



Aboriginal Family Violence Prevention  
& Legal Service Victoria

# FVPLS Victoria

Submission to the Senate Standing  
Committees on Finance and Public  
Administration

Inquiry into Legal Assistance Services:  
Aboriginal and Torres Strait Islander  
experience of law enforcement and  
justice services

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## **Introduction**

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) welcomes the opportunity to provide a submission to this Senate Inquiry into Legal Assistance Services and Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services.

FVPLS Victoria endorses the submission made by the National Family Violence Prevention Legal Services Forum (NFVPLS). This submission is to be read in conjunction with the NFVPLS submission and seeks to explore in further detail certain matters of particular importance in Victoria.

FVPLS Victoria also refers to its Policy Paper Series June 2010<sup>1</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; and
- Paper 3: Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault.

## **About FVPLS Victoria**

FVPLS Victoria is an Aboriginal Community Controlled, not-for-profit legal assistance provider. Established over 12 years ago, FVPLS Victoria provides culturally safe frontline legal assistance to Aboriginal and Torres Strait Islander<sup>2</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 advocates for strengthened law and justice outcomes for Aboriginal victims/survivors.

FVPLS Victoria is open to Aboriginal women, children and men 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 has a holistic, intensive client service model where each client is assisted by a lawyer and paralegal support worker 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. As an Aboriginal Community Controlled Organisation, FVPLS Victoria is directed by an Aboriginal Board and has a

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<sup>1</sup> Available at [www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions](http://www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions)

<sup>2</sup> Hereafter referred to as 'Aboriginal'.

range of systems and policies in place to ensure we provide culturally safe services in direct response to community need.

FVPLS Victoria's legal services include advice, casework and court representation 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.

As part of what was previously the National FVPLS Program,<sup>3</sup> FVPLS Victoria receives its core funding from the Commonwealth Government under the Indigenous Advancement Strategy. FVPLS Victoria has also successfully attracted supplementary funding from the State government, Victoria Legal Aid and philanthropic sources.

At the time of writing, FVPLS Victoria has no confirmed funding to continue our policy and advocacy work or staff our community legal education and early intervention prevention programs past 30 June 2015. These areas are currently funded by philanthropic grants due to expire at the end of this financial year. Without renewal or replacement of this funding, our capacity to provide crucial work to strengthen Aboriginal victims/survivors access to their legal rights and experience of the legal system will be severely curtailed.

## **Response to the terms of reference**

As FVPLS Victoria fully endorses the submission of the NFVPLS, we do not propose to respond to each of the terms of reference.

Instead we wish to outline the following matters for the Committee's attention:

- (1) Funding and increased demand (which relates to term of reference (b) concerning the adequacy of resources provided to Aboriginal legal assistance services by state, territory and Commonwealth governments);
- (2) Police responses to Aboriginal victims/survivors of family violence and the importance of appropriate referrals to ensure Aboriginal victims/survivors have access to specialist, culturally safe legal representation from FVPLS Victoria (which relates to terms of reference (a), (b) and (i); and
- (3) Child protection in Victorian Aboriginal Communities and the impact of new legislative changes which we anticipate will disproportionately impact Aboriginal children and families (which relates to term of reference (a) and (i)

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<sup>3</sup> The National FVPLS Program was abolished by the Federal Government in 2014 and collapsed into the *Indigenous Advancement Strategy* alongside 150 other programs, requiring each FVPLS unit to competitively tender for funds. For further detail, please refer to NFVPLS submission to this inquiry and to the current Senate Inquiry into the Indigenous Advancement Strategy Tendering Processes, available at

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/Commonwealth\\_Indigenous/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Commonwealth_Indigenous/Submissions).

and to Aboriginal and Torres Strait Islander victims/survivors' experience of the justice system more generally).

## **1. Funding and Increased Demand**

FVPLS Victoria is Victoria's only legal assistance service exclusively dedicated to assisting Aboriginal victims/survivors of family violence and sexual assault. In the 2013-14 financial year, FVPLS Victoria's integrated services impacted more than 4,000 people across Victoria.

