

NATIONAL FAMILY VIOLENCE PREVENTION LEGAL SERVICES

WORKING TO ACHIEVE IMPROVED JUSTICE OUTCOMES FOR ABORIGINAL AND TORRES STRAIT ISLANDER
VICTIMS/SURVIVORS OF FAMILY VIOLENCE AND SEXUAL ASSAULT

Submission to Expert Mechanism on the Rights of Indigenous Peoples Study on Access to Justice

About the National FVPLS Forum

The Australian Aboriginal Family Violence Prevention Legal Services (FVPLS) program was established in recognition of the gap in access to legal services for Aboriginal and Torres Strait Islander victims of family violence – predominantly Aboriginal women and children.

The Australian Government provides funding for FVPLS services. The primary function of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal adults and children who are victim-survivors of family violence, including sexual assault/abuse. Approximately 90 per cent of FVPLS clients are women and children, many of whom are conflicted out from accessing Aboriginal Legal Services due to the criminal law focus of Aboriginal Legal Services.

Members of the National Forum are those organisations which deliver Family Violence Prevention Legal Services in 31 rural and remote locations across Australia.

Introduction

United Nations Special Rapporteur on Violence against Women, Rashida Manjoo attended a national conference convened by FVPLS Victoria, an FVPLS member agency in 2012.¹ She stated that despite the Declaration on the Rights of Indigenous Peoples, Aboriginal women in Australia remain at higher risk of violence and continue to be discriminated against and lack access to appropriate services. Aboriginal women and children are among the most legally disadvantaged peoples in Australia and have been repeatedly recognised within Australia and internationally as having significant unmet legal need and facing additional barriers in accessing justice.

The 2009 Senate *Access to Justice* report² acknowledged the ongoing chronic disadvantage of Aboriginal women and found that Aboriginal people's access to justice is compromised by a lack of properly funded Aboriginal legal services. The report noted that people living in regional, rural and remote areas were particularly disadvantaged. People living in urban areas also experience challenges with policy decisions to restrict FVPLS services to rural and remote areas leading to urban Aboriginal people being 'in effect abandoned to mainstream services, without adequately addressing issues of access, flexibility and relevance.'³

It is the responsibility of governments to provide protection and access to support and intervention services. The CEDAW Committee has called for the Australian Government to take 'appropriate and effective measures' to overcome all forms of gender based violence. It has highlighted that Aboriginal and Torres Strait Islander women have limited access to legal services and reiterated the need to fund culturally safe Aboriginal women's legal services in urban, rural and remote Australia. The CEDAW Committee in 2009 also recommended that 'special measures to advance the human rights of Aboriginal and Torres Strait Islander women be implemented.'

¹ See Conference proceedings, available at <http://fvpls.org/images/files/Post%20Conference%20Publication%20Web%20Version.pdf>

² Legal and Constitutional Affairs References Committee, *Access to Justice*, 2009 at 147.

³ Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights Commission, *Social Justice Report*, 2006.

Despite these calls, government policy fails to recognise the multiple and complex barriers that prevent Aboriginal people from accessing the legal system. Culturally safe FVPLS services continue to be chronically underfunded and restricted to providing services in a limited number of regional and remote locations around Australia, leaving large geographic gaps in coverage. At a time when rates of family violence are escalating, Aboriginal women and children's safety is being threatened by government's failure to address gaps in access to justice.

Aboriginal family violence

Aboriginal people are disproportionately overrepresented as victims of family violence. While available data is limited, we know that Aboriginal women in Australia are 34 times more likely to be hospitalised as a result of injuries caused by assault, than non-Aboriginal women.⁴ One in three Aboriginal people also report having a relative who is a victim or a witness to interpersonal violence on a daily basis.⁵

Family violence has broad impacts, including on Aboriginal women's imprisonment rates, child protection interventions and physical and mental health. Given the complexity and sensitivity of these issues, legal support is critical. There is strong evidence of the importance of legal services in addressing family violence long-term, especially the use of protection orders and victims compensation. The effectiveness of protection orders is enhanced by victims having legal representation, advice and advocacy. Anecdotally, we consistently see the role of legal services in empowering women to recognise and address their experiences of family violence, and the benefits of a service model that recognises the complexity of the issues experienced.

Limitations on access to FVPLS Services

The complex nature of family violence and the many underlying issues that contribute to family violence require responses that are unique, and informed by experience in this area. FVPLSs have adopted holistic, wrap-around service delivery models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face.

However FVPLSs are limited by our funding guidelines to providing services in the areas of family law, child protection, victim's assistance, family violence and other legal issues directly related to the family violence. This means that for assistance with any other legal issues, not directly related to their experiences of violence, clients must either access another service, or their additional legal issues remain unresolved. As a result of generations of negative experiences with the justice system, including ongoing experiences of discrimination and racism, Aboriginal victims/survivors of family violence are often reluctant to engage with the legal system and to access legal assistance. Requiring Aboriginal people to access multiple services creates additional barriers for people that already experience significant challenges in accessing justice. Although there has been little progress in recent years, discussions continue about the need for funding a specific Aboriginal women's legal service which deals with civil and criminal matters.

