

# 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

## **National Family Violence Prevention Legal Services Forum** **SUBMISSION IN RESPONSE TO THE SENATE INQUIRY INTO ACCESS TO** **LEGAL ASSISTANCE SERVICES**

**JUNE 2015**

## **Introduction**

The National Aboriginal Family Violence Prevention Legal Services Forum (National FVPLS Forum) welcomes the opportunity to provide input into the Finance and Public Administration References Committee inquiry into Access to Legal Assistance Services.

The National FVPLS Forum is very concerned about the significant unmet legal need, and the repercussions of reduced access to justice outcomes, experienced by Aboriginal and Torres Strait Islander people across Australia. Aboriginal and Torres Strait Islander women, in particular, have been found to be the most legally disadvantaged group in Australia.<sup>1</sup> There is an increased risk of family violence, incarceration, poverty, homelessness, poor mental and physical health and wellbeing, racism and discrimination<sup>2</sup> and child removal faced by Aboriginal and Torres Strait Islander peoples.<sup>3</sup>

Unacceptably, violence against Aboriginal and Torres Strait Islander women is dramatically increasing and it is essential that Family Violence Prevention and Legal Services (FVPLSs) are, as a priority, funded at appropriate levels to meet service demands, with directly allocated and long term funding arrangements.

Despite recent applications for an increase in resourcing for our critical front-line family violence prevention legal services to respond to increasing service demands, FVPLSs have received confirmation from the Department of Prime Minister and Cabinet (PM&C) that current funding will be provided at the same levels as 2013/14, without any CPI indexation.

The Federal Government has stated that reducing and eliminating family violence is a national priority. This cannot be achieved without appropriately funded legal assistance services and a genuine commitment to an informed, integrated and united government approach.

A reduction in family violence must be sought through investment in early intervention programs, prevention and community education approaches and increased inter-disciplinary responses. A multi-agency whole-of-government systemic and strategic national response and genuine consultation with experienced community services and their consumers is required. It is crucial that genuine consultation occurs with Aboriginal community-controlled organisations and Aboriginal and Torres Strait Islander women.

The National FVPLS Forum refers the Committee to the following recent, related submissions:

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<sup>1</sup> Senate Report on Legal Aid and Access to Justice, 2004. See also: Aboriginal and Torres Strait Islander Commission (ATSIC), *Submission to the Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice*, ATSIC Canberra, 13, November 2003, page 4.

<sup>2</sup> The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014-Overview*, page 2-61 available at <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014/key-indicators-2014-report.pdf>.

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

1. Submission to the Senate Inquiry into the Indigenous Advancement Strategy Tendering Processes<sup>4</sup>;
2. Submission to the Family Law Council reference on Families with Complex Needs<sup>5</sup>;
3. Senate Inquiry into Out of Home Care<sup>6</sup>; and
4. Senate Inquiry into Domestic Violence<sup>7</sup>.

## **1. About the Family Violence Prevention Legal Services**

The primary function of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are victim/survivors of family violence. FVPLSs also provide an important community legal education and early intervention and prevention function. FVPLSs have developed holistic, wrap-around service models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face. FVPLSs are not gender exclusive. However, nationally 90% of our clients are Aboriginal and Torres Strait Islander women and children.

FVPLSs were established 16 years ago in recognition of:

- the gap in access to legal services for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault;
- the high number of legal conflicts within Aboriginal and Torres Strait Islander Legal Services (ATSILS) and;
- high rates of family violence in Aboriginal and Torres Strait Islander communities.

FVPLSs are one of the four national legal assistance providers, along with legal aid commissions (LACs), community legal centres (CLCs), Aboriginal and Torres Strait Islander legal services (ATSILS) and family violence prevention legal services (FVPLS), which all have different and specialised but complementary roles.”<sup>8</sup> FVPLSs currently service 31 rural and remote locations around Australia pursuant to Commonwealth government funding. Some FVPLS units have also attracted additional funding from State government and other sources to service metropolitan and additional regional areas.

## **2. About the National FVPLS Forum**

The National FVPLS Forum Members have been successfully working together since the Forum was established in May 2012. The Forum’s goal is to work in collaboration across FVPLS Services nationally and increase access to justice for Aboriginal and Torres Strait Islander victims/survivors of family violence. The National Forum has its own Charter, is led by an elected National Convenor and supported by a Secretariat. Members are represented by their CEO/Coordinator (or delegates) and have worked together to develop tools for capacity

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<sup>4</sup> Available at

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance and Public Administratio n/Commonwealth\\_Indigenous/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administratio n/Commonwealth_Indigenous/Submissions)

<sup>5</sup> Available at

[http://www.nationalfvpls.org/images/files/Submission\\_National\\_Forum\\_Family\\_Law\\_Council\\_Reference\\_FINAL.pdf](http://www.nationalfvpls.org/images/files/Submission_National_Forum_Family_Law_Council_Reference_FINAL.pdf)

<sup>6</sup> Available at

[http://www.nationalfvpls.org/images/files/National\\_FVPLS\\_Forum\\_Submission\\_to\\_the\\_Senate\\_Inquiry i nto\\_Out\\_of\\_Home\\_Care.pdf](http://www.nationalfvpls.org/images/files/National_FVPLS_Forum_Submission_to_the_Senate_Inquiry_i nto_Out_of_Home_Care.pdf)

<sup>7</sup> Available at

[http://www.nationalfvpls.org/images/files/National\\_FVPLS\\_Forum\\_Submission\\_to\\_Senate\\_Inquiry\\_into\\_Domestic\\_Violence.pdf](http://www.nationalfvpls.org/images/files/National_FVPLS_Forum_Submission_to_Senate_Inquiry_into_Domestic_Violence.pdf)

<sup>8</sup> Productivity Commission, *Access to Justice Arrangements Report*, 2014, p 667.

building, good governance, professional development, training, the development of evaluation frameworks and improved data collection.

At the time of writing this submission, the National Forum comprised 13 members:

- Aboriginal Family Violence Prevention and Legal Service Victoria (Melbourne HO, Mildura, Gippsland, Barwon South West)
- Aboriginal Family Legal Service Southern Queensland (Roma)
- Binaal Billa Family Violence Prevention Legal Service (Forbes )
- Central Australian Aboriginal Family Legal Unit Aboriginal Corporation (Alice Springs HO, Tennant Creek)
- Family Violence Legal Service Aboriginal Corporation (Port Augusta HO, Ceduna, Pt Lincoln)
- Many Rivers Family Violence Prevention Legal Service (Kempsey)
- Marninwarnitkura Family Violence Prevention Unit WA (Fitzroy Crossing)
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Domestic and Family Violence Service (Alice Springs, NPY Tri-state Region)
- Queensland Indigenous Family Violence Legal Service (Cairns HO, Townsville, Rockhampton, Mount Isa, Brisbane)
- Southern Aboriginal Corporation Family Violence Prevention Legal Service (Albany)
- Thiyama-li Family Violence Service Inc. NSW (Moree HO, Bourke, Walgett)
- Warra-Warra Family Violence Prevention Legal Service (Broken Hill)
- Western Australia Family Violence Legal Service (Perth HO, Broome, Carnarvon, Kununnura, Geraldton, Kalgoorlie, Port Hedland)

#### **a. THE EXTENT TO WHICH ABORIGINAL AND TORRES STRAIT ISLANDER AUSTRALIANS HAVE ACCESS TO LEGAL ASSISTANCE SERVICES**

Historical and current institutionalised and individualised racism and discrimination have left Aboriginal and Torres Strait Islander community members reluctant to engage with the legal system or to seek mainstream service assistance. The 2004 Senate Report on Legal Aid and Access to Justice identified that Aboriginal and Torres Strait Islander women remain chronically disadvantaged in terms of their access to legal services, awareness and exercise of their legal rights and domestic violence support. The Productivity Commission *Access to Justice Arrangements Inquiry 2014* determined that there is a continued and ongoing need for FVPLS's specialist Aboriginal and Torres Strait Islander specific legal assistance services.

It is well-documented that Aboriginal and Torres Strait Islander people are confronted with significant obstacles to accessing justice, due to the complexity and multiplicity of legal problems they experience and the barriers faced in accessing legal services.<sup>9</sup> The Indigenous Legal Needs Project highlighted substantial areas of unmet legal need in civil and family law.<sup>10</sup>

The National FVPLS Forum members have identified that in their experience:

- There is distrust in the legal and justice systems within Aboriginal and Torres Strait Islander communities
- There are substantial gaps in legal services/protection for Aboriginal and Torres Strait Islander women
- There is a lack of awareness within Aboriginal and Torres Strait Islander communities around the legal rights of victim/survivors of family violence; and

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<sup>9</sup> Productivity Commission, *Access to Justice Arrangements*, 2014, p 762.

<sup>10</sup> James Cook University, *Indigenous Legal Needs Project*, 2014.

- There are multiple, significant barriers to accessing mainstream services, particularly for Aboriginal and Torres Strait Islander victim/survivors of family violence

Despite these significant identified gaps, funding for the two specialised legal assistance services to address the legal needs of Aboriginal and Torres Strait Islander people - FVPLSs and ATSILS - has not increased. This is despite continued community need and service demand for their essential services.

Prior to the collapse of the National FVPLS Programme into the Indigenous Advancement Strategy, Commonwealth funding for FVPLSs was restricted to service delivery within 31 specified rural and remote locations. The boundaries of each of these regions are now less certain. Each FVPLS Unit has identified an increased demand for their unique and culturally safe service provision in communities beyond these specified service areas. Prime Minister and Cabinet have requested FVPLSs review their service imprint to potentially alter service areas, within the current restricted and limited resources. The National FVPLS Forum Members are committed to maintain effective service delivery within the communities already serviced, appropriately and in response to established community trust and expectation of essential service provision.

### Client Barriers

Family violence is complex and the issues faced by clients of the National FVPLS Forum members are equally complex. As well as family violence driven homelessness, our clients live with intergenerational trauma, removal of children, discrimination, poverty, mental health issues, disability, lower levels of literacy and numeracy, as well as a range of other cultural, legal and non-legal issues. In the experience of the National FVPLS Forum, the legal issues themselves experienced by our clients are generally complex, involve multiple areas of law and operate within multiple layers of trauma.

Family violence has significant, far-reaching and multiple impacts. Through our casework, we see the multi-generational impacts of family violence on a daily basis, and the intrinsic links between family violence, child protection and homelessness. Family violence is the single biggest driver of Aboriginal child removal and Victoria currently has the highest rates of Aboriginal children in out of home care since white settlement – rates which are the highest in Australia – with men’s violence against women identified as the leading cause. Family violence is the primary reason Australians present to homelessness accommodation services,<sup>11</sup> with Aboriginal women 15 times more likely to seek support from crisis homelessness services.<sup>12</sup>

Family violence creates long-term damage to the mental and physical health and wellbeing of victims/survivors, contributes to disproportionate incarceration rates for Aboriginal women and children as well as increased self-harm and self-medication with alcohol and other drugs.

