

Victim-Survivors of Family Violence: an Aboriginal and Torres Strait Islander Perspective.

Presented by: Thelma Schwartz, Principal Legal Officer and Isabella Copetti, Deputy

Principal Legal Officer, QIFVLS.











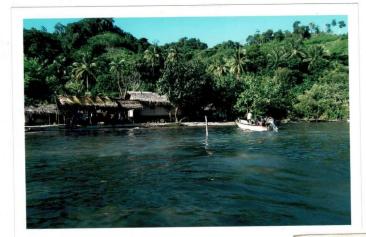


Acknowledgement

• We would like to acknowledge the Gimuy Walaburra and Yidinji Peoples, the traditional custodians of the land on which we gather and meet today here in Gimuy and we pay our respects to their elders past, present and emerging. We extend this respect to all Aboriginal and Torres Strait Islander people and recognise the strength, resilience and capacity of the first Australians.

 QIFVLS recognises that First Nations peoples have occupied and cared for this continent for over 65,000 years and continue to do so, as they are spiritually and culturally connected to this country.

Acknowledging my Elders and heritage















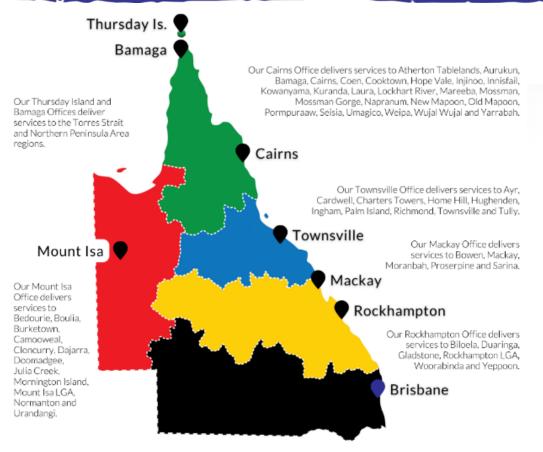
Who We Are? Our Journey into the Law



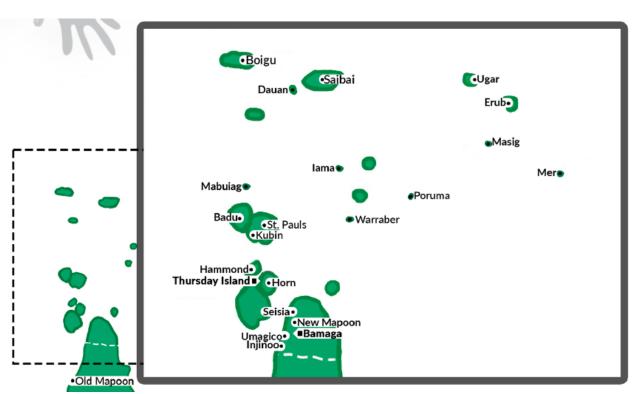




QIFVLS - Our state footprint



Our Brisbane Office delivers services to Beenleigh, Brisbane LGA, Caboolture, Cleveland, Ipswich, Logan, Moreton Bay, Pine Rivers, Redcliffe, Southport and Wynnum.



QIFVLS - Our Practice

Practice areas:

- Domestic & Family Violence;
- Family law;
- Child Protection;
- Victims Assistance Qld Applications;
- Support to victims of Sexual violence;
- Minor civil law matters (QCAT Blue cards etc).
- Support to families accessing cultural recognition orders.

- Full legal case work representation;
- Legal Advice;
- Community Legal Education;
- Community Education sessions

QIFVLS - Our Case Management practice

- Integrated service delivery practice framework
- Non-therapeutic case management;
- Holistic wrap around support service response addressing pressing non legal needs
- Case Management Officers (CMOs) are identified roles;
- CMOs receive general training from the Case Management Society of Australia and additional case management training modules;
- To establish and embed self efficacy and self determination.

