



Aboriginal Family Violence Prevention  
& Legal Service Victoria

# FVPLS Victoria

Submission to the Victorian  
Royal Commission into  
Family Violence

June 2015

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## Executive Summary

This submission has been prepared by the Aboriginal Family Violence Prevention and Legal Service Victoria ('FVPLS Victoria') who are the only legal service in Victoria exclusively dedicated to assisting Aboriginal and Torres Strait Islander (hereafter 'Aboriginal') victims/survivors of family violence.

**Family violence impacts on Aboriginal people at vastly disproportionate rates and has devastating impacts on Victorian Aboriginal communities.** Aboriginal women are at the highest risk of family violence. In comparison with other women, Aboriginal women are 34 times more likely to be hospitalised from family violence<sup>1</sup> and almost 11 times more likely to be killed as a result of violent assault.<sup>2</sup> Aboriginal women have been identified as the most legally disadvantaged group in Australia.<sup>3</sup>

Tragically **family violence against Victorian Aboriginal people appears to be escalating.** Across Victoria, police reports of family violence against Aboriginal people (predominantly women and children) have tripled in less than a decade.<sup>4</sup> This is despite evidence that the majority of family violence incidents go unreported and the reality that Aboriginal women are markedly less likely to disclose family violence due to a multitude of complex barriers.<sup>5</sup>

**Family violence has significant, far-reaching and multiple impacts for Aboriginal people – especially women and children.** Through our casework with Aboriginal victims/survivors, FVPLS Victoria sees the multi-generational impacts of family violence on a daily basis, especially the intrinsic link between family violence and child protection.

**In Victoria, family violence is the single biggest cause of Aboriginal child protection involvement** with recent research indicating that men's violence against women is the primary driver in up to 95% of cases where Aboriginal children enter out-of-home care. Out-of-home care rates for Victorian Aboriginal children are now higher than at any time since white settlement.<sup>6</sup> In addition, family violence is a leading contributor to Aboriginal women's homelessness, poverty, criminalization, incarceration, mental and physical ill health, and drug and alcohol abuse.<sup>7</sup>

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<sup>1</sup> The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014* (2014) 4.93 table 4A.11.22 available at: <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014/key-indicators-2014-report.pdf>.

<sup>2</sup> Australian Institute of Health and Welfare *Family violence among Aboriginal and Torres Strait Islander people* Cat. no. IHW 17 (2006) 71 <<http://www.aihw.gov.au/publication-detail?id=6442467912>>.

<sup>3</sup> Aboriginal and Torres Strait Islander Commission (ATSIC), Submission to the Senate Legal and Constitutional References Committee, Parliament of Australia, *Inquiry into Legal Aid and Access to Justice*, 13 November 2003, 4.

<sup>4</sup> Victorian Auditor-General *Victorian Auditor-General's Report: Accessibility of Mainstream Services for Aboriginal Victorians* (2014) 57.

<sup>5</sup> Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities', *Trends & issues in crime and criminal justice* No. 405 (2011) Australian Institute of Criminology available at <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.html>

<sup>6</sup> Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, (2014) 37 available at <http://www.ccyp.vic.gov.au/downloads/annual-reports/ccyp-annual-report-2014.pdf>

<sup>7</sup> National Mental Health Commission, *The Mental and Social and Emotional Wellbeing of Aboriginal and Torres Strait Islander Peoples, Families and Communities* (2013) 17; Australian Institute of Health and Welfare, *Specialist Homelessness Services 2011-2012* (2012) 13, 38.

<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542529>; Data drawn from a 2004 study. See Smart Justice, *Factsheet: more prisons are not the answer to reducing crime*, (2011) 2 <http://www.smartjustice.org.au/resources/SJ%20Factsheet%20Prisons%202011.pdf>

**Reducing and eliminating family violence can only be achieved with genuine commitment to an informed, integrated and united government approach.** This approach must necessarily recognise the over-representation of Aboriginal women and children among victims/survivors of family violence, and prioritise culturally safe and targeted approaches which address Aboriginal women and children's unique needs, perspectives and barriers to getting assistance. Any response must also include increased, long-term investment in early intervention, prevention and community education approaches, specialist and culturally safe frontline legal services for Aboriginal victims/survivors, and strategies to improve responses by police, courts, child protection and corrections. In order to sustain this response, it is critical that governments invest in increased housing, advocacy and supports for Aboriginal victims/survivors, especially women and children.

## Summary of Recommendations

In response to the terms of reference for this Royal Commission, FVPLS Victoria is pleased to provide the following 32 recommendations:

### ***Increased funding and resourcing of Aboriginal Family Violence Prevention Legal Services and Strategies***

1. Longer-term (five yearly), increased funding from both State and Federal Governments to enable FVPLS Victoria to:
  - (a) meet demand for our specialist, culturally safe, frontline legal assistance services, including through expansion to state-wide coverage;
  - (b) continue and expand our highly successful, culturally targeted early intervention prevention programs and community legal education programs; and
  - (c) continue to provide high level policy advice and undertake advocacy and law reform activities to strengthen law and justice outcomes for Aboriginal victims/survivors of family violence.
2. Reinstatement of the National Family Violence Prevention Legal Services as a national, standalone program provided with a transparent and secure funding commitment through treasury and budget processes to secure a direct allocation of resources.
3. Increased State Government responsibility for ensuring Aboriginal victims/survivors of family violence have access to culturally safe and specialist family violence legal services across Victoria, including metropolitan, regional and rural areas.
4. Funding policies and priorities of both State and Federal Governments acknowledge that disadvantage experienced by Aboriginal victims/survivors of family violence is not limited to rural and remote Australia, and strategies and resources must be dedicated to culturally safe and specialist urban service delivery for Aboriginal victims/survivors across metropolitan Melbourne.

5. Joint implementation by State and Federal Government of the recommendation by the Productivity Commission and the Interim Report on Domestic Violence that an additional \$200 million be immediately provided to the legal assistance sector to address unmet legal need in the community, including through FVPLS Victoria.<sup>8</sup>

***Investment in Culturally Safe and Targeted Early Intervention and Prevention Strategies for Aboriginal Women and Children***

6. Increased, long-term, secure investment by government at all levels in specialist Aboriginal organisations to undertake culturally safe early intervention and prevention programs targeting Aboriginal women and children as those most at risk of family violence.
7. Recognition of holistic legal assistance and policy and advocacy work as a form of early intervention/prevention for Aboriginal family violence victims/survivors.
8. New early intervention and prevention initiatives designed to address family violence in Aboriginal communities must be led by and/or developed in ongoing consultation with Aboriginal Community Controlled Organisations with appropriate expertise.
9. Increased emphasis on dedicated law and justice policy development for Aboriginal women and children in Victoria.
10. Increased investment in housing and homelessness services for Aboriginal victims/survivors of family violence and implementation of strategies to improve housing affordability more generally.

***Implement Strategies to Strengthen Police Responses to Violence Against Aboriginal Women and Children***

11. Implement strengthened, systematic training for all police officers to improve cultural awareness and family violence sensitivity, led by and in consultation with Aboriginal organisations with frontline expertise assisting Aboriginal victims/survivors of family violence such as FVPLS Victoria.
12. Implement data collection training and system strengthening within Victoria Police to ensure appropriate collection of data on Aboriginality of victims/survivors and provision of appropriate referral pathways.
13. Undertake a review of the L17 Referral process to ensure that Aboriginal victims/survivors coming into contact with the police receive a referral to their local Aboriginal family violence service, including FVPLS Victoria where present in the region.

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<sup>8</sup> Productivity Commission, *Access to Justice Arrangements*, 201, p 738-39.

***Implement Strategies to Reduce Family Violence-Driven Child Protection Intervention in Aboriginal Families and Strengthen Child Protection Responses to Aboriginal women and children victim/survivors of family violence***

14. Investment in culturally safe and targeted strategies to reduce family violence-driven child protection intervention in Aboriginal families including:
  - (a) Increased investment in community legal education activities conducted by FVPLS Victoria, and other specialist services, to increase the Aboriginal communities' awareness of their legal rights and understanding of the child protection system;
  - (b) Implementation and concomitant resourcing of the recommendations made by *Taskforce 1000*;
  - (c) Strengthened cultural awareness and family violence sensitisation training for child protection workers developed in partnership and consultation with the Aboriginal community and specialist, Aboriginal organisations with expertise in child protection and family violence; and
  - (d) Implementation of a Child Protection Notification Referral System for Aboriginal families which ensures that upon a child protection notification being received for an Aboriginal family the primary parent is immediately referred to FVPLS Victoria (or another appropriate legal assistance provider where required) and informed of the importance of obtaining independent legal advice at the earliest opportunity – such a system should be developed in consultation with FVPLS Victoria and other Aboriginal Community-Controlled organisations including careful consideration of informed consent, privacy and confidentiality.
15. Implement strengthened, regular and systematic training for all child protection workers to ensure culturally appropriate and therapeutic responses for Aboriginal victims/survivors of family violence.
16. Strengthened accountability mechanisms within child protection agencies to protect and promote the cultural rights of Aboriginal children and to increase Departmental compliance with statutory obligations towards Aboriginal children and families.
17. Repeal the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic).
18. Any further substantive reforms to the *Children, Youth and Families Act*:
  - a. be postponed to allow implementation of relevant recommendations from this Royal Commission into Family Violence;
  - b. implement relevant recommendations from *Taskforce 1000* and be developed in consultation with the Victorian Commissioner for Aboriginal Children and Young People;

- c. follow from comprehensive community consultation over a reasonable timeframe to allow meaningful input from the legal sector, Aboriginal Community Controlled Organisations, specialist family violence and children’s services; and
- d. allow for review and consultation with the sector on exposure drafts.

***Improve Access to Court and Other Justice Services for Aboriginal Women and Children Victim/Survivors of Family Violence***

- 19. Improved security at Magistrates Courts including separate entrances and waiting rooms for family violence intervention order applicants (victims/survivors) and respondents (perpetrators).
- 20. Greater access to remote witness facilities for family violence intervention order applicants (victims/survivors).
- 21. New initiatives designed to address unmet family violence-related legal need among Aboriginal people must be led by and developed in ongoing consultation with FVPLSs and ATSILS and, where relevant, other Aboriginal Community Controlled Organisations with appropriate expertise.
- 22. Implement recommendations contained in the submission made by Flat Out Inc. to this Royal Commission, as endorsed by FVPLS Victoria.<sup>9</sup>
- 23. Establish improved facilities and policies within women’s prisons to prioritise culturally appropriate and child-friendly facilities for Aboriginal women to care for and/or visit with their children while in prison.

***Implement Strategies to Strengthen Coordination and Integration Between Government and Community For the Benefit of Aboriginal Victims/Survivors***

- 24. Community organisations, including Aboriginal Community Organisations, be appropriately resourced to participate in consultations, sector networks and forums aimed at strengthening integration and coordination between government and the community sector and among the community and family violence service sector.
- 25. The Victorian Government commit to provide dedicated funding for FVPLS Victoria and other legal services within the community sector to undertake policy, advocacy and law reform work.
- 26. Long term, secure funding for frontline family violence services to promote collaboration and capacity building and reduce incentives for negative competition.

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<sup>9</sup> Flat Out Inc (2014), ‘Family Violence and Criminalised Women’, Submission to Royal Commission into Family Violence, available at: <http://www.flatout.org.au/wp-content/uploads/2012/04/Flat-Out-Submission-RCFV-FINAL.pdf>



27. The Victorian Government continue to support and strengthen mechanisms designed to promote coordination and improvements for Aboriginal people in the justice sector such as the Aboriginal Justice Forum and the Indigenous Family Violence Partnership Forum, including ensuring that specialist services working with Aboriginal victims/survivors of family violence have capacity to meaningfully participate.

***Improve Data Collection, Evaluation and Government Accountability***

28. The Victorian government and government agencies collect and provide more consistent statistical and other data for Aboriginal people, especially within police forces and across the justice system.
29. Evaluation and reporting requirements imposed on community services working with Aboriginal victims/survivors should reflect the unique service provision and model of those services.
30. Implementation of new systems of coordination, workforce development and accountability measures within government agencies and departments responsible for police, housing, child protection, courts and corrections, to ensure that Aboriginal victims/survivors of family violence receive consistent, culturally competent and supportive responses.
31. Develop and implement justice targets as measurable goals against which governments report annually to gather further information about Aboriginal justice issues and monitor progress towards reducing both criminal offending and levels of family violence and victimisation. Such justice targets should be developed in close consultation with Aboriginal and Torres Strait Islander legal services (including ATSILS and FVPLSs), Aboriginal peak bodies and the legal sector.
32. The Victorian Government's proposed Family Violence Index contain specific measures relating to those most at risk of family violence, including Aboriginal women and children, and measures aimed at countering the significant levels of under-reporting within Aboriginal communities.

## Introduction

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) welcomes the opportunity to provide a submission to the Royal Commission into Family Violence ('the Commission').

In addition to the comments and recommendations contained in this submission, FVPLS Victoria refers the Commission to our Policy Paper Series June 2010<sup>10</sup> which includes:

- Paper 1: Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault and women and children;
- Paper 2: Strengthening on-the-ground service provision for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in Victoria;
- Paper 3: Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault.

We also refer the Commission to our recent submissions<sup>11</sup> to a range of relevant inquiries including:

- The Senate Inquiry into Domestic Violence – July 2014;
- The Senate Inquiry into Out of Home Care – October 2014;
- The Senate Inquiry into Access to Legal Services and Aboriginal and Torres Strait Islander Experiences of Law Enforcement and Justice Services – May 2015; and
- Family Law Council reference on Families with Complex Needs and the Interaction of the Family Law and Child Protection Systems – May 2015.

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<sup>10</sup> Available at [www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions](http://www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions)

<sup>11</sup> All available at [www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions](http://www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions)

## About FVPLS Victoria

FVPLS Victoria is an Aboriginal Community Controlled, not-for-profit legal assistance provider. Established over 12 years ago, FVPLS Victoria is the only legal assistance service in Victoria exclusively dedicated to assisting Aboriginal victims/survivors of family violence and sexual assault.

FVPLS Victoria provides culturally safe and holistic, frontline legal assistance to Aboriginal and Torres Strait Islander<sup>12</sup> victims/survivors of family violence and sexual assault. FVPLS Victoria also provides early intervention/prevention and community legal education to the Aboriginal community, the legal, Aboriginal and domestic violence sector. In addition, with support from philanthropic sources, FVPLS Victoria undertakes policy and law reform work to identify systemic issues in need of reform and advocate for strengthened law and justice outcomes for Aboriginal victims/survivors.

In 2013-14 FVPLS Victoria's integrated services impacted more than 4000 people. We provided legal services to over 500 clients (with more than 800 children), and delivered community legal education, early intervention and prevention activities to almost 1700 community members and over 1000 mainstream services staff.

FVPLS Victoria is open to Aboriginal men, women and children who have experienced or are at risk of family violence or sexual assault, as well as non-Aboriginal carers of Aboriginal children who are victims/survivors of family violence. FVPLS Victoria is not gender specific, however at last count 93% of our clients were women.

FVPLS Victoria's legal services include advice, court representation and ongoing casework in the areas of:

- family violence intervention orders;
- child protection;
- family law;
- victims of crime assistance; and
- where resources permit, other civil law matters connected with a client's experience of family violence such as: police complaints, housing, centrelink, child support and infringement matters.

FVPLS Victoria has a holistic, intensive client service model where each client is assisted by a lawyer and paralegal support worker to address the multitude of interrelated legal and non-legal issues our clients face. FVPLS Victoria paralegal support workers, many of whom are Aboriginal women, provide additional emotional support, court support and referral to ensure the client is linked into culturally safe counselling and support services to address the underlying social issues giving rise to the client's legal problem and experience of family violence.

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<sup>12</sup> Hereafter referred to as 'Aboriginal'.

This may include for example assistance with housing, drug and alcohol misuse, mental health, parenting, financial and other supports.

As an Aboriginal Community Controlled Organisation, FVPLS Victoria is directed by an Aboriginal Board and has a range of systems and policies in place to ensure we provide culturally safe services in direct response to community need.

FVPLS Victoria's highly successful, Sisters Day Out program, has reached more than 6,500 Aboriginal women since its commencement in 2007. In 2014, an independent evaluation of FVPLS Victoria's suite of early intervention prevention programs (including Sisters Day Out, Dillybag and Dillybag the Journey) found that the programs have a range of significant beneficial impacts on participant's immediate wellbeing and access to services, as well as important impacts over the medium and long term. This evaluation verified the efficacy of FVPLS Victoria's approach in utilising early intervention prevention to break down barriers to reporting for Aboriginal victim/survivors of family violence while building resilience and self-esteem, reducing vulnerability to violence and victimisation, and strengthening the Aboriginal community's ability to address family violence.<sup>13</sup>

FVPLS Victoria also plays a key role in advocating for systemic change to improve legal and justice system responses for Aboriginal victims/survivors of family violence. With assistance from philanthropic funding, FVPLS Victoria undertakes strategic policy and law reform work and stakeholder engagement. FVPLS Victoria's expertise is regularly called upon within the sector and we are an active member of a wide range of government advisory panels.

FVPLS Victoria's Chief Executive Officer, Antoinette Braybrook, is also the Convenor of the National Family Violence Prevention Legal Services Forum ('National FVPLS Forum') and FVPLS Victoria hosts the Secretariat of the National FVPLS Forum. This allows Antoinette and FVPLS Victoria to raise issues concerning Aboriginal family violence on the National stage. FVPLS Victoria also has special consultative status to the United Nations Economic, and Social Council (ECOSOC) which allows us to elevate issues affecting Aboriginal victims/survivors to the highest level.

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<sup>13</sup> *Evaluation Report of the Aboriginal Family Violence Prevention and Legal Service Victoria's Early Intervention and Prevention Program* (July 2014). A copy can be made available on request.

## About Family Violence In Aboriginal Communities

### 1. Prevalence of Family Violence Against Aboriginal People

Aboriginal women are one of the groups at highest risk of family violence in Victoria and indeed in the nation. This is irrespective of whether they live in rural, regional or urban settings. A fact which has been sadly misunderstood or overlooked by government and funders to the detriment of urban Aboriginal women.

Aboriginal people – women and children in particular – experience family violence at significantly higher levels than other Australians. Nationally, Aboriginal women are 34.2 times more likely to be hospitalised from family violence<sup>14</sup> and 10 times more likely to be killed in a violent assault.<sup>15</sup> In Victoria, Aboriginal people are at least 6.5 times more likely to report being a victim of family violence related offences than non-Aboriginal people.<sup>16</sup> These statistics, while shockingly high, likely under-estimate the true prevalence of violence against Aboriginal women as many cases go under-reported due to a range of pressures and barriers as outlined in the section on barriers at page 23 below. Aboriginal victims/survivors are less likely to disclose family violence than their non-Aboriginal counterparts. Indeed, some studies have estimated that as much as 90% of family violence against Aboriginal people goes unreported.<sup>17</sup>

The disproportionately increased rates of family violence against Aboriginal women are made even more shocking because they appear to be escalating. Across Victoria, police reports of family violence against Aboriginal people have tripled in less than a decade.<sup>18</sup> In some of the local government areas ('LGAs') FVPLS Victoria services (for example Geelong) reported family violence incidents against Aboriginal people increased by as much as 360% between 2008-9 and 2013-14.<sup>19</sup> The table below provides a snapshot of increasing family violence reporting rates in the local government areas that FVPLS Victoria services, as well as additional areas of high unmet need which FVPLS Victoria has long sought increased funding to service.

