QIFVLS
Queensland Indigenous Family Violence Legal Service

23 March 2026

Commission Secretariat
Child Safety Commission of Inquiry
By Email: secretariat@childsafetyinquiry.qld.gov.au

QIFVLS Supplementary Submission – Director of Child Protection Litigation and litigation model Public Hearing (8 – 12 December 2025)

Queensland Indigenous Family Violence Legal Service (QIFVLS) welcomes the opportunity to provide this supplementary submission following the conclusion of the Director of Child Protection Litigation and litigation model public hearing (DCPL Hearing), held in Brisbane from 8 to 12 December 2025 and from 2 – 5 February 2026.

QIFVLS relies upon, and incorporates by reference, its earlier submission dated 1 December 2025 (December 2025 submission). That submission identified a set of core concerns about the Child Protection Litigation Model, including the need:

- to understand child protection through the lens of domestic and family violence (DFV);
- for culturally safe and community-controlled intervention at the earliest possible point;
- for early access to legal advice and legal representation;
- for specialist, therapeutic and culturally grounded court pathways; and
- for greater accountability, oversight and independent scrutiny in decisions affecting Aboriginal and Torres Strait Islander children and families.

The DCPL hearing has sharpened those concerns, revealing the present model is afflicted with three critical structural defects:

1. A failure of front-end legal accountability at the most consequential point of State intervention;
2. A failure of documentary integrity and recorded evaluation, especially in decisions said to be reviewable or said to be grounded in principle; and
3. A failure to make Aboriginal and Torres Strait Islander-specific statutory obligations and DFV-informed practice real in evidence, rather than merely rhetorical in policy.

QIFVLS submits that the DCPL hearing evidence supports findings and recommendations directed not merely to efficiency, but to the following deeper fundamental questions:

- who actually decides whether the State invokes coercive jurisdiction;
- whether that decision is made with a proper legal and evidentiary basis;
- whether Aboriginal and Torres Strait Islander children and families receive the protection of active efforts, cultural planning, and meaningful participation in a form capable of proof; and
- whether families have genuine opportunities to resolve matters early, before removal hardens into a type of status quo.

1.Summary of Recommendations

Recommendation 1: Fund early legal access through a culturally safe referral mechanism

QIFVLS seeks a recommendation for a child protection notification/referral model requiring warm referral to QIFVLS or another Aboriginal and Torres Strait Islander community-controlled specialist legal service at the earliest possible point, particularly where DFV is a feature.

Recommendation 2: Adopt a Queensland pre-proceedings pathway

QIFVLS seeks a recommendation that Queensland implement a structured child protection pre-proceedings pathway, modelled in broad terms on the UK's Public Law Outline (PLO) described in evidence.[1]

Recommendation 3: Court ordered conferencing should be the first meaningful ADR event

QIFVLS seeks a recommendation that court ordered conferencing (COC), occur at the earliest practical point and before FGMs are treated as the primary dispute-resolution mechanism. Furthermore, dates for conferences and FGMs be fixed by court order to reduce drift.[2]

Recommendation 4: Mandate written legal advice or recorded legal endorsement for critical decisions

QIFVLS seeks a recommendation that there be mandatory, recorded legal advice or legal endorsement for section 18-related ex parte emergent order applications, major placement decisions, and decisions not to seek further statutory action after court assessment orders.

Recommendation 5: Require verifiable standards for sworn emergent material

QIFVLS seeks a recommendation that urgent application material identify source, basis of knowledge, and verification status, and that material derived from verbal updates not be transmuted into sworn fact without transparent source identification and corroboration where available.

Recommendation 6: Require reasons for reviewable decisions

QIFVLS seeks a recommendation that placement and similar decisions said to be reviewable should not be capable of lawful exercise without a written decision record.

Recommendation 7: Active efforts and cultural plans must be evidentiary requirements

QIFVLS seeks a recommendation that, for every Aboriginal and Torres Strait Islander child, proceedings and key decision records include an Active Efforts Schedule, a culturally meaningful support plan, documentation of ACCO / independent entity / cultural practice adviser involvement, and a prohibition on progressing to later litigation without those matters being evidenced.

Recommendation 8: Retain and strengthen independent statutory litigation function

QIFVLS further seeks a recommendation that, if the litigation functions of the Office of the Child and Family Official Solicitor (OCFOS) and the Office of the Director of Child Protection Litigation (ODCPL) are to be consolidated, independent legal decision-making is non-negotiable. This is in contrast to OCFOS's current departmental embedded legal model.

---

[1] Day 13, T3414–T3415; Day 14, T3603
[2] Day 4, T4027; T4029–T4030

2.Family violence as a cornerstone

QIFVLS' casework, as noted in our previous submissions, demonstrate daily, that family violence is not peripheral to child protection intervention - it is often the cornerstone of it. A litigation model that does not recognise the practical realities of DFV, as experienced by Aboriginal and Torres Strait Islander families, will mistake the effects of coercive control for parental unwillingness or instability. It will read protective conduct as 'non-engagement'. It will compound safety risks through poor service, contact and disclosure practices. Such a model will institutionalise delay in a way that punishes victim-survivors and their children.

For Aboriginal and Torres Strait Islander families, these risks are intensified by the legal and historical significance of child removal, placement instability, weak cultural planning, and a system that too often speaks of 'active efforts' and 'self-determination' without producing evidence that either has occurred in any meaningful sense.

3.Early legal representation

QIFVLS previously submitted that early access to independent, culturally safe legal advice is critical, and should be facilitated through a notification/referral mechanism and specialist legal services. In our view, the DCPL hearing strengthens this position.