As well as limiting the areas of law we can provide support in, many Aboriginal victims/survivors remain unable to access FVPLS service because the Commonwealth Government only funds FVPLSs to provide services in 31 rural and remote locations across Australia. A recent report commissioned by a government department stated that "the FVPLS units collectively service an area that covers approximately half the Indigenous population, though much of this coverage in remote areas is extremely limited and often consists of one or two days per month."⁶

⁴ Commonwealth Government, Department of Health, *Aboriginal and Torres Strait Islander Health Performance Framework 2012 Report*, 2012.

⁵ Aboriginal Affairs Victoria, *The Victorian Indigenous Family Violence Taskforce*, 2003.

⁶ NOUS Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, 2013 (unpublished).

With approximately one-third of the Aboriginal population living in capital cities, and a further 25% living in inner-regional areas, the restriction means large numbers of Aboriginal victims/survivors of family violence are unable to access specialist culturally safe family violence legal services.⁷

There are also a number of very high needs rural and remote areas that do not receive adequate levels of service to meet demand. With only 31 rural and remote locations serviced, many high needs communities continue to miss out. Even where FVPLSs are located, the funding provided is insufficient to meet the much higher cost of delivering services in remote areas, meaning FVPLSs are unable to provide the level of service needed to meet the complex needs of remote communities.

The impacts of lack of access to family violence prevention services

Aboriginal women are being disadvantaged by the government's failure to support equitable access to gender and culturally specific legal services. With their lack of focus on cultural safety and their lack of understanding of the complexities of Aboriginal communities, mainstream legal services often do not meet the unique needs of Aboriginal and Torres Strait Islander women. Similarly, many victims/survivors of family violence are unable (due to conflict of interest issues) or unwilling (due to their criminal law focus and because they also provide services to perpetrators) to access Aboriginal Legal Services.

The impacts of being unable to access culturally appropriate legal services are also exacerbated by failures to adequately protect Aboriginal and Torres Strait Islander women from family violence. For example culturally specific crisis accommodation, and crisis accommodation generally, is limited and many victims/survivors are unable to access support services that could help to keep them safe.

Case Study: Andrea's Story⁸

Andrea, an Aboriginal mother of 10, was violently killed by her former de-facto partner after separation. Her former partner made repeated threats against Andrea and she sought multiple restraining orders. After repeatedly breaching the restraining orders he was charged and jailed. After his release from prison, her former partner made repeated threats to Andrea and their children. When Andrea notified police that her partner was violating the restraining order and in violation of his parole no action was taken to notify his parole officer.

Prior to her death Andrea had many encounters with various state government agencies charged with assisting women to escape from family violence. Andrea requested emergency accommodation for her and her children and was unsuccessful in securing a referral due to the number of children in her care.

Andrea attempted to seek legal assistance from the local Aboriginal Legal Service but was informed that they could not assist her because the perpetrator had already sought their assistance and there would be a conflict of interest. When seeking a referral to a specialist FVPLS service, Andrea was unsuccessful because she lived in an urban area. Andrea remained in her home with her children where she was stalked and murdered by her violent partner.

⁷ NOUS Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, 2013 (unpublished).

⁸ Some details changed. For more information see <http://www.abc.net.au/4corners/stories/2012/07/30/3554420.htm>

This case highlights the chronic lack of adequate protection measures and services available for Aboriginal people experiencing family violence, including police assistance, refuges or other safe housing and short-term emergency assistance.

It also highlights the gap in relation to access to justice for Aboriginal women as Andrea was unable to access a culturally specific legal service, such as an FVPLS, because she lived in one of the many areas of Australia without adequate FVPLS coverage. The perpetrator in this case study however, had access to an Aboriginal Legal Service, which are not subject to the same geographic funding restrictions on service delivery.

Dedicated services for Aboriginal victim/survivors of family violence were not available for Andrea. Whilst it is not possible to predict the difference in outcome had she been able to access specialist services, it has been our experience that specialist services provide a crucial alternative, and oftentimes the only option, for Aboriginal women victim/survivors of family violence. Specialist services positively influence outcomes for Aboriginal women by filling the gap created by inequitable government policies.

International obligations

The above case study clearly illustrates how the Australian Government has neglected its obligations to ensure that Aboriginal women have access to services that ensure their full protection against all forms of violence under the Declaration on the Elimination of Violence against Women (1993), the Declaration on the Rights of Indigenous Peoples and the International Covenant on Civil and Political Rights (ICCPR).

Australia has enacted various laws to prevent discrimination on the basis of race, age, sex and disability, including the Racial Discrimination Act 1975 (Cth), along with other state and territory anti-discrimination legislation. Despite these legal protections, Aboriginal people continue to experience both direct and systemic discrimination, and consequently do not benefit from human rights equality.

Right to Life, Liberty and Security

The Australian Government is in breach of its obligations under the Universal Declaration of Human Rights (UDHR) by not ensuring equal rights to life, liberty and security of person for Aboriginal women.

Conclusion

Aboriginal victims/survivors of family violence in Australia continue to experience racism, discrimination and marginalisation from the legal system and face multiple and complex barriers in accessing justice. Government policies that restrict access to culturally safe specialist services are further disadvantaging Aboriginal women, and putting more women and children at risk of violence and abuse. Aboriginal victims/survivors of family violence have a right to equitable access to legal and non-legal support services, and a right to safety in their homes and communities, that are not currently being adequately protected.

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