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<sup>14</sup> The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014* (2014) 4.93 table 4A.11.22 available at: <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014/key-indicators-2014-report.pdf>.

<sup>15</sup> Australian Institute of Health and Welfare, *Family Violence among Aboriginal and Torres Strait Islander people* (2006) 66 available at: <http://www.aihw.gov.au/publication-detail/?id=6442467912>

<sup>16</sup> Koori Justice Unit, Department of Justice, Indigenous Family Violence Regional Action Group and Regional Aboriginal Justice Advisory Committee joint workshop (March 2013) – based on 2011-12 data.

<sup>17</sup> The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014* (2014) 4.91 available at: <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014/key-indicators-2014-report.pdf> and Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities', *Trends & issues in crime and criminal justice No. 405* (2011) Australian Institute of Criminology available at <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.html>

<sup>18</sup> Victorian Auditor General, *Accessibility of Mainstream Services for Aboriginal Victorians*, May 2014, 57 available at <http://www.audit.vic.gov.au/publications/20140529-Aboriginal-Services/20140529-Aboriginal-Services.pdf>

<sup>19</sup> Calculated as shown in the table on page 14 below. Population figures sourced from Australian Bureau of Statistics data, 2011, document no. 3238.0.55.001; All other figures are sourced from 2013/14 data provided by the Koori Justice Unit, Victorian Department of Justice, in confidence for the purposes of this application only. Please note that family violence incident data is based on reports to police, which means that multiple incidents may be caused by an individual perpetrator.

LGA	FVPLS Service	Aboriginal population <sup>20</sup> (No)	FV Incidents - Aboriginal victims (No in 08-09)	FV Incidents - Aboriginal victims (No in 2013/14)	FV Incidents - Aboriginal victims (% of incidents in LGA)	% Increase since 2008/9
E. Gippsland	Existing office	1662	79	256	26%	244%
Mildura	Existing office	2291	110	269	20%	145%
Warrnambool	Existing office	618	18	52	10%	189%
Geelong	Outreach from existing office (Warrnambool)	2204	15	69	2.5%	360%
Metro Melbourne (31 LGAs)	Existing office	22,461	547	972	2.2%	77%
La Trobe (Morwell)	Outreach from existing office (Melbourne)	1301	64	128	6%	100%
Swan Hill	Currently un-serviced (with additional resourcing could provide outreach from existing office - Mildura)	1119	96	150	29%	56%
Bendigo	Currently un-serviced (with additional resourcing could service from new 4 <sup>th</sup> office)	1775	44	77	4.9%	75%
Campaspe (Echuca)	Currently un-serviced (with additional resourcing could service from new 4 <sup>th</sup> office)	1012	26	70	13%	169%
Shepparton	Currently un-serviced (with additional resourcing could service from new 4 <sup>th</sup> office)	2611	117	182	13%	56%

<sup>20</sup> Population figures are sourced from Australian Bureau of Statistics data, 2011, document no. 3238.0.55.001; All other figures are sourced from 2013/14 data provided by the Koori Justice Unit, Victorian Department of Justice, in confidence for the purposes of this application only. Please note that family violence incident data is based on reports to police, which means that multiple incidents may be caused by an individual perpetrator.

It is important to note that the vast majority of family violence incidences go unreported and the true figures in each of these LGAs are therefore likely much higher. It is also important to note that without effective action and appropriate resourcing of services that support Aboriginal victims/survivors of family violence, these rates will likely increase given the high youth demographics and fast growth rate of the Aboriginal population. Increased public attention on family violence generated by growing media attention on the topic and the Royal Commission into Family Violence, are also driving up reporting rates.

We note also that Victorian Aboriginal population figures are also under-reported due to the level of mistrust and reluctance by many Aboriginal community members to identify as Aboriginal to authorities.

Increased, secure and long-term resourcing for culturally safe and specialist support services working with Aboriginal victims/survivors of family violence are sorely needed to stem the over-representation and increasing numbers of Aboriginal victims/survivors of family violence.

## **2. Impacts of Family Violence Against Aboriginal People**

Family violence has devastating impacts on Aboriginal women, children and communities as a whole. It is a leading contributor to Aboriginal child removal, women's incarceration, homelessness, poverty, poor physical and mental health, and drug and alcohol abuse as discussed in further detail below.

Economic modelling by KPMG shows that violence against women and their children cost the Australian economy \$13.6billion in the 2008-9 financial year.<sup>21</sup> Unless effective action is taken, the cost of violence against women and children is projected to increase to \$15.6billion in 2021-22.<sup>22</sup> The specific annual national cost of violence against Aboriginal women was projected to increase to \$2.2billion in the year 2021-22.<sup>23</sup> This does not include costs incurred in relation to children who witness violence, which were projected to reach \$1.6billion.<sup>24</sup> While a figure was not calculated for Aboriginal children, other data on Aboriginal family violence and children in child protection services shows very clearly these costs will be high, and grossly disproportionate relative to population

### **2.1. Family violence and child protection**

Family violence has been recognised as a key contributor to Aboriginal child removal for some time. However, it is only recently that data has come to light that illustrates the true extent of the relationship between family violence (specifically men's violence against women) and the removal of Aboriginal children in Victoria. In 2014, the Victorian Commissioner for Aboriginal Children and Young People commenced *Taskforce 1000* – a project to examine the case of each Aboriginal child in statutory out-of-home care in Victoria. Preliminary findings from the first 250 cases examined by *Taskforce 1000* indicate that men's violence against women was a primary driver in up

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<sup>21</sup> National Council to Reduce Violence Against Women and their Children. (2009). *The Cost of Violence Against Women and Their Children*, page 9, available at:

[http://www.fahcsia.gov.au/sites/default/files/documents/05\\_2012/vawc\\_economic\\_report.pdf](http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf)

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

to 95% of Aboriginal children entering out-of-home care.<sup>25</sup> In other words, family violence is a leading cause of removal for almost every Aboriginal child in statutory care in this state.

Aboriginal and Torres Strait Islander children are significantly over-represented among children in out-of-home care right across the country and Victoria has some of the highest rates in the country. Across Australia, Aboriginal and Torres Strait Islander Children now account for almost 35% of all children in care despite comprising only 4.4% of the nation's child population.<sup>26</sup>

In Victoria, Australian Institute of Health and Welfare data shows that Aboriginal children are 16 times more likely to be on care and protection orders in comparison with non-Aboriginal children.<sup>27</sup> They are also 16 times more likely to be in out-of-home care.<sup>28</sup> The rate of Aboriginal child removal in Victoria is now higher than at any time since white settlement.<sup>29</sup>

The rate of Aboriginal child removal is increasing at an alarming pace and Victoria's removal rate is now increasing faster than any other State or Territory in Australia. In Victoria, the number of Aboriginal children removed from their families and placed in out of home care increased by 98% between 2007-08 and 2013-14.<sup>30</sup> For non-Aboriginal children the increase was just 45 per cent.<sup>31</sup> In just the twelve months to June 2014, there was a 42% increase in Victorian Aboriginal children in statutory care<sup>32</sup> - which was the highest increase in the country for that period.

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<sup>25</sup> Personal correspondence. See also *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care* – October 2014 Update, a joint submission from the Commissioner for Aboriginal Children and Young People and Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 3; and Commission for Aboriginal Children and Young People - Papers submitted to Aboriginal Justice Forum October 2014.

<sup>26</sup> Productivity Commission, *Report on Government Services* (2015) 15.13.

<sup>27</sup> Australian Institute of Health and Welfare, *Child Protection Australia 2012–13*, Table 5.4, page 52 available at <http://www.aihw.gov.au/publication-detail/?id=60129547965>

<sup>28</sup> Australian Institute of Health and Welfare, *Child Protection Australia 2012–13*, Table 4.4 page 41 Available at <http://www.aihw.gov.au/publication-detail/?id=60129547965>. Please note: recent data from the Productivity Commission now states that the out-of-home care rate for Aboriginal children is 12 times that of non-Aboriginal children. This reflects changed statistical methodology, including the use of increased Aboriginal population figures. The actual number of Aboriginal children in out-of-home care in Victoria has continued to increase. See Productivity Commission, *Report on government services: Volume F Community Services*, 2015, Table 15A.20 available at <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volumef-chapter15.pdf>.

<sup>29</sup> Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, (2014) 37 available at <http://www.ccyp.vic.gov.au/downloads/annual-reports/ccyp-annual-report-2014.pdf>

<sup>30</sup> Productivity Commission, *Report on government services: Volume F Community Services*, 2015, Table 15A.20 available at <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volumef-chapter15.pdf>

<sup>31</sup> Productivity Commission, *Report on government services: Volume F Community Services*, 2015, Table 15A.20 available at <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volumef-chapter15.pdf>

<sup>32</sup> Commissioner for Aboriginal Children and Young People, Open Letter in response to *2015 Report on Government Services*, 3 February 2015.



In 2011-12 there were around 1,000 Aboriginal children in out of home care in Victoria.<sup>33</sup> This was around one in eleven of all Victorian Aboriginal children.<sup>34</sup> By June this year there will be an estimated 1500 Aboriginal children in care.<sup>35</sup>

These statistics come as no surprise to organisations like FVPLS Victoria working with Aboriginal families at the grassroots. Between June 2013 and June 2014, our lawyers saw a 66% increase in child protection cases. This is a startling indication of the increasing rates of Aboriginal families facing child protection intervention and the link between family violence victimisation and child removal.

The extraordinary rates of contemporary Aboriginal child removal and child protection intervention in Aboriginal families act as a significant deterrent for Aboriginal victims/survivors to disclose family violence and seek assistance from services. FVPLS Victoria clients – predominantly Aboriginal women – regularly instruct our lawyers that their violent partners or family members make explicit threats to report them to child protection or have their children taken away from them if they go to the police. In addition, our clients often report that they did not know that child protection intervention was a legal matter until their children got removed or the Department initiated a Protection Application in the Children’s Court. Some community members report explicitly being told by child protection workers that they do not need a lawyer.

In order to address these issues, a far greater investment is required for culturally targeted early intervention and prevention activities (including community legal education) and wrap-around responses (including legal) for Aboriginal victims/survivors of family violence. The value of community legal education and proactive legal advice and assistance for families involved in or at risk of child protection intervention cannot be under-estimated. Investing in support services at the front-end supports strengthened and resilient families and promotes healthy relationships, reducing the risk or escalation of child protection intervention as well as the resource requirements necessitated by greater intensity of child protection service involvement.

There is also a crucial need to reform the approach taken by child protective workers and the child protection system towards Aboriginal victims/survivors of family violence. This is needed to transform what is currently a punitive system that blames victims for exposing their children to violence, instead of one which strengthens perpetrator accountability and provides a therapeutic and supportive model that builds victims/survivors’ capacity to safely care for their children.

Our recommendations and commentary on Child Protection Authorities responses are discussed in further detail at pages 53 to 57 below.

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<sup>33</sup> *Report of Government Services 2015*, Productivity Commission Table 15A.19; see also <http://www.cyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf>

<sup>34</sup> *Report of Government Services 2012*, Productivity Commission Table 15A.17; see also <http://www.cyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf>

<sup>35</sup> Commissioner for Aboriginal Children and Young People, Open Letter in response to *2015 Report on Government Services*, 3 February 2015.

## **2.2. Family Violence and Homelessness**

The single greatest reason people in Australia present to homelessness accommodation services is family violence<sup>36</sup>, with Aboriginal women 15 times more likely to seek assistance from crisis homelessness services than non-Aboriginal people.<sup>37</sup> Aboriginal women make up 22% of all clients at specialist homelessness services and Aboriginal children aged up to 14 years make up 32.7%, or one third, of all children in these services.<sup>38</sup>

Housing unavailability and the prospect of homelessness acts as a dangerous deterrent to victims/survivors leaving violent relationships. This can be especially so for Aboriginal victims/survivors – predominantly women – with children for whom both homelessness and family violence become catalysts for child protection intervention and child removal, putting women in the invidious position of feeling forced to endure and hide violence in order to maintain a home for their children.

Even where family violence is disclosed and a victim/survivor's need for safe housing is identified as 'urgent', they can spend months on public housing waiting lists. As at March 2015, there were 9,565 (of a total 33,933) people on the Victorian public housing waiting list who were eligible for 'early housing' due to urgent need such as family violence.<sup>39</sup>

Within Aboriginal and Torres Strait Islander communities, homelessness as a result of family violence may be particularly devastating, as it can also mean dissociation from community, kin and a disconnection to country. Yet culturally safe, Aboriginal and Torres Strait Islander specific crisis housing is very rare.

FVPLS Victoria endorsed the 'Family violence, homelessness and affordable housing – a joint submission from 129 organisations'<sup>40</sup> and supports the recommendations contained therein.

## **2.3. Family Violence and Aboriginal Women's Incarceration**

Aboriginal women are being criminalised at a disproportionate and rapidly increasing rate. Aboriginal women are now the fastest growing group of prisoners in Victoria and the nation.<sup>41</sup> Despite comprising only 2% of the national population, Aboriginal women

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<sup>36</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services: 2013–2014* 'Table VIC2.14: Clients, by main reasons for seeking assistance, 2013–14, adjusted for non-response' (2014). See also Australian Institute of Health and Welfare, *Domestic Violence a major factor in homelessness among women and children* (2008) available at

<http://www.dpmc.gov.au/women/publications-articles/safety-women/women-synthesis-report-HTML.cfm>

<sup>37</sup> Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women's Offending* (2010) 28.

<sup>38</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services 2012-13, 2014*, page 38 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129545638>

<sup>39</sup> Department of Health and Human Services, *Public Housing Waiting and Transfer List March 2015* (2015). As cited in 'Family violence, homelessness and affordable housing – a joint submission from 129 organisations', endorsed by FVPLS Victoria and submitted to the Royal Commission into Family Violence on 29 May 2015.

<sup>40</sup> Available at: <http://chp.org.au/wp-content/uploads/2015/06/Joint-submission-affordable-housing-and-family-violence-May-2015.pdf>

<sup>41</sup> Human Rights Law Centre, 'New stats reveal that Aboriginal and Torres Strait Islander women are one of the most incarcerated groups in the world', Media Release, (16 September 2015) <http://hrlc.org.au/new-stats-reveal-that-aboriginal-and-torres-strait-islander-women-are-one-of-the-most-incarcerated-groups-in-the-world/>. See also: Australian Institute of Criminology; <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp107/06.html>; Australian Human Rights Commission, *A Statistical Overview: Social Justice Report 2008*

represent more than one third of the prison population.<sup>42</sup> In Victoria between 2007 and 2012, the number of Aboriginal women in prison doubled.<sup>43</sup>

There is a strong link between the high incarceration rates of Aboriginal women and their exposure and involvement in family violence.<sup>44</sup> Ample research demonstrates that an overwhelming majority of women in prison have experienced family violence.<sup>45</sup> While family violence victimisation is not a direct cause of Aboriginal women being jailed, it is a precursor to a range of conditions that lead to imprisonment. With respect to Aboriginal women in prison, FVPLS Victoria's experience working in Victorian Aboriginal communities for the last 12 years confirms a NSW study which found that over 80% of female Aboriginal prisoners reported that their incarceration was an indirect result of their victimisation.<sup>46</sup> In Victoria, research indicates 87% of female prisoners have been victims of sexual, physical or emotional abuse and most women suffered abuse in multiple forms.<sup>47</sup>

The majority of women in prison are there for non-violent crimes and are serving short sentences.<sup>48</sup> Aboriginal women are also increasingly likely to serve time on parole and the vast majority in cases where they ultimately receive a non-custodial sentence.<sup>49</sup> Even for those serving time for serious violent crimes, strong links to victimisation can be made. Australian Institute of Criminology data on homicide by Aboriginal and Torres Strait Islander women shows that the offender and victim were in a domestic or family relationship in 93 per cent of cases, and that it is likely many of these cases involved women responding to violence against themselves.<sup>50</sup>

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(2008), <https://www.humanrights.gov.au/publications/statistical-overview-aboriginal-and-torres-strait-islander-peoples-australia-social>; University of New South Wales, *Social and Cultural Resilience and Emotional wellbeing of Aboriginal Mothers in prison* (2013), <https://npsu.unsw.edu.au/project/social-and-cultural-resilience-and-emotional-wellbeing-aboriginal-mothers-prison-scream>.

\*Alternative source: Australian Institute of Criminology, 2010, 'Data On Prisons', available at: <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp107/06.html>

<sup>42</sup> Ibid. See also: Kilroy, D. 'Women & Girls in Prison: Australia's Alternative to Equality & Justice' JCU Criminology Lecture, 22 May 2012, Presented by Debbie Kilroy, Chief Executive Officer of Sisters Inside.

<sup>43</sup> State of Victoria, Corrections Victoria 'Indigenous Offenders and Prisoners March 2013' Presentation to AJF (quoted in Unfinished Business, VEOHRC 2013) Victorian Equal Opportunity and Human Rights Commission, Unfinished Business: Koori Women and the Justice System (2013) 18, available at [http://www.humanrightscommission.vic.gov.au/media/k2/attachments/Unfinished\\_business\\_-\\_Koori\\_women\\_and\\_the\\_justice\\_system.pdf](http://www.humanrightscommission.vic.gov.au/media/k2/attachments/Unfinished_business_-_Koori_women_and_the_justice_system.pdf)

<sup>44</sup> Kilroy, D. *The over-representation of Aboriginal and Torres Strait Islander women in prison*, Sister's Inside, April 2013,3.

<sup>45</sup> See Australian Institute of Family Studies, *Addressing women's victimisation histories in custodial settings* (2015) Canberra, Australian Government, available at <http://www.aifs.gov.au/acssa/pubs/issue/i13/i13b.html>; K. P. Moloney, B. J van den Bergh & L.F. Moller 'Women in Prison: The central issue of gender characteristics and trauma history' (2014) 123 *Public Health*, 426-430; Holly Johnson, *Drugs and Crime: A Study of Incarcerated Female Offenders, Research and Public Policy Series* (2014) No. 63, Canberra, Australian Institute of Criminology; WIPAN (2014) Women in Prison - Primary Document for a Public Forum surrounding Women in Prison being hosted by WIPAN, Community Justice Coalition (CJC) and the International Commission of Jurists (ICJ) at NSW Parliament House on 13 August 2014, 16.

<sup>46</sup> NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*, 2001, 7.