The Legal Australia-Wide Survey (LAW Survey)<sup>13</sup> identified that Aboriginal and Torres Strait Islander people have significantly increased and multiple legal problems, with a rate 1.3 times as high as that of non-Aboriginal and Torres Strait Islander people.

The LAW survey also reported that Aboriginal and Torres Strait Islander people have lower incidents of finalising their legal problems, compared with non-Aboriginal and Torres Strait Islander people. In FVPLS experience it is likely this is due to:

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<sup>11</sup> 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>12</sup> Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women’s Offending*, 2010, p 28.

<sup>13</sup> Law and Justice Foundation of NSW, *Legal needs of Indigenous people in Australia*, 2013, p 2.

- the complex nature of the issues experienced;
- the interaction of a number of complex legal issues;
- challenges maintaining engagement with the system;
- not receiving sufficient legal and non-legal support and;
- the underlying social disadvantage and trauma experienced by many of our clients.

The Law Survey also discussed the difficulties in measuring Aboriginal and Torres Strait Islander legal need, which is often unidentified. The Productivity Commission has noted that ‘many of these same factors make it more challenging for Indigenous people to resolve, or to seek assistance to resolve, their disputes’.<sup>14</sup>

FVPLSs provide comprehensive and individualised wrap-around service delivery for legal clients through flexible and experienced holistic support, facilitated referrals, specialist lawyers and increased access to appropriate counselling. This unique high-quality and culturally safe holistic service model enables increased levels of engagement with clients leading to improved, sustainable outcomes.

### Culturally safe service delivery

The framework of cultural safety specifically extends beyond cultural awareness and cultural competence and incorporates self-determination into the provision of services. The fundamental importance of cultural safety in effective service provision to vulnerable clients speaks to the access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness. FVPLSs conceptualise cultural safety as the creation of an environment where Aboriginal and Torres Strait Islander people feel safe and draw strength in their identity, culture and community.

Mainstream legal services often lack knowledge of and access to the complexities of Aboriginal and Torres Strait Islander communities. The many barriers Aboriginal and Torres Strait Islander people continue to experience in accessing mainstream services are persistent and have far-reaching consequences.

This is well documented in reports and through consultations with Aboriginal and Torres Strait Islander communities. As identified by the Law and Justice Foundation of NSW, “the literature notes that barriers to accessing justice can result when services are not culturally sensitive and appropriate for Indigenous people. Notably, the Indigenous Australian community has experienced historical marginalisation, including marginalisation from mainstream public and related services”.<sup>15</sup>

For victims/survivors of family violence – most particularly Aboriginal and Torres Strait Islander women - mistrust in the legal system and the mainstream service sector is perpetuated by high levels of child protection notifications and child removal in Aboriginal communities and poor police and service responses. These factors are often perceived and experienced by Aboriginal and Torres Strait Islander communities through the lens of systemic racism and discrimination.

Aboriginal and Torres Strait Islander community controlled organisations are recognised as important and powerful mechanisms for decision making by Aboriginal and Torres Strait Islander people and communities. Community ownership and leadership are strongly linked to the cultural authority and legitimacy of service providers to Aboriginal and Torres Strait Islander victims of family violence, which in turn strengthens the capacity of these organisations to deliver the outcomes required. Aboriginal and Torres Strait Islander community controlled

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<sup>14</sup> Productivity Commission, *Access to Justice Arrangements*, 2014.

<sup>15</sup> Law and Justice Foundation of New South Wales, *Reshaping Legal Assistance Services: Building on the Evidence Base A Discussion Paper*, Law and Justice Foundation of New South Wales, 2014, p 31.

organisations have an immediate connection into community. Increasing the voice and leadership of Aboriginal and Torres Strait Islander women in particular will achieve outcomes in relation to cultural, safety and wellbeing needs of Aboriginal and Torres Strait Islander communities.

In relation to the complexities of legal assistance, Aboriginal and Torres Strait Islander legal service providers are better equipped to build trust and maintain engagement with Aboriginal and Torres Strait Islander clients, obtain fuller legal instructions, understand the complexity of clients' legal problems and understand and apply specific legislative provisions and rules pertaining to Aboriginal and Torres Strait Islander people. This ultimately contributes to improved legal outcomes for clients.

Engaging with community leaders and employing community owned solutions enhances both the quality of community life and the organisation's service responsiveness. Community perspectives are embedded in program design and implementation through processes of community consultation and collaboration with other Aboriginal and Torres Strait Islander organisations. Indeed, maintaining a responsibility to represent local communities and having clear organisational practices that ensure connection is maintained is a central premise of Aboriginal and Torres Strait Islander community controlled organisations. Although mainstream organisations have a role in providing services to Aboriginal and Torres Strait Islander people, this must be led by Aboriginal and Torres Strait Islander community controlled organisations.

FVPLSs have worked hard to build strong and collaborative relationships within Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander communities and among service providers across government departments, community services and the many law and justice agencies. Harnessing FVPLS's organisational expertise, contributions and relationships maximises the effectiveness and efficiency of existing community and government investments across different sectors.

Aboriginal and Torres Strait Islander communities must be supported to develop and implement community led interventions, to evaluate and enhance their effectiveness using cultural methods, and receive adequate and sustainable resourcing. An important strategy for achieving this is to engage with and work through existing Aboriginal and Torres Strait Islander community controlled organisations like the National FVPLS Forum and other existing networks and groups in the development, roll-out and evaluation of initiatives.

### Physical/Geographic Barriers

As more than 20% of Aboriginal and Torres Strait Islander people live in rural and remote locations, Aboriginal and Torres Strait Islander people disproportionately face physical barriers to accessing legal assistance, with a recent report on Legal Assistance Services noting that:

'Accessing legal services of any kind (public-funded or otherwise) is becoming increasingly difficult in regional, rural and remote Australia' (Commonwealth Attorney-General's Access to Justice Taskforce 2009, p. 146)... Importantly, the problem of distance and poor service infrastructure in some RRR areas is compounded by the fact that disadvantaged groups such as Indigenous Australians are more highly concentrated in RRR areas (Australian Bureau of Statistics (ABS) 2010, 2011). Thus, some RRR areas are microcosms of legal need, embodying the 'double whammy' of poor service infrastructure and populations with high vulnerability to legal problems.'<sup>16</sup>

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<sup>16</sup> Law and Justice Foundation of New South Wales, *Reshaping Legal Assistance Services: Building on the Evidence Base A Discussion Paper*, Law and Justice Foundation of New South Wales, 2014, p32.

Providing appropriate and consistent legal assistance service model to rural and remote locations can be resource intensive and critically relies on establishing and maintaining community trust. Another challenge to service delivery in remote areas is language, with many local Aboriginal people speaking limited English - English being a second, third or fourth language. Complicated legal language exacerbates the problems of clear communication and there is a lack of appropriately resourced interpreters.

*There are definitely gaps in the legal service providers in our rural area. It is very difficult to engage a Private Solicitor in some areas due to the distance and location of listings in Local Courts. The number of local solicitors that will accept a grant of legal aid is also limited. Our remote outlying areas are not serviced by Legal Aid Family Law outreach; our organisation is the only legal service provider that undertakes regular outreach and court attendance on a regular and consistent basis. Our rural and remote communities are extremely culturally sensitive and due to the isolation and distrust of the legal system, telephone conferences are not productive. BBFVPLS are the only legal service providers that will travel to undertake face-to-face consultations prior to a court date.*

### Urban Service Delivery

Aboriginal and Torres Strait Islander disadvantage “does not start and stop at remote Australia [which] is especially true when comparisons are made with the urban non-Indigenous population.”<sup>17</sup> Around three quarters of Aboriginal and Torres Strait Islander Australians live in a regional or urban areas, and almost a third live in a major city. Regional and urban Aboriginal and Torres Strait Islander populations continue to face significant barriers to accessing legal assistance services and typically experience poorer law and justice outcomes in comparison with mainstream, non-Aboriginal populations. For example, urban populations are still well over-represented among victims/survivors of family violence and within the criminal and child protection systems.

Aboriginal and Torres Strait Islander victims/survivors of family violence living in urban areas have been adversely impacted by previous policy decisions, and funding FVPLS allocations, that geographically restrict FVPLS services to rural and remote areas. This leads to urban Aboriginal and Torres Strait Islander victim/survivors of family violence being ‘in effect abandoned to mainstream services, without adequately addressing issues of access, flexibility and relevance.’<sup>18</sup>

### Recommendations

The National FVPLS Forum recommends that:

1. the Government reinstate the National Family Violence Prevention Legal Services as a national, standalone programme provided with a transparent commitment through treasury and budget processes to secure a direct allocation of resources.
2. Funding to Aboriginal Family Violence Prevention Legal Services should be increased to address increasing and unmet need and ensure that Aboriginal and Torres Strait Islander victim / survivors of family violence have access to culturally safe legal services, including in metropolitan areas.
3. Funding to Aboriginal and Torres Strait Islander specific legal services should be increased to ensure that Aboriginal and Torres Strait Islander people have access to culturally safe legal services, including in metropolitan areas.

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<sup>17</sup> Nicholas Biddle, ‘Indigenous Gaps in the City’, 2009, *Indigenous Law Bulletin* 7(14), 16.

<sup>18</sup> Australian Human Rights Commission, *Social Justice Report 2006*, p 36.

4. New initiatives designed to address unmet legal need among Aboriginal and Torres Strait Islander people be led by and developed in ongoing consultation with FVPLSs and ATSILS and, where relevant, other Aboriginal Community Controlled Organisations with appropriate expertise.

## **b. THE ADEQUACY OF RESOURCES PROVIDED TO ABORIGINAL LEGAL ASSISTANCE SERVICES BY STATE, TERRITORY AND COMMONWEALTH GOVERNMENTS**

The resources provided to Aboriginal legal assistance services by the State, Territory and Commonwealth governments are insufficient, particularly understood in the context of the extraordinary costs, both social and economic, of failing to address legal need amongst Aboriginal and Torres Strait Islander communities.