Ms Clair Martin gave evidence that legal support at the assessment stage is inadequate and should be available by right, not merely through ad hoc or pro bono arrangements.[3]

Ms Martin also explained that during the court assessment order phase there is presently nothing like a formal, represented negotiation process, even though this is the stage where issues about contact, placement, kinship assessment and the very need for an order could be ventilated more rationally.[4]

The Director of Child Protection Litigation, Mr Nigel Miller's evidence about the UK Public Law Outline (to be discussed further below) confirms that legal representation can be built into a child protection pre-proceedings architecture as a matter of design, not afterthought.[5]

For QIFVLS clients, this could represent a practical safeguard against misidentification, coerced safety planning, silence later characterised as 'non-engagement', and parents unknowingly acquiescing to arrangements with long-term legal consequences. This could in effect be a mechanism to harmonise system responses to DFV risk and harm.

4.Independence as a structural question

One of the most important themes in the hearing was whether the Office of the Child and Family Official Solicitor (OCFOS) functions as an independent legal safeguard, or whether it is, in practical terms, an internal departmental mechanism operating under instruction.

---

[3] Day 15, T3653–T3655
[4] Day 1, T3764–T3766
[5] Day 13, T3414–T3415

The evidence of the Official Solicitor, Ms Angela Schifilliti, was revelatory. She accepted that OCFOS legal officers act on the instructions of Child Safety and that the decisions whether to pursue emergent orders and whether to refer matters onward are, in ordinary course, decisions of senior team leaders and CSOs rather than OCFOS itself.[6]

Thus, the hearing exposed that OCFOS is not independent in the sense that matters are independently assessed and decided by lawyers exercising their own independent authority. Rather, the model places OCFOS in the position of executing or facilitating departmental decisions, subject only to an escalation model when disagreement arises.

That is not a small distinction. An office is not made independent because it describes its role as giving legal advice while the decisive power remains with operational managers. That is especially so where the same witness accepted that legal advice is rarely able to be sought prior to the exercise of section 18 powers to remove a child administratively.[7]

The DCPL hearing also revealed that OCFOS' own internal guidance *(the earlier unamended guide. An updated version was in place by Day 15)* had instructed lawyers not to refuse to run applications unless there was *no legal foundation*, and historically referred to *"base level of evidence"* being put before the court. When the Commissioner raised that this sets an impermissibly low threshold and subordinates the lawyer's role, the OCFOS witnesses were unable to defend the language convincingly.[8]

In her evidence, Ms Clair Martin agreed that the then language of the guide and the escalation process subjugates the role of the lawyer, and identified as *"worrying"* the fact that OCFOS sits within statewide operations / service delivery, while maintaining that its *"core purpose has to be independent legal advice"*.[9]

QIFVLS submits that the Commission can safely find that OCFOS's present legal model is structurally vulnerable to executive instruction and does not reliably deliver the kind of independent merits assessment that should precede an application for coercive intervention.

5.Removals and urgent applications may lack robust legal scrutiny

The most coercive point in the system is the earliest point - the taking of a child into custody under section 18 of the *Child Protection Act 1999,* and the rapid transition to emergent orders.

The evidence of Ms Schifilliti was that legal advice is "*rarely*" able to be sought prior to the exercise of section 18 powers.[10] Her explanation was urgency and point-in-time decision-making. While this may explain the practice, it doesn't excuse the structural gap.

Later evidence from Ms Martin showed that, in practice, emergent order applications are sometimes built on information communicated orally from CSOs, later reduced to written form,

---

[6] Day 11, T3181; Day 12, T3331
[7] Day 12, T3328
[8] Day 12, T3319–T3322; Day 15, T3731–T3738
[9] Day 15, T3737–T3738
[10] Day 12, T3328

and then placed before a lawyer to be sworn or settled. She described experienced legal officers becoming uncomfortable when asked to swear or support factual content derived from verbal updates that could not be properly verified. The concern was not abstract. It went to a lawyer's duty to the court.[11] In this regard, we specifically raise Rule 17.1 of the Australian Solicitors' Conduct Rules, stipulating that a solicitor must not act as the mere mouthpiece of the client and must exercise forensic judgment.[12]

A system in which the State may remove a child without prior legal advice, then build urgent sworn material from unverified information, is a system that carries a high risk of error. That risk cannot be cured by saying that if disagreement arises the matter can be escalated. As the Commissioner pointed out in substance, an escalation model does nothing in the ordinary case where the lawyer simply proceeds.

QIFVLS submits that the DCPL hearing supports a finding that the current model does not deliver reliable front-end legal accountability. Rather, it permits the combination of urgent executive action, limited or absent contemporaneous forensic legal scrutiny, and evidentiary material that may be compiled in a way that obscures source, verification and authorship.

We are concerned that this combination is particularly dangerous in cases involving Aboriginal and Torres Strait Islander children and families where DFV, homelessness, trauma, intergenerational Child Safety involvement, and community distrust can make early factual error both more likely and more damaging.

6.Unrecorded decisions

The evidence of Ms Tyrrallye Alanko, read together with her NTP 125 statement, was illustrative. Her evidence was not primarily from first-hand involvement. It was drawn from a file review. We note that in several critical respects the file did not contain what the State would need to prove as lawful, evaluative decision-making. There was no recorded evaluative document explaining a significant placement decision. No reasons letter could be identified in circumstances where reviewability in QCAT was said to exist. There was no clear record of consultation with the existing carer. There were admitted limits on evidence of active efforts over a substantial period in identifying kin placement.[13]

That absence of record cannot be cured by simply saying the Department would usually do certain things. It means the Department cannot prove that it did.