<sup>47</sup> See Smart Justice (2011) Factsheet: more prisons are not the answer to reducing crime, p. 2 <http://www.smartjustice.org.au/resources/SJ%20Factsheet%20Prisons%202011.pdf> and Victoria Equal Opportunity and Human Rights Commission (2013) *Unfinished Business – Koori women and the justice system*, p. 29 [http://www.humanrightscommission.vic.gov.au/media/k2/attachments/Unfinished\\_business\\_-\\_Koori\\_women\\_and\\_the\\_justice\\_system.pdf](http://www.humanrightscommission.vic.gov.au/media/k2/attachments/Unfinished_business_-_Koori_women_and_the_justice_system.pdf)

<sup>48</sup> Drugs and Crime Prevention Committee, *Inquiry into the Impact of Drug - Related Offending on Female Prisoner Numbers* (2010) Melbourne, Parliament of Victoria.

<sup>49</sup> Victorian Aboriginal Legal Service, *2012-13 Annual Report* (2013) 19, available at

[http://vals.org.au/static/files/assets/d81684fe/VALS\\_Annual\\_Report\\_2012-2013\\_FINAL.pdf](http://vals.org.au/static/files/assets/d81684fe/VALS_Annual_Report_2012-2013_FINAL.pdf)

<sup>50</sup> Lorana Bartels, 'Violent Offending by and against Indigenous Women' (2012) 8.1 *Indigenous Law Bulletin*, 20.

As outlined in Flat Out's submission to this Royal Commission, which has been endorsed by FVPLS Victoria, criminalised women can face increased barriers to accessing support for family violence as:

*"Family violence services often have refused support for criminalised women based on the assumption that they are too difficult, pose a threat to other women, a threat to the service model of high security, or present with a complex range of support needs to which services feel unable to appropriately respond. ... Criminalised women may therefore fear mainstream services because they fear discrimination."<sup>51</sup>*

As outlined by Flat Out, criminalised women can also face systematic barriers and discrimination when seeking assistance from police meaning there is even greater need for independent and specialist legal support to ensure they can access protective processes through the law without being re-criminalised in the process.<sup>52</sup>

In this context, culturally safe and holistic services for Aboriginal victims/survivors of family violence who typically take a less punitive or restrictive approach to criminalised women are vitally important. Unacceptably, however, there continues to be a lack of sufficient, secure funding for such services including FVPLS Victoria.

The impact of incarcerating Aboriginal women also has a distinct adverse impact on future generations as more than 80% of Aboriginal women in prison in Victoria are mothers.<sup>53</sup> As stated in the Victorian Equal Opportunity and Human Rights Commission report. 'Unfinished Business: Koori Women and the Justice System' "this increases the likelihood of their children entering out-of-home care, which is in turn one of the biggest risk factors for them one day coming in contact with the justice system themselves."<sup>54</sup>

## **2.4. Family Violence and Health Impacts**

Family violence is the leading contributor to death, disability and illness for Victorian women between the ages of 15 and 44.<sup>55</sup> Demonstrated health impacts of family violence include higher rates of depression, self-harm, smoking, obesity and alcohol and drug misuse. Studies have also found suicidal tendency rates of up to 77 per cent among women who have experienced family violence.<sup>56</sup> Economic analyses have indicated that the indirect social and psychological impacts of family violence may in fact be the greatest cost to the general community. These impacts can continue long after the abuse:

Abuse tends to cause fear, distrust, emotional pain and suffering. Abuse can damage self-esteem, family relationships, intergenerational relationships, and

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<sup>51</sup> Flat Out Inc, 'Family Violence and Criminalised Women', Submission to Royal Commission into Family Violence (2014) 6. Available at: <http://www.flatout.org.au/wp-content/uploads/2012/04/Flat-Out-Submission-RCFV-FINAL.pdf>

<sup>52</sup> Ibid.

<sup>53</sup> State of Victoria, Department of Justice, Koori Justice Unit, 'Aboriginal Women's Diversion Project' (Presentation to Aboriginal Women's Diversion Project Working Group meeting 3 July 2013), p 2.

<sup>54</sup> Victorian Equal Opportunity and Human Rights Commission, Unfinished Business – Koori Women and the Justice System, foreward 1.

<sup>55</sup> VicHealth, *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence* (2004) VicHealth, Melbourne.

<sup>56</sup> Jacqueline Golding, 'Intimate partner violence as a risk factor for mental disorders: a meta-analysis' (1999) 14 *Journal of Family Violence*, 112.

our sense of community well-being. For the woman, abuse can represent significant loss of choices and loss of opportunities to enjoy life.<sup>57</sup>

The 2006 *Social Justice Report* points out that mental health problems such as low self-esteem, depression, guilt, fear and relationship difficulties, substance abuse through to self-harm and suicide “are as much as a result of exposure to violence and crime, as drivers of it”.<sup>58</sup>

Women who have experienced family violence and/or sexual assault are also more likely to have alcohol problems and to use non-prescription drugs than other women. Empirical evidence supports these observations that women often use substances to self-medicate and cope with trauma. FVPLS Victoria clients regularly inform their legal representatives that their alcohol or drug use became a problem following their experiences of family violence and/or sexual assault. Often this is in the context of self-medicating or attempting to escape negative feelings and memories. It is also common for women to be introduced to problematic drug use by an abusive partner.

There are substantial benefits to a social reinvestment approach that provides proactive, holistic and culturally safe service supports to victim/survivors of family violence including targeted and appropriate early intervention/prevention programs.

### **3. Causes and Contributors to Increased Rates of Family Violence Against Aboriginal People**

Family violence is complex and the issues our clients face are complex. Our clients live with intergenerational trauma, removal of children, discrimination, poverty, mental health issues, family violence-driven housing instability and homelessness, disability, lower levels of literacy and numeracy, as well as a range of other cultural, legal and non-legal issues.

#### **3.1. Gender**

It must be recognised that family violence in Aboriginal communities is gendered – just as it is in the mainstream community. While men can certainly be victims of family violence and their needs must not be overlooked, women and children represent the vast majority of victims /survivors within Aboriginal communities.

Court and police statistics, together with FVPLS Victoria’s 12 years of frontline experience, confirm the majority of victims/survivors of family violence are women and children, and the majority of perpetrators are men – including both Aboriginal and non-Aboriginal men. At last count, 93 per cent of FVPLS Victoria’s clients were Aboriginal women. While there are certainly instances of men as victims, it is important to note many male victims are children – many of whom experience violence perpetrated by men not women. Indeed, as discussed in further detail below, recent research indicates that men’s violence against women is a primary driver in up to 95 per cent of Aboriginal children entering out of home care.<sup>59</sup> Where children are at risk alongside their mother, the most effective way of protecting those children from violence is to provide culturally

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<sup>57</sup> ADFVC, *Economic Costs of Family Violence* (2002) 16. See also: National Mental Health Commission, *The Mental and Social and Emotional Wellbeing of Aboriginal and Torres Strait Islander Peoples, Families and Communities* (2013).

<sup>58</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander Communities: An overview paper of research and findings by the human rights and equal opportunity commission, 2001-2006*, Human Rights and Equal Opportunity Commission, 108.

<sup>59</sup> Information provided by the office of the Victorian Commissioner for Aboriginal Children and Young People.

safe, specialist and effective assistance to the mother and equip her with the supports necessary to safely care for her children free from violence.

In addition, FVPLS Victoria's legal team have been involved in a number of cases where men have made allegations of violence against a female partner in an attempt to minimise legally substantiated complaints she has made against him (which are often much more serious in nature) or, alternatively, in order to intimidate and control a female partner against whom the man has been perpetrating violence for some time.

It is of concern that some strategies and frameworks designed to address family violence in Aboriginal communities fail to recognise the gendered nature and impacts of family violence, instead framing family violence as an issue affecting families and communities or as simply one aspect of "lateral violence"<sup>60</sup> - thus overlooking the lived experiences of women and children as the primary victims/survivors of male-perpetrated violence. FVPLS Victoria wholeheartedly supports the notion that solutions to family violence impacting Aboriginal people lie within Aboriginal communities and that Aboriginal people must lead strategies to prevent and eradicate family violence in our communities. Community ownership and community-driven solutions are fundamentally important. However, it is crucial that community approaches do not result in the voices and perspectives of Aboriginal women being lost. Without reference to women or to gender, reliance on a 'community voice' can serve to reinforce pre-existing gendered power dynamics and silence Aboriginal women.

### **3.1. Colonisation, Discrimination and Inter-Generational Trauma**

There are multiple complex and diverse factors contributing to the high levels and severity of family violence in Aboriginal and Torres Strait Islander communities. It must be clearly understood that the causes do not derive from Aboriginal culture. Family violence is not part of Aboriginal culture. However, the disadvantage, dispossession and attempted destruction of Aboriginal cultures since colonisation have meant that family violence has proliferated in Aboriginal communities.

This does not however, mean that family violence affecting Aboriginal victims/survivors, predominantly women and children, is exclusively the domain of Aboriginal communities - or that all perpetrators of violence against Aboriginal women are Aboriginal men. There is insufficient data on the Aboriginality of perpetrators and FVPLS Victoria routinely sees Aboriginal clients, mostly women, who experience family violence at the hands of men from a range of different backgrounds and cultures, Aboriginal and non-Aboriginal. The only certainty in the existing data is that Aboriginal women are at disproportionately higher risk of family violence.

Aboriginal women face the "double bind" of gender and racial discrimination and oppression. Violence against Aboriginal women includes many forms of abuse that are directed against them because they are women, or that affects women disproportionately compared to men. Significant causes of this violence are embedded social attitudes, norms and structural inequalities with regard to their perceived place and value.

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<sup>60</sup> Lateral violence, sometimes referred to as 'horizontal violence' or 'internalised colonialism', has been described by Richard Frankland as: "[T]he organised, harmful behaviours that we do to each other collectively as part of an oppressed group: within our families; within our organisations and; within our communities. When we are consistently oppressed we live with great fear and great anger and we often turn on those who are closest to us." See: Australian Human Rights Commission (2011) 'Chapter Two: Lateral Violence in Aboriginal and Torres Strait Islander Communities', *Social Justice Report 2011*.

In addition, there are many other factors arising from colonisation and systemic discrimination against Aboriginal peoples, which contribute to the high incidence and severity of family violence among Aboriginal people. This includes:

- inter-generational trauma;
- dispossession of land;
- forced removal of children;
- interrupted cultural practices that mitigate against interpersonal violence;
- disproportionate rates of criminalisation and incarceration;
- economic exclusion and poverty; and
- systemic and indirect racism.

#### **4. Barriers Faced by Aboriginal Victims/Survivors of Family Violence**

Aboriginal women have been recognised as one of the most legally disadvantaged groups in Australia<sup>61</sup> and face a wide array of complex and compounding barriers to reporting violence and accessing support.

The legacy and impact of Australia's colonial history, including oppression through legal and government systems and policies of forced assimilation, cannot be overstated. This legacy continues in Aboriginal people's ongoing disadvantage and dispossession in Victoria. It has resulted in profound levels of mistrust of government, the legal system and mainstream service system by Aboriginal communities. This results in Aboriginal victims/survivors facing significant barriers to reporting and seeking support for family violence.

Those barriers can include:

- Lack of understanding of legal rights and options and how to access supports when experiencing family violence;
- Poor police responses and discriminatory practices within police and child protection services;
- Fear of child removal if disclosing family violence;
- Mistrust of mainstream legal and support services to understand and respect the needs, autonomy and wishes of Aboriginal victims/survivors;
- Community pressure not to go to the police in order to avoid increased criminalisation of Aboriginal men;
- Pressure not to leave a violent relationship, stemming from a priority within some parts of the community of maintaining the family unit due to a misconceived fear that parental separation will threaten cultural connection (especially for children) and community cohesion;
- Poverty and social isolation; and
- Lack of cultural competency and indirect discrimination across the support sector, including for example discriminatory practices within police and child protection agencies, lack of culturally appropriate housing options, alienating and deterrent communication and client/patient approaches by medical, legal, community services and other professionals.

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<sup>61</sup> Above n 3.



Aboriginal Community Controlled Organisations with family violence expertise are best placed to address these barriers and provide culturally safe and effective support to Aboriginal victims/survivors. This includes community legal education and early intervention/prevention programs to counter the significant lack of awareness among Aboriginal victims/survivors – women in particular – about their legal rights and options in relation to family violence.

The impact of these barriers has been demonstrated through primary data collection by FVPLS Victoria. Legal Needs Surveys conducted by FVPLS Victoria at our Sisters Day Out workshops held across Victoria during 2013-14<sup>62</sup> found that almost half (46%) the participants had experienced a family violence-related legal issue in the previous 12 months but 53% of those women had received no legal assistance for that issue.

Legal services such as FVPLS Victoria have “an essential role to play in addressing barriers which inhibit access to civil and family law justice.”<sup>63</sup> The Productivity Commission has noted that the sizeable barriers to accessing legal assistance faced by Aboriginal people mean that many civil legal issues (such as family law and family violence matters) go unresolved and can escalate.<sup>64</sup> This can include escalation into criminal charges,<sup>65</sup> further cementing the longstanding over-representation of Aboriginal people in both the criminal justice system and in the child protection system. The Commission found specifically that the nature and complexity of civil law needs in Aboriginal communities means that specialist legal services are required alongside mainstream services.

#### **4.1. Role of Aboriginal Community-Controlled Organisations**

Community controlled organisations are widely recognised as important and powerful mechanisms for servicing and empowering Aboriginal people and communities. An external evaluation of FVPLS Victoria’s early intervention prevention programs concluded that the most appropriate way of tackling the complexities of family violence “is through a response which acknowledges the experience of Aboriginal people and the trauma, grief and suffering associated with European invasion, settlement and 200+ years of imposed authority. Mainstream ‘solutions’ will not meet the needs of the Aboriginal community for a multitude of reasons...”<sup>66</sup>

The evidence supports a strong and ongoing demand for culturally safe legal services for Aboriginal victim/survivors of family violence, and most particularly Aboriginal women. It supports the need to combine community legal education, early intervention and prevention and awareness programs with frontline services to effectively identify and address the gaps in service delivery.

It is encouraging that State and Federal Governments acknowledge that Aboriginal Community Controlled Organisations are integral in ensuring Aboriginal access to justice systems and services. The Victorian Human Services Aboriginal Strategic Framework 2013-2015 acknowledges that “Aboriginal Community Controlled

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<sup>62</sup> Data compiled at 12 Sisters Day Out events with approximately 1,700 attendees in total.

<sup>63</sup> Melanie Schwartz, Fiona Allison and Chris Cunneen, *The Civil and Family Law Needs of Indigenous People in Victoria* (James Cook University 2013) 59.

<sup>64</sup> The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014*, 2014, p 671, <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014/key-indicators-2014-report.pdf>.

<sup>65</sup> Above n 63.

<sup>66</sup> Above n 13, 24.



Organisations are uniquely positioned to engage Aboriginal clients and connect them to a range of services and holistic responses.”<sup>67</sup> Victoria’s Commissioner for Aboriginal Children and Young People, Commissioner Andrew Jackomos, confirms this view, noting that a strengthened Aboriginal community-controlled service sector that is centred around the whole family, community and culture “will be an essential ingredient of any successful intervention to achieve improved outcomes for Aboriginal children and young people.”<sup>68</sup>

In relation to family violence in particular, respective Australian Human Rights Commission’s Social Justice Reports and the Productivity Commission’s Access to Justice Arrangements Draft Report detail specific barriers in the accessibility and appropriateness of legal processes for Aboriginal and Torres Strait Islander women.<sup>69</sup> This supplements strong and consistent evidence that many Aboriginal and Torres Strait Islander women don’t access mainstream domestic violence services<sup>70</sup> and that mainstream domestic violence services are unlikely to adequately understand Aboriginal and Torres Strait Islanders experiences of colonisation, marginalisation and entrenched disadvantage.<sup>71</sup>

An Indigenous Legal Needs Project found that FVPLS Victoria’s accessibility for Indigenous clients was viewed favourably in comparison with other similar, mainstream (non-Indigenous services) leading to the community viewing FVPLS as “more ‘open’ to contact by those in need”.<sup>72</sup>

#### **4.2. Limitations of Mainstream Services**

Aboriginal Victorians access mainstream services at significantly reduced levels when compared with non-Aboriginal Victorians and this is particularly so in the sensitive area of family violence. As noted in the 2013 AGD Review, “many Indigenous women do not access mainstream domestic violence services because they do not feel comfortable with the organisation itself and don’t feel that the staff understand their culture, values and needs.”<sup>73</sup> The Victorian Auditor-General further indicated Aboriginal peoples’ reluctance to access mainstream services, finding that despite targeted state government frameworks the gap in access to services for Aboriginal Victorians has not improved and in some instances it has widened.<sup>74</sup>

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<sup>67</sup> Department of Human Services (2013) *Human Services Aboriginal Strategic Framework, Strong families, strong communities: positive future: Improving the wellbeing of Aboriginal peoples by building on strength and resilience 2013–2015*, 48.

<sup>68</sup> Commission for Children and Young People, *Annual Report 2013-2014* <<http://www.ccp.vic.gov.au/downloads/annual-reports/ccyp-annual-report-2014.pdf>>, 37.

<sup>69</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, 2003, [https://www.humanrights.gov.au/sites/default/files/content/social\\_justice/sj\\_report/sjreport03/pdf/sjrep03\\_final.pdf](https://www.humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport03/pdf/sjrep03_final.pdf); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, 2006, available at: [https://www.humanrights.gov.au/sites/default/files/content/social\\_justice/sj\\_report/sjreport06/pdf/sjr\\_full.pdf](https://www.humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport06/pdf/sjr_full.pdf)

<sup>70</sup> Victorian Auditor-General *Victorian Auditor-General’s Report: Accessibility of Mainstream Services for Aboriginal Victorians* (2014); Commonwealth Attorney-General’s Department and the Nous Group (2013) *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, Commonwealth of Australia, 52. See also: Australian Human Rights Commission, ‘*Social Justice Report 2003*’ and ‘*Social Justice Report 2006*’

<sup>71</sup> Commonwealth Attorney-General’s Department and the Nous Group (2013) *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, Commonwealth of Australia, 52. See also: Australian Human Rights Commission, ‘*Social Justice Report 2003*’ and ‘*Social Justice Report 2006*’.

<sup>72</sup> *Ibid.*

<sup>73</sup> Commonwealth Attorney-General’s Department and the Nous Group (2013) *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, Commonwealth of Australia, 69.

<sup>74</sup> Victorian Auditor-General *Victorian Auditor-General’s Report: Accessibility of Mainstream Services for Aboriginal Victorians* (2014), 33.

Mainstream organisations can face significant difficulty in delivering and measuring culturally competent services to Aboriginal clients. While work undertaken by mainstream services to improve their accessibility to Aboriginal clients is welcome and important, care must be taken to avoid the risk of token or ineffective ‘add-on’ attempts to cater for Aboriginal clients. Cultural safety cannot be achieved by simply employing a handful of Aboriginal staff. Indeed, Aboriginal staff in large mainstream organisations can easily become over-burdened by expectations to single-handedly represent ‘Aboriginality’ within the organisation, service Aboriginal clients and continually educate non-Aboriginal colleagues about cultural matters.

