided via telephone or internet will never be an adequate substitute for face to face service. This is particularly the case with Aboriginal and Torres Strait Islander clients whose cultural customs affect interaction and communications. If services are provided via telephone, it is more difficult to foster a relationship of trust with the client, making it more difficult to develop an effective lawyer-client relationship. QIFVLS recommends that the Government address the

serious lack of access to justice in family law matters experienced by Aboriginal and Torres Strait Islander people. This can only be achieved if sufficient and certain funding is received by experienced and culturally sensitive legal service providers. Providing sufficient resources would help address many of the difficulties that currently obstruct delivery of legal services to Aboriginal and Torres Strait Islander peoples.

Question 6

Question 7

Question 8

Question 9

In Queensland, a high number of Aboriginal and Torres Strait Islander people live in regional, remote and rural areas (RRR). At 30 June 2006 across Australia: (a) 32% (165, 800 people) of Aboriginal and Torres Strait Islander Australians lived in major cities; (b) 21% (110,600 people) lived in inner regional areas; (c) 22% (113,300 people) lived in outer regional areas; (d) 9% (47,900 people) lived in remote areas; and (e) 15% (79,500 people) lived in very remote areas. The Aboriginal and Torres Strait Islander regions with the highest proportion of Aboriginal and Torres Strait Islander residents, which were outside major population centres, included the Aboriginal and Torres Strait Islander Region in Queensland (85%). The Australian Bureau of Statistics has recognised that Aboriginal and Torres Strait Islander people in RRR areas suffer disadvantages in education, work, health and housing when compared to Aboriginal and Torres Strait Islander people living in metropolitan areas. Ensuring that Aboriginal and Torres Strait Islander 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 ongoing challenge. Presently, Aboriginal and Torres Strait Islander victims residing in RRR areas have a much more limited range of services open to them. In QIFVLS' experience, some communities actively disengage with technologically provided services. While telephone services that provide legal information are theoretically available, they do not provide an effective or culturally appropriate means of giving legal advice. Many Aboriginal and Torres Strait Islander people in remote communities do not own a telephone or cannot easily access a public phone. Many remote communities do not have reliable mobile phone coverage and some communities have only one shared public phone. The use of public or council phones does not guarantee privacy and waiting for return phone calls often involves lengthy time periods and delays to services. Given the low literacy rates among Aboriginal and Torres Strait Islander people in remote communities and the overarching lack of knowledge and understanding regarding the Australian legal system, the potential efficacy of internet based information is limited. Services that are provided via telephone or internet will never be an adequate substitute for face to face service. This is particularly the case with Aboriginal and Torres Strait Islander clients whose cultural customs affect interaction and communications. If services are provided remotely via telephone, it is more difficult to foster a relationship of trust with the client, making it more difficult to develop an effective lawyer-client relationship. To build the level of trust required to provide effective legal and support services, QIFVLS requires a presence in the community, and must not be seen as merely a 'fly-in fly-out' service. In those instances, where QIFVLS has been able to sustain a long-standing relationship with a client (rather than merely provide a one-off advice) QIFVLS has identified and resolved a variety of legal issues that were not readily apparent when the client first engaged with the service. QIFVLS' services are most effective when provided face to face with clients. Geographical isolation is a significant barrier to access to justice for Aboriginal and Torres Strait Islander Queenslanders. Unfortunately, this barrier cannot be overcome through the use of technologies such as telephone and internet. By recognising that the community desires face to face legal services, QIFVLS has been able to increase engagement with the service in certain communities. More resources are required

to enable QIFVLS to provide a similar level of face to face legal services across all of the communities that require assistance. QIFVLS recommends that the Government address the serious lack of access to justice in Family Law matters experienced by Aboriginal and Torres Strait Islander people in remote locations. This can only be achieved if sufficient and certain funding is received by experience and culturally sensitive legal service providers. Providing sufficient resources would help address many of the difficulties that currently obstruct delivery of legal services to remote Aboriginal and Torres Strait Islander communities.