Elsewhere, Ms Martin said that reasons letters for placement decisions under section 82(2) are effectively required and customarily provided because they are reviewable decisions.[14] Yet Ms Alanko's evidence during the case study disclosed no such reasons document. Ms Martin accepted there may be no legal advice or legal evaluation where, after a court assessment order, Child Safety decides not to seek further statutory action, unless the gravity of risk

[11] Day 15, T3729–T3731
[12] Rule 17, Australian Solicitors Conduct Rules 2015
[13] Day 2, T3909–T3910; Alanko statement, para 134
[14] Day 1, T3813–T3814

prompts OCFOS concern.[15] Ms Schifilliti accepted that even in escalated matters legal advice may not be recorded in writing, although she accepted written recording would be best practice.[16]

The hearing therefore supports a broader finding that the OCFOS model suffers from an inherent documentary integrity problem. It is document-heavy in the wrong places: voluminous affidavit material, and document-poor in the places that matter most for reviewability and accountability: reasons, evaluative records, active efforts, and recorded legal advice.

7.First Nations obligations are too often treated as rhetoric rather than evidence

A major contribution of the hearing was to expose the gulf between what the legislation says about active efforts, cultural support and participation, and what the evidence demonstrates in files and litigation material.

-

The Director of Child Protection Litigation, Mr Nigel Miller, accepted that active efforts are a statutory obligation in relation to Aboriginal and Torres Strait Islander children, but also accepted that the quality of evidence of those efforts is matter dependent and location dependent, and that in some matters there is *"not a lot of evidence of active efforts"*.[17]

Ms Martin's evidence went further. She accepted that cultural support plans may be absent or contain minimal information. Furthermore, even when the deficiency is identified by OCFOS, that does not mean it is corrected before orders are sought.[18]

Ms Alanko's NTP statement is of the same character. It expressly records that the Department identified limited evidence demonstrating active efforts to identify kin placement during the relevant period.

QIFVLS submits that the Commission should recommend that active efforts must be evidenced, not merely asserted. The same is true of cultural support plans. If the system cannot demonstrate timely, and documented efforts, it has not meaningfully discharged the obligation to the court, to families, or to the child.

This isn't only a statutory compliance point. It's also a point about cultural safety and public confidence. A child protection system that repeatedly invokes the Aboriginal and Torres Strait Islander Child Placement Principle while failing to create a documentary trail of actual efforts is a system that is reducing cultural obligations to a slogan and by extension, eroding public confidence.

---

[15] Day 1, T3767–T3768
[16] Day 12, T3329
[17] Day 4, T4071–T4073
[18] Day 3, T4006

8.Delay is structural

QIFVLS' longstanding concern has been that the litigation model resolves too little too late. The DCPL hearing evidence provides firmer grounding for our concerns.

Mr Miller gave evidence that court ordered conferences resolve around 60% of matters once they occur but concurrently accepted that they are typically reached only after delay associated with service and the case plan / assessment process.[19]

Thus, the system is delaying the one mechanism that demonstrably resolves matters. If court ordered conferencing has real settlement value, it should not sit downstream of avoidable procedural gates. It should be brought forward. An avenue to do this is demonstrated in the UK's Public Law Outline.

8.1 UK's Public Law Outline (PLO)

This is where the UK Public Law Outline (PLO) evidence becomes important. Mr Miller described the PLO as a framework in which the local authority issues a letter before proceedings. Parents are invited to a pre-proceedings meeting, and the letter entitles them to non-means tested legal aid funding to attend that meeting with legal representation. The purpose of the meeting is to resolve matters and avoid proceedings if possible.[20]

We are not asking the Commission to replicate the UK model wholesale. The PLO does however prove two key points:

1. We don't believe there is anything conceptually fanciful about a child protection system requiring legally aided engagement before proceedings crystallise; and
2. Queensland's sequencing is backwards. It keeps meaningful negotiation trailing behind service, case plan and document-production bottlenecks.

Ms Martin's evidence from the February 2026 section of the hearing reinforced the same point, albeit from a different vantage-point. She described the court ordered assessment (CAO) period as lacking any *"inbuilt mechanism to negotiate"*, despite the fact that it is precisely the stage at which positions could be clarified and narrowed if both the family and the Department were represented.[21]

QIFVLS therefore submits that court ordered conference should be the first cab off the rank, not the last. Queensland must have a pre-proceedings pathway, adapted to Queensland's unique population, demography and geography, and particularly to Aboriginal and Torres Strait Islander families. In this system, concerns can be particularised early. Legal advice would also be available early, a structured, facilitated meeting would occur early, and court ordered conferencing would occur before case positions harden.

---

[19] Day 4, T4029–T4030
[20] Day 13, T3414–T3415; Day 14, T3603
[21] Day 1, T3764–T3766

9.Governance deficits within DCPL

After reviewing the evidence, QIFVLS does not submit that the public hearing exonerates the Office of the DCPL. The evidence supports retaining genuine independence in the litigation decision-making function. It does not support however, complacency about the DCPL's current governance.

Mr Creamer's cross-examination of Mr Miller exposed two matters of vital significance:

1. Mr Miller accepted that cultural capability training had not been undertaken in the most recent year in the way it should have been, and he accepted this was something he *"can do better"*.[22]
2. Mr Miller accepted that the DCPL Guidelines were last issued in July 2019 and therefore do not expressly address the *Human Rights* Act obligations, including section 28 cultural rights.[23]

These are not minor internal management points. They matter because any office that is said to be the independent legal safeguard for Aboriginal and Torres Strait Islander children and families must be able to demonstrate that its own governance, guidance, training and decision-making tools are current and adequate.

QIFVLS therefore submits that any recommendation to retain or strengthen the Office of the DCPL must be accompanied by updated guidelines expressly addressing the *Human Rights Act 2019*, active efforts, cultural support planning, and DFV-informed practice, mandatory and regular cultural capability training co-designed with ACCOs, and auditable decision-support tools, not merely informal practice.