Our Practice in Action

The Intersection of DFV and An Introduction to Child Protection and its renowned complexities

Fundamental Duties of Solicitors:

3. Paramount duty to the court and the administration of justice

3.1 A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

4. Other fundamental ethical duties

4.1 A solicitor must also:

- 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client;
- 4.1.2 be honest and courteous in all dealings in the course of legal practice;
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible;
- 4.1.4 avoid any compromise to their integrity and professional independence; and
- 4.1.5 comply with these Rules and the law.



ethicscentre

Australian Solicitors Conduct Rules

Commenced 1 June 2012

Legal Profession (Australian Solicitors Conduct Rules) Notice 2012

Themes of Discussion:

This presentation will cover themes of child safety and child removal, domestic and family violence and mental health

- 1. R U OK: https://www.ruok.org.au/every-day-resources
- 2. Lifeline: https://www.lifeline.org.au/ or call 13 11 14
- 3. Beyond Blue: https://www.beyondblue.org.au/get-support/urgent-help or call 1300 224 636
- 4. 13 YARN: https://www.13yarn.org.au/ or call 13 92 76

Case Study of a Child Protection Matter:

This presentation will aim to provide a vast overview of a legal matter spanning various areas of law, the complexities of the legal system and the densities of working with First Nations clients who present as a victim of domestic and family violence.



Child Protection Act 1999

Current as at 1 February 2024



Domestic and Family Violence Protection Act 2012

urrent as at 18 March 2024



Victims of Crime Assistance Act 2009

Current as at 2 September 2024



Corrective Services Act 2006

Current as at 19 September 2024

Meet our Client:

Presented to our Office in January 2021 for assistance for a Child Protection matter.

- She was 26 years old.
- She was from a remote Aboriginal community and was now living in the Cairns area.
- She lived in a two-bedroom unit allocated by the Department of Housing.
- She had five children ranging from 12 years old to 4 years old.
- She had been a child involved with the Child Protection system herself and often spent time in out of home care.
- She had been in a domestically violent relationship since she was a young teenager at just 13 years of age. The person using violence was an adult.
- At 14 years old, she gave birth to her first child.
- She had four more children which prompted ongoing intervention and engagement with Child Safety.

What is the effect of custody?

12 What is effect of custody

- (1) This section applies if—
 - (a) an authorised officer or police officer takes a child into the chief executive's custody; or Note— Under section 18, a child at immediate risk of harm may be taken into custody.
 - (b) the chief executive has custody of a child under a care agreement; or
 - (c) the chief executive or someone else is granted custody of a child under an assessment order, temporary custody order or child protection order.
- (2) The chief executive, or other person granted custody of the child, has—
 - (a) the right to have the child's daily care; and
 - (b) the right and responsibility to make decisions about the child's daily care.

What is the effect of guardianship?

13 What is effect of guardianship

If the chief executive or someone else is granted guardianship of a child under a child protection order, the chief executive or other person has—

- (a) the right to have the child's daily care; and
- (b) the right and responsibility to make decisions about the child's daily care; and
- (c) all the powers, rights and responsibilities in relation to the child that would otherwise have been vested in the person having parental responsibility for making decisions about the long-term care, wellbeing and development of the child.

Client Circumstances presented at Intake:

Concerns detailed by Child Safety in the Applications for Child Protection Orders filed in the Children's Court: Domestic Violence, Alcohol and Substance Misuse, Housing, Budgeting and Finances, Transportation and Parenting Capacity.

- All five children were removed from her care and placed in Residential Care.
- There were no active assessments being completed by Child Safety for kinship carers.
- There were no foster care placements available to care for five children and it was a priority for our client that the siblings were not separated.
- The children were required to change daycares and schools.
- The children had no interaction with their culture and country.
- The Mother was refused contact initially with the children, however, was now having two hours of contact per week which would be supervised.

Process within the Children's Court

- Family Group Meeting.
- Develop a Case Plan (6 months) and file with the Court.

- Separate Representative appointed.
- Social Assessment Report prepared.

- Court Ordered Conference.
- Final Hearing.