However, family violence hospitalisation and reporting rates are increasing and driving up demand for our services. We anticipate this increased demand will soon outstrip our already limited resources. For example, in Victoria police reports of family violence against Aboriginal people have almost tripled in less than a decade.<sup>4</sup> Between 2008 and 2013 the percentage of family violence incidents involving Aboriginal victims/survivor increased by as much as 360% in some of the regions we service (specifically Geelong).<sup>5</sup> Legal needs surveys conducted by FVPLS Victoria at our 'Sisters Day Out' events around the State indicate that 46% of survey respondents had experienced a family violence related legal issue in the past twelve months but only 47% had obtained legal assistance for that issue.<sup>6</sup>

We expect reporting rates and legal need associated with family violence will only continue to increase in the near future. Increases are expected – and indeed already beginning - in response to significant media and public attention on family violence generated by recent Federal and Victorian Government action on the issue including the Victorian Royal Commission into Family Violence.

Disappointingly, FVPLS Victoria's resourcing has not kept pace with this increased demand. Instead, real funding per person aggregated across both ATSILS and FVPLSs declined by approximately 20 per cent in recent years.<sup>7</sup>

Most recently, in March 2015 the Department of Prime Minister and Cabinet renewed FVPLS Victoria's core, organisational funding for three years at 2013-14 levels under the Indigenous Advancement Strategy ('IAS'). While recurrent funding is a welcome and much-needed result, the IAS leaves significant gaps:

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<sup>4</sup> Victorian Auditor General, 2014, *Accessibility of Mainstream Services for Aboriginal Victorians*, p 57, available at [www.audit.vic.gov.au/publications/20140529-Aboriginal-Services/20140529-Aboriginal-Services.pdf](http://www.audit.vic.gov.au/publications/20140529-Aboriginal-Services/20140529-Aboriginal-Services.pdf). See also: Joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, 2014, *Update to Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, p 3, available at [www.cyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf](http://www.cyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf).

<sup>5</sup> Calculated on the basis of 2008/9 and 2013/14 police data supplied by Department of Premier and Cabinet and the Koori Justice Unit, Victorian Department of Justice. 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. In addition given significant under-reporting of family violence, the true prevalence of violent incidents is likely higher.

<sup>6</sup> Statistics compiled from surveys conducted at 12 Sisters Day Out workshops across Victoria throughout 2013-14.

<sup>7</sup> Productivity Commission 2014, *Access to Justice Arrangements: Overview*, Inquiry Report No. 72, Canberra, p 700 and 801, available at: <http://www.pc.gov.au/inquiries/completed/access-justice/report>.

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

That 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>8</sup> 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.
- 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.

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 – for example:

- 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>9</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>10</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>11</sup>

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<sup>8</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>9</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>10</sup> Schwartz, M., Allison, F. and Cunneen, C, 2013, *The Civil and Family Law Needs of Indigenous People in Victoria*, Cairns: James Cook University, p 15.

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

The lack of increase in FVPLS Victoria and the gaps in funded areas of work are highly concerning given current levels of demand and the high likelihood that demand will only continue to increase, particularly in relation to family violence and child protection matters, as a result of the increased public attention on family violence at both a Federal and State level.

If FVPLS Victoria is to adequately respond to demand and honour the aspirations of Federal and State government attention on family violence, a significantly greater, longer-term investment is required. Both Federal and State governments bear a responsibility to ensure adequate funding of FVPLS Victoria and we are seeking a firmer commitment of increased investment from both governments into the future.

This includes investment in frontline legal service provision, community legal education, early intervention/prevention and policy and law reform work to ensure that the distinct perspectives of Aboriginal victims/survivors are heard and addressed through public policy and legislation.

### ***Recommendations:***

1. Longer-term, 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;
  - b. continue 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. Police Responses to Aboriginal victims/survivors of family violence**

FVPLS Victoria practitioners hear on a daily basis about our clients' experiences with police. Far too often we hear reports of poor police conduct which exposes 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.