10.Findings sought

As a Family Violence Prevention Legal Service (FVPLS) notable for having child protection matters as its leading file work area of legal practice, child protection litigation is a daily and constant presence for our clients and frontline staff. Thus, QIFVLS respectfully submits that the Commission can safely make findings in substance that the current litigation model does not provide genuine front-end legal independence in urgent and emergent decision-making. Additionally, OCFOS operates in an instructional role subject to departmental decision-making rather than as an independent gatekeeper.[24]

QIFVLS further submits that the Commission can safely find that there is a material risk that coercive intervention is pursued without adequate independent forensic legal scrutiny, including because legal advice is rarely sought before section 18 removals and because the evidentiary basis for emergent applications may be assembled from material not capable of proper verification.[25]

---

[22] Day 4, T4111
[23] Day 4, T4112
[24] Day 11, T3181; Day 12, T3328; Day 15, T3737–T3738
[25] Day 12, T3328; Day 15, T3729–T3731

The Commission can also safely find that the system does not reliably create and retain documentary records of evaluative decision-making for significant placement and related decisions, even where review rights are said to exist. Put simply, if it is not recorded, it cannot be assumed to have occurred.[26]

The DCPL hearing also supports a finding that the statutory obligations of active efforts and cultural planning are not being consistently evidenced in litigation material or departmental decision records, and that compliance is variable rather than systematic.[27]

The Commission can safely find that meaningful dispute resolution is being delayed by the present sequencing of service, assessment and case planning steps, notwithstanding that court ordered conferences appear to resolve a substantial proportion of matters once they occur.[28]

The evidence also supports a finding that a structured pre-proceedings pathway, comparable in broad logic to the UK Public Law Outline is a viable reform option.[29]

Finally, the evidence supports a finding that the DCPL's independence should not be lost through integration into an internal departmental legal office. Rather the DCPL's own governance requires strengthening, including updated guidelines and cultural capability training.[30]

Conclusion

QIFVLS' December 2025 submission argued that the child protection litigation model must be understood through the lived intersection of family violence, cultural dislocation, procedural unfairness and delayed legal response. The DCPL public hearing evidence has now largely confirmed that analysis.

Our view is that the evidence does not support a return to a model in which legal officers embedded within service delivery are said to provide "independence" while acting under instruction. Nor does it support complacency about the current system's capacity to generate timely, reviewable, culturally safe decisions.

The DCPL hearing instead supports a conclusion that Queensland needs a model which is earlier, clearer, better recorded, genuinely independent, and culturally evidenced.

QIFVLS respectfully urges the Commission to make findings and recommendations accordingly. If you would like to discuss our response further, please don't hesitate to contact me at plo@qifvls.com.au.

---

[26] Day 1, T3813–T3814; Day 2, T3909–T3910
[27] Day 3, T4006; Day 4, T4071–T4073; Alanko statement, para 134
[28] Day 4, T4029–T4030
[29] Day 13, T3414–T3415; Day 14, T3603
[30] Day 13, T3474; Day 4, T4111–T4112

Yours faithfully

Queensland Indigenous Family Violence Legal Service

Executive Director Legal

Attachment 'A'

QIFVLS
Queensland Indigenous Family Violence Legal Service

1 December 2025

Commission Secretariat
Child Safety Commission of Inquiry
By Email: secretariat@childsafetyinquiry.qld.gov.au

QIFVLS Submission – Director of Child Protection Litigation and Litigation Model

Dear Commission Secretariat,

The Queensland Indigenous Family Violence Legal Service (QIFVLS) welcomes the opportunity to provide a submission in relation to the Director of Child Protection Litigation (DCPL) and the Child Protection Litigation (CPL) Model.

Our submission is made from the standpoint of an Aboriginal and Torres Strait Islander Community Controlled Organisation (ACCO) and Family Violence Prevention Legal Service, dedicated to ensuring that families and households are safe from violence.

In that regard, as a proud member of the national Coalition of Peak Aboriginal and Torres Strait Islander peak organisations (Coalition of Peaks) and the Queensland Aboriginal and Torres Strait Islander Coalition of community-controlled organisations (QATSIC), we are dedicated to achieving the priority reforms and socio-economic targets outlined in the National Agreement on Closing The Gap (the National Agreement), particularly Target 13 (ensuring families and households are safe and that domestic and family violence against Aboriginal and Torres Strait Islander women and children is reduced by at least 50% by 2031 as we progress towards 0) alongside the closely related Target 12 (reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 percent by 2031).

We are mindful that the Commission will hold a public hearing in Brisbane from **8 December 2025 to 12 December 2025** to hear evidence from OCFOS (Office of Child and Family Official Solicitor) and the DCPL regarding the Child Protection Litigation (CPL) model. Accordingly, our submission and the views expressed herein are provided on the basis that they may be further informed by evidence and information presented at that pending public hearing.

In my witness statement to this Inquiry dated 19 September 2025, I highlighted that I gave evidence to the Disability Royal Commission about my experience in dealing with the DCPL. I repeat that evidence here given its relevance to this Inquiry:

> *"My experience in dealing with the DCPL is that there is a lack of cultural understanding in the regional areas. The DCPL essentially operates as a fly-in-fly-out (FIFO) service for the courts. I have seen that there is often criticism that the DCPL does not have a visual appreciation of the issues that occur within the communities that families come from. This*

stems from the fact that in Cape York communities for example, the DCPL, do not physically appear on circuit but appear by telephone link to the Court. An example of how this could develop the understanding would be to see how long it would take a client to travel to the nearest centre to access services, or even to attend court. In addition, it would highlight to DCPL, the lack of availability of on the ground services for a client to access support.

It is my belief that the DCPL also needs to undertake further and ongoing cultural competency training to address the specific cultural needs of Aboriginal and Torres Strait Islander families and children."