First Occurrence within Proceedings:

- In mid 2021, our client confirmed she was pregnant and expecting her sixth child.
- Step taken by QIFVLS: We were separately retained to assist with the preparation of a Support Plan. To assist in the event a bedside removal occurred. Child Safety were advised of this.
- In late October 2021, the client gave birth to a girl.
- Within an hour of the birth, Child Safety attended the Hospital.
- An application for a Temporary Custody Order was filed.
- The solicitor appearing for OCFOS was advised the Mother did not have legal representation and the application was heard in our absence.
- The application was dismissed, and no order was made.
- Outcome: No application for custody was made. An Application for a Child Protection Order was filed seeking a Protective Supervision Order.

Second Occurrence within Proceedings:

- Domestic violence incident involving the Father and our Client.
- Attended the house of our client and was in breach of the current Domestic Violence Order.
- He was arrested and charged with a contravention of the Domestic Violence Order. An Application to Vary the Domestic Violence Order was filed.

At this time, our client was already presented with the stress and complexity of having her five children not in her care. She was now dealing with:

- The postpartum period for her sixth child and Child Safety's attempted removal.
- A domestic violence incident.
- The requirement to provide a statement to Police in the contravention matters.
- And being listed as an aggrieved in a Police Application to Vary the Domestic Violence Order.

Overcoming evidence and "victim-blaming":

Child Safety's view: That if the children were returned to the care of our client, they would be at risk of suffering significant harm, specifically, they would be exposed to domestic and family violence.

Steps taken by QIFVLS: We worked with our Client to address the concerns posed to her and completed the following:

- Applied to the Queensland Corrective Services to register our client with the Victims Register so she was able to receive information about the Other Party's parole and release.
- Confirmed her views and wishes in relation to the Application to Vary the Domestic Violence Order.
- Referrals were made to DV Connect.
- Referred her to a service to complete a Parenting Beyond Violence program.
- Ensured she was actively engaged in counselling to learn about the impacts of domestic violence on herself and the children.

Third and Fourth Occurrences within Proceedings:

In January 2022:

- The eldest child telephoned our client to advise she had been physically assaulted by multiple young girls.
- Our client telephoned the Police to report the incident and requested they speak with the child and carers.
- Child Safety made no attempts to assist. They confirmed the child would remain living in the area.

In November 2022:

- The child was assaulted by a paternal family member
- Our client telephoned Police and Child Safety to report the incidents.
- She booked a flight for the child to be returned to the Cairns area.
- We liaised with Child Safety to request the return of the child to the Cairns area.

Social Assessment Report & Recommendations:

What is a Social Assessment Report? Prepared typically by a psychologist which details information about the child's history, living situation, views and wishes. Importantly, it provides an independent opinion on the appropriate way to protect the child's interests. Provides recommendations for the Court to consider and place weight on.

Child Safety's remarks during the Report:

- "Mum is doing well. In terms of the worries, she still has issues with budgeting. Accommodation is still an issue she's staying out of her house she has a shaky tenancy and is working with Department of Housing."
- "The youngest child presents beautifully. Mum is meeting her health and developmental needs."
- "Mum really tries she had a horrible upbringing of her own and lacks consistent family support to sustain change."

Court Ordered Conference

The central points of conferences are to:

- Comply with the *Child Protection Act 1999* and the court's order that a conference between the parties be held before the proceeding continues.
- Maintain a clear and consistent focus on the safety, wellbeing and best interests of the child.
- Create a collaborative, inclusive, confidential and constructive environment for parents, ODCPL,
 Child Safety departmental officers and other participants to discuss and negotiate issues around the future care of the child.
- Promote a productive ongoing relationship between Child Safety departmental officers and the parents.