Question 10

Question 11

Question 12

Question 13

Question 14

Question 15

The defining of domestic and family violence is itself problematic. Historically, the term 'domestic violence' has contributed to a conceptualisation of this form of violence as a private problem located inside the home and not to be interfered with by the wider community. Arguably, the legacy of this conceptualisation is that the justice response commences in the civil law sphere, the message being that domestic violence is not a serious, family or criminal problem. Definitions of domestic and family violence can include financial and economic abuse, intimidation, stalking, violence towards pets, behaviour that is threatening or coercive or action that controls or dominates and causes fear for oneself or another. One commonly held misunderstanding is that actual physical violence is required. In reality, in QIFVLS' experience, it is common for victims to report that threats and intimidation can be far worse than physical assaults. The fear and anticipation of what a perpetrator will do and when, is reported as being so hard to deal with, that victims often say words to the effect, "I wish he would just hit me and get it over with." QIFVLS supports an extended definition of family violence to be inline with the sections 8-12 of the Family and Domestic Violence Act 2012. Domestic and family violence is a significant problem for Australia generally, but is particularly prevalent in Aboriginal and Torres Strait Islander people. Statistics indicate that Aboriginal and Torres Strait Islander women are significantly more likely to be victims of domestic and family violence than non- Aboriginal and Torres Strait Islander women. Aboriginal and Torres Strait Islander women are 35 times more likely to be hospitalised for assault and 10 times more likely to die from assault than Aboriginal and Torres Strait Islander women. The 2002 National Aboriginal and Torres Strait Islander Social Survey found that, within the twelve months prior to the survey, 24% of Aboriginal and Torres Strait Islander people aged 15 years or over reported being a victim of physical or threatened violence. Significantly, the rate for an Aboriginal and Torres Strait Islander person being a victim of physical or threatened violence was over twice the rate of non Aboriginal and Torres Strait Islander person. Aboriginal and Torres Strait Islander people have higher rates of domestic and family violence order use than non-Aboriginal and Torres Strait Islander people. However they are much less likely to be the person applying for an order; police are the applicants in more than 95% of orders in many remote communities. These statistics are particularly alarming considering that 90% of the violence is not disclosed. It is also concerning that Aboriginal and Torres Strait Islander people are three times more likely to report domestic or family violence as a neighbourhood or community problem. 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.

For all of the crimes that are typically associated with domestic violence, the Northern and Far Northern Regions of Queensland between them reported the highest rates of these 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. 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). 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 Regions of Cairns-Atherton, Townsville, Mackay and Rockhampton. In 2005, the Queensland Crime and Misconduct Commission noted that approximately 23 per cent of domestic violence victims State-wide were Aboriginal and Torres Strait Islander people while 60 per cent of victims in the Far Northern Region and 55 per cent of victims in the Northern Region were Aboriginal and Torres Strait Islander people. This of course represents a percentage far higher than the proportion of the population generally that identifies as Aboriginal and Torres Strait Islander people. 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. Disincentives to Aboriginal and Torres Strait Islander people's victims reporting In general, disincentives to Aboriginal and Torres Strait Islander victims reporting incidents of domestic and family violence include: (a) Victims are often fearful of the consequences of reporting family violence because of the lack of anonymity in Aboriginal and Torres Strait Islander communities. (b) Most victims will not have access to alternative accommodation and generally will stay with the perpetrator to protect their children. (c) 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. This is a strong consideration for victims in reporting family violence, as victims believe it will bring shame to their children and extended families. (d) Victims fear stigmatisation and being ostracised from family and the community members. Shame is often given as a major reason for not disclosing family violence. 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. (e) 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. QIFVLS has additionally found that: (a) Victims can be reluctant to report incidents because of the fear that Child Safety authorities will intervene and remove their children; (b) Victims in remote communities often find it difficult to find support to leave a relationship. (c) There is often a lack of response by authorities when violence occurs in remote Queensland communities where the police are several hours away when a call for help is made; and (d) Victims often fear police based on previous experiences, which is aggravated by a general distrust of police and the culturally insensitive manner in which police often respond to victims. QIFVLS supports that that be an inclusion in the legislation similar to that found in section 4(d) of the Domestic and Family Violence Act (QLD) 2012 - " if people have characteristics that may make them particularly vulnerable to domestic violence, any response to the domestic violence should take account of those characteristics; Examples of people who may be particularly vulnerable to domestic violence— • women • children • Aboriginal people and Torres Strait Islanders • people from a culturally or linguistically diverse background • people with a disability • people who are lesbian, gay, bisexual, transgender or intersex • elderly people"