Child protection proceedings represent our largest component of legal assistance and representation file work at QIFVLS. This is a sad reflection on the intersectional nature of family violence that our clients experience. In the circumstances, our submission is grounded in the experiences and observations of our solicitors and case management officers as they assist our clients to navigate the child protection system.

The CPL model urgently needs improvement to provide justice for Aboriginal and Torres Strait Islander children and families drawn into the child protection system. This is particularly so through ensuring that the system is culturally safe for our clients and their families.

We also believe that to genuinely enhance the CPL model, there must be a preparedness to invest smartly in the requisite recommendations and work in true partnerships (within the operational meaning of the National Partnership Agreement on Closing the Gap) with Aboriginal and Torres Strait Islander Community Controlled Organisations, among other stakeholder groups to ensure the model is fit for purpose and working for the benefit of children, families and the wider community.

Summary of Recommendations

- **Establish an Aboriginal and Torres Strait Islander Child Protection Notification and Referral Scheme** to provide warm referrals to QIFVLS and other ACCOs at first contact.
- **Co-design and pilot a specialist, therapeutic child protection court** that combines the cultural immersion of Dandjoo Bidi-Ak court (Western Australia) with the operational strengths of Marram-Ngala Ganbu court (Victoria), including round-table hearings, Aboriginal and Torres Strait Islander team presence, Family Engagement Officers (similar to Indigenous Family Liaison Officers in the FCFCOA supporting the Specialist Indigenous Lists) and docketing.
- **Strengthen OCFOS/DCPL/Child Safety interfaces** by locating DCPL lawyers regionally where possible, ensuring decision-making authority at conferences, and improving pre-trial case conferencing and negotiation.
- **Mandate early access to independent legal representation** for subject children and

parents, including opt-out referrals to the Office of Public Guardian (OPG) for children aged 10 and over.

- **Address after-hours and bedside removal practices** by reviewing timing, notification, hospital contexts and ensuring parents have access to legal advice before orders are finalised.
- **Improve timeliness and procedural fairness** through strict filing timeframes, court-ordered directions for Case Plan Affidavits, and faster delegated decision-making within Child Safety.
- **Prioritise kinship placements and Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP) compliance** by resourcing kinship identification and assessment pathways and removing barriers such as Blue Card delays.
- **Introduce independent oversight and reform Practice Panels** to ensure impartial review of expiring orders and assessments.
- **Invest in cultural capability and legal training** for Child Safety, DCPL and OCFOS, and fund ACCO-led cultural guidance and Elders' remuneration.
- **Commission independent evaluation** of any pilot court and system reforms to measure participation, timeliness, reunification outcomes and cultural safety.

Family violence as a cornerstone

We noted above that as a family violence prevention legal service, child protection matters represent the leading number of case files in our legal practice, amongst the areas of law in which we provide assistance —

- domestic and family violence.
- child protection.
- family law.
- Victim Assist Queensland (VAQ) compensation applications;
- minor assistance in blue card matters; and
- Cultural Recognition Orders pursuant to the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practices) 2020 (Qld)* Act

This accords with data collected by the Australian Institute of Health and Welfare (AIHW) to the effect that family violence was identified as the primary driver of children being placed into the child protection system, with 88% of First Nations children in care having experienced family violence.[1]

Additionally, Queensland Government data has revealed that at least 60% of all Aboriginal and Torres Strait Islander children in youth detention have experienced or been impacted by

[1] Australian Institute of Health and Welfare (2019), *Family, domestic and sexual violence in Australia: continuing the national story*, https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true

domestic and family violence[3]

This sadly informs QIFVLS' experience that family violence is the cornerstone or intersection, which links an Aboriginal and Torres Strait Islander person's connection to the child protection system, the youth justice system, adult criminal justice system, housing and/or homelessness, health and the family law system.

We find that 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-survivor escaping a violent relationship[4] (i.e., domestic violence support services and shelters; actual police presence within a community).

In contrast to siloed government responses which have long been the standard practice, QIFVLS consistently advocates for uniform, holistic, culturally safe and consistent strategies that will improve responses in the family violence, policing and criminal justice, child protection system, housing and corrective services. This approach aligns with achieving reductions in the Justice targets (Targets 10, 11, 12 and 13) of the National Agreement on Closing the Gap as well as meeting the overarching objectives of the four priority reform areas.

Cultural safety and capability

QIFVLS supports expanded cultural capability training for Child Safety, DCPL, OCFOS and judicial officers, consistent with Priority Reform 3 (Transforming mainstream institutions) under the National Agreement on Closing the Gap.

Acknowledging different cultural groups and country

The CPL model must recognise the diversity of Aboriginal and Torres Strait Islander communities in Queensland. QIFVLS provides community booklets with profiles, traditional custodians and Elders for the specific community we visit. Similar resources should inform Child Safety practice and local engagement.

Elevating the voices of Aboriginal and Torres Strait Islander children and families

We support greater delegated authority and involvement of ACCOs in child protection operations, expanded use of the Family Participation Program (FPP), and engagement of external cultural guidance (ACCOs, local justice groups and Elders) with appropriate remuneration.

Children's participation and representation

We believe that an often-overlooked factor is the appropriateness of questions asked of a child during information gathering and the person asking the questions. Children's answers are shaped by question framing and the interviewer. We support increased referrals to the Office of the Public Guardian (OPG)'s Child Advocate Legal Officers or Direct Representatives and recommend consideration of an opt-out automatic referral for subject children so their views are heard by an independent representative.

Role clarity for Cultural Practice Advisors

Our staff observe that Cultural Practice Advisors are often used to explain Child Safety practices to parents rather than to provide cultural guidance to Child Safety staff. This role confusion undermines cultural safety and places Cultural Practice Advisors in a position that duplicates legal explanation rather than informing Departmental practice. The role of Cultural Practice Advisors should be resourced and positioned to include advice to Departmental Child Safety staff on cultural context and the requisite appropriate engagement.