Court Ordered Child Protection Conference Guidelines Dispute Resolution Branch, Department of Justice and Attorney-General Published December 2023

Road to Final Hearing in the Children's Court:

Court Ordered Conference



No Agreement reached



Final Hearing

An overview of merit at Final Hearing:

- She had given birth to two children who remained in her care.
- The eldest child had self-placed with the client for 9 months. Client had enrolled her in school, she was engaging with a youth support worker.
- She was having contact three times a week with the children.
- The children not in her care remained living in Residential Care for three years.
- She had engaged with a Family Wellbeing Worker for over four years.
- She had completed four parenting programs and was enrolled in a fifth.
- She had completed budgeting courses and financial counselling.
- She had maintained her own stable housing for a number of years.
- She had purchased her own vehicle and made it roadworthy.
- She was in a relationship that was stable and not characterised by domestic violence.
- She had no involvement with Police.
- She had a Safety Plan in place for herself and the children.

Key Points from the Hearing:

The matter proceeded to a two-day Hearing in the Children's Court as resolution of the matter was unachievable. Evidence of the Child Safety Officers involved, Respondent Mother and Social Assessment Report Writer was given.

- Concessions by Child Safety Officers regarding their assessments, evidence and view on appropriate intervention.
- Evidence given by our Client to support her position and merit.
- Evidence of the Social Assessment Report Writer.
- Change in assessment by the Report Writer to support the position of the Mother.
- Judgment reserved by Magistrate to a later date.

Outcome of Final Hearing:

Judgment was delivered one month later in favour of our position. It was ordered by the Court that a Short Term Custody Order for a period of two years be put into place with a focus for the children to reunify to their Mother.

- The mother's entry into motherhood occurred when she was herself still a child, she was 14. By 22, she had four young children she was a victim-survivor of domestic violence, she had a troubled childhood herself which included Child Safety intervention, yet she continued to engage positively.
- She has had to be taught and learn the required skills to parent, protect and provide for her children. This enormous task would take time. It has been 6.5 years and the Mother has continued to demonstrate strength, resilience and determination.
- She repeatedly told Child Safety that she wanted the children to be returned to her care and that she wasn't going to give up on her kids and in cross-examination when she was asked what changed in this time, she replied "I have, I've changed".

Intersectionality and Overrepresentation

Understanding and navigating the complexity of the policy and law reform frameworks

Rates of Violence against First Nations Women

- The Australian Government has recognised the disproportionate and severe forms of family violence affecting First Nations people compared to others in Australia, and it published the following data in 2022:
- First Nations women report 3.1 times the rate of violence compared to other women in Australia.
- 3 in 5 First Nations women have experienced physical or sexual abuse by a male intimate partner.
- Aboriginal and Torres Strait Islander women are almost 11 times more likely to die due to assault.
- Hospitalisation rates from family violence are 32 times higher for First Nations women compared to other women in Australia.

Rates of Violence against First Nations Women

- Intimate partner violence contributes 10.9% of the burden of disease for Aboriginal and Torres Strait Islander women aged between 18 and 44, which is higher than any other health risk factor including alcohol or tobacco use and obesity and is 6.3 times higher than other women in Australia.
- Family violence against women is the "leading reason for the disproportionately high numbers of Aboriginal and Torres Strait Islander children removed from their families", and two-thirds of First Nations adults who experience family violence share a home with a child.