The Productivity Commission's *Inquiry into Access to Justice Arrangements* found that there was significant unmet family and other civil law legal need for Aboriginal and Torres Strait Islander people.<sup>19</sup> Unmet legal need can escalate to serious interrelated problems for Aboriginal and Torres Strait Islander people. Early intervention in civil law matters is crucial in preventing the escalation of matters into the criminal jurisdiction.<sup>20</sup>

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 and recommended an increase in funding to both services.<sup>21</sup> The Productivity Commission also called for an immediate \$200 million funding boost for legal assistance services, including FVPLSs.<sup>22</sup> The report also recommended that state and territory governments contribute to the funding of services provided by FVPLSs and ATSILS.<sup>23</sup> The interim report of the Senate Inquiry into Domestic Violence supported the Productivity Commission's recommended \$200million funding injection, as well as recommending the restoration of funding cuts to legal services (including FVPLSs) and noting the importance of adequate funding for policy and law reform work by legal services.<sup>24</sup>

The 2004 *Legal Aid and Access to Justice Report* recommended that the Government allocate sufficient funding to Family Violence Prevention Legal Services to enable adequate provision of effective legal services for Aboriginal and Torres Strait Islander women in family law and family violence matters.<sup>25</sup>

The 2009 Senate *Access to Justice Report* found that Aboriginal and Torres Strait Islander people's access to justice is compromised by a lack of properly funded Aboriginal and Torres

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<sup>19</sup> Productivity Commission, *Access to Justice Arrangements*, 2014, p 801.

<sup>20</sup> Productivity Commission, *Access to Justice Arrangements*, 2014, p 781-82.

<sup>21</sup> Productivity Commission, *Access to Justice Arrangements*, 2014, p 700, 801.

<sup>22</sup> Productivity Commission, *Access to Justice Arrangements*, 2014. For clarity, the recommendation refers specifically to 'Aboriginal and Torres Strait Islander Legal Assistance Services. The Commonwealth Attorney General's Department has confirmed at meetings of Australian and Victorian Legal Assistance Forums that this term covers ATSILS and FVPLSs.

<sup>23</sup> Productivity Commission, *Access to Justice Arrangements*, 2014, p 29.

<sup>24</sup> Senate Finance and Public Administration Committees, *Domestic Violence in Australia: Interim Report*, 2015, p vii and p 11.

<sup>25</sup> Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, 2004 at 5.54.

Strait Islander Legal Services and noted that people living in regional, rural and remote areas were especially disadvantaged.<sup>26</sup>

The resources currently provided to FVPLSs are inadequate to meet demand. FVPLSs have been subjected to review after review in recent years (including the Allens Consulting Report, the NOUS Report, The Review of the NPA on Legal Assistance Services, the Senate Inquiry, and the Productivity Commission), commonly determining there is an ongoing need for our specialist services, a need to provide secure sustainable funding and a need to develop an effective evaluation framework in consultation with FVPLSs.

Despite these consistent findings and evidence establishing the value and importance of the work and impact of FVPLSs, there has been no increase in funding for FVPLSs from the Commonwealth Government. In fact the programme has been collapsed into the Indigenous Advancement Strategy's Safety and Wellbeing programme, creating devastating levels of uncertainty for services.

In 2012, funding was cut to FVPLSs early intervention and prevention activities. Savings and broader social and economic benefits could still be attained by investing in FVPLSs early interventions to respond, reduce and prevent family violence.

A 2012 study found that on average, community legal centres, which includes FVPLSs, "have a cost benefit ratio of 1:18; that is, for every dollar spent by government they return a benefit to society that is 18 times the cost."<sup>27</sup> Further work is required to determine the cost benefit of FVPLSs independently.

FVPLSs' cost efficient and effective service models provides added value through:

- Early, cost effective resolution of legal matters for clients
- Maintenance of engagement of clients to resolve complex matters efficiently
- Effective use of cross-sector resources to improve outcomes
- Flow on impacts of safer, stabilised clients including jobs, training, school attendance
- Harnessing established community trust as effective mechanism to successfully engage communities and expand into new service areas

### Increasing rates of family violence

Rates of family violence, child protection intervention and incarceration are increasing at devastating rates for Aboriginal and Torres Strait Islander people, placing additional pressure on FVPLSs under-resourced service delivery.

Nationally, Aboriginal and Torres Strait Islander women are now 34 times more likely to be hospitalised for family violence<sup>28</sup> and 10 times more likely to die from violent assault than other women.<sup>29</sup> 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>30</sup> Aboriginal

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<sup>26</sup> Australian Human Rights Commission Submission to the Senate Legal and Constitutional Affairs Committee, *Inquiry into Access to Justice*, 2009.

<sup>27</sup> Dr Judith Stubbs and associates, *Economic Cost Benefit Analysis of Community Legal Centres*, June 2012.

<sup>28</sup>The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014*, 2014, p 4.93, table 4A.11.22.

<sup>29</sup> Australian Institute of Health and Welfare, *Family Violence among Aboriginal and Torres Strait Islander people*, 2006, p 66.

<sup>30</sup> Productivity Commission, *Report on Government Services*, 2015, page 15.13

women are also the fastest growing prisoner demographic in Australia<sup>31</sup> - a phenomena intrinsically linked with family violence as detailed under term of reference (e) below.

The *Interim Report on Domestic Violence* released by the Senate Finance and Public Administrations References Committee ('the Committee') earlier this year, called for an immediate funding boost to legal assistance services. The Committee also called on governments to work with frontline services and peak advocacy bodies in developing meaningful prevention programs, to increase coordination and communication between jurisdictions and increase the availability of behaviour change programs for perpetrators.<sup>32</sup>

National Forum Members have identified an alarming and increasing need for access to legal assistance for Aboriginal and Torres Strait Islander victim/survivors of family violence particularly to address the escalating rates of family violence and provide support for issues related to child protection.

### Economic Costs of Family Violence

Family violence is not only one of Australia's biggest social issues, it has significant economic, social, health and community costs. As indicated, the prevalence of family violence is vastly disproportionate for Aboriginal and Torres Strait Islander women.

Economic modelling by KPMG shows that violence against women and their children cost the Australian economy \$13.6 billion in the 2008-9 financial year.<sup>33</sup> The specific annual national cost of violence against Aboriginal women was projected to increase to \$2.2 billion in the year 2021-22.<sup>34</sup> This does not include costs incurred in relation to children who witness violence, which were projected to reach \$1.6 billion.<sup>35</sup>

Without adequate investment the consequential costs and adverse impacts of escalating family violence will include:

- increased expenditure on child protective services and Courts for child removal and intervention by child protection services;
- increased costs and reduced efficiencies on the Court system who would be burdened with a greater number of unrepresented litigants;
- increased expenditure on homelessness, mental health and drug and alcohol services; and
- increased expenditure on the incarceration of both perpetrators and victims of violence.

Despite family violence being considered a national priority for the Federal Government and calls for further funding to be provided to legal assistance services, the recent Federal Budget did not include an increase in funding for FVPLSs. The 2015 Federal Budget did provide \$16.7 million over three years towards funding a \$30 million National Awareness Campaign to Reduce Domestic Violence. It is unclear how this campaign will effectively reach Aboriginal and Torres Strait Islander women and what impact it will have on the ground. Indeed, increasing awareness

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<sup>31</sup> Human Rights Law Centre, *New Stats reveal that Aboriginal and Torres Strait Islander women are one of the incarnated groups in the world*, 16 September 2014, <http://hrlc.org.au/new-stats-reveal-that-aboriginal-and-torres-strait-islander-women-are-one-of-the-most-incarcerated-groups-in-the-world/>.

<sup>32</sup> Senate Finance and Public Administration Committees, *Domestic Violence in Australia: Interim Report*, 2015.

<sup>33</sup> The National Council to Reduce Violence Against Women and their Children, *The Cost of Violence Against Women and their Children*, 2009, p 4.

<sup>34</sup> The National Council to Reduce Violence Against Women and their Children, *The Cost of Violence Against Women and their Children*, 2009, p 9.

<sup>35</sup> The National Council to Reduce Violence Against Women and their Children, *The Cost of Violence Against Women and their Children*, 2009, p 9.

of – and hence reporting of -family violence can be dangerous if services tasked to assist victims/survivors are not resourced to cope with the extra demand generated and are forced to turn away victims/survivors seeking assistance.

National FVPLS Forum members have estimated that an additional \$2 million per unit is the minimum additional resourcing urgently required to address existing demand.

### **Rural and Remote Service Delivery**

Geographic issues lead to considerable resource challenges for FVPLSs in the provision of legal services and providing access to justice. The costs of travelling to remote communities are high. Some services are required to charter flights, or spend many hours travelling by road to reach community. The unique challenges of service provision in rural and remote areas are often not recognised in resourcing for FVPLSs or ATSILS.

Funding levels mean that some services are only able to visit communities once a month. This results in limited time to spend with individual clients, delays in progressing legal matters with potential safety implications, and impedes the process of building trust between the client and the lawyer. Another challenge to service delivery in remote areas is language, with many local Aboriginal and Torres Strait Islander people speaking limited English, as a second or third language. The costs and practicalities of engaging interpreters to explain complex legal language makes service delivery more difficult.

Face-to-face contact between lawyers and their clients is very important. Where cultural or language barriers exist it is often essential. Face-to-face contact allows parties to engage with each other in ways that are not possible through telephone conferencing. Telephone contact may also be inappropriate in the context of family violence, where the subject matter is traumatic, and there is a need to build trust between the lawyer and the client. In addition, many FVPLS clients do not own phones, or can be reliant on limited pre-paid credit. They may need to use pay phones in their communities, where there is little privacy.

Other usual forms of communication, such as email, are often inappropriate. Many clients have little or no access to computers or the internet. Emailed communication, especially when clients are using public or shared computers, may even put the client's safety at risk. Clients may also experience low levels of literacy, making written communication difficult. To address these challenges, lawyers and client support workers are often required to spend many hours driving to communities to contact clients, to advise them about court dates or take advice.

Serving of documents in remote communities creates further challenges for services in rural and remote areas. There are often limited police resources, and other matters can take precedence over service of documents. Victims of violence are then left unprotected until documents, such as IVO/AVOSs, can be served. An FVPLS service in Alice Springs has provided examples where nine court appearances were required for a domestic violence order to be granted, as the hearing was continually adjourned due to difficulties serving the defendant. This is a considerable (and unacceptable) risk to the client's safety as well as a significant cost to the legal service.

Some FVPLS units in remote locations report being unable to fill vacancies for significant lengths of time, which has led to gaps in service delivery and some financial underspends. Increased and longer-term, secure funding would improve staff recruitment and retention with clear flow-on benefits to clients and community in terms of continuity of personnel and relationships, and improved corporate knowledge retention. The distances between offices in many rural and remote locations as well as the time required to build community connections and trust make it impractical and costly to provide services from other offices. While this is not unusual for agencies offering services in remote locations, the role of FVPLS creates specific

risks for community members anticipating or seeking assistance. Long term, secure funding and establishment of relationships within the community are required to ensure safe and effective delivery to Aboriginal and Torres Strait Islander victim/ survivors of family violence.