In the context of legal services, mainstream legal services, whose practitioners do not routinely assist Aboriginal clients may face challenges given the breadth and complexity of issues facing Aboriginal clients and the need to keep abreast of relevant case law, legislation and changing personnel within appropriately skilled referral partners and Aboriginal-specific agencies.

Culturally appropriate service delivery by mainstream family violence and legal services necessitates ensuring that all Aboriginal clients are provided with the option of being represented by an Aboriginal legal service and facilitating referrals accordingly. While some Aboriginal people may prefer assistance from a mainstream service, despite the best intentions to improve mainstream services’ accessibility, many Aboriginal people will still want to be assisted by organisations established by and for their own community. In order to be effective, all efforts to address family violence and unmet legal need among Aboriginal people must be undertaken in consultation and partnership with Aboriginal Community Controlled Organisations, with the clear and overarching goal being to support and build the capacity of Aboriginal organisations and Aboriginal communities to devise and implement solutions to address the needs of our own people.

#### **4.3. Role of Other Aboriginal Legal Services**

Aboriginal and Torres Strait Islander Legal Services (VALS in Victoria) play a crucially important role in supporting access to justice for Aboriginal people, however the majority of their workload is criminal law.<sup>75</sup> This means ATSILS do not have the capacity to create the same kind of specialisation around supporting family violence as FVPLSs. Legal conflict of interest provisions often prevent VALS from representing victim/survivors of family violence as they may be assisting, or have previously represented, the perpetrator.<sup>76</sup> In addition, this can also influence community perceptions of VALS, as victims/survivors of family violence may not trust a service known for its role in criminal law.

FVPLSs were established some twenty years after ATSILS in recognition of the fact that ATSILS were not appropriate to represent the legal needs of all members of the Aboriginal community – namely, Aboriginal victims/survivors of family violence who are predominantly women.

Specifically, FVPLSs were established in recognition of:

- The high prevalence of family violence against Aboriginal people;

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<sup>75</sup> Productivity Commission, *Access to Justice Arrangements*, 2014, p 679 available at [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0020/145406/access-justice-volume2.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0020/145406/access-justice-volume2.pdf).

<sup>76</sup> NATSILS (Submission, November 2013), *Productivity Commission Inquiry into Access to Justice Arrangements* <[www.pc.gov.au/\\_data/assets/pdf\\_file/0011/.../sub078-access-justice.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0011/.../sub078-access-justice.pdf)>

- The gap in access to access to legal services for Aboriginal victims/survivors of family violence and sexual assault; and
- The high number of legal conflicts within ATSILS which resulted in victims/survivors frequently being turned away to access culturally inappropriate services.

Aboriginal women have been identified as the most legally disadvantaged group in Australia.<sup>77</sup> Aboriginal victims/survivors, predominantly women, are entitled to same access to culturally safe legal representation as those accused of crime.

Numerous inquiries and evaluations<sup>78</sup> have repeatedly confirmed that there is a continued justification and need for FVPLSs as holistic, family violence-specialist, Aboriginal legal services.

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<sup>77</sup> Aboriginal and Torres Strait Islander Commission (ATSIC), Submission to the Senate Legal and Constitutional References Committee, Parliament of Australia, *Inquiry into Legal Aid and Access to Justice*, 13 November 2003, 4.

<sup>78</sup> See: above n 73; *Access to Justice Arrangements Inquiry Report* (Productivity Commission, released 2014); *Review of the National Partnership Agreement on Legal Assistance Services* (Allen Consulting, report released 2014); *Review of the Family Violence Prevention Legal Service Program* (Allen Consulting, report released 2012).

## Funding Climate

As detailed above, the rates of family violence against Aboriginal people – especially women – are devastatingly high and escalating. Unfortunately, however, funding decisions and priorities have consistently failed to reflect this reality and demand for FVPLS Victoria’s services will soon outstrip our already limited resources.

As part of what was previously the National FVPLS Program, FVPLS Victoria receives its core funding from the Commonwealth Government under the Indigenous Advancement Strategy. Due to the limitations of this Commonwealth funding, FVPLS Victoria has also attracted supplementary funding from the State Government, Victoria Legal Aid and philanthropic sources. However, all of this funding is short-term and uncertain from year to year and FVPLS Victoria’s capacity to service the level and geographical breadth of need in Victoria is still sorely limited by insufficient funding.

There is a growing body of compelling evidence supporting increased and longer term funding for legal services addressing family violence, including FVPLS Victoria. Most notably such evidence includes:

- the final report of the Productivity Commission’s Inquiry into Access to Justice Arrangements which called for an immediate funding boost of \$200million for legal assistance services, including FVPLSs<sup>79</sup>;
- the Indigenous Legal Needs Report which recommended increased funding across the legal sector to address the family and civil law needs of Aboriginal Victorians;<sup>80</sup> and
- the interim report of the Senate Inquiry into Domestic Violence which supported the Productivity Commission’s recommended \$200million funding boost as well as recommending the restoration of funding cuts to legal services and noting the importance of adequate funding for policy and law reform work by legal centres.<sup>81</sup>

In addition, the Productivity Commission acknowledged the need to build trust between Indigenous communities and legal assistance providers, an objective warranting longer-term models of engagement.

### 1. Commonwealth Funding and the Indigenous Advancement Strategy

FVPLS Victoria was established in 2002 as part of the National FVPLS Program. The National FVPLS Program is one of Australia’s four legal assistance service programs, alongside legal aid commissions, community legal services and Aboriginal and Torres Strait Islander Legal Services (‘ATSILS’ - who primarily service criminal defendants including perpetrators of family violence.<sup>82</sup>) The National FVPLS Program comprises 14 organisations around Australia.

The National FVPLS Program was funded by the Commonwealth Attorney-General’s department until 2013 when a decision was made to shift responsibility to the Prime

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<sup>79</sup> Productivity Commission 2014, *Access to Justice Arrangements: Overview, Inquiry Report No. 72*, Canberra, p 30, available at: <http://www.pc.gov.au/inquiries/completed/access-justice/report>

<sup>80</sup> Above n 63, 15.

<sup>81</sup> Senate Finance and Public Administration Committees, 2015, *Domestic Violence in Australia: Interim Report*, p vii and p 11.

<sup>82</sup> See the section on ‘Role of Other Aboriginal Legal Services’ at page 26 above.

Minister and Cabinet portfolio. At the time, no rationale was provided for this shift and the three other legal service providers remained under the Attorney-General's portfolio.

In 2014, as a result of this departmental shift, FVPLS Victoria (along with all FVPLS services across Australia) became subject to the Commonwealth *Indigenous Advancement Strategy* ('IAS') rendering our core funding and ongoing sustainability uncertain. The IAS was intended to 'rationalise' 150 Aboriginal programs (including the National FVPLS Program) into five high level program streams and cut \$534.4 million from Indigenous Affairs over five years.

Consequently, FVPLS Victoria was forced to compete in an open, competitive tender process to attempt to obtain funding to continue providing our services under the IAS' program areas. The IAS' 'Safety and Wellbeing' program contained no separate allocation for family violence nor a specific allocation for services to support victims/survivors. This meant that services for victims/survivors of family violence were forced to compete for limited funding against perpetrator programs, and programs targeting children were forced to compete with programs targeting women. The tender was open to both Aboriginal and mainstream organisations, as well as State and Territory governments. Community based, not-for-profit Aboriginal organisations were forced into direct competition against large mainstream providers including national, for-profit corporations.

Further detail on the IAS tender process and its adverse impacts are outlined in the submission to the Senate Inquiry into Indigenous Advancement Strategy tender processes made by the National FVPLS Program and endorsed by FVPLS Victoria.<sup>83</sup>

In March 2015, the Department of Prime Minister and Cabinet advised that it would renew FVPLS Victoria's core, organisational funding for three years at 2013-14 levels. While recurrent funding is a welcome and much-needed result, it leaves significant gaps:

- Of greatest concern, FVPLS Victoria will see no increase in funding levels nor CPI indexation from 2013 through to 2018.

This is despite increasing rates of reported family violence, escalating demand and the evidence indicating a need for significantly increased funding as outlined in further detail below.

This means FVPLS Victoria has no capacity to expand service provision to identified additional geographic areas of unmet need. For example, FVPLS Victoria has never been resourced to have an office in Shepparton or to service Echuca, Bendigo or Swan Hill, despite significant Aboriginal populations and family violence rates in those regions.<sup>84</sup> In addition, of the areas that FVPLS Victoria services Geelong had the greatest increase (360%) in family violence incidents reported to police during 2007-8 to 2013-14,<sup>85</sup> however FVPLS Victoria currently only has capacity to send a lawyer to conduct outreach in Geelong approximately once per fortnight.

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<sup>83</sup> Available at: <http://www.nationalfvpls.org/Submissions-and-Media.php>

<sup>84</sup> See Annual Victoria Police data and regional profiles compiled by the Koori Justice Unit, Victorian Department of Justice. FVPLS Victoria can provide further detail on request.

<sup>85</sup> Above n 19.

As we were encouraged to view the IAS as an opportunity for expansion, FVPLS Victoria applied for additional funding to service these long-identified areas of high need but no additional funding was provided.

- Our IAS grant did not extend to cover the vast majority of, or staffing for, our highly successful early intervention prevention and community legal education programs. At the time of writing, FVPLS Victoria has zero funding confirmed to maintain staffing for these programs after 30 June 2015.
- We received no funding for our policy and law reform activities despite the significant benefits this function provides in delivering advice to government, participating in research and consultation and identifying opportunities to strengthen and improve law and justice outcomes for Aboriginal victims/survivors of family violence and Aboriginal women within the family law and child protection system. At the time of writing, FVPLS Victoria has zero funding confirmed to undertake policy work after 30 June 2015.
- The National FVPLS Program was effectively defunded under the IAS and now has no direct funding allocation. This means that there is no transparency or guarantee of funding for the program, or national recognition of the value of this model into the future; and
- FVPLS Victoria will remain vulnerable to the vagaries of competitive tendering at the conclusion of our current funding contract.

The IAS funding decision runs counter to a compelling and growing body of evidence pointing to the need to increase funding for legal services such as FVPLS Victoria (as outlined at page 28 above).

## 2. State Funding

Due to restrictions imposed by Commonwealth funding which limited service delivery to rural and regional areas, FVPLS Victoria successfully attained supplementary funding from the Victorian government to provide services in metropolitan Melbourne. Currently the Victorian government directly funds one child protection lawyer and one family violence lawyer. The Victorian government also contributes through the National Partnership Agreement on Homelessness to the employment of two paralegal support workers.

Alongside funding secured by Victoria Legal Aid for the employment of two additional lawyers and one paralegal support worker, these positions service all of metropolitan Melbourne. Our single child protection lawyer attempts to cover the entire metropolitan region and experienced a 66% increase in her caseload in the twelve months between 2013 and 2014. Our two city-based family violence lawyers attempt to cover every metropolitan Magistrates Court and service clients across all of metropolitan Melbourne – for example they do outreach from Melton to Ringwood and from Broadmeadows to Pakenham. As stated earlier, reporting rates for Aboriginal family violence in Victoria have tripled in recent years and are only anticipated to

continue to increase as a result of the attention generated by this Royal Commission. FVPLS Victoria requires a significantly increased investment to meet the levels of demand for our legal services across Victoria.

To date, with only ad hoc State Government contributions, Victoria has received significant benefits from FVPLS Victoria's highly successful early intervention and prevention programs and our policy and advocacy work (which includes advice and consultations to the government and a wide array of networks in Victoria). FVPLS Victoria's early intervention prevention programs and our policy and advocacy activities have previously been funded either by the Commonwealth or by philanthropy. This work provides a direct social and economic return to governments at the state and local level and it must be acknowledged as a responsibility of all governments, including at the State level. As discussed in section three on 'Current Funding Gaps for FVPLS Victoria' below, FVPLS Victoria currently has no funding to continue this work beyond 30 June 2015.

### **3. Current Funding Gaps for FVPLS Victoria**

At the time of writing, FVPLS Victoria has a number of urgent gaps and without additional funding will be forced to cease or seriously scale back programming come 1 July 2015. These gaps relate to:

#### **3.1. Lack of Ongoing Funding for Policy, Advocacy and Law Reform Work**

FVPLS Victoria has not been able to secure funding for this vital work to continue beyond 30 June 2015. This will severely limit our ability to share advice and findings informed by our grass-roots, frontline and specialist work with Aboriginal communities and drive systemic change to improve law and justice outcomes for Aboriginal victims/survivors of family violence and sexual assault.

FVPLSs have never received government funding for the policy, advocacy and law reform work we do yet without this crucial function governments would be unable to harness the skills, experience and expertise of FVPLS services to their work. When we participate in inquiries such as this one, our advice is informed by our unique expertise and experience gained from delivering front-line services which are responsiveness to emerging community needs. As FVPLS Victoria is under Aboriginal Community Control, our policy, advocacy and law reform work is founded on the expertise and aspirations of Aboriginal and Torres Strait Islander people. Our governance structures and culturally safe practices support the fundamental principle of self-determination and evidence-based best practice for delivery of effective services.

See pages 40 to 43, and 65 to 67, below for detail of our policy, advocacy and law reform and its value.

#### **3.2. Lack of Ongoing Funding to staff our Early Intervention Prevention and Community Legal Education programs**

FVPLS Victoria has not been able to secure funding to staff these critical programs beyond 30 June 2015. Aboriginal women have long been recognised as one of the most legally disadvantaged groups in Australia. Without resources to continue to deliver our EIP programs, this disadvantage will be compounded and our women and children will

continue to be the most affected by family violence. With appropriate funding, our CLE and EIP programs could continue to result in hundreds of Aboriginal victims/survivors having access to vital information and gaining the confidence to seek assistance to ensure their safety.

See pages 34 to 41 below for further detail about our Early Intervention Prevention and Community Legal Education programs and our recommendations in this area.

### **3.2. *Lack of Sufficient Funding to Service Unmet and Increasing Demand Across Victoria***

As outlined at pages 13 to 14 and 32 above, due to limited funding, there are a number of areas in Victoria where Aboriginal victims/survivors have no access to an Aboriginal family violence legal service despite high rates reported family violence against Aboriginal people (such as Shepparton, Echuca, Bendigo and Swan Hill). As outlined above, this puts Aboriginal victims/survivors at heightened risk given the many and complex barriers to reporting and the reluctance of many Aboriginal victims/survivors to access mainstream legal and support services.

In addition, increasing demand is likely to out-strip our limited resources in the areas we already service. As outlined above, family violence hospitalisation and reporting rates are escalating with reports to police of family violence against Aboriginal victims/survivors in Victoria having tripled in less than a decade. The Royal Commission into Family Violence is also increasing public attention on family violence which will only drive a further increase in people seeking support. We also anticipate that this Royal Commission's increased attention on family violence will drive up child protection notifications in Aboriginal families - further increasing demand for our culturally safe and specialist legal advice and representation.

It is essential that the community expectations generated by the Royal Commission are responded to with appropriate resourcing especially for specialist services like FVPLS Victoria which assist Aboriginal women and children who we know are statistically far more at risk.

FVPLS Victoria needs further resourcing to employ additional lawyers and paralegal support workers to manage this increased demand and ensure access to justice and culturally safe and accessible support for Aboriginal victims/survivors – especially women – as those most at risk of family violence.

FVPLS Victoria supports the National FVPLS Forum's continued calls on all levels of Government to make secure long-term commitments to frontline family violence services for Aboriginal and Torres Strait Islander victims/survivors, including increased investment and reinstatement of the FVPLS Program.

In Victoria, a much higher investment of resources is required to enable Aboriginal victim/survivors of family violence to have appropriate access to justice, including legal advice and representation that recognises and addresses their unique circumstances and needs. Relevantly, the final report of the Productivity Commission's Inquiry into Access to Justice Arrangements, released in 2014, found that there was a significant need for increased resourcing for legal assistance services including FVPLSs and called for an immediate funding boost of \$200million.



**Recommendations:**

1. Longer-term (5 yearly), increased funding from both Federal and State governments to enable FVPLS Victoria to:
  - (d) meet demand for our specialist, culturally safe, frontline legal assistance services, including through expansion to state-wide coverage;
  - (e) continue and expand our highly successful, culturally targeted early intervention prevention programs and community legal education programs; and
  - (f) continue to provide high level policy advice and undertake advocacy and law reform activities to strengthen law and justice outcomes for Aboriginal victims/survivors of family violence.
2. Reinstatement of the National Family Violence Prevention Legal Services as a national, standalone program provided with a transparent commitment through treasury and budget processes to secure a direct allocation of resources.
3. Increased State government responsibility for ensuring Aboriginal victims/survivors of family violence have access to culturally safe and specialist family violence legal services across Victoria, including metropolitan, regional and rural areas.
4. Joint implementation by State and Federal Government of the recommendation by the Productivity Commission and the Interim Report on Domestic Violence that an additional \$200 million be immediately provided to the legal assistance sector to address unmet legal need in the community, including through FVPLS Victoria.<sup>86</sup>

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<sup>86</sup> Productivity Commission, *Access to Justice Arrangements* (2014) 738-39.

## Prevention and Early Intervention (ToR 1 and 2)

Prevention and early intervention are core part of FVPLS Victoria's suite of services. As a state-wide, specialist Aboriginal service and the only legal service in Victoria exclusively dedicated to assisting Aboriginal victims/survivors of family violence, we play a key role in this area. FVPLS Victoria recognizes that a combination of preventative education, community engagement and legal assistance (as both early intervention and response) are all crucial parts of the continuum of services required to address and reduce family violence against Aboriginal people – especially women and children.

FVPLS Victoria recognizes that victims/survivors of family violence are typically socially isolated, afraid to approach anyone for help and/or experiencing other traumatic impacts of their experience. They may have been threatened with further violence, the removal of their children or the wellbeing of their relative if they speak out. This reality is compounded for Aboriginal victims/survivors who already face a vast array of barriers to speaking out and seeking assistance for family violence as discussed at page 23 to 26 above. Accordingly, it is the responsibility of services with a mandate of assisting Aboriginal victims/survivors to be proactive in our efforts to engage, providing information and every opportunity for women and children to build trust and come back to us for assistance.

FVPLS Victoria has a program of early intervention/prevention activities that includes:

- The 'Sisters Day Out' program;
- The 'DillyBag' and 'DillyBag: The Journey' programs; and
- A community legal education program.

In addition, FVPLS Victoria's frontline legal service and policy and advocacy unit also contribute to effective early intervention for Aboriginal victims/survivors.

Since 2007, FVPLS Victoria's community legal education, early intervention and prevention activities have been attended by over 7,000 community participants. In 2013-14 we have delivered these services to over 2700 people, including Aboriginal victims/survivors of family violence, Aboriginal family and community members, and government representatives and services providers. FVPLS Victoria anticipates holding our 100<sup>th</sup> Sisters Day Out later this year or in early 2016.

FVPLS Victoria's Early Intervention and Prevention (EIP) programs aim to reduce vulnerability to family violence by achieving the following outcomes:

- improved family violence identification and prevention capacity;
- improved knowledge and understanding of family violence related laws and justice processes;
- increased access to support services and/or legal services, including mainstream services;
- reduced isolation and improved community networks;
- enhanced self-esteem;
- enhanced decision making capacity;
- enhanced connections to culture;
- improved health and well-being;
- demonstrated family violence leadership capacity; and

- empowered and with a renewed strength to address life stressors for self, family and community.