Pilot: specialist therapeutic child protection court

Queensland should trial a specialist, therapeutic child protection court that combines the cultural immersion and therapeutic practice of Western Australia's Dandjoo Bidi-Ak with the operational and case-management strengths of Victoria's Marram-Ngala Ganbu (MNG) Koori Family Hearing Days. A combined model would be well placed to reduce power imbalances, increase participation, improve continuity and strengthen case progression.

Dandjoo Bidi-Ak (Western Australia): cultural immersion and therapeutic practice

Dandjoo Bidi-Ak provides a culturally safe, therapeutic courtroom environment. Key features include:

- **Culturally designed space and welcome**: the courtroom is intentionally "full of colour and life" with Aboriginal art, books and cultural resources; each session begins with an Acknowledgement of Country and families are greeted by Family Engagement Officers or Aboriginal Liaison Officers.
- **Aboriginal team presence during hearings**: Aboriginal team members are present to provide cultural support, context and advocacy for families.
- **Seating and power balance**: everyone sits on the same level, including the magistrate, creating a yarning-circle dynamic that reduces formality and supports open dialogue.
- **Plain language and non-shaming practice**: magistrates and staff use plain language and a therapeutic, non-judgemental approach to encourage honest engagement.
- **Family engagement and navigation supports**: Family Engagement Officers assist families to navigate the process and link them to culturally appropriate services.
- **Evaluation and iterative design**: the pilot has been evaluated and refined to assess cultural safety, case outcomes and resource needs.

Marram-Ngala Ganbu (Victoria): practical case management and Koori supports

MNG demonstrates operational practices that improve participation and case progression:

- **Round table seating and introductions**: hearings are conducted around an oval/round table, so magistrates, family members and practitioners sit at the same level and introduce themselves, fostering a yarning-circle dynamic.
- **Dedicated Koori coordinators and support officers**: Koori Services Coordinators and Koori Family Support Officers prepare families, coordinate listings and provide warm referrals.

- **Docketing and continuity of judicial oversight**: docketed magistrates provide continuity, so families see the same magistrate across proceedings, building trust and case knowledge.
- **Cultural artefacts and acknowledgements**: cultural items and Acknowledgement of Country centre culture and the child in discussions.
- **Child Protection Practice Leadership**: an attached practice leader supports case progression and the interface between court and child protection agencies.

Combined model and implementation recommendations

We support a Queensland pilot that would:

- Be co-designed with ACCOs;
- fund Family Engagement Officers and Koori/Murri coordinators;
- trial round-table hearings and docketing in metropolitan and regional sites;
- embed Child Protection Practice Leaders;
- integrate warm referral pathways; and
- commission independent evaluation to measure participation, timeliness and reunification outcomes.

OCFOS and DCPL: operational interfaces and barriers

Effective, timely and culturally informed legal engagement is central to procedural fairness. Our frontline experience identifies systemic inconsistencies and operational barriers that undermine fair process and timely resolution.

- **Variable OCFOS engagement**: The interaction with OCFOS varies across offices and depends on local working relationships. In Cairns for example, where OCFOS are aware QIFVLS may be involved, they are prompt in advising us of applications. This responsiveness supports early legal engagement and better outcomes. In contrast however, experiences in Brisbane have been less consistent, with communication gaps that impede timely representation.
- **Different approaches to encouraging legal advice**: Our experience is that OCFOS more actively seeks to ensure parents obtain legal advice. Child Safety, by contrast, often prioritises expeditious resolution, which can be at odds with procedural fairness and meaningful access to legal advice. This divergence risks decisions being made without parents having had a realistic opportunity to obtain advice.
- **Geographic resourcing of DCPL**: A consistent barrier is that DCPL lawyers are not permanently based outside the south-east corner (Brisbane). This centralised model means DCPL lawyers can lack local knowledge of regional circumstances and community contexts, reducing the quality of engagement and the appropriateness of proposed orders.
- **File lawyers at conferences without decision-making authority**: DCPL's practice of sending File Lawyers to Court Ordered Conferences to litigate is problematic where those lawyers lack the designated delegated decision-making authority. This limits the capacity to resolve matters at conference and increases the likelihood of contested hearings. We would support consideration of the model used within the summary criminal callover lists

whereby a police prosecutor, with designated decision making-making authority is capable of resolving matters at the call over.

- **Insufficient case conferencing and pre-trial negotiation**: There is a lack of appropriate case conferencing and negotiation to resolve matters before trial. Many matters resolve on Day 1 of hearing. While outcomes may be positive for parents, the resources, funding, time delays and emotional toll on clients and staff have already been expended. Post-resolution delays then occur because case plans are not parallel-planned for alternate outcomes.
- **Delays in filing affidavit material**: Ongoing and significant delays in the preparation and filing of affidavit material are evident. Breakdowns in communication between DCPL and Child Safety contribute to late filings, which materially impact proceedings. Court orders requiring Child Safety Officers to attend and explain delays have not resolved the problem. Addressing these communication and workflow failures is essential to timeliness and fairness. A more robust case management framework must be used to ensure that proceedings are kept on track with minimal delays in the requisite filing of evidence.

The post-model change landscape shows reduced interaction between OCFOS and DCPL, with practical consequences:

- **Front-loading assistance but delayed affidavits**: OCFOS typically assists at the outset - completing referrals and supporting the Initiating Affidavit before forwarding to DCPL. However, we observe delays where the Application for a Child Protection Order and Form D Disclosure are filed early (often before expiry of a TCO, CAO or previous CPO) while the initiating affidavit is filed later. This sequencing can disadvantage parties seeking to contest interim orders.
- **Reduced ongoing collaboration**: Following the model change, there is less ongoing interaction between OCFOS and DCPL. Strengthening this interface is necessary to ensure consistent, timely and procedurally fair litigation.