Question 16

Question 17

Question 18

Question 19

Question 20

Question 21

Question 22

Question 23

Question 24

QIFVLS view is that family dispute resolution should play a greater role in disputes involving family violence or abuse, however, such should be by specifically trained legal professionals. QIFVLS recommends the Government support increased training and recruitment programs for legal service providers working in regional and remote Aboriginal and Torres Strait Islander communities. QIFVLS also recommends that the Government increase its funding targeting more Aboriginal and Torres Strait Islander Family Dispute Resolution Practitioners and Mediators who will be able to communicate with clients in a culturally appropriate manner and not only that but they will also have a greater insight in the issues that affect Aboriginal and Torres Strait Islander clients accessing Family law dispute resolution.

Question 25

Question 26

Question 27

Question 28

Question 29

Question 30

Question 31

A number of States and Territories have demonstrated the effectiveness of integrated responses in respect to domestic violence within the last 15 years. In the ACT, the Family Violence Intervention Program (FVIP) involves many key agencies, and aims to: • '[ensure the agencies] work co-operatively together; • maximise safety and protection for victims of family violence; • provide opportunities for offender accountability and rehabilitation; and • work towards continual improvement of the FVIP.' The program is achieving these objectives. QIFVLS submits that this type of model, incorporating holistic and case management elements, is the most effective, and should be adopted.

Question 32

There is currently no single judicial forum that can provide a comprehensive response to concerns for children. Domestic and family violence is dealt with in a separate court, in isolation from child protection and family law matters pertaining to the same family unit. QIFVLS submits that a referral of powers should be given so that federal family courts can have concurrent jurisdiction with state courts to deal with all domestic violence matters, including child protection and parenting orders.

Question 33

Often for QIFVLS' clients it is difficult to obtain subpoenas in relation to child protection matters and domestic violence matters due to the client's financial inability to meet the costs of conduct monies. QIFVLS support sharing of information between Queensland Police and the Department of Child Safety upon Order of the Court or by there being an Order of the Court that conduct monies is not required when issuing a subpoena for certain persons that meet the financial means test.

Question 34

Question 35

Question 36

Question 37

Question 38

Question 39

Question 40

Question 41

Many not-for-profit legal service providers suffer from funding deficits or under resourcing, and the inability to employ highly skilled staff is a major concern. Although QIFVLS, and other legal service organisations, provide essential services to underprivileged and disadvantaged individuals, the quality of services is hampered by the inability to attract highly educated and experienced personnel. The result is that not-for-profit legal services are often forced to recruit under-skilled or inexperienced staff who require significant levels of supervision and training from within the organisation. The Productivity Commission has already considered the problems associated with not-for-profit organisations attracting and retaining quality staff. In its 2010 report on the Contribution of the Not-for-Profit Sector, the Productivity Commission noted that three of the major issues associated with staffing in these organisations are: (a) difficulties attracting and retaining employees due to low wages; (b) high levels of employee turnover; and (c) a lack of career paths and training opportunities. These issues sadly reflect on the profile of many not-for-profit organisations. In the case of domestic and family violence prevention legal services such as QIFVLS, these issues reduce the chance of individual victims to receive appropriate access to the Queensland justice system. It is significant that some of the most underprivileged and difficult clients are located in regional and remote areas. For QIFVLS, engaging and retaining experienced staff in regional areas of Queensland is an ongoing challenge. Providing greater bonuses and transfer systems as incentives for staff in regional and remote areas would assist to rectify this concern. Any government policy that can focus the attention of qualified individuals on regional and remote areas as an attractive working environment takes the first step toward attracting the right staff. Governments need to consider the disadvantages that Aboriginal and Torres Strait Islander people 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 bolster provision of criminal justice services for Aboriginal and Torres Strait Islander people (perpetrators) and ignore the vital need for holistic access to justice for victim and family law matters. Community education initiatives are also needed to increase awareness about civil and family law within Aboriginal and Torres Strait Islander communities and ensure that those services which are provided are fully utilised. QIFVLS submits that the Government should support increased training and recruitment programs for legal service providers that operate in Aboriginal and Torres Strait Islander communities and assist in family law matters. Such programs may include increased cultural awareness training.

Question 42

Question 43

Question 44

All relevant state and territory law societies should look at offering debrief sessions and some level of counselling for Family Law lawyers.

Question 45

Question 46

Question 47

Other comments?