There are a number of very high needs rural and remote areas that are not among the 31 locations that are currently serviced by FVPLSs, including but not limited to the Torres Strait, Shepparton in Victoria, Halls Creek in WA and the Anangu Pitjantjatjara communities in South Australia. Where FVPLSs have been able to secure additional funding to fill service gaps, the funding is often uncertain and short term. All National FVPLS Members have identified considerable demand for FVPLS specific services in communities where we are currently not resourced.

### Indigenous Advancement Strategy

The background of rationalising the National FVPLS Program into the IAS has been well documented. In the 2014-15 Federal Budget it was announced that more than one hundred and fifty Indigenous programs under the responsibility of the Department of Prime Minister and Cabinet (PM&C) would be 'rationalised' into five high level program streams under the Prime Minister's *Indigenous Advancement Strategy*. Under the Strategy, \$534.4 million has been cut from Indigenous Affairs across five years, commencing 2014/15.

The National FVPLS Program was one of the programs collapsed into the *Indigenous Advancement Strategy*. This resulted from a decision in December 2013, to shift responsibility for the National FVPLS Program from the Attorney General's Department (AGD) to the PM&C. The three other legal assistance services, Legal Aid, Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services, all remained in AGD. No rationale was given for the shift, creating uncertainty as to whether FVPLSs would continue to be recognised by Government as frontline legal services and as a national program.

The new funding Guidelines for the *Indigenous Advancement Strategy* were released on 8 August 2014. The Guidelines provided for the majority of funding to be available through 'open competitive grant rounds' which opened on 8 September and closed on 17 October 2014.

The National FVPLS Program sought a direct allocation through a direct or restricted tender process, as permitted by discretion under the guidelines, but this request was refused. Instead, each individual FVPLS was required to make their own application for funding as one of many potential activities under one of five programs under the *Indigenous Advancement Strategy*, such as the 'Safety and Wellbeing Programme'. As a result of the denial of a direct allocation, FVPLSs are no longer provided the status by Government of a standalone program, still held by the other 3 Legal Assistance Services, which impacts on the transparency of funds committed to it and funding security for members.

The 'Safety and Wellbeing Programme' allows for funding of activities that aim to prevent family violence or support victims of family violence. This meant each individual FVPLS, including small operators with less than five staff, were forced to compete with over one hundred and fifty former programs for funding as well as new competitors including large care organisations, territory and state governments and programs for family violence perpetrators. Without Commonwealth funding, FVPLSs around the country would have been forced to shut down or significantly reduce staff and services in July 2015.

Fortunately, following announcements in March 2015 all FVPLSs were successful in their application under the *Indigenous Advancement Strategy* retaining services for the moment. However, there remain a number of significant and highly concerning gaps which are set out below and in other submissions made.

Current status of FVPLS Units under IAS:

- All FVPLSs were successful in their application under the Indigenous Advancement Strategy, including funding secured for the National Secretariat
- Nine of the FVPLSs initially received only one year of additional funding, extending significant funding uncertainty and its distressing impacts on staff and victims/survivors
- Following further negotiation these funding agreements were extended to two years
- Five FVPLS Units received confirmation that three year funding agreements would be offered
- No Forum members received an increase in funding or inclusion of CPI, despite a rise in the hospitalisation rates of Aboriginal and Torres Strait Islander women and other evidence<sup>36</sup> to support increased funding for culturally safe, specialist legal services; and
- Despite these 'successful' funding outcomes, the National FVPLS Program was effectively defunded under the *Indigenous Advancement Strategy* and continues to have no direct allocation. This means there is no transparency or guarantee of funding for the program into the future, nor national recognition of the value of this model;
- The treatment of CPI is an effective cut and the application of the ERO/SACS Supplementation may be a further cut (TBC at time of writing);
- Funding cuts to Early Intervention and Prevention Programs sustained in 2012 have not been reversed;
- FVPLSs and their frontline services remain at high risk through future tendering under the *Indigenous Advancement Strategy*;

The introduction and outcomes of the *Indigenous Advancement Strategy* run counter to a growing body of compelling evidence concerning the value and increased funding needs of FVPLSs, as stated above. The National FVPLS Forum has made a submission to the Senate Inquiry into the *Commonwealth Indigenous Advancement Strategy Tendering Process* and we refer the Committee to that submission for further detail.

### **FVPLSs Flow-on effects and savings**

Impacts on the provision of support to Aboriginal and Torres Strait Islander victims/survivors of family violence can be expected to have flow on impacts on the rates of Aboriginal and Torres Strait Islander children in out of home care and the level of unmet family law need among Aboriginal and Torres Strait Islander communities.<sup>37</sup> Given historical and contemporary experiences of the removal of Aboriginal and Torres Strait Islander children from their families, this situation is nothing less than devastating for individuals, families and communities and for the nation as a whole. It is absolutely imperative that these impacts are not only prevented in the future, but that action is taken to ensure that existing impacts are addressed and reversed as far as possible.

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<sup>36</sup> See for example: Productivity Commission, *Access to Justice Arrangements*, 2014; Senate Finance and Public Administration Committees, Interim Report, *Domestic Violence in Australia*, March 2015; Judith Stubbs and Associates, 'Economic Cost Benefit Analysis of Community Legal Centres', June 2012.

<sup>37</sup> Personal correspondence. See also; Commissioner for Aboriginal Children and Young People and Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, October 2014, p 3; and Commission for Aboriginal Children and Young People - Papers submitted to Aboriginal Justice Forum October 2014.

## Recommendations

The National FVPLS Forum recommends that:

1. the Government enter long-term funding agreements to ensure organisational resources are directed at front-line service delivery and quality improvements for clients and communities rather than organisational sustainability. It is inadequate to provide short-term contracts to address long term social investment needs.
2. funding to Aboriginal Family Violence Prevention Legal Services be increased to ensure that Aboriginal and Torres Strait Islander victim/survivors of family violence have access to culturally safe legal services and early intervention and prevention activities.
3. the Government support and resource Aboriginal and Torres Strait Islander Community Controlled Organisations policy, advocacy and law reform activities to better inform and advise Government policy development and outcome/impact measures.
4. Government recognise that competitive tendering processes disadvantage smaller Aboriginal and Torres Strait Islander organisations, rather than measuring effectiveness of service delivery or community impact, they actually measure organisations' grant writing capacity and resources in comparison to large NGOs, private companies and State and Territory Governments.
5. Government implement the finding of the Productivity Commission and the Interim Report on Domestic Violence that an additional \$200 million to the legal assistance sector is required for unmet legal need in the community, including Family Violence Prevention Legal Services;<sup>38</sup>
6. That each FVPLS Unit receive an additional \$2 million to address existing demand for FVPLS specific services.

### **C. THE BENEFITS PROVIDED TO ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITIES BY FAMILY VIOLENCE PREVENTION LEGAL SERVICES**

#### **National FVPLS Program**

Family Violence Prevention Legal Services are aligned with national priority policies including the Access to Justice Principles, Closing the Gap, National Indigenous Law and Justice Framework and the National Plan to Reduce Violence against Women and their Children. FVPLSs support the achievement of core objectives across portfolios of the Prime Minister, Minister for Indigenous Affairs, Minister Assisting the Prime Minister for Women, Attorney General and Minister for Social Services.

FVPLSs expertise, experience and critical service delivery continues to respond to the high rates of family violence in Aboriginal and Torres Strait Islander communities and address the multiple, complex and unique needs of Aboriginal and Torres Strait Islander victim/survivors of family violence, especially Aboriginal and Torres Strait Islander women and children. The Productivity Commission acknowledged the need to build trust between Aboriginal and Torres Strait Islander communities and legal assistance providers, an objective warranting longer-term models of engagement. A greater investment of resources is required to enable Aboriginal and

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<sup>38</sup> Productivity Commission, *Access to Justice Arrangements*, 201, p 738-39.

Torres Strait Islander victim/survivors of family violence access to justice and to enable services to effectively address their needs.

Effective service delivery to our client group and capacity to generate real and tangible individual and community safety continues to be dependent on the presence and integration of culturally safe and holistic service elements. This is supported by a recent program evaluation for the Attorney-General's Department which found that "[t]he provision of a comprehensive service for victims is key to the success of FVPLS units."<sup>39</sup>

Since the establishment of FVPLS services, the greatest risks to the successful delivery of programme objectives has been insecurity of funding and the enormous diversion of organisational time from achieving service objectives to securing and sourcing adequate resources to deliver our essential services. Long-term, sufficient investment in our high-quality integrated front-line service model not only has the potential to increase access to justice for Australia's most legally disadvantaged group, it would contribute to closing the gap in life expectancy between Aboriginal and non-Aboriginal Australians. Empowering victim/survivors to better protect themselves and their children and improving their social and emotional wellbeing creates home environments which are more conducive to parents' and children's capacity to get to school, remain engaged, concentrate and benefit from education. A safer home and community environment also enables parental capacity to pursue training, employment and economic advancement and reduces the likelihood that adults, especially women, will feel compelled to self-medicate violence-induced trauma with drugs and alcohol.

### *Holistic Legal Assistance Services*

The benefits of FVPLSs holistic service model have been verified by external review. In 2014, Allen's Consulting found: "The key to intensive management of complex clients is about working collaboratively to coordinate and deliver services and to develop and review a plan to meet legal and non-legal needs. This approach is facilitated within FVPLS through non-legal client support officers, usually drawn from the local Indigenous communities being serviced by the FVPLS."<sup>40</sup>

In addition to the matters outlined under terms of reference (a) and (b) above, our frontline legal service provision ensures:

- Effective navigation of the justice system by Aboriginal and Torres Strait Islander victims/survivors of family violence;
- Safer outcomes and more protective legal measures for victims/survivors of family violence;
- Increased knowledge of legal rights and remedies for victims/survivors of family violence; and
- Access to justice for victims/survivors of family violence.

### *Community Legal Education (CLE) and Early Intervention/Prevention (EIP)*

Our community legal education and early intervention/prevention programs ensure:

- Increased safety and well-being and access links to services available ;
- Community engagement, participation and increased resilience for victims/survivors of family violence;
- Increased recognition of family violence;

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<sup>39</sup> Commonwealth Attorney-General's Department and the Nous Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, 2013, 52.

<sup>40</sup> Allens Consulting Group, *Review of the National Partnership Agreement on Legal Assistance Services: Final Report*, 2014, 27.

- Increased awareness of impacts of family violence, reduced taboo/stigma related to family violence, recognition of legal remedies to improve safety; and
- Increased community awareness and support for victim / survivors of family violence.