Case study: lived experience of the model in practice

To illustrate the human impact of the operational and cultural issues described above, we have included one of the case studies featured in my statement to the Commission on 19 September 2025. This reflects recurring patterns in practice.

Case study — Lynne's story (de-identified)

We assisted a Respondent Mother, Lynne (not her real name) with a child protection matter. The Director of Child Protection Litigation (DCPL) had filed Applications seeking Long Term Guardianship Orders of Lynne's five children. All five children had been self-placing at home with Lynne and they had done so even prior to the Court ordered Short Term Custody Order expiring. This meant that even whilst the children were all self- placing at home, DCPL still went ahead and made an application seeking the most intrusive order for the children.

The Department of Families, Seniors, Disability Services and Child Safety (Child Safety)

raised concerns related to domestic and family violence, substance misuse and parenting. Child Safety submitted that Lynne had not appropriately addressed the concerns during the period of the Short- Term Custody Order. However, of significant note, Lynne had been diagnosed with ovarian cancer during the Short-Term Custody Order which involved numerous medical appointments, a surgery and 9 months of recovering. Further to that, COVID-19 occurred during the period of the short-term custody order, and a number of services were closed meaning that even if Lynne was in a position to do so, she was unable to consistently engage with support services to address the Child Safety concerns.

Lynne instructed us that she recognised the children were in need of protection given what she was going through. However, rather than a long-term guardianship order for the children, Lynne would be agreeable to working with Child Safety on a Protective Supervision Order meaning that the children could remain in her care while Child Safety supervised.

A Social Assessment Report (SAR) was completed, and the recommendation of the SAR was that the children remain at home and a protective supervision order be made. This SAR also took into account the impact of Lynne's health following her cancer diagnosis and commented that having the children home will likely assist Lynne's health as removing them would mean added stress.

QIFVLS took the matter to two (2) Court Ordered Conferences and advised DCPL of Lynne's position. DCPL however, were not agreeable to amending their application and maintained their position of seeking Long Term Guardianship Orders irrespective, despite the recommendations made in the Social Assessment Report.

We obtained Legal Aid Funding to brief a Barrister to act as Lynne's Counsel at the Hearing. We worked with Lynne over a few weeks to prepare all her Affidavit material, including attaching support letters and certificates evidencing the services she was proactively working with and programs she had successfully completed to address the Child Safety concerns.

The matter then went to a Court ordered Review Mention where all parties confirmed that all their material had been filed and DCPL once again confirmed that their application remained Long Term Guardianship Orders.

The matter was then listed for a Final Hearing. On the Tuesday of the week of the Final Hearing, DCPL called our Office and advised that they would be amending their applications from Long Term Guardianship Orders to Protective Supervision Orders.

The day before the Final Hearing, DCPL filed their amended Applications now seeking a Protective Supervision Order. Although it was a long process and something that could have potentially resolved sooner had DCPL agreed with our position at the Court Ordered Conference stage, it was a good outcome for Lynne to finally reach an agreement and in the

terms that we were seeking. The children still remain with Lynne, whilst supervised by DOCs. This has allowed Lynne to continue to recover with the support and love of her children around her.

This outcome would not have been possible without the dedicated legal and non-legal support provided by QIFVLS.

There are several features of Lynne's story (above) that are not a 'one-off' but are representative of the repeated conducted we see as practitioners when engaging in the Child Protection Litigation Model at QIFVLS. It is not child-focused, it is not focused on the resolution of matters in a timely manner supporting not only the best interests of the child, nor does it operate in a manner that is trauma-informed and culturally safe.

QIFVLS engagement with Queensland's CPL model review

On 20 May 2024, QIFVLS was asked to provide a submission to inform the development of a permanent and contemporary model for child protection litigation. Prior to providing our submission, on 21 May 2024 QIFVLS received an email containing an initial high-level summary of a Nous Group independent review of the CPL model in 2022. Attached to this submission and marked **"A"** is a copy of the summary report.

On 7 June 2024, QIFVLS provided a formal submission in response to the development of a contemporary model for child protection litigation. Attached to this submission and marked **"B"** is a copy of the QIFVLS submission. We repeat and reiterate the calls made in that submission here in this current submission to the Commission of Inquiry into Child Safety.

Since June 2024, we have not received any further updates as to what, if anything, is happening, to progress reforms to the Child Protection Litigation model in Queensland.

After hours and birth-suite removals: procedural fairness

After hours removals and birth-suite removals raise acute procedural fairness and safety concerns:

- **Frequency and representation**: After hours removals are observed regularly, affecting both self-represented parents and those who have obtained legal advice. Where OCFOS and QIFVLS have established working relationships (for example, in Cairns), we are often contacted when retained. This mitigates harm. Where such relationships are absent, parents can be left without timely legal support.
- **Matters dealt with in Chambers**: We have been involved in matters where, despite legal representation and a parent's wish to be heard, the TAO application is dealt with in Chambers. This often results from Child Safety failing to notify OCFOS or the Court that a lawyer has been retained or that parents wish to be heard. The effect is to deny parents the fundamental right of procedural participation.
- **Early intervention changes trajectories**: Early legal intervention frequently changes the trajectory of Child Safety intervention. For example, contesting a CAO can result in a

non-custodial order, a Protective Supervision Order (PSO) application, or voluntary interventions such as an Intervention with Parental Agreement (IPA) or Safety Plan. Child Safety Officers should be encouraged to promote early legal advice and early resolution of matters. We state that the current practice of providing a covering letter with contact details for QIFVLS, ATSILS and LAQ is insufficient for vulnerable and highly distressed parents without an active, supported warm referral.