Importantly, our workshops acknowledge Aboriginal women as community leaders, providing the support necessary to focus the community's attention on this critical issue.

## 1. Sisters Day Out, DillyBag and DillyBag: The Journey

### 1.1. Sisters Day Out

Sisters Day Out prevents family violence through addressing root causes of Aboriginal women's vulnerability to violence and victimisation, such as social isolation, barriers to accessing services, lack of knowledge about legal rights and mistrust and reluctance to engage with the legal and mainstream support system.

Sisters Day Out is a one-day workshop which builds resilience and self esteem among Aboriginal women and breaks down barriers to reporting violence. Sisters Day Out provides a culturally welcoming and safe space for Aboriginal women to gain some respite from life stressors, obtain information and connect with services in a celebratory and non-confronting atmosphere.

These outcomes are pursued through a workshop format that combines a range of relaxation, pampering, and well-being activities that take place with an emphasis on self-care. Included in the day is an information session presented by FVPLS Victoria staff and a solicitor. An FVPLS Victoria lawyer is available on the day to provide confidential one-on-one advice to women with family violence related legal problems. A counsellor is also available for participants requiring a personal conversation about their circumstances.

FVPLS Victoria invites a range of community agencies and service providers to attend the workshop and their presence allows agencies and participants to informally interact and share information relating to family violence.

Victorian organisations who have previously been invited to *Sisters Day Out* events include family violence support services, health services, parenting support services, community legal services, Medicare, Centrelink, the Ombudsman's office, Aboriginal Corporations, housing services, relationships services, Indigenous studies support services, Quit Victoria, Victorian Aboriginal child care services, gamblers support services, and women's support services.

FVPLS Victoria also utilises the workshop as an opportunity to consult with Koori women in the community about their family violence related legal needs which informs our service delivery and advocacy towards improving outcomes for Aboriginal victims/survivors of family violence.

A short DVD about the Sisters Day Out workshop is available at <http://www.fvpls.org/AboutSDO.php>. This DVD was taken at our Collingwood Sisters Day Out workshop in 2010 which was attended by 227 Aboriginal women.

FVPLS Victoria is currently planning our 100<sup>th</sup> Sisters Day Out which, subject to attaining sufficient funding, will take place later this year or in early 2016.

## **1.2. Dilly Bag and Dilly Bag: The Journey**

The *Dilly Bag* programs are intimate, intensive workshops for up to 20 Aboriginal women. These workshops prevent and reduce family violence by drawing on Aboriginal culture and Aboriginal women's traditional role as nurturers and leaders. The workshop format and activities emphasise self-nurturing and healing from trauma, promote cultural identification, and assist women to strengthen their resolve and resilience.

*Dilly Bag* was developed in response to an identified gap in therapeutic programs that provide culturally-based healing for Aboriginal women where the program has been developed and delivered for and by Aboriginal women. The *Dilly Bag* program not only aims to help Aboriginal women to recover from trauma they have experienced in their lives, but also aims to provide a foundation for women to reach their life potential and to consider future life choices.

The format of the project includes:

- A balance of intensive personal development activities combined with relaxing activities that promote well-being and self-esteem (such as self-defence classes or yoga);
- The opportunity for participants to work as a group, using a yarnning circle, to reflect on their personal experiences, and explore their strengths and potential for instigating meaningful life changes;
- The opportunity to develop strong supportive relationships with other participants.

*Dilly Bag* is a one day program and *Dilly Bag: The Journey* is an extended, program where participants stay together over three days at a private, tranquil and culturally appropriate location. This strengthens outcomes and opportunities for activities that allow participants to form strong bonds, intensify healing and obtain respite from their daily life stressors.

The program seeks to positively impact on the community by supporting women to undertake a leadership role in speaking out about the issues facing their communities, particularly family violence. The project also seeks to strengthen women's networks by building knowledge and connections between young Koori women and Elders, and developing a strong local community focus.

A follow up lunch is provided to participants approximately one month following the workshop. This lunch provides an opportunity for participants to revisit their learnings and discuss how they have applied this knowledge to their lives and in their communities.

## **1.3. Evaluation and Outcomes**

In 2014, FVPLS Victoria obtained an external evaluation of our early intervention prevention programs including Sisters Day Out, *Dilly Bag* and *DillyBag: The Journey*. This evaluation determined that our programs have significant beneficial impacts on participant's immediate wellbeing and access to services, and important impacts over

the medium and long term.<sup>87</sup> The evaluation concluded that “participants feel motivated and empowered to make real and significant changes to their lives.”<sup>88</sup>

Overall, the evaluation found that FVPLS Victoria’s Sisters Day Out, Dillybag and Dillybag: The Journey programs successfully achieved a range of outcomes including:

- enhanced participant’s self-esteem and well-being;
- strengthened friendships/relationships/connections within the community and increased community networks;
- strengthened individual participant’s resilience and the community’s ability to address family violence;
- increased participant’s knowledge and understanding of family violence; and
- increased participant’s awareness of support and legal services, both Aboriginal specific and mainstream.”<sup>89</sup>

There was also evidence of significant changes to participants’ lifestyles post-attendance including changes to living arrangements, matters relating to custody of children, access to legal services, and personal care.<sup>90</sup>

These impacts contribute to family violence prevention and reduction for individuals, their children, families and communities. Given the strong outcomes and success of these unique, culturally safe programs and their best practice models, it is deeply concerning that Commonwealth funding to staff them has been lost and FVPLS Victoria has been unable to secure alternate funding to date as outlined in the ‘Funding Climate’ chapter of this submission at pages 28 to 33 above.

## 2. Community Legal Education

FVPLS Victoria currently has a team of three staff who design and deliver a community legal education program in response to arising community need. (This workload is in addition to facilitating the Sisters Day Out and DillyBag programs.) Our community legal education activities are designed to enhance Aboriginal victims/survivors’ understanding of their legal rights and access to legal avenues and support services, thereby building resilience and reducing vulnerability to victimization among the Aboriginal community, particularly women and children. In addition, our community legal education activities increase community and sector awareness of the impacts and prevalence of family violence in Aboriginal communities and contribute to reinforcing social and cultural norms of non-violence and respect.

The community legal education activities undertaken by FVPLS Victoria includes:

- Delivering workshops and community information sessions for Aboriginal communities about family violence, its impacts and legal options available such including intervention order processes;
- Designing and delivering community forums on emerging issues of priority such as child protection, victims of crime compensation or accessing the Royal Commission into Institutional Responses to Child Sexual Abuse;
- Publishing and disseminating culturally safe information for the community about legal avenues and support services;

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<sup>87</sup> Above n 13, 12.

<sup>88</sup> Ibid, 24.

<sup>89</sup> Ibid, 11.

<sup>90</sup> Ibid, 12.

- Devising and implementing campaigns and awareness-raising initiatives such as 2015's Ochre Ribbon Campaign designed to raise awareness of the disproportionate impacts of family violence on Aboriginal women, children and men and unite community, government, services in the fight to end family violence in Aboriginal communities;
- Informing decision-making about new areas of legal need, new stakeholder and sector partnerships, and new outreach models and locations; and
- Participate in relevant networks and advisory groups in the region in order to raise awareness of the issues faced by Aboriginal victims/survivors and strengthen referral pathways.

These activities are crucial elements of family violence prevention and early intervention as they not only promote access to information, justice and support services, but also build trust and relationships between FVPLS Victoria and the communities we service. As outlined in section 13 to 27 above, a sustained commitment to being present in the community and building trust is fundamental in combating the many barriers and fears faced by Aboriginal victims/survivors of family violence. This necessitates having a regular presence in community including through schools, community groups, community events, and in remote communities. Community education about family violence and sexual assault in culturally safe women's gatherings such as the Sister's Day Out program are key to accessing women who might not otherwise seek legal assistance.

Sadly, however, successive funding decisions have failed to recognise the importance of resourcing this work. As at the time of writing, FVPLS Victoria currently has zero confirmed funding post July 2015 to continue to staff the early intervention, prevention and community legal education activities outlined above. Without this work, many Aboriginal victims/survivors in need will not engage with our services and our capacity to provide potentially life-saving access to safety and justice will be significantly compromised.

### **3. Legal Assistance as Early Intervention**

FVPLS Victoria's holistic legal services empower Aboriginal victims/survivors (mostly women) by providing proactive, culturally safe legal advice to assist women to make choices that will protect their safety and resolve legal problems before they escalate. In addition, interaction with our lawyers and paralegal support workers typically identifies a range of other legal or social issues which can be addressed and which might otherwise have gone ignored increasing the risk factors for escalating frequency and severity of violence and other poor outcomes. For example, a client may come to us for assistance to obtain a family violence intervention order and, through discussion and appropriate questioning, our lawyers and paralegal support workers will identify that the client is also at risk of homelessness, child removal or criminal sanctions due to fines and infringements. Or we may identify that the client requires family law advice and assistance to negotiate safe parenting arrangements that will reduce the risk of conflict and violence with an ex-partner or that the client has an entitlement to victims of crime compensation that could secure them vital counselling, security adjustments to their home or other items to promote safety, healing and resilience to re-victimisation.

Our model of having paralegal support workers assigned to each client further strengthens the capacity of legal assistance to operate as a mode of early intervention.

Our paralegal support workers, many of whom are Aboriginal, can provide additional emotional and practical support to clients. This relationship build trust and means our clients are more likely to disclose their full circumstances, obtain maximum benefit from legal assistance and benefit from opportunities for safety planning, case management and referral to a suite of supports to address the complex social issues giving rise to the clients' vulnerability to ongoing violence and equipping the client with a network of supports needed to live safely, build resilience and heal from the trauma of violence. Those supports can include: housing and refuge services, counseling, drug and alcohol support workers, medical services, respite and parenting services.

#### **Case Study – Jayde<sup>91</sup>**

Jayde is a 24 year old mother of five. Jayde grew up in residential care, became addicted to ice and alcohol as a teenager and first fell pregnant at 16. She has had significant periods of homelessness. Jayde's two youngest children live with their father by agreement. Jayde's eldest three children - who have a different father - were removed by the Department of Health and Human Services (DHHS).

Jayde contacted FVPLS Victoria on referral from the DHHS who had observed Jayde's boyfriend damage her car and be highly aggressive towards Jayde during child access visits.

Due to past negative experiences, Jayde was extremely mistrustful of police, courts, lawyers and the DHHS.

Our PLSW formed a strong rapport with Jayde and helped her to trust, work with and open up to our lawyer. As a result of this relationship, Jayde disclosed a long history of serious violence by her boyfriend who had subjected her to frequent physical and emotional violence and financial abuse. Jayde confided that she had attempted to leave her boyfriend several times but had ultimately returned to him as she had nowhere else to live.

Our PLSW supported Jayde to make a statement to police and linked her in with our FVPLS Victoria lawyer who obtained a family violence intervention order for her protection. In addition, our PLSW supported Jayde to move to a women's refuge and assisted our lawyer to obtain financial assistance through the Victims' of Crime Assistance Tribunal to pay for storage of Jayde's property while she was in refuge awaiting new safe and secure housing. To assist Jayde over the longer term, our PLSW also referred Jayde to a culturally competent psychologist and alcohol and drug worker to support her recovery and ongoing healing from violence.

Without our PLSW's support, Jayde may not have found the courage to disclose her experience of violence and abuse or safely leave her relationship without facing homelessness. In addition, without a skilled and experienced PLSW, Jayde may not have been willing to trust her lawyer to achieve the positive housing and safety outcomes obtained.

Court support is also a key issue. The availability of a dedicated court support person (other than the legal representatives) for legal proceedings is extremely important. Due to issues of confidentiality and trust this role is best filled by a person attached to the legal service, if possible. Paralegal workers attached to legal services are in a unique position to provide intensive court support for clients of the service.

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<sup>91</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety, privacy and confidentiality of our clients.

In the case of child protection and the removal of Aboriginal children, FVPLS Victoria believes early referral to specialist, culturally safe legal assistance is fundamental. Sadly, however, too many Aboriginal people in Victoria do not recognise child protection intervention as a legal issue until it is too late. Indeed, FVPLS Victoria routinely hears of clients being advised by Child Protection workers and other support workers that they do not need legal advice.

FVPLS Victoria reiterates the recommendation made in our submissions to the Family Law Council reference on Families With Complex Needs that Victoria should implement a mandated and enforceable process for ensuring that FVPLS Victoria is immediately notified when an Aboriginal client comes into contact with child protection authorities and that client is also immediately advised of the need to obtain independent legal advice at the earliest opportunity. Such a process would mirror the custody notification system which currently exists in the criminal law jurisdiction in Victoria and forms part of the response to the issue of Aboriginal deaths in custody and over-incarceration. Given the high and escalating rates of child removal among Victorian Aboriginal families, we believe such a response is justified. Such a requirement, along with appropriate resourcing of FVPLSs to respond to demand, would be an important step in reducing the devastatingly high rates of child protection and child removal in Aboriginal families.

See the section on child protection responses at page 53 to 57 below for further detail and recommendations concerning the needs of Aboriginal victims/survivors of family violence in the child protection space.

## **5. Policy, Advocacy and Law Reform as Early Intervention/Prevention**

FVPLS Victoria believes that well-resourced policy, advocacy and law reform work undertaken by community legal centres and Aboriginal organisations – including culturally safe, family violence specialists such as FVPLS Victoria – are crucial in supporting the development and implementation of effective early intervention and prevention for Aboriginal victims/survivors of family violence. This work has the potential to deliver powerful outcomes that improve the way the community, the legal system and authorities respond to and address family violence and sexual assault. It can prevent and reduce family violence through reforming laws, policies and practices that deter victims/survivors from seeking assistance and through promoting public attention on systemic issues.

At FVPLS Victoria, our policy, advocacy and law reform work includes:

- Ensuring the needs and perspectives of Aboriginal victims/survivors are incorporated into public policy through preparing submissions to inquiries, conference presentations and undertaking media and stakeholder engagement;
- Identifying and advocating for systemic change, strategic law reform and innovation to address the needs of Aboriginal victims/survivors – predominantly women and children;
- Developing targeted research evidence to inform service development, knowledge dissemination and enhanced responses across the sector;



- Analysing and monitoring outcomes within key areas of the legal system for Aboriginal victims/survivors, such as family violence, child protection, family law, victims assistance and police responses;
- Participating in strategic engagement, advocacy and the development of training to advance integrated service delivery and collaborative law and policy development;
- Assisting to identify ways that access to culturally appropriate legal and associated services can be improved for Aboriginal victims/survivors of family violence and sexual assault in Victoria (particularly women and children); and
- Representing the needs and views of Aboriginal victims/survivors in a range of consultations, networks and advisory groups across the legal, domestic violence and Aboriginal sector.

On-the-ground experience and community feedback informs this work.

FVPLS Victoria has never received government funding for the policy function we perform despite the significant benefits our work provides to governments at both State and Federal levels.

To date, this work has been undertaken exclusively with funding from philanthropic sources. All existing funding for our policy and advocacy work expires on 30 June 2015 and FVPLS currently has zero confirmed funding to continue this important work into the future.

Without a policy officer, our ability to participate in the Royal Commission into Family Violence will be significantly impaired. This will have a direct negative impact on the Commission's capacity to hear from and address the needs of Aboriginal victims/survivors of family violence.

### ***Recommendations:***

1. Long-term, secure investment by government at all levels in specialist Aboriginal organisations, such as FVPLS Victoria, to undertake culturally safe early intervention and prevention programs targeting Aboriginal women and children as those most at risk of family violence.
2. Recognition of holistic legal assistance and policy and advocacy work as a form of early intervention/prevention for Aboriginal family violence victims/survivors.
3. New early intervention and prevention initiatives designed to address family violence in Aboriginal communities must be led by and/or developed in ongoing consultation with Aboriginal Community Controlled Organisations with appropriate expertise.
4. Greater dedicated emphasis on law and justice policy development for Aboriginal and Torres Strait Islander women and children in Victoria.

5. Increased investment in housing and homelessness services for Aboriginal victims/survivors of family violence and implementation of strategies to improve housing affordability more generally.
6. Investment in culturally safe and targeted strategies to reduce family violence-driven child protection intervention in Aboriginal families including:
  - a. Increased investment in community legal education activities conducted by FVPLS Victoria, and other specialist services, to increase the Aboriginal communities' awareness of their legal right sand understanding of the child protection system;
  - b. Implementation and concomitant resourcing of the recommendations made by *Taskforce 1000*;
  - c. Strengthened cultural awareness and family violence sensitisation training for child protection workers developed in partnership and consultation with the Aboriginal community and specialist, Aboriginal organisations with expertise in child protection and family violence including FVPLS Victoria; and
  - d. Implementation of a Child Protection Notification Referral System for Aboriginal families which ensures that upon a child protection notification being received for an Aboriginal family the primary parent is immediately referred to FVPLS Victoria (or another appropriate legal assistance provider where required) and informed of the importance of obtaining independent legal advice at the earliest opportunity – such a system should be developed in consultation with FVPLS Victoria and other Aboriginal Community-Controlled organisations.

## Support For Victims/Survivors (Term of Reference 1(c))

### 1. Culturally Targeted Support led by Aboriginal Community-Controlled Organisations with Family Violence Expertise

FVPLS Victoria maintains that Aboriginal victims/survivors of family violence require dedicated, appropriately resourced and culturally safe supports led by Aboriginal community-controlled organisations with appropriate expertise. This is fundamental for ensuring that supports are accessible and effective for Aboriginal victims/survivors who face multiple, complex barriers to reporting violence and accessing support, and who are often reluctant to access mainstream services. For further detail we refer to the section 'About Family Violence in Aboriginal Communities' at pages 13 to 27 above, and to the section on Responses at page 46 to 63 below.

Despite growing evidence of the need for increased resourcing for culturally safe and specialist services for Aboriginal victims/survivors (especially legal assistance services) funding for services such as FVPLS Victoria has become increasingly insecure. Indeed, in the Productivity Commission's *Inquiry into Access to Justice Arrangements*, it was found that aggregated across both ATSILS and FVPLSs, real funding per person declined by approximately 20 per cent between 2000-01 and 2010-11.<sup>92</sup> For further detail on the current funding climate and serious funding shortage currently experienced by FVPLS Victoria, readers are referred to the chapter on ' and the section on 'Funding Climate' at pages 28 to 33 above.

In addition, we note that specific therapeutic and other supports must be available to assist children who have experienced family violence and abuse. We note that widely accepted best practice in this regard necessitates work to support the non-violent parent and build their capacity to enhance and promote their child's safety. This is particularly crucial given new evidence of the strong correlation between family violence, child protection intervention and child removal in Aboriginal communities. See the section on Family Violence and Child Protection at page 15 to 18 above.