### *National FVPLS Secretariat and Forum Activities*

Our National FVPLS Forum structure supported through the Secretariat enables us to:

- Identify emerging community issues;
- Capacity build stakeholders and improve sector collaboration;
- Share best practice principles;
- Inform government strategic frameworks to address community need; and
- Conduct and refine monitoring & evaluation.

The evidence is overwhelming that “service integration is crucial in the context of responding to family violence in Indigenous communities in order to address the multiple factors that contribute to incidences of violence.”<sup>41</sup> In the context of legal services specifically, the Australian Law Reform Commission has found that integrated responses offer clear benefits for victims by improving the experience of victims involved in multiple proceedings and facilitating access to a range of options and referrals.<sup>42</sup> Family violence is the single biggest contributor to death, illness and ill health amongst women in Australia and investing in specialist services such as National FVPLS Forum Members providers to support Aboriginal and Torres Strait Islander victim/survivors of family violence is required.

Reducing family violence in Aboriginal communities requires long term strategies that are informed, evidence-based, across all tiers of government, with inter-agency and multi-disciplinary collaboration and improved community awareness and capability. With the support of the National FVPLS Forum Secretariat and through the collaboration of a National FVPLS Forum Members Service, FVPLS continues to ensure the gathering, analysis and dissemination of organisational expertise and client informed experience enhances the capacity and capability of community, government and services to effectively respond to and reduce family violence in Aboriginal and Torres Strait Islander communities.

Several independent government reviews of FVPLS services have identified benefits of the FVPLS program, including: –

- trust and cultural safety are “primary success factors for legal services”;<sup>43</sup>
- the “comprehensive service” approach of FVPLS is “key to [its] success”;<sup>44</sup>
- A strength of the FVPLS program “lies in its ability to generate trusting relationships with communities”;<sup>45</sup>
- Tailored and holistic service models support clients to access and use these services;<sup>46</sup>

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<sup>41</sup> Commonwealth Attorney-General’s Department and the Nous Group (2013) *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, Commonwealth of Australia, p 65.

<sup>42</sup> Australian Law Reform Commission, *Family Violence - A National Legal Response (ALRC Report 114)*, 2010, 76.

<sup>43</sup> Commonwealth Attorney-General’s Department and the Nous Group (2013) *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, Commonwealth of Australia, p 69.

<sup>44</sup> Commonwealth Attorney-General’s Department and the Nous Group (2013) *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, Commonwealth of Australia, p 52.

<sup>45</sup> The Allens Consulting Group, *Review of Family Violence Prevention Legal Services: Final Report (Report to the Australian Government Attorney-General’s Department)*, 2012.

<sup>46</sup> The Allens Consulting Group, *Review of Family Violence Prevention Legal Services: Final Report (Report to the Australian Government Attorney-General’s Department)*, 2012

- “Promoting legal services prior to a crisis and/or working in conjunction with other culturally appropriate services appears to increase awareness of and access to legal services”.<sup>47</sup>

### Culturally Safe, Service Provision

FVPLSs provide a culturally safe service for Aboriginal and Torres Strait Islander victim/survivors of family violence. Our staff work with clients to identify and address legal issues, facilitate access to other crucial services and provide support to engage with and navigate the justice system and government services.

*BBFVPLS provide benefit to their local area services, in particular the more outlying remote areas where other legal service providers do not have a presence, by attending on a regular basis for: community workshops; school legal presentations; community legal education; establishing relations with community elders; and appearance at Local Courts on List Days. Without our assistance in the communities we service, many individuals would not be aware of or able to access legal resources nor have the opportunity to have personal consult.*

With Aboriginal and Torres Strait Islander children now accounting for almost 35 per cent of all children in care despite comprising only 4.4% of the nation’s child population, child removal in Aboriginal and Torres Strait Islander communities is creating a new stolen generation.<sup>48</sup> FVPLSs not only provide legal assistance to direct clients but, critically, aim to ensure that the cultural needs of their children are taken into account in care and protection decisions.

FVPLSs provide holistic, wrap-around service delivery models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face, including barriers to access to justice that are specific to Aboriginal and Torres Strait Islander women and children.

While there are locally driven differences across FVPLSs, generally service delivery models involve client support or paralegal support workers who work alongside lawyers to provide critical court and client support, referral and assistance liaising with other services.

*“I don’t know what I would have done without your service. Even just to call to talk to (paralegals name) so she could explain the things that happened in court again made all the difference.”*

This supportive, client focussed approach encourages clients to remain engaged with the legal system, attend and participate in court processes, and contributes to the cultural safety of those services.

### Community Education and Early Intervention and Prevention Programs

*“Thank you for a wonderful day, keep doing what you are doing for the sister girls.”*

FVPLSs provide a diverse range of community engagement activities enabling effective Community Legal Education (CLE) and Early Intervention/ Prevention (EIP) approaches. Funding for these important programs is extremely limited due to funding cuts to FVPLSs early intervention and prevention programs in 2012 by the Federal Government.

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<sup>47</sup> Commonwealth Attorney-General’s Department and the Nous Group (2013) *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, Commonwealth of Australia, p 49.

<sup>48</sup> Productivity Commission, *Report on Government Services*, 2015, page 15.13. (Nationally, 14 991 Aboriginal Children and 27,827 non-Aboriginal children were in out of home care as of 30 June 2014).

A major benefit of delivering CLE/EIP activities in the community is the opportunity to develop and maintain relationships with community members, including Elders. Proactively presenting information sessions and programs in the community is one way of providing Aboriginal and Torres Strait Islander communities with face-to-face opportunities to find out what legal remedies may exist for them and the services available to assist. Without CLE and EIP services, the broader justice system will continue to struggle to engage those who face barriers to access such as communication and lack of awareness.<sup>49</sup> Culturally safe services are required to mitigate these barriers.

Having a regular presence in schools, community groups, community events, and in remote communities is vital to ensuring FVPLS staff are interacting with community members and other stakeholders. Community engagement activities are also essential in informing service providers about emerging community issues and client needs.

The impacts of these community activities are significant. Aboriginal and Torres Strait Islander victim/survivors of family violence are likely to be 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. FVPLSs are proactive in engaging clients and establishing service access to minimise barriers to Aboriginal and Torres Strait Islander victim/ survivors of family violence. Our CLE and EIP programs also empower Aboriginal and Torres Strait Islander women to leave violent situations or seek assistance. Without adequate funding for these programs, the success of community legal education and early intervention and prevention activities will be limited.

### Essential role of FVPLS services

As discussed above, the needs of FVPLS clients are often not met through Legal Aid, Community Legal Centres or Women's Legal Services. Aboriginal and Torres Strait Islander people continue to experience challenges and barriers in accessing mainstream services and these are well documented. For victims/survivors of family violence – most particularly Aboriginal women - this includes historical experiences and distrust in the legal system and child protection services.

ATSILS services are often not appropriate for FVPLS clients, particularly due to legal conflicts, indeed this was one of the key drivers of establishing FVPLS services. Approximately 80-90% of the legal work undertaken by ATSILS are criminal law matters. ATSILS predominantly service those accused of, rather than victimised by, crime and are not always equipped to respond effectively to those seeking other forms of help. Community perceptions of ATSILS as services working with those facing criminal charges have the unintended repercussion that victims/survivors of family violence may not trust a service known for its role in criminal law.

Comments on service barriers include:

*Aboriginal and Torres Strait Islander clients in our area are often reluctant or unable to access a Private Solicitor in their area... [which] ... frequently leads to Aboriginal and Torres Strait Islander clients leaving it to the last minute before accessing legal advice and representation. With the Aboriginal Legal Service and Legal Aid NSW branch offices being located so far from where the client lives, it is only by phone that they can contact these services. There is a monthly Legal Aid NSW outreach which is booked out 3 months in advance. BBFVPLS has an outreach service to remote locations within our region, which allows easy access to advice, representation, and referral to Legal Aided funded solicitors.*

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<sup>49</sup> Productivity Commission, *Access to Justice Arrangements Draft Report*, 2014, 28.

Aboriginal and Torres Strait Islander people are particularly disadvantaged when it comes to accessing justice and when they do they are “more likely to rely on inappropriate sources of advice.”<sup>50</sup> Aboriginal and Torres Strait Islander women often require legal representation even when police apply for safety notices or legal safeguards such as AVO/IVOs on their behalf. Many Aboriginal and Torres Strait Islander victim/survivors of family violence in our communities have limited understanding of their legal rights and may struggle to advocate for their own wishes and interests in the face of busy and potentially unresponsive police officers. These rights extend to making complaints about unsatisfactory responses from police or child protection and with respect to children and property.

In the experience of FVPLSs over sixteen years of operation and assisting thousands of Aboriginal and Torres Strait Islander victim/survivors of family violence, it is evident that clients require the specialist intensive legal and non-legal support services provided through Family Violence Prevention Legal Services.

### Recognition of critical work of FVPLSs

The importance of the work of FVPLSs has been acknowledged in multiple reports. The *2004 Senate Report on Legal Aid and Access to Justice* identified that Aboriginal women remain chronically disadvantaged in terms of their access to legal services, awareness and exercise of their legal rights and domestic violence support. In the same year, the Aboriginal and Torres Strait Islander Social Justice Commissioner’s *Social Justice Report* confirmed that:

“An approach that assumes that the needs of Indigenous women will be met through services designed for Indigenous men, or those for women generally, will not work. The lack of attention to the distinct needs of Indigenous women marginalises and entrenches inequalities in service delivery.”

The 2005 Indigenous Law and Justice Inquiry acknowledged the wide role of FVPLSs in responding to family violence, and emphasised the importance of FVPLSs as legal service providers. The report stated that “the Committee is not suggesting that FVPLSs withdraw from providing services such as counselling for victims of family violence but rather that the focus of these organisations as providers of legal services be affirmed and acknowledged in their funding and required outputs.”<sup>51</sup>

Given the complexity and sensitivity of family violence, legal support is critical. FVPLSs consistently bear witness to the role specialist, culturally safe legal assistance plays in empowering women to recognise and address their experiences of family violence, and the benefits of a service model that recognises and responds to the complexity of the issues experienced.

### FVPLSs Measuring Impacts

National FVPLS Forum Members have collaboratively identified five overarching intended objectives that successful service delivery of Family Violence Prevention and Legal Services strives to provide. We are developing approaches to measure and monitor the important and tangible differences created by our services.

#### **1. Increased safety of Aboriginal & Torres Strait Islander victim/survivors of family violence**

Activities supporting this objective include:

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<sup>50</sup> Productivity Commission, *Access to Justice Arrangements Draft Report*, 2014, 10.

<sup>51</sup> Joint Committee of Public Accounts and Audit, *Inquiry into Indigenous Law and Justice*, 2005, 32.