The following case studies illustrate some of the issues our clients' experience in their interactions with police:

#### **Case Study - Donna<sup>12</sup>**

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

After Dan threatened to kill her, Donna 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. Donna was frightened and intimidated by this prospect and left the police station without making a written statement or receiving any protection. Donna was not offered a referral to an appropriate legal service, such as FVPLS Victoria.

Ultimately, Donna 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 Donna 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.

#### **Case Study - Tina<sup>13</sup>**

With assistance from FVPLS Victoria, Tina applied for a family violence intervention order as she was experiencing physical and emotional violence from her partner, Sam. The Court granted Tina 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 Tina's house and threatened that if she proceeded with the court case she was "fucked" and "would be punished". Tina knew from past experience that Sam and his family were capable of serious violence and she was terrified.

Tina 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

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<sup>12</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety and privacy of our clients.

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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 Tina was left feeling vulnerable and scared to pursue her intervention order application.

FVPLS Victoria assisted Tina 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 Tina 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 - Sarah<sup>14</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 got to 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. She was told the police would help her find somewhere safe to stay. Sarah was incredibly distraught and upset and did not feel able 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. No IVO application was made against Peter for Sarah's protection and no referral was made for Sarah to obtain her own 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>14</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety and privacy of our clients.

## ***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 chose 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.

### ***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); and
3. 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.

### 3. Child Protection in Victorian Aboriginal Communities

Aboriginal and Torres Strait Islander families experience child protection intervention at disproportionately high rates. According to 2013 Australian Institute of Health and Welfare, (AIHW) data, Victorian Aboriginal children are 16 times more likely to be on care and protection orders than their non-Aboriginal counterparts.<sup>15</sup> Aboriginal children in Victoria are also 16 times more likely to be in out-of-home care<sup>16</sup> and that rate is increasing. The rate of removal of Victorian Aboriginal children increased by 42% in the last twelve months.<sup>17</sup> In Victoria, out-of-home care rates for Aboriginal children are some of the highest in the country and they are now higher than at any time since white settlement.<sup>18</sup>

These escalating rates of child protection intervention and removal are inextricably linked with high rates of family violence against Aboriginal people – especially Aboriginal women who have been found to be the most legally disadvantaged group in Australia.<sup>19</sup> Family violence is the single greatest driver of Aboriginal child removal.<sup>20</sup> The Victorian Commissioner for Aboriginal and Torres Strait Islander Children and Young People commenced *Taskforce 1000* in 2014 to investigate the cases of approximately 1000 Aboriginal children in out-of-home care across Victoria. Preliminary findings from his review of the first 250 cases indicate that men’s violence against women was the primary driver of up to 95% of Aboriginal children entering out-of-home care.<sup>21</sup>

Along with family violence, another key catalyst for the over-representation of Aboriginal families within the child protection system is a lack of awareness of legal rights and processes within Aboriginal communities.

FVPLS Victoria routinely sees clients who have not understood until engaging with our service (for another reason such as family violence) that the Department of Health

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<sup>15</sup> Australian Institute of Health and Welfare, *Child Protection Australia 2012–13*, Table 5.4, p 52, available at <http://www.aihw.gov.au/publication-detail/?id=60129547965>

<sup>16</sup> Australian Institute of Health and Welfare, *Child Protection Australia 2012–13*, Table 5.4, p 52, available at <http://www.aihw.gov.au/publication-detail/?id=60129547965>

<sup>17</sup> Commissioner for Aboriginal Children and Young People, Open Letter in response to *2015 Report on Government Services*, 3 February 2015.

<sup>18</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012–13*, Table 4.4 p 41.

<sup>19</sup> Aboriginal and Torres Strait Islander Commission (ATSIC), 2013, Submission to the Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice, ATSIC Canberra, (13 November 2003), p 4.

<sup>20</sup> Joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, 2014, *Update to Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, p 36, available at [www.cyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf](http://www.cyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf).