Wiyi Yani U Tnangani Report 2020



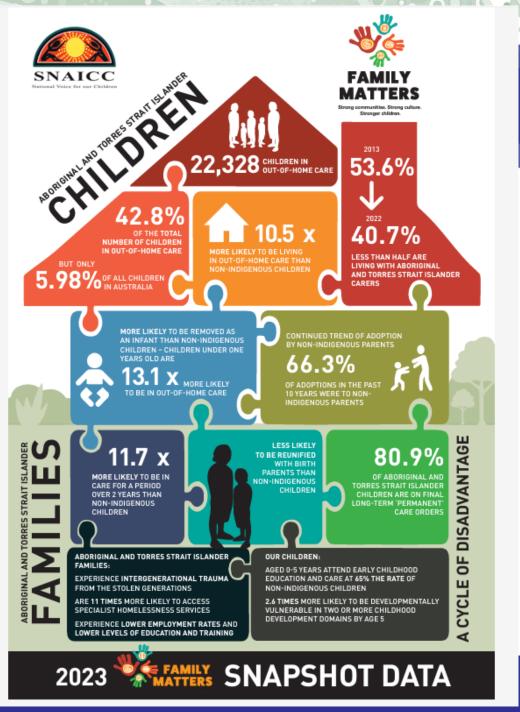


Wiyi Yani U Tnangani Report 2020









THE NATIONAL AGREEMENT

CLOSING THE GAP NEW TARGET



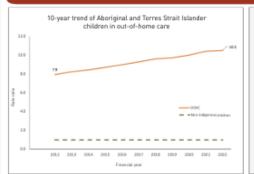
2031 Reduce -

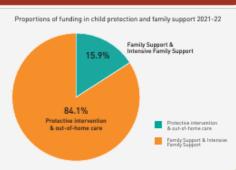


45%

THE OVER-REPRESENTATION OF OUR CHILDREN

TURN THE TIDE PROJECTED TO INCREASE BY 39% BY 2033





ABORIGINAL-LED SOLUTIONS

Family Matters calls for investment in community-led solutions and a national commissioner for Aboriginal and Torres Strait Islander children and young people to eliminate the over-representation of our children in out-of-home care

BUILDING BLOCK 1

Access to universal and targeted services

Invest in communitycontrolled organisations to provide culturally safe early intervention and prevention services

Aboriginal-led early intervention and prevention services and holistic integrated early years services such as MACS and ACFCs

BUILDING BLOCK 2

Participation and control in decision-making

Establish resourced legislative roles for participation of community-controlled organisations in all child protection decisions

Delegation of child protection decisionmaking (Old and Vic.) and Aboriginal-led out-of-home care and kinship programs (eg NSW, Vic., NT and SA)

BUILDING BLOCK 3

Culturally safe and responsive policies and practice

Permanency planning that supports Aboriginal child rights. Invest in Aboriginalled family reunification programs

Keeping families together sooner, more often, and for longer, through communityled family reunification programs (eg Qld and Vic.)

BUILDING BLOCK 4

ccountable governments nd services

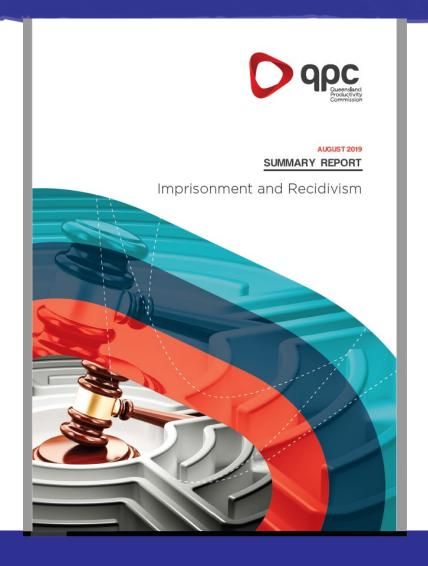
Establish and resource commissioners and peak bodies for our children. Build partnerships with Aboriginal and Torres Strait Islander people to oversee data and outcomes for children

Aboriginal commissioners for children in each state and territory (SA, Vic., Qld) and deputy guardian (NSW)