- Providing legal advice, casework and representation for Aboriginal and Torres Strait Islander victim/survivors of family violence
- Identifying and supporting legal and non-legal needs of clients
- Co-ordinating appropriate referrals and engaging necessary stakeholders
- Delivering family violence early intervention and prevention activities
- Providing specialist community legal education and information

**2. The wellbeing of Aboriginal and Torres Strait Islander victim/survivors of family violence is supported with effective service integration**

Activities supporting this objective include:

- Service delivery is holistic to address the legal and non-legal needs of clients
- Co-ordinating and collaborating with a range of service agencies to improve client access and outcomes
- Providing court support for Aboriginal and Torres Strait Islander victims/survivors of family violence
- Providing access to appropriate counselling for Aboriginal and Torres Strait Islander victims/survivors of family violence

**3. Aboriginal Family Violence Prevention Legal Services expertise and knowledge is shared and develops cross-sector capability to respond to and reduce family violence**

Activities supporting this objective include:

- Strong networks and relationships
- Sharing best practice principles
- Capacity building stakeholders
- Engaging local and mainstream services in culturally targeted awareness raising and prevention activities
- Providing support and advice to government services (police, health, child protection) to improve strategic and operational responses to family violence in Aboriginal and Torres Strait Islander communities

**4. Extended capacity of Aboriginal Family Violence Prevention and Legal Services to address the needs of Aboriginal & Torres Strait Islander victim/survivors of family violence**

Activities supporting this objective would include:

- Extending the work of FVPLS holistic legal services geographically
- Extending FVPLS early intervention and prevention activities
- Expanding and investing in FVPLS data collection and evaluation activities
- Supporting further FVPLS quality assurance, accreditation and continuous improvement activities

**5. Cultural needs and safety are embedded in organisational governance, planning and service delivery**

Activities supporting this objective include:

- Compliance with governance obligations of Aboriginal and Torres Strait Islander community controlled organisation
- Presence in community including through sector networks and early intervention and prevention activities

- Identifying community need in consultation with Aboriginal and Torres Strait Islander communities, particularly victim/survivors of family violence
- Planning and practices that engage with and respond to the diversity of Aboriginal and Torres Strait Islander communities

### Impacts of Funding Uncertainty

Recent increased uncertainty around Federal Government funding has had a major impact on the service delivery of FVPLSs. Until funding announcements under the Indigenous Advancement Strategy were made in March funding for FVPLSs was not guaranteed beyond 30 June 2015. Without Federal funding, FVPLSs around the country would have been forced to shut down or significantly scale back programs, services and staff. Uncertainty regarding the future of FVPLS services has an impact on maintaining trust in the communities that FVPLSs work with. In particular, victims/survivors of family violence have not known whether FVPLSs will be available to assist them for the entirety of their legal matters.

*"What I am supposed to do, where would I go and who would help me, or even understand me? This office [has] been really good and patient with me".*

*"What about everyone else you guys help and support, what is going to happen to them?"*

*"Without you guys who looks after the needs of Indigenous kids?"*

Years of continued funding uncertainty makes it particularly challenging to recruit and retain qualified and experienced staff, especially in regional and remote locations. FVPLSs already compete with the wages and conditions offered by government and legal aid departments and funding uncertainty contributes to high turnover rates and alternate career decisions for experienced staff. In addition, FVPLSs experience practical challenges, including difficulties in identifying suitable housing for lawyers relocating to remote areas. Impacts on staff wellbeing across services have escalated since the release of the IAS Guidelines and cuts to the sector more broadly and are currently being shouldered by organisations and the communities they service.

Although FVPLSs have now been funded through the Indigenous Advancement Strategy, the devastating service impacts of funding uncertainty need to be redressed and will continue for FVPLSs until a direct, long term funding allocation is implemented that appropriately responds to levels of demand.

### Recommendations

The National FVPLS Forum recommends:

1. Significantly increased investment to address existing demand (refer recommendations above); and
2. that the Government supports and resources FVPLSs to develop the National Outcomes Framework enabling more effective monitoring and evaluation of meaningful outcome measures and service impacts.

#### **d. THE CONSEQUENCES OF MANDATORY SENTENCING REGIMES ON ABORIGINAL AND TORRES STRAIT ISLANDER INCARCERATION RATES**

Mandatory sentencing regimes were first introduced in Australia in the late 1990's and vary around the country.<sup>52</sup> Evidence suggests that mandatory sentencing has a disproportionate and discriminatory impact on some groups in the community, including Aboriginal and Torres Strait Islander people, youth, people with a mental health or cognitive impairment and economically disadvantaged people.<sup>53</sup>

The National FVPLS Forum has concerns about mandatory sentencing regimes as placing unnecessary restrictions on judicial discretion and independence and limitations on the right to a fair trial. The regimes may result in unjust outcomes for an offender, due to the 'one size fits all' approach of sentencing. Mandatory sentencing regimes fail to take into account the individual circumstances of the offender and the offence they have committed which can lead to adverse and devastating consequences. For example, a 15-year-old Aboriginal boy received a 20-day mandatory sentence for stealing pencils and stationary and died while in custody.<sup>54</sup>

Mandatory sentencing has been contributing to the existing over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system and the grossly disproportionate numbers of Aboriginal and Torres Strait Islander people being imprisoned for offences that previously would have attracted a non-custodial sentence.<sup>55</sup>

Mandatory sentencing will continue to contribute to the widening of the gap between incarceration rates of Aboriginal and Torres Strait Islander and other Australians.

The National FVPLS Forum questions the effectiveness of deterrence as a basis for mandatory sentences, with a large amount of studies finding no link between the severities of sentence and reoffending. According to a report completed by the Sentencing Advisory Council of Victoria, "there is little evidence to suggest that a more severe penalty is a better deterrent than a less severe penalty".<sup>56</sup>

In the context of family violence, mandatory sentencing can have significant adverse impacts on victims. For example, there is a risk that mandatory sentencing could deter reporting from Aboriginal and Torres Strait Islander victims/survivors due to pressures from their community not to report a perpetrator who would be imprisoned as a result. Rather than a focus on imprisonment, a greater emphasis should be placed on early intervention and prevention activities that focus on education before offending begins and/or escalates.

In addition, given evidence of the significant link between family violence victimisation and Aboriginal women's incarceration (as detailed under term of reference (e) below), mandatory sentencing is likely contributing to increased imprisonment of Aboriginal victims/survivors of family violence who require culturally safe therapeutic approaches rather than criminalisation.

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<sup>52</sup> Australian Human Rights Commission, *Social Justice and Native Title Report*, 2014, page 174 – 178.

<sup>53</sup> Law Council of Australia, *Policy Position: Mandatory Sentencing*, June 2014, available at [http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/Policy\\_Position\\_-\\_Mandatory\\_Sentencing.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/Policy_Position_-_Mandatory_Sentencing.pdf).

<sup>54</sup> Law Council of Australia, *Mandatory Sentencing Discussion Paper*, May 2014, p 11, available at [http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/discussion%20papers/MS\\_Discussion\\_Paper\\_Final\\_web.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/discussion%20papers/MS_Discussion_Paper_Final_web.pdf)

<sup>55</sup> Law Council of Australia, *Mandatory Sentencing Discussion Paper*, May 2014, p 30, available at [http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/discussion%20papers/MS\\_Discussion\\_Paper\\_Final\\_web.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/discussion%20papers/MS_Discussion_Paper_Final_web.pdf)

<sup>56</sup> Sentencing Advisory Council, *Sentencing Matters: Mandatory Sentencing*, August 2008, p 14, available at <http://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Mandatory%20Sentencing%20Sentencing%20Matters%20Research%20Paper.pdf>

## Recommendations

1. The National FVPLS Forum recommends a review of mandatory sentencing regimes in Australia and the disproportionate effect they have on Aboriginal and Torres Strait Islander people.
2. Early intervention and prevention programs, including culturally targeted community legal education, should be further resourced to reduce imprisonment rates for Aboriginal and Torres Strait Islander people.

### e. THE REASONS FOR THE HIGH INCARCERATION RATES FOR ABORIGINAL AND TORRES STRAIT ISLANDER MEN, WOMEN AND JUVENILES

Rates of imprisonment for Aboriginal and Torres Strait women are escalating at an alarming rate. Between 2000 and 2013 the rate of imprisonment for Aboriginal and Torres Strait Islander women increased by 73 percent.<sup>57</sup> Aboriginal and Torres Strait Islander women now comprise 34 per cent of the prison population whilst only accounting for 2 per cent of the Australian population.<sup>58</sup>

There are clear links between Aboriginal and Torres Strait Islander women's imprisonment and family violence. This is demonstrated through many reports and inquiries. The Social Justice Commissioner's Report *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander communities: Key Issues 2006* points to a consistent pattern indicating that incarcerated Aboriginal and Torres Strait Islander women have been victims of physical and sexual assault at some time in their lives. In a survey of Aboriginal and Torres Strait Islander women in prison and their experiences of victimisation, over 80 per cent state that they believed their offending was an indirect consequence of their victimisation.<sup>59</sup> The National FVPLS Forum calls on Government to recognise that responding and preventing family violence will also lead to a reduction in imprisonment rates.

Aboriginal and Torres Strait Islander women in prison have broadly experienced a significant level of trauma and abuse beginning in childhood.<sup>60</sup> In a NSW study conducted by the Aboriginal Justice Advisory Council of Aboriginal and Torres Strait Islander women in prison, 73 per cent reported being victims of abuse as adults and 69 per cent said they had been abused as children.<sup>61</sup> One of the key findings of the study was 'the clear link between child sexual assault, drug addiction and the patterns of offending behaviour that led' to the women's imprisonment.<sup>62</sup> Some said that the underlying cause of their alcohol and drug and criminal behaviour was to avoid dealing with the abuse they had suffered.<sup>63</sup>

The experience of FVPLSs working within and across communities confirms a recent NSW study which found that over 80% of female Aboriginal prisoners reported that their incarceration was

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<sup>57</sup> The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014*, 2014, page 4.100, table 4.12.1.

<sup>58</sup> ABS, *Prisoners in Australia 2014*, Cat. No. 4517.0

<sup>59</sup> NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*, 2001, p 7.

<sup>60</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission, p 335.

<sup>61</sup> NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*, 2001, 7.

<sup>62</sup> Bartels, L. *Violent Offending by and against Indigenous Women*, Indigenous Law Bulletin, July/August 2012, Vol. 8, Issue 1, p 20.