### 2. Urban Service Delivery

Successive Commonwealth policies have prioritised funding for rural and remote Aboriginal populations to the detriment of Aboriginal people living in regional and urban environments. This policy approach stems from a misapprehension that need is solely concentrated in rural and remote locations. Remote Aboriginal communities undoubtedly experience high levels of isolation, family violence and service need, however approximately two thirds of Australia's Aboriginal population live in regional and urban environments and around one third live in major cities<sup>93</sup> and their needs must also be addressed. In Victoria, approximately 48% of the Aboriginal a community lives in metropolitan Melbourne.<sup>94</sup>

*"While it is perhaps easier politically to gather support from the broader Australian community for dealing with problems in Aboriginal communities where the population looks more like "real" Aborigines – the*

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<sup>92</sup> Above n 8, 700 and 801.

<sup>93</sup> Nicholas Biddle 'Indigenous Gaps in the City' (2009) 7.14 *Indigenous Law Bulletin*, 16.

<sup>94</sup>

*ones who look and live the way that many Australians think “authentic” Aboriginal people should look and live, it is irresponsible – and in the end, bad policy – to ignore the other 76% of the Aboriginal community.”<sup>95</sup>*

Aboriginal victims/survivors of family violence, predominantly women, experience social isolation and barriers to accessing services that have little to do with geography. Aboriginal disadvantage “does not start and stop at remote Australia [which] is especially true when comparisons are made with the urban non-Indigenous population.”<sup>96</sup> A policy of limiting services to rural and regional areas leads to urban Aboriginal people being “in effect abandoned to mainstream services, without adequately addressing issues of access, flexibility and relevance.”<sup>97</sup>

For further detail on barriers faced by Aboriginal victims/survivors in urban communities, see pages 23 to 26 above.

Since 2006-7, Victoria has supplemented FVPLS Victoria’s Commonwealth funding (tied exclusively to regional and remote service delivery<sup>98</sup>) to enable us to provide services in metropolitan Melbourne and to some regional areas of high need that were not funded by the Commonwealth. This State Government resourcing is welcome and critical funding however increasing demand will soon outstrip our resources. For example, in the 2013-14 financial year, FVPLS Victoria’s child protection caseload increased by 66% and we currently have only one child protection lawyer to service all of metropolitan Melbourne. We also have only two family violence lawyers to service all Magistrates Courts across metropolitan Melbourne and, as noted above, reported rates of family violence against Aboriginal people in Victoria have tripled in recent years increasing demand for our culturally safe and specialist services.

A significantly greater investment is required from both State and Commonwealth governments to appropriately resource culturally safe supports, including Aboriginal family violence legal services, for Aboriginal victims/survivors across Victoria. Aboriginal victims/survivors of family violence living in all geographic areas are entitled to equal access to culturally safe services, access to justice and the right to live in safety. It must be accepted that this is a responsibility of governments at all levels, including the Victorian state government.

### **Recommendations**

1. Funding policies and priorities of both State and Commonwealth Governments acknowledge that disadvantage experienced by Aboriginal victims/survivors of family violence is not limited to rural and remote Australia, and strategies and resources must be dedicated to culturally safe

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<sup>95</sup> Larissa Behrendt, ‘The Urban Aboriginal Landscape’ in Kay Anderson, Reena Dobson, Fiona Allon, and Brett Neilson (eds), *After Sprawl: Post-Suburban Sydney. E-Proceedings of Post-Suburban Sydney: The City in Transformation Conference* (University of Western Sydney, 2006).

<sup>96</sup> Above n 93, 16.

<sup>97</sup> Ibid.

<sup>98</sup> Recent changes to Commonwealth funding agreements pursuant to the Indigenous Advancement Strategy have relaxed the restrictive, government designation of service areas. However, FVPLS Victoria has been provided with no increase in funding to service additional areas which in effect means that we are still restricted to the same limited geographical service regions – or alternatively forced to abandon certain areas in favour of others.

and specialist urban service delivery for Aboriginal victims/survivors across metropolitan Melbourne.

2. Increased funding for FVPLS Victoria to support expanded and comprehensive state-wide service delivery.

## **Perpetrator Accountability (Term of Reference 1(d))**

As a service that exclusively assists victims/survivors, FVPLS Victoria does not work with perpetrators of family violence and we do not wish to speak on behalf of frontline service providers and experts in that area. We do recognise however that siloed or divergent approaches to victims/survivors, on the one hand, and perpetrators, on the other, can be counter-productive. Perpetrator programs such as men's behavior programs need to be informed by both a cultural and a gender lens that recognises the role of gender norms, power differentials between men and women and systems of gendered control in family violence. Comprehensive monitoring and evaluation is required to ensure that men's behavior change programs are effective. Victims/survivors, and the services that support them, are an important source of data as to the efficacy of men's behavior change and other forms of perpetrator accountability.

It is also fundamentally important that increased attention on perpetrator accountability does not detract from already limited funding available to support victims/survivors, typically women and children. Rehabilitation programs for perpetrators of violence are important, but they should not be funded at the expense of services for victims/survivors of family violence.

## **Responses (Term of Reference 2)**

### **1. Police**

FVPLS Victoria practitioners hear on a daily basis about our clients' experiences with police. Far too often we hear reports of systemic issues around poor police conduct which expose our clients to additional trauma and risk. Poor police responses reported to our lawyers, paralegal support workers and community engagement workers include responses that minimise violence, discriminate against Aboriginal clients, fail to accord with appropriate procedure (such as the Koori Family Violence Police Protocols) and ultimately deter victims from reporting violence and seeking assistance to ensure their safety and that of their children.

The solution to these issues is not more police. Increased policing is likely to be ineffective in Aboriginal communities due to a significant lack of trust and confidence in the police force among Aboriginal peoples. Profound levels of mistrust are the legacy of Australia's colonial history, including oppression through legal and government systems and policies of forced assimilation – the impact of which cannot be overstated. This legacy continues in Aboriginal people's ongoing disadvantage and dispossession in Victoria. In addition, high rates of Aboriginal child removal, incarceration and family violence have also compounded mistrust of police and law enforcement systems by Aboriginal communities. Aboriginal legal service providers, including FVPLS Victoria, are best placed to respond to this.

The most appropriate and effective response to issues around poor policing is to invest in strengthened cultural awareness and family violence training for Police, led by Aboriginal Community-Controlled Organisations with frontline expertise assisting Aboriginal victims/survivors. Responses should also include increased resourcing for

frontline services, such as FVPLS Victoria, who can build trust between Aboriginal victims/survivors and the legal system.

A range of systemic issues and illustrative case studies are set out below:

### ***Responses by police that minimise family violence***

On a daily basis, Aboriginal victims/survivors tell us about deeply concerning responses they receive from police when trying to report family violence or to access intervention orders. Responses reported to our lawyers and paralegal support workers include:

- Comments that minimise violence, such as: *“Well, he only hit you in the face this time. Maybe things are getting better.”*
- Comments that undermine victims/survivors’ trust in Intervention Orders or deter them from seeking such orders, for example: *“If you apply for an order and take him to Court that might just make him more angry, don’t you think?”*
- Comments that discourage women experiencing family violence from seeking Intervention Orders that protect their children in the absence of a referral for family law legal advice, *“Do you think it’s right to keep your child from seeing his dad?”*

These and other examples are outlined in the case studies below:

#### **Case Study – Chrystal<sup>99</sup>**

Chrystal was in a new relationship with Dan when Dan become controlling and began to physically and sexually assault Chrystal. Dan regularly used ICE and other drugs, and had an extensive criminal record including for violent crimes.

After Dan threatened to kill her, Chrystal went to the police. She was told by the officer on duty that if she sought an intervention order this might just make Dan more angry. Chrystal was frightened and intimidated by this prospect and left the police station without making a written statement or receiving any protection. Chrystal was not offered a referral to an appropriate legal service, such as FVPLS Victoria.

Ultimately, Chrystal found out about FVPLS Victoria and came to us for advice about her options. FVPLS Victoria was able to make a comprehensive safety plan and set of referrals for Chrystal to ensure she was in safe and secure housing - unknown to Dan - before she applied for and was successfully granted a family violence intervention order.

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<sup>99</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety, privacy and confidentiality of our clients.

### **Case Study - Tanaya<sup>100</sup>**

With assistance from FVPLS Victoria, Tanaya applied for a family violence intervention order as she was experiencing physical and emotional violence from her partner, Sam. The Court granted Tanaya an interim intervention order and a further hearing was scheduled for later in the month.

The day before the hearing Sam's cousin went to Tanaya's house and threatened that if she proceeded with the court case she was "fucked" and "would be punished". Tanaya knew from past experience that Sam and his family were capable of serious violence and she was terrified.

Tanaya reported the incident to the police straight away. The police offered to "drive up and down" her street to check there was no-one present. The police did not take a written statement or investigate the incident as a potential breach of the interim intervention order. This meant Sam and his cousin faced no repercussions and Tanaya was left feeling vulnerable and scared to pursue her intervention order application.

FVPLS Victoria assisted Tanaya to move into a secure women's refuge and then apply for a public housing transfer so that Sam and his cousin could not find out where she lived and carry out their threats against her. FVPLS Victoria also linked Tanaya into culturally safe counselling to ensure she had ongoing, long-term support to heal from the violence she had experienced and build coping mechanisms to get her life back on track.

### **Case Study: Maxine<sup>101</sup>**

Maxine was physically assaulted by her ex-partner and went immediately to her local Police Station to report the incident and ask for help. Maxine spoke to the Constable on duty and told him a number of times that she wanted assistance to obtain an Intervention Order. The Constable responded by telling Maxine that he could charge her with assault for slapping her ex-partner during the course of the incident. The police refused to help her obtain an Intervention Order and did not refer her to independent legal advice or support.

Three days later, Maxine received a call from a different Constable at the same Police Station. The Constable said Maxine's ex-partner had contacted the police about wanting to see his children who were in Maxine's care. The Constable said to Maxine, "Don't you think you're being unreasonable not allowing your ex to see the kids?" and said that her ex-partner had equal rights to see the child. The Constable was not aware of our client's previous visit to the police station nor the ongoing violence from which Maxine was trying to shield her children.

Maxine was confused and worried by the Constable's call. She contacted FVPLS Victoria for advice and our lawyer followed up with the Police station to urge them to take a written statement from Maxine about the violence she had been experiencing and assist

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<sup>100</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety, privacy and confidentiality of our clients.

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with applying for an Intervention Order as Maxine had requested. The Police said that as they did not attend on the day they would not assist.

FVPLS Victoria ultimately obtained an Intervention Order for Maxine and initiated family law proceedings to ensure that appropriate court orders were in place for the children's safe care. An FVPLS Victoria lawyer was also able to provide Maxine with accurate family law advice and clarify and correct the Constable's statements so Maxine understood her rights and obligations in relation to the children's time with their father.

### *Responses by police that blame or punish the victim*

FVPLS Victoria has also assisted a number of clients where police have failed to appropriately identify or assess the situation and mistakenly assumed family violence is reciprocal or that the victim/survivor is somehow to blame or complicit in the violence she has experienced.

#### **Case Study - Sarah<sup>102</sup>**

Sarah had experienced a history of family violence by her partner, Peter – most of which she had been too frightened to report as she lived in a small town where Peter had significant influence and friends in the police force.

In one instance, Sarah was physically assaulted by Peter and fled the family home with her four children. Peter drove after her, speeding, shouting and driving dangerously. Sarah drove to the police station with Peter in pursuit.

When Sarah arrived at the police station, a police officer asked the children what had happened and they said, "Daddy hurt Mummy". Peter subsequently arrived at the police station and another police officer who knew and was friends with Peter took Peter aside.

The police asked Sarah whether she had anywhere to stay that night. Sarah said that she would have to go to the next major town which was more than two hours drive away. The police officer told Sarah that was too far and that she should "let the kids stay in their own beds tonight." Sarah was told to come inside the station and let her children go home with Peter. The police told her they would help her find somewhere safe to stay. Sarah was incredibly distraught and upset and did not feel like she had the emotional resources to disagree with the police officers. She waited at the station for five hours until they found her accommodation in the same town she had originally intended to go to.

As Sarah got up to leave the police station, she was served with an Intervention Order application taken out by the police against Sarah for the protection of Peter and the children. The police did not make a similar application against Peter for her protection, nor did they advise her to obtain legal advice about the matter. Sarah was shocked and confused.

Sarah ultimately sought advice from FVPLS Victoria who assisted her to lodge a police complaint, obtain her own IVO, regain her children and dispute the police application against her.

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<sup>102</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety, privacy and confidentiality of our clients.

### *Failures by police to provide assistance and/or referrals to legal services for victims seeking family violence intervention orders*

Our lawyers have observed a number of cases where police have attended family violence incidents, but declined to initiate a safety notice or family violence intervention order or facilitate a referral to a legal service to assist the victim. Instead, in these cases, police have simply sent the victim to Court to try to obtain an order on her own. It appears police may not be aware that duty lawyers do not assist clients at application stage and referrals should therefore be made to services such as FVPLS Victoria who do provide intensive assistance from preparation through to finalisation of family violence intervention order matters.

#### **Case Study**

FVPLS Victoria is currently assisting a client who was seriously injured by the perpetrator (choked and 'stomped' on). Police and ambulance services attended the incident. However, police did not initiate a family violence intervention order application on the client's behalf. The client attended Court as a self-represented litigant and sought to make an application but was advised by the Court that police should be helping her. She was effectively turned away by the Court and led to believe that police would contact her. However, she did not receive any follow up contact from police. The client ultimately came to FVPLS Victoria for assistance and we obtained an interim family violence intervention order on her behalf. However, this was more than a month after the initial incident during which time the client had no legal protection despite significant ongoing risk.

### *Police failing to take action in relation to Intervention Order breaches*

Our lawyers have assisted clients in a number of cases in which victims/survivors have attempted to report alleged breaches of family violence intervention orders, but police have declined to take action to investigate or charge.

#### **Case Study – Ashlee<sup>103</sup>**

Ashlee had been assisted by FVPLS Victoria to obtain an Intervention Order against her violent ex-partner, Bobby. Bobby breached the Intervention Order by sending Ashlee a series of text messages threatening to “smash” her and “make her sorry”.

Ashlee went to her local police station to report the breach. On advice from FVPLS Victoria she asked to speak to the Family Violence Unit but was told the officers from that Unit weren't available. Ashlee instead had to tell her story over the counter in a busy police station.

When she gave her name and address to the police officer, she was told she had an outstanding warrant for driving infringements and the officer told Ashlee she should not drive home.

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<sup>103</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety, privacy and confidentiality of our clients.

Ashlee was devastated. She felt the police had not taken her safety seriously, had intimidated her by bringing up the infringement and that it had been a waste of her time reporting the breach. Luckily, because Ashlee was being assisted by FVPLS Victoria she was able to inform us about the police response and obtain advice about how to pursue the matter to make sure she got the support she needed to stay safe.

### *Police disregarding victim's wishes in police-initiated family violence intervention order matters*

Where police deem a matter sufficiently urgent (typically upon attendance at a family violence incident), they can issue a Family Violence Safety Notice and initiate intervention order proceedings in the Court for the victim/survivor's protection. It is FVPLS Victoria's position that access to independent legal advice and representation for Aboriginal victims/survivors is still crucial where police are assisting.

Police are not required to act on the victim/survivors' instructions. Without culturally safe and specialist legal assistance, many Aboriginal victims/survivors struggle to adequately advocate to police for their needs and interests. There is a general mistrust and fear of police in Aboriginal communities, which means police are often unable to engender the trust necessary for a traumatised victim/survivor to disclose the true nature of abuse and violence experienced and accept police assistance. Accordingly, police will often not have the capacity to identify where family law, child protection or other issues may be implicated in a family violence intervention order matter and police cannot provide legal advice in relation to such matters that may be critical for a client to understand and consider before making decisions about how to proceed in a family violence intervention order matter.

FVPLS Victoria lawyers receive reports from clients of matters where police have initiated intervention order proceedings in relation to an Aboriginal victim/survivor, only to subsequently withdraw, proceed against the clients' wishes or obtain an order that is not in the best interests of the client or fails to appropriately take into account the client's circumstances and safety needs (for example, by failing to include a child on an intervention order, failing to include provisions for the safe collection of property or failing to include an exemption to allow contact in accordance with family law orders or agreements.) Police may often apply a 'one size fits' all approach and seek standard, 'tick a box' orders instead of an order tailored to the specific safety needs and living arrangements of the victim/survivor.

The following are some specific case examples where police matters have not adequately promoted the safety and protection of Aboriginal victims/survivors:

#### **Case Study**

In one example from metropolitan Melbourne, FVPLS Victoria provided advice to a client who was the subject of a police-initiated Family violence intervention order. The client wanted to remain in a relationship with the respondent, with whom she had a young child, and instructed that she wanted a partial order only. However police were not prepared to settle for a partial order and refused to finalise the matter until the client agreed to a full order. The client felt pressured into agreeing to an order that was inappropriate in her circumstances and likely to be breached or create additional conflict. This again demonstrates the need for specialist and culturally safe legal representation to ensure client's have an experienced legal advocate even in police

matters.

In another recent example, the police advocate elected not to proceed to contest in a police-initiated intervention order matter leaving the client to continue without police assistance, despite the wishes of the victim to proceed and the serious violence alleged. The victim then had to seek assistance from FVPLS Victoria and felt forced to begin all over again.

### ***The Need For Reform of Police 'L17' Referrals and Localised, Tailored Referral Processes for Aboriginal Victims/Survivors of Family Violence***

The above examples demonstrate the importance of culturally safe and specialist legal advice and representation for victims/survivors of family violence. However, many Aboriginal victims/survivors do not receive appropriate referrals to be able to benefit from such legal assistance.

Where police attend a family violence incident in Victoria or where a woman attends a police station to report an incident of family violence, police are required to undertake a risk assessment and make a referral to an appropriate victim support service in accordance with the relevant protocols in place. Despite the capacity for the development of localised referrals and different protocols for Aboriginal victims, in most instances in Victoria, police take a one-size fits all approach and utilise a single point of referral to a mainstream domestic violence service. This means that Aboriginal victims/survivors are deprived of their right to choose to be assisted by an Aboriginal service and in many instances on-referrals from mainstream agencies are not forthcoming.

Mainstream agencies can fail to provide the requisite culturally safe environment, knowledge and skill-set to build trust and meaningfully assist Aboriginal victims/survivors. Without appropriate cross-cultural knowledge and communication skills, mainstream services may also fail to appreciate the complexity of Aboriginal victims/survivors' experiences of violence. This can result in Aboriginal victims/survivors losing hope in the system and disengaging from legal processes.

FVPLS Victoria recommends that a review be undertaken of the L17 process to ensure that culturally targeted and localised referral pathways are implemented in consultation with FVPLS Victoria and other local Aboriginal organisations across Victoria.

Such a review should be accompanied by entrenched, recurrent training for all police officers to strengthen their cultural awareness and family violence sensitivity as a matter of the utmost priority.