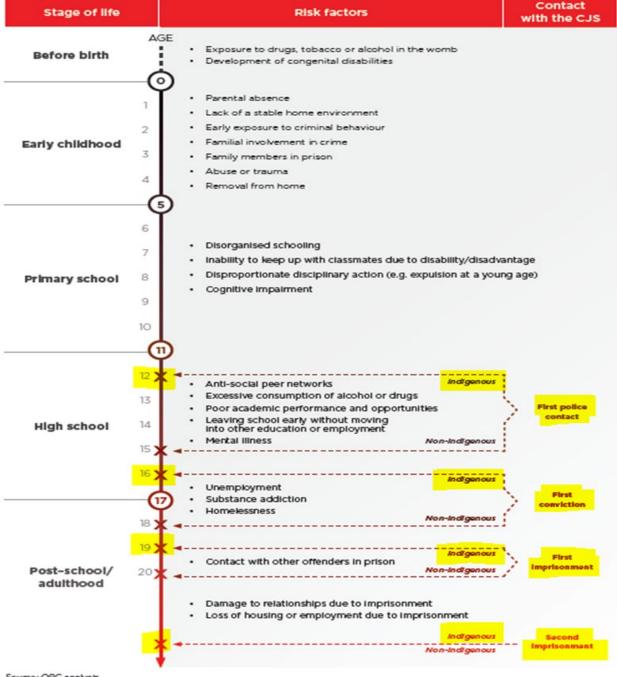
The Qld specific evidence base



 The Qld Productivity Commission's Report 2019 on Imprisonment and Recidivism



QPC 2019

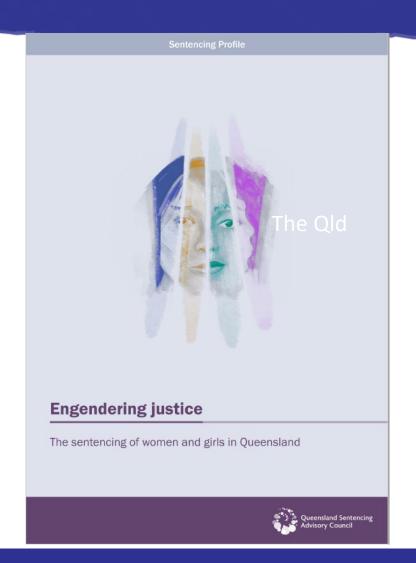


QPC 2019 - Risk factors and contact with the criminal justice system, Qld.



Source: QPC analysis.

Engendering Justice – the Sentencing of women and girls in Qld

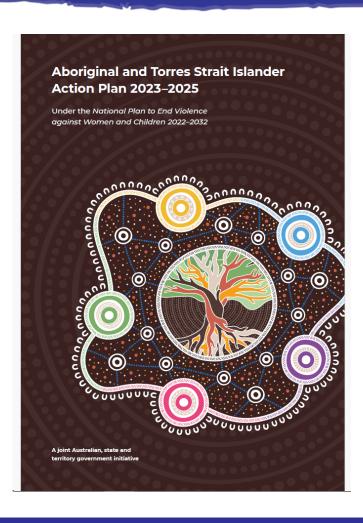


The **Qld Sentencing Advisory Council's** August 2022 report found:

- Aboriginal and Strait Islander women and girls were 7.7 times overrepresented
- Nearly half of all sentenced girls in Qld identified as Aboriginal or Torres Strait Islander (46.9%), compared to 29.9% of sentenced women.
- Compared to non- Indigenous women, Aboriginal & Torres Strait Islander women are more likely to be taken into police custody for non-violent crimes, such as public intoxication;

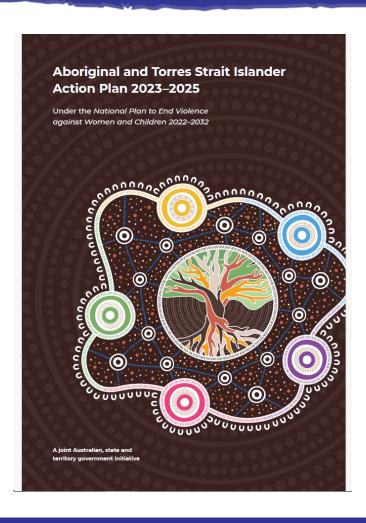


The Aboriginal and Torres Strait Islander Action Plan 2023-2025: key take aways:



- Family, domestic and sexual violence also contributes to Aboriginal and Torres Strait Islander impoverishment.
- Domestic and family violence is one of the main reasons women and children leave their homes and is the leading cause of homelessness for children.
- First Nations women describe their interactions with the justice system as one that exacerbates the impacts of violence and compounds the trauma experienced.
- The Justice system should protect women and children fleeing the violence but too often it retraumatizes them, removes their children and even criminalises them for the violence

The Aboriginal and Torres Strait Islander Action Plan 2023-2025: key take aways:



- Family violence is a significant factor contributing to the overrepresentation of Aboriginal and Torres Strait Islander children in out of home care.
- Too often, Aboriginal and Torres Strait Islander women are being misidentified as perpetrators when they seek assistance from police.
- Incident based responses, assumptions/ stereotypes, intentional systems abuse and structural inequality and discrimination heighten the risk of Aboriginal and Torres Strait Islander victim-survivors being misidentified as the perpetrator.