<sup>63</sup> NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*, 2001.

an indirect result of their victimisation.<sup>64</sup> Links have been drawn between the high incarceration rates of Aboriginal women and their exposure and involvement in family violence.<sup>65</sup>

This includes but is not limited to Australian Institute of Criminology data on homicide by Aboriginal and Torres Strait Islander women which shows that the offender and victim were in a domestic or family relationship in 93 per cent of cases.<sup>66</sup> Based on ABS and Government expenditure information, it is estimated that it costs \$19,283 per day or \$7,038,295 per year to incarcerate Victoria's female Aboriginal prison population alone<sup>67</sup> - the vast majority of whom have been impacted at some point by exposure to or as victims of family violence or sexual assault.

For example, the high rate of Aboriginal and Torres Strait Islander women incarcerated for 'acts intended to cause injury' has been linked to higher rates of exposure and involvement in family violence.<sup>68</sup>

Importantly, the impact of incarcerating Aboriginal and Torres Strait Islander women also has a distinct adverse impact on future generations; it is estimated that at least 80 per cent of the Aboriginal and Torres Strait Islander women in prison are mothers to dependent children.<sup>69</sup> Imprisonment, self-medication through drug and alcohol and victimisation through family violence (including sexual assault) all contribute to mothers coming into contact with the child protection system and, for too many, the removal of their children. This results in further placements into out of home care, which in turn increases the likelihood of Aboriginal and Torres Strait Islander children entering juvenile justice and/or the adult prison systems themselves. The impacts of this intergenerational cycle is understood and experienced by many as the new stolen generation.

Aboriginal and Torres Strait Islander children who are removed from their families and communities, whether placed in residential care or in an unrelated/non-Aboriginal and Torres Strait Islander foster care placements, are at increased risk of adverse outcomes. Those outcomes may include:

- cultural dislocation and disconnection leading to poor psychological, social and emotional health and wellbeing as they grow older, including for example social isolation and problems with their sense of identity, belonging and self-esteem;
- increased risk of abuse whilst in care;
- increased risk of offending and involvement with the juvenile justice system;
- increased likelihood of drug and alcohol misuse; and
- increased likelihood of having their own children removed.

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<sup>64</sup> NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*, 2001, 7.

<sup>65</sup> Kilroy, D. *The over-representation of Aboriginal and Torres Strait Islander women in prison*, Sister's Inside, April 2013, p 3.

<sup>66</sup> Bartels, L. *Violent Offending by and against Indigenous Women*, Indigenous Law Bulletin, July/August 2012, Vol. 8, Issue 1, 20.

<sup>67</sup> This has been calculated using the 2013 female Aboriginal incarceration rate of 237 per 100,000 and the Victorian daily female prisoner expenditure cost of \$342 from SCRGSP (Steering Committee for the Review of Government Service Provision) 2014, *Report on Government Services 2014*, Productivity Commission, Canberra, Volume C Justice, Table 8A.9; as well as the ABS female Aboriginal population figure of 23,790 as at June 2011. Given the 2011 population rates have been used the actual expenditure on imprisoning Aboriginal women is likely higher.

<sup>68</sup> Kilroy, D. *The over-representation of Aboriginal and Torres Strait Islander women in prison*, Sister's Inside, April 2013, p 3.

<sup>69</sup> Behrendt, L., Cunneen, C. & Liebesman, T, *Indigenous legal relations in Australia*, Melbourne, Oxford University Press, 2009.

As stated in the Victorian Equal Opportunity and Human Rights Commission report. 'Unfinished Business: Koori Women and the Justice System', the contact by Aboriginal women with the justice system " 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>70</sup>

The Productivity Commission has noted that Aboriginal and Torres Strait Islander people often have complex legal needs and face substantial barriers in accessing legal assistance, and that civil and family law matters are particular areas of unmet need among Aboriginal and Torres Strait Islander Australians.<sup>71</sup> The Commission also noted that the sizeable barriers to accessing legal assistance for Aboriginal and Torres Strait Islander people means that many civil legal issues (such as family law and family violence matters) go unresolved and can escalate.<sup>72</sup> This can include escalation into criminal charges/behaviours,<sup>73</sup> further cementing the longstanding over-representation of Aboriginal and Torres Strait Islander people in 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 and Torres Strait Islander communities means that specialist services are required alongside mainstream services.

## Recommendations

The National FVPLS Forum recommends:

1. Recognition by government and policy makers at all levels that responding to and preventing family violence will lead to reduction of imprisonment rates;
2. Investment in culturally safe, front-line legal services as an essential component in reducing the over imprisonment of Aboriginal and Torres Strait Islander people;
3. Investment in initiatives to reduce the disproportionate rate of child protection intervention and child removal in Aboriginal and Torres Strait Islander communities, including through the provision of adequate funding for culturally safe legal assistance for families in conflict with the child protection system and in close consultation with Aboriginal and Torres Strait Islander Communities and Aboriginal Community-Controlled Organisations.

## **f. THE ADEQUACY OF STATISTICAL AND OTHER INFORMATION CURRENTLY COLLECTED AND MADE AVAILABLE BY STATE, TERRITORY AND COMMONWEALTH GOVERNMENTS REGARDING ISSUES IN ABORIGINAL AND TORRES STRAIT ISLANDER JUSTICE**

The National FVPLS Forum is concerned about the quality of data being gathered by government agencies concerning Aboriginal justice issues. For example, Aboriginal and Torres Strait Islander status is often not adequately recorded by Police. In Victoria, Police are given an option to record Aboriginal and Torres Strait Islander status as 'unknown' in their computer systems. If Aboriginal and Torres Strait Islander victims/survivors are excluded, then almost half of the remaining victims/survivors are recorded as unknown. Some Police argue this is because victims/survivors are reluctant to disclose their Aboriginality. There is identified reluctance to identify Aboriginality in the context of involvement by child protection as a result of reports made, but at

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<sup>70</sup> Victorian Equal Opportunity and Human Rights Commission, *Unfinished Business – Koori Women and the Justice System*, foreward 1.

<sup>71</sup> Productivity Commission, *Access to Justice Arrangements Report*, p 768-772.

<sup>72</sup> Productivity Commission, *Access to Justice Arrangements Report* p 781-782.

<sup>73</sup> Productivity Commission, *Access to Justice Arrangements Report* p 782-783.

these levels that warrants further exploration – it may be that some officers are reluctant to ask about Aboriginal and Torres Strait Islander status in a context of high conflict and/or record this detail administratively.

In South Australia, Police record the Aboriginal and Torres Strait Islander status of alleged offenders but not of victims. This leads to the underreporting of Aboriginal and Torres Strait Islander family violence and other justice issues and effects not only understanding of the nature and magnitude of the problem but, crucially, the amount of resources committed to services supporting Aboriginal and Torres Strait Islander people.

With almost 90 per cent of violence against Aboriginal and Torres Strait Islander women not disclosed<sup>74</sup> accurate data must be gathered by authorities at every available opportunity. Without collecting Aboriginal and Torres Strait Islander status, police are unlikely to be referring Aboriginal and Torres Strait Islander people to appropriate culturally safe services and resourcing cannot be provided in the regions most needed.

The National FVPLS Forum strongly supports calls for increased accountability of Aboriginal and Torres Strait Islander family violence and other justice issues, through improved gathering of statistical and other qualitative information across the justice system.

According to the Productivity Commission, quantitative data on Aboriginal and Torres Strait Islander unmet legal need is ‘inadequate’.<sup>75</sup> The primary source of information about legal need is found in the *Legal Australia – Wide Survey: Legal Need in Australia* (Law Survey).<sup>76</sup> However, the authors of the Survey found gathering data on Aboriginal and Torres Strait Islanders difficult due to many Aboriginal and Torres Strait Islander people, particularly in remote communities, not having access to landline phones.<sup>77</sup> Several reports have recommended that state, territory and Commonwealth governments fund a survey on demand and unmet need for legal assistance services for Aboriginal and Torres Strait Islander People.<sup>78</sup> This report has never eventuated.

National FVPLS Forum members have historically been limited in the data they are able to collect about their own service provision. In the first 10 years of the FVPLS national program, no national data or reporting system was provided. After significant lobbying, FVPLS Victoria was finally granted access to CLSIS (the data system designed for and utilised by mainstream community legal centres) in 2009. More resources are required to assist FVPLS administrators of the CLSIS database to make data collection more meaningful from the service provider’s perspective and to ensure the reliability of service data across FVPLS services. The Department has undertaken to support this work.

The National FVPLS Forum is concerned that the reporting requirements mandated for services under the Indigenous Advancement Strategy are not sufficient to appropriately measure the unique service delivery of FVPLSs. Setting meaningful, appropriate service delivery targets (outputs and outcomes, using quantitative and qualitative measures) will strengthen service delivery by ensuring regular self-assessment in line with funding body evaluation and review. With collaboratively developed clear goals and targets, services can successfully achieve agreed

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<sup>74</sup> The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014*, 2014, page 4.91 and Willis, M. 2011, *Non-disclosure of violence in Australian Indigenous communities, January; Trends & issues in crime and criminal justice*, No. 405, Australian Institute of Criminology, Canberra, available at <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.html>

<sup>75</sup> Productivity Commission, *Access to Justice Arrangements Report*, p 770.

<sup>76</sup> C Coumarelos and others, *Legal Australia- Wide Survey: Legal need in Australia*, 2012.

<sup>77</sup> C Coumarelos and others, *Legal Australia- Wide Survey: Legal need in Australia*, 2012, p1.

<sup>78</sup> Productivity Commission, *Access to Justice Arrangements Report*, p 770.

outcomes. Targets must be able to measure quality, complexity and holistic services provided including non-legal services and specifically take into account the complexities of family violence. Targets must be negotiated depending on the individual circumstance of the service i.e. geographic distances to cover (i.e. remote service FVPLSs). Establishing service delivery targets should be a collaborative process with FVPLSs to create benchmarks and targets, which are realistic and achievable and acknowledge the challenges unique to our service provision as well as the importance of providing community education and engagement strategies to build community resilience and address the socio-legal needs of our clients and their communities.

The National FVPLS Forum's Data and Evaluation Working Group have been proactively designing an evaluation framework in order to improve qualitative and quantitative evidence of service impacts and client outcomes. Further resourcing is required to develop a data collection framework that will measure meaningful service impacts on clients and their communities.

The setting of justice targets should drive the development of mechanisms to gather, collate and monitor further information about Aboriginal and Torres Strait Islander justice issues. Justice targets would mean that stipulated statistical and anecdotal information would be gathered at specific times creating a valuable record of the achievements and limitations of Government policies and on the ground service delivery.