### ***Recommendations:***

1. Implement strengthened, systematic training for all police officers to improve cultural awareness and family violence sensitivity, led by and in consultation with Aboriginal organisations with frontline expertise assisting Aboriginal victims/survivors of family violence such as FVPLS Victoria;

2. Increased investment from both Federal and State Governments for frontline, culturally safe services for Aboriginal victims/survivors of family violence (including FVPLS Victoria);
3. Implement data collection training and system strengthening within Victoria Police to ensure appropriate collection of data on Aboriginality of victims/survivors and provision of appropriate referral pathways;
4. Undertake a review of the Police L17 Referral process to ensure that Aboriginal victims/survivors coming into contact with the police receive a referral to their local Aboriginal family violence service, including FVPLS Victoria where present in the region; and
5. Longer-term (5 yearly), increased funding from both Federal and State Governments to enable FVPLS Victoria to:
  - (a) meet demand for our specialist, culturally safe, frontline legal assistance services, including through expansion to state-wide coverage;
  - (b) continue and expand our highly successful, culturally targeted early intervention prevention programs and community legal education programs; and
  - (c) continue to provide high level policy advice and undertake advocacy and law reform activities to strengthen law and justice outcomes for Aboriginal victims/survivors of family violence.

## 2. Child Protective Services

As outlined in the section on 'Family Violence and Child Protection' at pages 15 to 17 above, many Aboriginal victims/survivors do not disclose family violence for fear of having their children taken from them by child protective services. Sadly, this fear is entirely understandable given family violence is by far the leading contributor to child protection intervention and child removal in Aboriginal families, as discussed in further detail above.

In order to effectively address family violence in Aboriginal communities, it is therefore imperative that we address the disproportionate rates of Aboriginal child removal and the policies and practices of child protection services. FVPLS Victoria routinely hears from our clients and from the Aboriginal communities we serve about punitive approaches taken by child protective services towards Aboriginal victims/survivors and failures by child protective services to abide by their statutory obligations towards Aboriginal children and their families. This includes Child Protection workers responding to Aboriginal women as though they are to blame for being victims of family violence and making decisions about their capacity to care for their children on the basis of this misinformed view. This re-victimisation contributes to victims' reluctance to seek help which can contribute to victims/survivors' isolation and vulnerability putting them and their children at greater risk of family violence – and Departmental intervention.

The impact of these poor practices is compounded by a significant lack of awareness of legal rights and processes within Aboriginal communities. FVPLS Victoria reiterates the recommendation made in our submission to the Family Law Council reference on

Families With Complex Needs<sup>104</sup> that Victoria should implement a mandated and enforceable process for ensuring that FVPLS Victoria is immediately notified when an Aboriginal client comes into contact with child protection authorities and that the client is also immediately advised of the need to obtain independent legal advice at the earliest opportunity. Such a process would mirror the custody notification system which currently exists in the criminal law jurisdiction in Victoria and forms part of the response to the issue of Aboriginal deaths in custody and over-incarceration. Given the high and escalating rates of child removal among Victorian Aboriginal families – which new research indicates is driven almost entirely by family violence - we believe such a response is justified. Such a requirement, along with appropriate resourcing of FVPLSs to respond to demand, would be an important step in reducing the devastatingly high rates of child protection and child removal in Aboriginal families and, in turn, reducing one of the most significant deterrents to disclosing and addressing family violence among Aboriginal communities.

In addition, a fundamental attitudinal shift is required within the Department to reform the way the system responds to Aboriginal victims/survivors of family violence. Robust systems of accountability, monitoring and workforce development are required to transform the harmful responses that unrealistically apportion blame to victims/survivors for failing to act protectively and instead take a therapeutic approach that aims to support victims/survivors to safely care for their children. Workforce development must include wide-spread, compulsory training for all child protection workers in order to improve cultural respect and awareness along with family violence sensitivity training.

#### **Case Study – Kylie<sup>105</sup>**

Kylie is a 21 year old mother of two. Kylie grew up in residential care after being removed from her parents when she was an infant. Kylie's grandmother was part of the stolen generation.

While still in state care as a teenager, Kylie became addicted to ice and alcohol and became pregnant at 16. Kylie began a relationship with Steve when she was 18 and had her second child with him when she was 19. During Kylie's pregnancy, Steve became increasingly violent and regularly threatened Kylie that if she went to the police her kids would be taken away.

Due to Steve's threats and past negative experiences, Kylie was extremely mistrustful of police, courts, lawyers and the Department.

An anonymous notification was made to the Department of Health and Human Services that there was suspected violence occurring in Kylie's home that her children may be witnessing. When child protection workers came to Kylie's house to investigate the situation, Kylie denied that Steve was violent. Kylie was scared of what might happen if she told the truth.

Kylie contacted FVPLS Victoria for advice only after the Department apprehended her children from daycare and lodged a protection application in the Children's Court to remove them from Kylie's care. The Department acknowledged that there was no

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<sup>104</sup> Available at <http://www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions>

<sup>105</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety, privacy and confidentiality of our clients.

evidence the children had been physically harmed, but alleged that the children were at risk of emotional harm due to being present in a violent home.

Had Kylie been properly supported by the Department and referred to FVPLS Victoria earlier for proactive legal advice and information she could trust, Kylie would have been supported to take steps to protect herself from Steve's violence and create a safe and loving home for children.

### ***Recent and Current Reforms to Child Protection Laws***

Given the context outlined above, FVPLS Victoria, along with the Law Institute of Victoria and other stakeholders, is particularly concerned about recent legislative changes to Victoria's child protection laws which will have a disproportionate and devastating impact on Aboriginal families, increasing already high Aboriginal out-of-home care rates and exacerbating Aboriginal children's disconnection with culture, identity and family. This will only serve to reinforce the existing barriers for Aboriginal victims/survivors terrified of disclosing family violence for fear of losing their children.

The *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic)* was passed in September 2014 and is due to commence by no later than March 2016. FVPLS Victoria predicts that these changes will fast-track the increased removal of Aboriginal children into permanent out-of-home care in a number of ways:

- Firstly, by imposing a strict cumulative 12 month window in which parents must resolve protective concerns and regain care of their children before children are placed on permanent care orders;
- Secondly, by removing the Court's discretion to extend this timeframe by any more than a further 12 months in 'exceptional circumstances' – it is unclear whether recovering from family violence victimisation and complex, potentially intergenerational trauma, would constitute 'exceptional circumstances' for the purposes of this provision;
- Thirdly, prioritising adoption over permanent care orders, thus removing Departmental responsibility and oversight including the capacity to require ongoing contact between children and their Aboriginal relatives; and
- Finally, removing court scrutiny of children on permanent care orders leaving parents without the ability to enforce the cultural rights of Aboriginal children in care, Departmental compliance or family contact.

On 28 May 2015, a Bill was introduced into Victorian parliament<sup>106</sup> which reinstates one provision (section 267) from the previous Act. This is only one aspect of the Court's discretionary power and FVPLS Victoria maintains that further repeal is necessary and that any substantive amendments at this stage would be premature in light of this Royal Commission and the current work and unfolding findings of Taskforce 1000, the Commissioner for Aboriginal Children and Young People's current investigation which is illustrating the profound link between family violence and Aboriginal child removal in Victoria.

FVPLS Victoria is deeply concerned that the 2014 reforms (left intact by the 2015 Bill) will disproportionately impact Aboriginal children and families who are statistically

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<sup>106</sup> *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 (Vic)*.



more likely to experience complex trauma – such as family violence - that cannot be quickly resolved according to an abbreviated timeline.

In addition, we are concerned these legislative changes will damage the care, cultural connection and wellbeing of Aboriginal children by significantly reducing Departmental accountability towards Aboriginal children in care.<sup>107</sup> Given significant existing failings by the Department to meet its statutory obligations towards Aboriginal children, we are concerned that a removal of court scrutiny will exacerbate the cultural dislocation of Aboriginal children in out-of-home care. By way of example of current Departmental failings, a 2013 audit of 194 cases found that only 8% of Aboriginal children required by law to have a cultural plan in place had one.<sup>108</sup> This indicates the Department was breaching the rights of Aboriginal children in 92% of cases.

Without urgent and effective action, these serious Departmental failings and escalating levels of child removal will continue to spark fear in Aboriginal communities of another stolen generation - compounding existing barriers to Aboriginal victims/survivors of family violence reporting violence and seeking assistance for themselves and their children.

### ***Recommendations***

1. Implement strengthened, regular and systematic training for all child protection workers to ensure culturally appropriate and therapeutic responses for Aboriginal victims/survivors of family violence;
2. Strengthened accountability mechanisms within child protection agencies to protect and promote the cultural rights of Aboriginal children and to increase Departmental compliance with statutory obligations towards Aboriginal children and families.
3. Investment in culturally safe and targeted strategies to reduce family violence-driven child protection intervention in Aboriginal families including:
  - a. Increased investment in community legal education and frontline legal assistance services delivered by FVPLS Victoria, and other specialist services, to increase the Aboriginal communities' awareness of their legal rights and understanding of the child protection system;
  - b. Implementation and concomitant resourcing of the recommendations made by *Taskforce 1000*;

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<sup>107</sup> For further detail see FVPLS Victoria's submission to the Senate Inquiry into Access to Legal Services and to the Victorian Legal and Social Issues Committee's Inquiry into the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015* (Vic). Both available at: <http://www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions>

<sup>108</sup> Department of Human Service, Information about cultural support plans for child protection clients, 2013, page 2, available at [http://www.dhs.vic.gov.au/\\_data/assets/word\\_doc/0012/898878/Information-about-cultural-support-plans-for-child-protection-clients.doc](http://www.dhs.vic.gov.au/_data/assets/word_doc/0012/898878/Information-about-cultural-support-plans-for-child-protection-clients.doc)



- c. Improved referral pathways to ensure Aboriginal victims/survivors in contact with the Department can access early, proactive legal advice and representation; and
  - d. Strengthened cultural awareness and family violence sensitisation training for child protection workers developed in partnership and consultation with the Aboriginal community and specialist, Aboriginal organisations with expertise in child protection and family violence including FVPLS Victoria.
4. Implementation of a Child Protection Notification Referral System for Aboriginal families which ensures that upon a child protection notification being received for an Aboriginal family the primary parent is immediately referred to FVPLS Victoria (or another appropriate legal assistance provider where required) and informed of the importance of obtaining independent legal advice at the earliest opportunity – such a system should be developed in consultation with FVPLS Victoria and other Aboriginal Community-Controlled organisations.
  5. Repeal of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic).
  6. Any further substantive reforms to the *Children, Youth and Families Act*:
    - a. be postponed to allow implementation of relevant recommendations from this Royal Commission into Family Violence;
    - b. implement relevant recommendations from *Taskforce 1000* and be developed in consultation with the Victorian Commissioner for Aboriginal Children and Young People;
    - c. follow for comprehensive community consultation over a reasonable timeframe to allow for meaningful input from the legal sector, Aboriginal Community Controlled Organisations, specialist family violence and children’s services; and
    - d. allow for review and consultation with the sector on exposure drafts.

### 3. Courts

#### ***Insufficient safety and facilities in Magistrates Courts***

Safety at Magistrates’ Courts in family violence intervention order matters is a serious and systemic issue. Most Magistrates Courts in Victoria have only one entrance and one waiting room. This means that unless victims/survivors have sufficiently specialised lawyers able to make alternative arrangements, they are forced to wait – potentially for hours - in cramped public waiting areas alongside their abusers. This exposes victims/survivors to significant danger and re-traumatisation.

By way of example, the family violence intervention order lists at Dandenong Magistrates Court are becoming increasingly busy. At times there are as many as 70 matters listed on the one day meaning individual litigants may need to wait at Court for

an entire day before their matter is heard. There are insufficient chairs and no separate waiting spaces for applicants (victims) and respondents (perpetrators) in this Court. Cramped and unsafe conditions at Court have also caused significant difficulty for FVPLS Victoria clients in wheelchairs or attending court with infants in prams.

In some Courts, lawyers 'in the know' can seek to utilise the 'court network room' to provide clients with a safe, secure and private space but these rooms are not always available and, when they are used, they can leave clients feeling trapped in the room all day, too intimidated to leave and risk coming face to face with the perpetrator of violence. In addition, in most courts the court network room is located on a separate floor or at a significant distance from the court-room making it difficult for our lawyers to both support the client and listen for when matters are called on.

As an alternative to waiting in cramped areas outside the court room, clients can wait in the general waiting area downstairs or outside the courthouse in order to avoid perpetrators however this can still expose them to risk of harassment and violence as they often have to wait by themselves because the lawyer must stay close to the court-room in order to listen for when the matter is being called on.

Improved court facilities with appropriate security and separate entries and waiting areas for applicants and respondents are sorely needed.

#### **Case Study: Nikki<sup>109</sup>**

Nikki initiated family law proceedings to obtain safe parenting arrangements for her 3 year old daughter.

Nikki separated from her daughter's father two years ago because Paul had become increasingly violent towards Nikki. During the course of the relationship, Paul slapped Nikki across the face, attempted to choke or strangle her, pushed her against walls, punched her in the stomach while pregnant and threatened to kill her.

Since separating from Paul, Nikki has had to move house multiple times and vigilantly keep her address secret as a result of Paul stalking, threatening and committing violence against her. On one occasion, Paul found out where Nikki was living and set fire to her car while it was parked in her drive way.

On the first day that Nikki's family law matter went to Court, Nikki was represented by a private lawyer funded through a legal aid grant. Nikki arrived at court on her own and had to wait in a long queue to go through security at the entrance to the courthouse. Paul arrived and lined up behind Nikki. Paul stood very close behind Nikki, pressing his body up against her, and whispered threats to punish her for taking him to court. He said things like, "You'll pay for this you know. Just wait till we get out of here. You're fucked."

Nikki was terrified. She told the security guard at the courthouse who suggested she wait on the other side of the room from Paul. This did not allay her anxiety.

At the end of the court proceedings, Nikki drove home from Court alone. Paul followed her in his car. He drove up behind her at high speed forcing her to swerve dangerously to avoid a collision. He then pulled up next to her at a set of traffic lights and shouted

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<sup>109</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety, privacy and confidentiality of our clients.

through the window – “just wait till I know where you live!” Nikki had to drive into a police station in order to lose Paul.

After this incident, Nikki came to FVPLS Victoria and asked us to continue her family law proceedings and help her make a statement about Paul’s violence and renew an expired intervention order. Our lawyer and paralegal support worker made a comprehensive safety plan for Nikki and took steps to make sure she would be safe at the next court appearance. The next time, Nikki had to go to court our paralegal support worker collected her in an unmarked work vehicle and spent the day with her at a café removed from the courthouse so that Nikki was available as required but did not have to risk coming face to face or being followed by Paul.

As illustrated by the above case study, unsuitable and traumatizing Court conditions demand appropriate resourcing for specialist, holistic legal representation and demonstrate the value of services such as FVPLS Victoria who can provide court support. Where resources permit, our paralegal support workers attend court alongside the lawyer. This means that the client’s physical and emotional safety and wellbeing can be catered for by the paralegal support worker at times when the lawyer is required to leave the client, for example, to negotiate with the other party, check the progress of the Court list or appear in Court without the client so as to ensure the client does not have to unnecessarily come face to face with the perpetrator. This added court support is especially crucial for Aboriginal victims/survivors who typically find Courts to be a culturally insensitive and highly intimidating atmosphere for a range of reasons including historic oppression of Aboriginal peoples through the legal system and negative associations with courts and law enforcement as a result of the excessive rates of criminalization and child removal among Aboriginal communities.

### ***Remote witness facilities for Victims/Survivors of Family Violence***

Attending court and giving evidence in relation to family violence can be a traumatising experience. This is especially so for Aboriginal victims/survivors who may perceive courts as highly intimidating and culturally alienating environments. For many Aboriginal people in Victoria, the law is viewed as a weapon of coercion inflicted upon Aboriginal people rather than an open system which Aboriginal people can actively engage with as rights-bearers. Many Aboriginal people associate courts and the legal system with criminal charges or child removal and courts therefore become imbued with high levels of anxiety.

In this context remote witness facilities are extremely important, as are other measures such as screens designed to shield witnesses from having to come face-to-face with their abuser in court. Unfortunately however these facilities are frequently unavailable or difficult to access as demonstrated by the following case study:

#### **Case Study – Jenny<sup>110</sup>**

FVPLS Victoria assisted Jenny to apply for an Intervention Order against her violent ex-partner, Josef. Jenny was very anxious about the process as she had experienced years of violence and abuse from Josef and Josef had often threatened to hurt Jenny, her children and her pets if she ever went to the police.

<sup>110</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety, privacy and confidentiality of our clients.

When Jenny's matter came on before the Magistrates Court, the Magistrate requested that Jenny give evidence. Josef was present in the Court along with four members of his extended family and Jenny felt incredibly scared and ashamed to speak out in front of them. The FVPLS Victoria lawyer requested a screen or remote witness facilities to allow Jenny to give evidence more comfortably.

After waiting two and half hours for remote witness facilities to become available, Jenny and her lawyer were advised that the facilities weren't working. Delay escalated Jenny's anxiety about giving evidence in front of her ex-partner and she felt so scared she was ready to give up.

Ultimately with FVPLS Victoria's support, Jenny did give evidence. After hearing Jenny's evidence, the Court granted an interim Intervention Order protecting Jenny and her two children. Without support from an FVPLS Victoria lawyer who was able to advocate for Jenny every step of the way, Jenny would likely have felt too traumatized to proceed and may have left the Court without protection

### ***Self-represented litigants being denied interim family violence intervention orders in circumstances of significant alleged physical violence and risk***

FVPLS Victoria has observed self-represented clients being denied interim Family Violence Intervention Orders where FVPLS Victoria-represented clients are awarded an order in very similar circumstances by the same Magistrate in the same court. This demonstrates the necessity of clients having competent, culturally appropriate legal representation throughout the entirety of their matter rather than be forced to self-represent or rely on brief advice from duty lawyers in order to make applications.

Lack of resourcing for duty lawyers, restrictions on legal aid and increasing number of self-represented defendants decrease the efficiency of intervention order lists. Where respondents are self-represented this can result in significant delays increasing risk factors, the likelihood of re-traumatisation and anxiety for victims/survivors. At times, lack of legal services for respondents can result in many victims/survivors are denied protection as illustrated by the following case study.

#### **Case Study: Kayla**

Kayla and Terry have been separated for over 6 years. They have a daughter together, Kristy.

Kristy had been staying with her father, Terry, when she witnessed a serious family violence incident between Terry and his new girlfriend. Kristy's grandmother collected Kristy and brought her to Kayla's house for Kristy's safety.

Later that night, Terry telephoned Kristy and made violent threats saying he would "smash up" and "kill" Kayla and the grandmother. Terry also told Kristy to "stab anybody who came around" otherwise "there'd be trouble". Kayla took these threats very seriously as Terry had a long history of physical violence and had had served time in jail for violent offences.

Worried about Kristy's wellbeing, Kayla sought FVPLS Victoria's assistance to apply for an intervention order in the Magistrate's Court and begin family law proceedings.

Terry was not represented when the matter came before the Magistrates Court. The Court did not have a duty lawyer service and the Magistrate adjourned the matter to allow Terry to get legal advice.