- **Birth-suite removals and hospital contexts**: Newborn bedside removals commonly occur while mother and baby remain admitted to hospital. There is often inadequate consideration of the mother's hospital admission circumstances. We note that immediate orders following birth can force hospitals to move mother or baby to prevent unauthorised contact. Orders should be considered at discharge where appropriate, to reduce trauma and disruption.
- **Timing of section 18 removals**: Section 18 removals frequently occur in the afternoon, causing the eight-hour window to expire after business hours. The consequence is that applications for TAO or TCO are often heard on the papers without a parent being heard, particularly where representation is not immediately available. This practice undermines procedural fairness and should be reviewed.

Statutory compliance and placement practice

We note that systemic delays and placement practice raise statutory compliance and child welfare concerns:

- **Delays in service**: While attempts are made to comply with service obligations, there are significant delays by DCPL and Child Safety in serving parents. These delays impact court timetables and can prejudice parents, particularly where Child Safety cannot locate a parent promptly.
- **Placement principles and sibling separation**: There is a worrying lack of adherence to the placement principles in section 5C(c) of the Child Protection Act 1999. We observe an alarming number of children placed in residential care and a concerning frequency of sibling groups being separated across placements. This practice runs counter to the Aboriginal and Torres Strait Islander Child Placement Principle and the best interests of children.

Practice model weaknesses

Our practice observations identify structural and procedural weaknesses that compound delay and reduce fairness for families:

- **Insufficient legal consultation with Child Safety**: Child Safety officers are not sufficiently or regularly advised by DCPL. While Child Safety Officers are not lawyers, higher interaction between operational staff and legal advisors is necessary to ensure decisions and affidavits reflect legal standards and procedural fairness.
- **Practice Panels lack independence**: Child Safety's Practice Panels, used for expiring orders or changes in assessment, are attended by departmental staff and a "critical friend" (often QATSICPP). Our view is that the current composition does not provide enough of an

impartial or independent review of facts. Consideration should be given to independent membership or external oversight to strengthen objectivity.

- **Recording parental views in affidavits**: We frequently observe initiating affidavits that record parental views obtained immediately after informing parents of proposed applications, without context or opportunity to obtain independent legal advice. Affidavits sometimes include statements that Child Safety explained its assessment (for example, seeking Long Term Guardianship) and then record the parent's immediate reaction. This practice risks capturing uninformed responses and undermines procedural fairness.
- **Opaque sourcing of family information**: There have been instances where Child Safety records parental views obtained from family members on departmental databases and then refuses to disclose the origin of that information when challenged. Transparency about information sources is essential for fair and just process.
- **Insufficient kinship identification and assessment speed**: There are inadequate attempts to identify kin carers early. When kin are identified, the assessment process is lengthy and creates further delays. Strengthening and resourcing kinship assessment pathways is critical to honouring placement principles and reducing unnecessary residential care placements.
- **Foster carer training gaps**: From our observation, there is a lack of training for foster carers on appropriate boundaries, communication and cultural competency. Investing in culturally informed foster carer training would improve placement stability and cultural safety for children.

Improve timeliness and case management

To prioritise timeliness and fairness we recommend:

- Faster delegated decision-making at Family Group Meetings, Care Team Meetings and Investigation and Assessment Meetings.
- Improved kinship assessment processes and resourcing.
- Court-ordered directions to file Case Plan Affidavits within strict timeframes.
- Consideration of legislating the reunification process to provide clearer review and case management.
- Practice Panels convened with six months remaining on a Final Order to assess whether further orders will be sought and to avoid unnecessary work where reunification is unlikely.

Make the system navigable and accessible

The system should be made fit for purpose by:

- Using plain English and simple terminology.
- Providing interpreters and culturally appropriate communication supports.
- Using diagrams (for example, Blurred Borders resources).
- Avoiding long, repetitive meetings and ensuring each meeting has a clear purpose and outcome.

Oversight, evaluation and accountability

We recommend:

- Enable the Office of the Aboriginal and Torres Strait Islander Children's Commissioner (OATSICC) within the Queensland Family and Child Commission to have oversight of the CPL model.
- Giving higher consideration to the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) and removing barriers (for example, Blue Card processes) that impede kin placements.
- Strengthening interaction with ACCOs and embedding independent oversight of Practice Panels and key decision points.
- Reviewing the interaction between Child Safety, OCFOS and DCPL to address late filing, delays, non-compliance with orders and miscommunication.

Early access to legal representation

We reiterate support for an Aboriginal and Torres Strait Islander Child Protection Notification and Referral Scheme (akin to the Custody Notification Service) to provide warm referrals to QIFVLS or other ACCOs at the earliest point of contact with the child protection system. We note that Child Safety officials, Ms Corinne Porta, Regional Director FNQ and Ms Victoria Van Houdt, Acting Chief Practitioner, both gave qualified support within their evidence to the Commission of Inquiry for a child protection notification referral scheme where matters regarding consent were addressed. Early legal advice changes trajectories, reduces unnecessary removals and supports culturally appropriate, family-centred responses.

Conclusion

We take this opportunity to thank you for considering our feedback. Our recommendations are grounded in frontline practice and informed by the lived experience of Aboriginal and Torres Strait Islander families. We urge the Departments to partner with ACCOs, invest in culturally safe services and training, strengthen legal interfaces and consider trialling a Queensland-conducive specialist, therapeutic court pilot that combines the best elements of Dandjoo Bidi-Ak (Western Australia) and Marram-Ngala Ganbu (Victoria). We trust that you appreciate our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and Family Violence Prevention Legal Service.

If you would like to discuss our response further, please don't hesitate to contact me at plo@qifvls.com.au.

Yours faithfully

Queensland Indigenous Family Violence Legal Service

[redacted]

Executive Director Legal