National Partnership Agreement

CLOSING THE GAP IN PARTNERSHIP

NATIONAL AGREEMENT ON CLOSING THE GAP

JULY 2020

An Agreement between:

- . the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, and
- all Australian Governments, being:
 - the Commonwealth of Australia
 - New South Wales
 - Victoria
 - Queensland
 - Western Australia
 - South Australia
 - Tasmania
 - the Australian Capital Territory
 - · the Northern Territory
 - the Australian Local Government Association

Priority Reform One

Formal partnerships and shared decision-making

Priority Reform Two

Building the communitycontrolled sector

Priority Reform Three

Transforming government organisations

Priority Reform Four

Shared access to data and information at a regional level



CTG – Socio economic targets

19 targets under 17 socio-economic outcome areas to be achieved by **2031**.

4 are critical in the Justice space:

- Target 10;
- Target 11;
- Target 12;
- Target 13.



CTG targets

TARGET 10

By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.

Outcome 10 - Aboriginal and Torres Strait Islander people are not overrepresented in the criminal justice system.

READ MORE







TARGET 11

By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by 30 per cent.

Outcome 11 – Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system.

READ MORE

The Justice Targets



CTG Targets linked to Justice targets

TARGET 12

By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-ofhome care by 45 per cent.

Outcome 12 - Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system.

READ MORE







TARGET 13

By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%, as progress towards zero.

Outcome 13 – Aboriginal and Torres Strait Islander families and households are safe.

READ MORE



Women's Safety and Justice Taskforce



Hear her voice

Report one

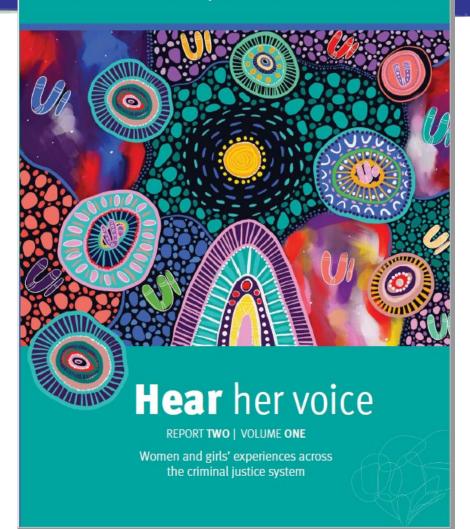
Addressing coercive control and domestic and family violence in Queensland

Hear Her Voice Report 1:

- 89 recommendations made
- 85 recommendations specific to Govt all 85 recommendations accepted (in whole or in principle)
- Qld will move to criminalise coercive control following a 4
 phase plan to implement the recommended program of
 reform.



Women's Safety and Justice Taskforce



Hear Her Voice Report 2:

- 188 recommendations made
- Report delivered to Government on 1 July 2022.
- Broader reform package proposed by the WSJT following women and girls' experience through the criminal justice system.



Outcomes of the Qld Commission of Inquiry 2022



"Police are the gatekeepers to the justice system, and their response can reduce or prevent future violence for victim-survivors and their children, hold perpetrators to account, and at times, save lives. If their response is performed poorly, it can embolden the perpetrator and drive the victim-survivor further away from help."

A Call for Change – Commission of Inquiry into Queensland Police Service responses to domestic and family violence Report, 2022.