FVPLS Victoria's lawyer asked the Magistrate to grant an interim intervention order to protect Kayla and Kristy in the meantime. The Magistrate refused and found that there was nothing alarming enough to warrant an interim order. The Magistrate also refused to hear about a further, violent incidents that had occurred since the application was lodged on the basis that Terry was not represented and would not be able to cross-examine Kayla.

Kayla left the Court house with no interim order to protect her and her daughter. She felt unheard and dismissed and was frightened for her and her family's safety.

The above case study also illustrates the importance of family violence training and specialisation for Magistrates, along with cultural awareness training to ensure that Aboriginal victims/survivors receive appropriate and effective legal outcomes that prioritise their safety as the paramount concern.

### **Recommendations:**

1. Increased investment in culturally safe, specialist legal assistance for Aboriginal victims/survivors of family violence;
2. Improved security at Magistrates Courts including separate entrances and waiting rooms for family violence intervention order applicants (victims/survivors) and respondents (perpetrators);
2. Greater access to remote witness facilities for family violence intervention order applicants (victims/survivors);
3. New initiatives designed to address unmet family violence-related legal need among Aboriginal people must be led by and developed in ongoing consultation with FVPLSs and ATSILS and, where relevant, other Aboriginal Community Controlled Organisations with appropriate expertise.

## **4. The Legal Assistance Sector**

There is "general consensus that legal representation for victims of domestic and family violence seeking restraining orders is likely to increase safety and protection."<sup>111</sup> Research indicates that victim/survivors who have advocacy services to obtain protection orders through the courts experience significantly less psychological and physical re-abuse and trauma than those who do not.<sup>112</sup> This includes evidence to show that "legal services are successful in addressing family violence, particularly the use of long-term protection orders, advocacy services supporting applications for protection

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<sup>111</sup> Law Reform Commission of Western Australia (December 2013) *Enhancing Family and Domestic Violence Laws- Discussion Paper Project No 104*.

<sup>112</sup> Bell ME, Goodman LA (2001) *Supporting battered women involved with the court system: an evaluation of a law-based advocacy intervention*, Violence Against Women, vol. 7, 12, pp. 1377-1404; Above n 1, 61.

orders and victim's compensation" and other research detailing specific benefits of obtaining legal information, advice, representation and/or court support.<sup>113</sup>

As outlined at pages 23 to 28 above, Aboriginal legal service providers are best placed to provide culturally safe and effective legal assistance for Aboriginal victims/survivors of family violence.

Many of FVPLS Victoria's clients come to the service reporting years of experience trying to navigate the legal system and complex procedural and administrative requirements without legal representation. This includes support to access legal safeguards such as family violence intervention orders and victims' compensation. Research confirms the direct beneficial impact of obtaining Intervention Orders (especially on application by the victim as opposed to by police) and victims' compensation in preventing ongoing and escalating family violence.<sup>114</sup>

Victims' compensation has been recognised as a crucial mechanism for ensuring victim/survivors of family violence have sufficient economic means to escape and recover from family violence, which minimises their vulnerability to further violence,<sup>115</sup> yet many of the clients that attend our service are not aware of their entitlements. The value of legal advocacy is a critical mechanism to ensure victim/survivors can claim the protections and entitlements needed to achieve financial security, thereby ensuring they have the means to escape violence and access safety.<sup>116</sup>

In Victoria, police can apply for Family Violence Safety Notices and Intervention Orders, but this does not take away the need for legal advice and representation. There is a general mistrust and fear of police in Aboriginal communities, which means police are often unable to engender the trust necessary for a traumatised victim/survivor to disclose the true nature of abuse and violence experienced and accept police assistance. FVPLS Victoria is often dealing with matters where police fail to act on breaches of intervention orders, leaving women and children vulnerable and at risk of being killed (as further detailed at pages 50 to 51 above).

FVPLS Victoria's experience shows that paralegal support workers (PLSWs) are highly effective in increasing the successful engagement of clients to maintain service contact, avoid trauma and maximise beneficial outcomes. We know through client reports and our own observations that this work is key to the likelihood of securing successful legal outcomes and enhanced protection and safeguards for our clients.

In our twelve years of operation assisting thousands of Aboriginal victim/survivors, it is clear that our clients require intensive legal and non-legal support. Women still require a legal advocate when police apply for safety notices or IVO's on their behalf. In our experience, many women in our communities have limited understanding of their legal rights. These rights extend to making complaints about unsatisfactory responses from police and with respect to children and property making it essential to have a legal advocate.

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<sup>113</sup> Braaf, R, and Meyering, B (2011) *Seeking Security: Promoting women's Economic Wellbeing Following Domestic Violence*, Australian Domestic Violence Clearing House, University of New South Wales.

<sup>114</sup> Ibid, p 23. See also above n 73; p48.

<sup>115</sup> Ibid. See also above n 73; p48.

<sup>116</sup> Ibid.

## 4. Corrections

An overwhelming majority of incarcerated Aboriginal women have experienced family violence and many draw an explicit causal link between their criminalisation and experience of violence. (For further detail, see the section on ‘Family Violence and Aboriginal Women’s Incarceration’ at pages 18 to 20 above.) Accordingly, the Department of Corrections, Department of Justice and the criminal justice system more broadly have a responsibility to consider the needs of family violence victims/survivors.

With respect to systemic change required in relation to the treatment and needs of criminalised women, FVPLS Victoria refers to the submission of Flat Out Inc, as endorsed by FVPLS Victoria. We encourage the Commission and Victorian Government to carefully consider the recommendations made in that submission.

In addition, we make the following brief points:

FVPLS Victoria provides legal outreach services to Aboriginal women prisoners at the Dame Phyllis Frost Centre (DPFC) and we have also provided early intervention prevention and community legal education within the prison. In our work within DPFC, FVPLS Victoria lawyers have observed a significant need for improved facilities and practices to allow women in low security imprisonment to have their children remain in their care or to have regular child-appropriate access visits at the prison.

In light of the strong evidence that the majority of Aboriginal women’s criminalisation is being driven – directly or indirectly – by their experience of family violence, a justice reinvestment approach must be taken that prioritises resources at the front-end. Front-end work must focus on preventing family violence and intervening early and effectively to respond to the needs of Aboriginal victims/survivors (predominantly women) before matters escalate to criminal offending and incarceration. In relation to justice reinvestment, FVPLS Victoria supports the National FVPLS Forum’s endorsement of Justice Targets and the work of the National Justice Coalition and ‘change the record’ campaign.<sup>117</sup>

In 2015, after long-running advocacy by a number of stakeholders within the Aboriginal community, including FVPLS Victoria, the Victorian Koori Justice Unit commenced a pilot Koori Women’s Diversion Program. This is a welcome initiative as justice and corrections policy has long focused on male Aboriginal prisoners to the detriment of Aboriginal women who are now the fastest growing prison population.<sup>118</sup> FVPLS Victoria commends the Koori Justice Unit on taking this step and looks forward to seeing meaningful programming to reduce Aboriginal women’s incarceration and strengthen the evidence for a justice reinvestment approach.

### **Recommendations**

1. Implement recommendations contained in the submission made by Flat Out Inc to this Royal Commission, as endorsed by FVPLS Victoria;
2. Establish improved facilities and policies within women’s prisons to prioritise culturally appropriate and child-friendly facilities for Aboriginal women to care for and/or visit with their children while in prison; and

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<sup>117</sup> See pages 65 to 67 below and <https://changetherecord.org.au/>.

<sup>118</sup> Above n 41.

3. Develop and implement justice targets as measurable goals against which governments report annually to gather further information about Aboriginal justice issues and monitor progress towards reducing both criminal offending and levels of family violence and victimisation. Such justice targets should be developed in close consultation with Aboriginal and Torres Strait Islander legal services (including ATSILS and FVPLSs), Aboriginal peak bodies and the legal sector.



## Strengthening Integration and Coordination between Government Agencies and Community Organisations (ToR 3)

Effectively responding to family violence requires strong integration and coordination between governments, government departments and all elements of the justice and service continuum. Sector-wide responses with shared goals of supporting victims/survivors are essential particularly in government to avoid siloed approaches. For example, as outlined in our submission above, Aboriginal victim/survivors can receive widely divergent responses from police, child protection workers, Aboriginal organisations and mainstream organisations, including therapeutic, culturally safe and supportive responses on the one hand or punitive, ‘victim-blaming’ approaches on the other. Varied or conflicting responses can weaken systems of perpetrator accountability, undermining victims/survivors’ resolve and damaging their ability to live safely and access their legal rights.

While state-wide coordination is required, the importance of recognising local Aboriginal community diversity and of the need to develop local strategies is essential. Aboriginal Community Controlled Organisations are widely recognised as important and powerful mechanisms for decision making by Aboriginal people and communities. The evidence is also clear that increasing the voice and leadership of Aboriginal women in particular will achieve unique outcomes in relation to the cultural needs and safety of Aboriginal women.

Service integration has been identified as crucial in the context of responding to family violence in Aboriginal communities “in order to address the multiple factors that contribute to incidences of violence.”<sup>119</sup> In addition, the development of more integrated approaches and that information sharing processes and service integration offered clear benefits to victims.<sup>120</sup>

Community organisations must be appropriately resourced to strengthen integration and coordination within the sector. Funding for policy, advocacy and law reform work is essential as it allows organisations to invest time and human resources in stakeholder engagement and meaningful participation in consultation processes. Without specific resourcing for this work, community organisations are placed in the invidious position of having to divert resources from frontline client service delivery if they want to contribute to systemic change and improvement. Without systemic improvements and resourcing, the success of legal services within established legal system is constrained.

FVPLS Victoria is a key stakeholder in the Victorian Aboriginal Justice Agreement, which has an objective focussed on reducing conflict, violence and victimisation and identifies the importance of “strengthening services for victims of crime in ways that gain the Koori community’s confidence, and equip[ing] services to respond to victims with significant trauma”.<sup>121</sup> To achieve its objectives however mechanisms associated with the Aboriginal Justice Agreement must be appropriately supported and community organisations resourced to meaningfully participate.

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<sup>119</sup> Above n 73, 60.

<sup>120</sup> Australian Law Reform Commission, *Family Violence — A National Legal Response* 2010.

<sup>121</sup> Victorian Government Department of Justice (March 2013) *Aboriginal Justice Agreement Phase 3*, Koori Justice Unit <[https://assets.justice.vic.gov.au/justice/resources/f4b38365-f9bc-48ef-bf3e-47ac8e6149de/aja3\\_web.pdf](https://assets.justice.vic.gov.au/justice/resources/f4b38365-f9bc-48ef-bf3e-47ac8e6149de/aja3_web.pdf)>, 125.

Community organisations' capacity to contribute to and support ongoing coordination is undermined by insecure funding which leads to high staff turn-over, difficulty in staff recruitment, high staff turn-over and corresponding loss of corporate knowledge and sector relationships and networks. Longer term, secure funding is necessary to avoid these issues and to support collaboration rather than competition within the sector.

As outlined above, FVPLS Victoria currently has zero confirmed funding to continue our policy and advocacy work including stakeholder engagement and service integration activities. To date, we have been reliant to date on philanthropic sources to fund this work and those sources are now running dry. Government commitment to the importance and value of this work is crucial if we are to achieve strengthened integration and coordination across the sector and between government and community organisations.

Ongoing investment in FVPLS Victoria will enable us to continue to work effectively in partnership with all levels of government and the non-government sector to negotiate - with the active participation of Aboriginal people - to deliver an effective and long term responses to family violence and ensure Aboriginal communities are meaningfully involved in justice planning that impacts on their rights and safety.<sup>122</sup>

There must be strengthened collaboration and coordination between Victorian and Commonwealth Governments to ensure expanded dedicated service assistance areas for Aboriginal women and children in Victoria either through FVPLS Victoria or as part of a broader overview of legal services for Aboriginal women and children nationally. This must include reinstatement of the National FVPLS Program as a stand-alone program with direct funding allocation.

In June this year, FVPLS Victoria's head office moved to new premises purchased with support from the Indigenous Land Corporation. FVPLS Victoria's long-held vision is to develop these premises into an innovative, multi-purpose community hub for our Aboriginal clients in partnership with government, non-profit, community and specialist services. A first of its kind in Victoria, the hub will be a centre celebrating Aboriginal culture and has potential to be a powerful mechanism for service collaboration with opportunities to offer a multi-agency suite of integrated support services to address both legal and non-legal needs. If appropriately resourced, it will also provide important opportunities to strengthen our education, early intervention and prevention programs and enhance cooperation across the sector.

### ***Recommendations***

1. Implementation of new systems of coordination, workforce development and accountability measures within government agencies and departments responsible for police, housing, child protection and corrections, to ensure that Aboriginal victims/survivors of family violence receive consistent, culturally competent and supportive responses;
2. Community organisations, including Aboriginal Community Organisations, be appropriately resourced to participate in consultations, sector networks and forums aimed at strengthening integration and coordination between

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<sup>122</sup> 'Partnerships between Indigenous Peoples, governments and civil society: Guidelines for Engagement with Indigenous People'. United Nations Workshop, 2005 International Conference on Engaging Communities – Brisbane, Australia, 15 August 2005.

government and the community sector and among the community and family violence service sector;

3. The Victorian Government commit to provide dedicated funding for FVPLS Victoria and other legal services within the community sector to undertake policy, advocacy and law reform work;
4. Long term, secure funding for frontline family violence services to promote collaboration and capacity building and reduce incentives for competition; and
5. The Victorian Government continue to support and strengthen mechanisms designed to promote coordination and improvements for Aboriginal people in the justice sector such as the Aboriginal Justice Forum and the Indigenous Family Violence Partnership Forum, including ensuring that specialist services working with Aboriginal victims/survivors of family violence have capacity to meaningfully participate.

# **Evaluating the Success of Strategies, Frameworks, Policies, Programs and Services Put in Place to Stop Family Violence (Term of Reference 4)**

## **1. Community Consultation**

Effective evaluation necessitates consultation with affected communities and frontline services working directly with affected communities at the grassroots. As outlined above, Aboriginal Community Controlled Organisations' participation in community consultation processes must be appropriately resourced. Without specific resourcing, organisations are forced to either divert human resources from frontline service provision or decline invitations to attend important community consultations. By way of example of the burden on resources that community consultation can involve for Aboriginal Community Controlled Organisations – especially peaks or state-wide specialist services with recognized expertise – in a typical month FVPLS Victoria receives at least 30 invitations to consultations, advisory groups, sector network meetings or conferences.

## **2. Evaluation of Community Organisations' Services and Programs**

The development of evaluation measures for services, whilst important, must be carefully developed to ensure that they do not create unduly onerous burden on already under-resourced organisations who are typically balancing significant compliance and reporting duties owed to multiple funders.

In terms of evaluation of community services and programs, targets and monitoring and evaluation mechanisms must be developed in close consultation with those services to ensure they are meaningful and appropriate. For example, evaluation should measure qualitative client impact and not just quantitative data. For example, FVPLS Victoria's holistic and culturally safe legal service delivery model involves long-term and intensive engagement with clients which results in powerful impacts in clients' lives. However, it does mean our raw legal client numbers will be lower than large legal services who only offer once-off advice or duty lawyer services in which a client may be seen by a lawyer once for a matter of minutes.

## **3. Justice Targets**

FVPLS Victoria supports calls by the National FVPLS Forum and the National Justice Coalition for the development of justice targets as an essential strategy to address the over-representation of Aboriginal people as both offenders and victims in the justice system. In particular, FVPLS Victoria endorses the National FVPLS Forum's recommendation that the Federal Government implement meaningful justice targets specifically aimed at reducing violence against Aboriginal women and children.

Family violence is a key driver of interactions across the justice system. Appropriately framed justice targets could present an important mechanism to evaluate and measure the success of programs aimed at preventing family violence, both nationally and in Victoria.

The National FVPLS Forum notes that “[t]here are many benefits to justice targets<sup>123</sup>, which include, but are not limited to:

- Creating a performance measure tool to quantify achievements and/or needs;
- Focusing on what is being achieved in the ground rather than the resources being expended;
- Establishment of good public policy;
- Accountability of Government and service providers;
- Visibility on the issues facing Aboriginal and Torres Strait Islander people and;
- Documented progress on achieving economic, social and cultural rights under the *International Covenant on Economic, Social and Cultural Rights* of which Australia is a party.”<sup>124</sup>

For further detail on justice targets and their value, FVPLS Victoria refers the Commission to the submissions made by National FVPLS Forum<sup>125</sup>, National Justice Coalition, NATSILS and the Aboriginal and Torres Strait Islander Social Justice Commissioner to the 2015 Senate Inquiry into Access to Legal Assistance Services.<sup>126</sup>

#### 4. Family Violence Index

FVPLS Victoria welcomes the Victorian Government’s commitment to develop a Family Violence Index. We support the institution of measurable targets which can be used to ensure government and community commitment, accountability and progress over time towards the prevention of family violence.

The Family Violence Index must incorporate specific data concerning those most at risk of violence, including Aboriginal women and children. To be effective, it is also important that the Index include a comprehensive range of data and measures in order to counter the high level of under-reporting of family violence – particularly within Aboriginal communities. If carefully developed such an index can be an important strategy in measuring not only financial investment by government and officially reported incidents, but also what is occurring and being achieved on the ground.

FVPLS Victoria looks forward to participating in community consultation in relation to the development and implementation of the Family Violence Index and we encourage the Australia's National Research Organisation for Women's Safety ('ANROWS' - engaged by the Government to define measures for the Index) to consult widely with Aboriginal communities and frontline service providers working with Aboriginal victims/survivors of family violence.

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<sup>123</sup> *Social Justice and Native Title Report* (2014) 117-118.

<sup>124</sup> National FVPLS Forum (2015), *Submission in Response to the Senate Inquiry into Access to Legal Assistance Services June 2015*, 31, [http://www.nationalfvpls.org/images/files/NFVPLS\\_Submission\\_to\\_Inquiry\\_into\\_Access\\_to\\_Legal\\_Assistance\\_Services\\_FINAL.pdf](http://www.nationalfvpls.org/images/files/NFVPLS_Submission_to_Inquiry_into_Access_to_Legal_Assistance_Services_FINAL.pdf)

<sup>125</sup> Ibid.

<sup>126</sup> Available at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/Legal\\_assistance\\_services/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Legal_assistance_services/Submissions)

## ***Recommendations***

1. The Victorian Government and government agencies collect and provide more consistent statistical and other data for Aboriginal and Torres Strait Islander people, especially within police forces and across the justice system;
2. Evaluation and reporting requirements imposed on community services working with Aboriginal victims/survivors should reflect the unique service provision and model of those services; and
3. Develop and implement justice targets as measurable goals against which governments report annually to gather further information about Aboriginal justice issues and monitor progress towards reducing both criminal offending and levels of family violence and victimisation. Such justice targets should be developed in close consultation with Aboriginal and Torres Strait Islander legal services (including ATSILS and FVPLSs), Aboriginal peak bodies and the legal sector,
4. The Family Violence Index contain specific measures relating to those most at risk of family violence, including Aboriginal women and children, and measures aimed at countering the significant levels of under-reporting within Aboriginal communities.