<sup>21</sup> Personal correspondence with the Victorian Commissioner for Aboriginal and Torres Strait Islander Children and Young People. See also Office of the Commissioner for Aboriginal and Torres Strait Islander Children and Young People, 2014, Papers submitted to Aboriginal Justice Forum (October 2014); and Joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, 2014, *Update to Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, p 3, available at [www.cyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf](http://www.cyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf).

and Human Services ('the Department') involvement with their family is a legal issue with potentially very serious consequences and that they are entitled to legal advice.

Without the assistance of our specialist lawyers who are attuned to the relationship between child protection and family violence, many clients would not seek legal advice until they are served with a court application made by the Department. Such applications are typically made many months into the Department being involved with a family and after the Department has already formed entrenched views that heavily influence the range of outcomes available at Court. We are concerned that in many cases during the months of Departmental scrutiny and intervention prior to court, the Department has not made clients aware that they require legal advice.

Without culturally safe legal representation, Aboriginal victim-survivors of family violence face enormous barriers to accessing their rights to participate in critical decision-making related to their children and holding the Department to its statutory obligations towards Aboriginal children.

Through our engagement with Victorian Aboriginal communities, FVPLS Victoria has received the following anecdotal reports concerning Departmental practices towards unrepresented Aboriginal families:

- Families feeling pressured to consent to the removal of their children due to the power imbalance between the Department and Aboriginal parents and a lack of faith that the justice system will give Aboriginal parents a fair go;
- Children being removed after their parent seeks assistance with respite care;
- Families being 'set up to fail' by the imposition of unrealistic timelines and unnecessarily onerous conditions;
- Grandparents taking on primary responsibility for caring for children and not receiving any supports, financial or otherwise;
- Siblings being put in separate placements and access between siblings not being prioritised;
- Failure to comply with existing law and procedure designed for Aboriginal children – for example, delays and failures to -
  - abide by the Aboriginal Child Placement principle;
  - convene Aboriginal Family-led Decision Making meetings;
  - prepare and implement cultural plans; and/or
  - respect Aboriginal and Torres Strait Islander cultures;
- High staff turnover within the Department resulting in no connection between the child and allocated Departmental caseworker and families being required to 'start over' every time the caseworker changes;

- The Department assessing proposed kinship carers as ‘unsuitable’ but not providing reasons for its decisions or allowing families a right of reply;
- The Department making negative and prejudicial judgments about parents’ capacity to care for their children on the basis that their extended family members are known to the Department;
- The fact that a new parent was themselves removed by the Department as a child being considered a ‘protective concern’ justifying Departmental scrutiny and intervention;
- The Department using legal jargon which Aboriginal families do not understand;
- Department 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 put them and their children at greater risk of family violence and Departmental intervention.

It is the experience of FVPLS Victoria that where clients engage our services at an early stage and obtain legal advice and representation to work with the Department in an informed and collaborative way, the chances of resolving the issue without the need to resort to Court are higher and, where court proceedings are initiated, the outcomes achieved are faster, more durable, realistic and positive for the whole family.

FVPLS Victoria reiterates the recommendation made in our submission to the Family Law Council reference on Families With Complex Needs<sup>22</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, 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.

#### **Case Study - Shelly<sup>23</sup>**

As part of FVPLS Victoria’s prison outreach services, FVPLS were approached for help by Shelly a young Aboriginal mother of three.

<sup>22</sup> Available at <http://www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions>

<sup>23</sup> Names and identifying details have been changed to protect the safety and privacy of our clients.

During Shelly's incarceration, the Department had obtained a Custody to Secretary Order from the Children's Court and placed Shelly's children in the care of an unrelated, non-Aboriginal foster carer. The Department had applied to the Court for final orders to continue this placement on a permanent basis.

Shelly had proposed her grandmother as an alternative carer for the children but the Department failed to complete a timely assessment of the grandmother resulting in the children remaining in foster care, away from their family and culture, for almost 12 months. The Department had also failed to abide by its statutory obligation to arrange an Aboriginal Family-led Decision-Making (AFDM) Conference so that Shelly, the grandmother and other relevant family members could participate in decisions about the children's placement, cultural needs and ongoing care.

The grandmother had been unable to participate in the proceedings or advocate for the Department to speed up the assessment process and comply with its statutory obligations because, as a grandmother, she was ineligible for a grant of aid under Victoria Legal Aid's restrictive funding arrangements.