Further reform:



Queensland

Path to Treaty Act 2023

Act No. 12 of 2023

An Act to establish the First Nations Treaty Institute to prepare a framework for treaty negotiations with Aboriginal peoples and Torres Strait Islander peoples and to support Aboriginal peoples and Torres Strait Islander peoples to participate in treaty negotiations, to provide for the establishment of the Truth-telling and Healing Inquiry to inquire into the continuing impacts of colonisation on Aboriginal peoples and Torres Strait Islander peoples, and to amend this Act, the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 and the Fire and Emergency Services Act 1990 for particular purposes



Qld Truth Telling Inquiry - TOR

5. Matters Subject to Inquiry

Having regard to these consultations the Inquiry is to inquire into, document, conduct research about and advise and make recommendations to the Minister about the following matters:

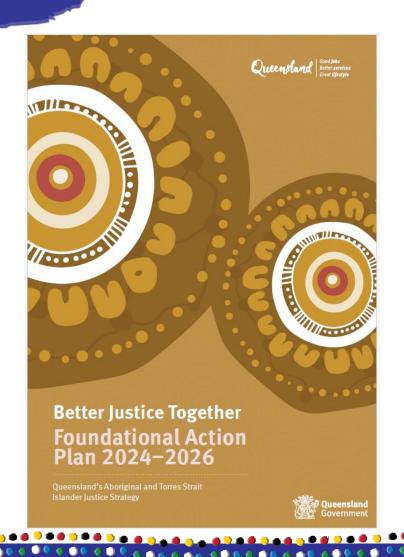
- a) the experience of, and effect on, Aboriginal peoples and Torres Strait Islander peoples of the conduct (including past laws, policies, actions and practices) of colonial and State governments relating to:
 - displacement, dispossession, settlement and management of lands, seas and waters;
 - assimilation and protection;
 - iii. missions and reserves;
 - iv. separation of children, or other family members, from their families;
 - control over personal property and places of residence;
 - vi. control over wages, finances and employment;
 - vii. treatment in policing and the criminal justice system;
 - viii. provision of education and health care;
 - ix. languages and culture;
 - control of movement for goods and services, for social interactions, and movement from one community to another;
 - xi. control of marriages and courtship; and
 - xii. the opportunities to participate in the public, economic and social life of Queensland on equal terms with the wider Queensland community;
- the role of non-government, faith-based organisations and others in the colonisation of Queensland relating to the above at (a);
- the role of non-government and faith-based organisations in the implementation of the laws, policies, actions or practices by colonial and State authorities relating to the above at (a); and
- the ongoing systemic impacts of the above experiences including the current barriers and obstacles to Aboriginal peoples' and Torres Strait Islander peoples' full participation in the public, economic and social life and public affairs of Queensland.

https://www.qld.gov.au/firstnations/treaty/truth-telling-healing

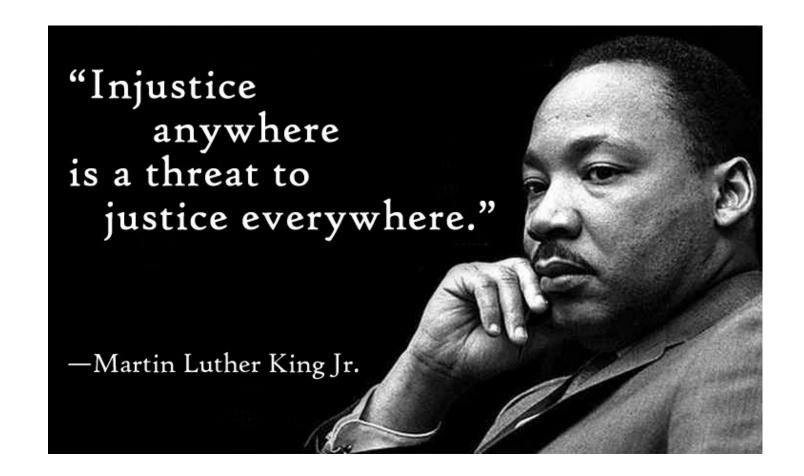


A Justice Agreement for Queensland - 2024





Hope, Equity, Equality, Justice





Any Questions?

If you think of any questions

after the session, please feel

free to yarn or contact us:

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