## **Recommendations**

The National FVPLS Forum recommends:

1. State and territory governments 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. Data collection systems for FVPLSs should reflect the unique service provision and model of services.
3. Reporting requirements imposed on FVPLSs under the Indigenous Advancement Strategy should reflect the unique service provision and model of FVPLSs.
4. Government service providers such as police should be provided with better training to appropriately collect data on Aboriginal and Torres Strait Islander justice issues and ensure culturally specific referral pathways are provided.
5. Justice targets should be developed and implemented, in close consultation with Aboriginal and Torres Strait Islander legal services, Aboriginal peak bodies and the legal sector, to gather further information about Aboriginal and Torres Strait Islander justice issues.

## **g. THE COST, AVAILABILITY AND EFFECTIVENESS OF ALTERNATIVES TO IMPRISONMENT FOR ABORIGINAL AND TORRES STRAIT ISLANDER AUSTRALIANS, INCLUDING PREVENTION, EARLY INTERVENTION, DIVERSIONARY AND REHABILITATION MEASURES**

The National FVPLS Forum calls on Government to better resource alternatives to imprisonment for Aboriginal and Torres Strait Islander people. Between 2001-13, the imprisonment rate for Aboriginal and Torres Strait Islander adults increased by 57 per cent, while the non- Aboriginal and Torres Strait Islander imprisonment rate remained steady.

Evidence demonstrates that prisons do not provide solutions to crime rates or the drivers of crime. With imprisonment rates dramatically increasing, justice reinvestment solutions should be considered as valuable alternatives to imprisonment, without comprising the safety of victims/survivors of family violence. Any justice reinvestment strategy should primarily focus on the needs of victims and local communities, with Aboriginal and Torres Strait Islander community control and co-operation between local services providers.

Investment in working with victims/ survivors of family violence as demonstrated earlier provides significant cost savings compared with incarceration and out-of-home care. Early intervention and prevention and community legal education activities are essential components of increasing access to justice, identifying community needs and reducing the social isolation often experienced by victims/survivors of family violence. In addition, given the co-existence of family violence with other devastating social issues including substance misuse, incarceration, unemployment, school avoidance and poverty, work toward its prevention would logically have positive impacts on other problems faced by the community. This justice reinvestment approach requires resources to be dedicated upfront where they can be applied more efficiently (instead of paying for prisons, and children in the care of the state).

In 2013, the Legal and Constitutional Affairs Committee (the Committee) held an Inquiry into the Value of Justice Reinvestment in the Criminal Justice System. In its report, the Committee recommended that the, 'Commonwealth adopt a leadership role in supporting the implementation of justice reinvestment, through the Council of Australian Governments' and 'the Commonwealth commit to the establishment of a trial of justice reinvestment in Australia in conjunction with the relevant states and territories, using a place-based approach, and that at least one Indigenous community be included as a site'.<sup>79</sup> The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda has also advocated for justice reinvestment to be trialled more broadly in the community.<sup>80</sup>

The National FVPLS Forum is a member of the steering committee of the National Justice Coalition which leads the 'Change the Record' campaign.<sup>81</sup> The campaign is aimed at reducing the escalating rates of imprisonment of and violence against Aboriginal and Torres Strait Islander people and advocates for investment in early intervention, prevention and diversion strategies. These solutions are essential in reducing the interaction with the justice system for Aboriginal and Torres Strait Islander people.

Early intervention and prevention activities were cut from FVPLS service provision in 2012. Some early intervention and prevention activities have continued but are more limited and at times rely on philanthropic funding. Without a long-term, secure funding base, these programs will not be as effective, as they need time to become established in communities; developing community trust is an essential component of successful service delivery.

## Recommendations

The National FVPLS Forum recommends:

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<sup>79</sup> Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, June 2013, page xi, [https://www.humanrights.gov.au/sites/default/files/20130313\\_jr.pdf](https://www.humanrights.gov.au/sites/default/files/20130313_jr.pdf) [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/justicereinvestment/report/~/\\_media/wopapub/senate/committee/legcon\\_ctte/completed\\_inquiries/2010-13/justice\\_reinvestment/report/report.ashx](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/~/_media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2010-13/justice_reinvestment/report/report.ashx)

<sup>80</sup> Australian Human Rights Commission, *Social Justice and Native Title Report*, 2014, p 25.

<sup>81</sup> For further information please see <https://changetherecord.org.au>

1. The Government provide a secure and long-term funding base to culturally safe early intervention and prevention activities, particularly those focussed on family violence;
2. A trial of justice reinvestment in Australia as recommended by the Legal and Constitutional Affairs Committee in 2013 be developed and rolled out in consultation with the National Justice Coalition and Aboriginal legal service providers and with an emphasis on ensuring the safety and wellbeing of Aboriginal victims/survivors of family violence.

## **h. THE BENEFITS OF AND CHALLENGES TO, IMPLEMENTING A SYSTEM OF 'JUSTICE TARGETS'**

In 2013, the Federal Government made a bi-partisan commitment to introduce justice targets in its Close the Gap Report, however this decision was reversed in 2014.<sup>82</sup>

The decision by the current Federal Government not to set justice targets runs counter to a significant body of reports and experts calling for justice targets as the appropriate way forward in addressing the increasing over imprisonment of Aboriginal and Torres Strait Islander people and its causes. In the *Social Justice and Native Title Report 2014*, Commissioner Gooda called on the Government to revise, 'its current position on targets as part of Close the Gap, to include holistic justice targets aimed at promoting safer communities'.<sup>83</sup> The Law Council of Australia also called on the Government to include new justice targets including, 'a multilateral program to halt the increase in Indigenous imprisonment and reduce the widening gap'.<sup>84</sup>

In November 2014, the Senate passed a motion calling on the Government to introduce national justice targets to reduce Aboriginal and Torres Strait Islander imprisonment rates.<sup>85</sup> In the recent Joint NGO report for the Universal Periodic Review of Australia's human rights, an alliance of peak bodies, legal services and NGOs similarly recommended that, 'Australia should implement measures to address the underlying causes of overrepresentation of Aboriginal and

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<sup>82</sup>The Australian, *Govt won't set indigenous justice targets*, 19 November 2014, <http://m.theaustralian.com.au/news/latest-news/govt-wont-set-indigenous-justice-target/story-fn3dxiwe-1227128697124>; The Australian, *Indigenous legal services peak body slams justice targets 'backflip'*, 20 November 2014, <http://m.theaustralian.com.au/national-affairs/indigenous/indigenous-legal-services-peak-body-slams-justice-targets-backflip/story-fn9hm1pm-1227129968610>; The Age, *Justice targets needed to reduce indigenous disadvantage*, 3 December 2014, <http://www.theage.com.au/comment/justice-targets-needed-to-reduce-indigenous-disadvantage-20141202-11xi5x.html>; Croakey, *Where to after "profoundly disappointing" Closing the Gap report? Justice targets, renewed funding and much much more*, 11 February 2015, <http://blogs.crikey.com.au/croakey/2015/02/11/where-to-after-profoundly-disappointing-closing-the-gap-report-justice-targets-renewed-funding-and-much-much-more/>

<sup>83</sup> Australian Human Rights Commission, *Social Justice and Native Title Report*, 2014.

<sup>84</sup> Law Council of Australia, *Law Council calls for justice targets in wake of "Closing the Gap" report*, 13 February 2015, <http://www.lawcouncil.asn.au/lawcouncil/images/1504 -- Law Council calls for justice targets in wake of Closing the Gap report.pdf>

<sup>85</sup> The Australian, *Senate passes motion urging a rethink on justice target*, 24 November 2014. <http://m.theaustralian.com.au/national-affairs/indigenous/senate-passes-motion-urging-a-rethink-on-justice-target/story-fn9hm1pm-1227133383694>

Torres Strait Islanders peoples in the criminal justice system, including justice reinvestment strategies and justice targets.<sup>86</sup>

The National FVPLS Forum calls on the Government to implement meaningful justice targets, including those specifically aimed at reducing violence against Aboriginal and Torres Strait Islander women.

Justice targets are an essential strategy to address the over representation of Aboriginal and Torres Strait Islander as both offenders and victims in the justice system.

There are many benefits to justice targets<sup>87</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 on the ground rather than the resources being expended;
- Establishment of good public policy;
- Accountability of Government and service providers;
- Increased visibility of the issues facing Aboriginal and Torres Strait Islander people; and
- Providing a mechanism to document progress on achieving economic, social and cultural rights under the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* of which Australia is a party.

Justice targets must be holistic as justice aims cannot be achieved without first addressing the underlying social and economic issues, particularly factors related to family violence. As articulated by Commissioner Gooda, '...you cannot expect to achieve targets around education, employment or health if you do not look holistically at justice risk factors as well. Similarly, you cannot expect to achieve a justice target, for instance, a reduction in the rate of imprisonment or victimisation, without addressing these underlying factors'.<sup>88</sup>

As shown through the Close the Gap campaign, targets can be a useful tool to measure the achievements, progress or failures, against established aims providing a measure of accountability to Government. Although many of the targets under Close the Gap are not being met, the fact that Government and other service providers know this allows policy makers to alter their approach for the future.

Justice targets should include specific aims to significantly reduce the number of Aboriginal and Torres Strait Islander women who are victims/survivors of family violence. This could be achieved through a greater focus on addressing the civil law needs of Aboriginal and Torres Strait Islander people and expanded support services for victim/ survivors of family violence as outlined above.

Justice targets must also be related to targets to reduce Aboriginal and Torres Strait Islander out-of-home care rates, an important consideration given the high correlation with juvenile incarceration rates.

Clearly an essential target should be aimed at reducing the appalling over-imprisonment of Aboriginal and Torres Strait people. It has been suggested that measures for justice targets

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<sup>86</sup> *Australia's 2<sup>nd</sup> Universal Periodic Review: Joint NGO Submission on behalf of the Australia NGO Coalition*, March 2015.

<sup>87</sup> Australian Human Rights Commission, *Social Justice and Native Title Report*, 2014, p 117-118.

<sup>88</sup> Australian Human Rights Commission, *Social Justice and Native Title Report*, 2014, p 120.

could be taken from the Overcoming Indigenous Advantage Report targets, which is published by the Productivity Commission every three years.<sup>89</sup>

## Recommendations

The National FVPLS Forum recommends:

1. Meaningful justice targets are developed and strategies to achieve these targets are resourced and implemented
2. Justice targets specifically include targets aimed at:
  - a. reducing violence against Aboriginal and Torres Strait Islander people, especially women;
  - b. reducing the number of Aboriginal and Torres Strait Islander children in out-of-home care as a result of intervention by child protection authorities;

with specific, appropriately resourced strategies to address these targets developed in consultation with Aboriginal legal service providers and other Aboriginal Community Controlled Organisations with appropriate expertise.

### ***i.* ANY OTHER RELEVANT MATTERS**

None

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<sup>89</sup> Australian Human Rights Commission, *Social Justice and Native Title Report*, 2014.