Shelly's FVPLS Victoria lawyer took on the case and successfully advocated for an adjournment of the court proceedings for final orders so that an AFDM could take place. At the AFDM, FVPLS Victoria ensured that all relevant family were present and successfully resolved the matter by agreement.

Without FVPLS Victoria involvement, final orders would have been made in this matter resulting in these children being permanently placed with non-Aboriginal carers thus severely limiting their ability to meaningfully engage with their culture and maintain close connections with their grandparent and, through her, their extended kinship network.

Notwithstanding this success, Shelly's children and their grandmother continue to face disadvantage as the financial and other supports provided by the Department to foster carers do not extend to grandparents taking responsibility for their children through kinship care placements.

### ***Children, Youth and Families (Permanent Care and Other Matters) Amendment Act 2014 (Vic)***

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.

The *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act* was passed in September 2014 and is due to commence by no later than March 2016.

FVPLS Victoria is deeply concerned that these reforms 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 time limit in which parents must resolve protective concerns and regain care of their children before children are placed on permanent care orders;
- Secondly, 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;<sup>24</sup>
- 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.

These changes will disproportionately impact Aboriginal children and families who are statistically 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. For example, currently if the Department seeks to change a child’s care placement, reduce parental or sibling access or permit a carer to relocate with a child, the Department must obtain a Court order and all parties to the matter must be notified and given the opportunity to appear at Court and make submissions. Under the new legislative reforms, the Department will be under no such obligation and can carry on its duties unchecked by court scrutiny or any external confirmation of the child’s best interests.

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>25</sup> This indicates the Department was breaching the rights of Aboriginal children in 92% of cases.

Further, there is evidence of a failure to convene Aboriginal Family Led Decision Making meetings or AFDMs. Under section 12 of the Victorian *Children, Youth and Families Act*, the Department is required to implement a set of decision-making

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<sup>24</sup> On 28 May 2015, at the time of writing, a Bill was introduced into Victorian parliament 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 and/or amendment is necessary.

<sup>25</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).

principles that involve Aboriginal family in decisions related to the care and placement of Aboriginal children. The Department has elected through its internal policy to do this through convening AFDMs. If convened early, AFDMs can be highly effective in identifying appropriate kinship carers and ensuring extended Aboriginal family can participate in important decisions about the care, placement and wellbeing of Aboriginal children. However we have seen cases where children unnecessarily languish in out-of-home care placements with un-related, non-Aboriginal carers – in some cases for years – because the Department failed to organise an AFDM to prevent this.

FVPLS Victoria along with a number of legal practitioners, academics and legal institutions are strongly advocating for the repeal of this legislation to ensure the best interests of Aboriginal children are appropriately supported.

### ***Recommendations:***

1. 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;
2. Repeal the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic) and or amend relevant provisions in consultation with the legal sector, Aboriginal Community Controlled Organisations, specialist family violence and children’s services and the community;
3. Implement improved, regular and systematic training for all child protection workers to improve cultural awareness and family violence sensitivity, in consultation with Aboriginal organisations with sufficient expertise such as FVPLS Victoria; and
4. 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.

#### 4. Conclusion and Summary of Recommendations

In addition to endorsing the recommendations made in the NFVPLS submission, FVPLS Victoria makes the following Victorian-specific recommendations:

1. Longer-term, 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;
  - b. continue our highly successful culturally targeted early intervention prevention programs and community legal education programs;
  - 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. 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;
3. Increase investment from both Federal and State governments for frontline, culturally safe services for Aboriginal victims/survivors of family violence (including FVPLS Victoria);
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;
5. Implement 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;
6. Repeal the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic) and/or amend relevant provisions in consultation with the legal sector, Aboriginal Community Controlled Organisations, specialist family violence and children’s services and the community;
7. Implement improved, regular and systematic training for all child protection workers to improve cultural awareness and family violence sensitivity, in consultation with Aboriginal organisations with sufficient expertise such as FVPLS Victoria; and

8. Strengthen 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;