

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
to the Senate Select Committee into the Abbott Government's Budget
Cuts:

INQUIRY INTO THE EFFECT OF CUTS OR CHANGES IN THE COMMONWEALTH BUDGET AUGUST 2014

1. Introduction

The National Family Violence Prevention Legal Services Forum (National FVPLS Forum) welcomes the opportunity to provide input into the Senate Select Committee into the Abbott Government's Budget Cuts.

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*. It was also announced that, under this strategy, \$534.4 million will be cut from Indigenous Affairs over the next five years.

The new Funding Guidelines for the Strategy were released on 8 August 2014. Under these guidelines, FVPLSs are no longer recognised as a stand-alone program or as a core service model that provides frontline legal assistance. Instead, FVPLSs may apply for funding as one of many potential activities under a broad 'Safety and Wellbeing Programme' alongside health, welfare and other service providers. However, at the time of writing the National FVPLS Forum could not confirm whether legal services are even eligible to apply.

In September these programs will be required to enter into an open tender process to compete for their core funding. If this decision proceeds without change, it could result in the closure of FVPLSs across Australia, along with many other crucial Indigenous programs.

The Budget not only threatens the existence of FVPLSs but makes significant cuts to other welfare sectors which will impact on Aboriginal and Torres Strait Islander victims/survivors of family violence. This includes cuts to family payments, income support, health and housing. This will disproportionately affect Aboriginal and Torres Strait Islander People, especially women and children.

As the primary legal service for Aboriginal and Torres Strait Islander victims of family violence, FVPLSs are critical to ensuring the safety of Aboriginal and Torres Strait Islander women and children throughout Australia and preventing and responding to family violence. The introduction of the *Indigenous Advancement Strategy* fails to recognise the vital work of FVPLSs or support equitable access to gender and culturally specific legal services. A greater investment of resources is required to enable disadvantaged Australians equitable access to justice and to allow services to effectively address multiple legal and non-legal needs.

FVPLSs have spent almost 15 years establishing credibility in Aboriginal and Torres Strait Islander communities and providing a voice for victims/survivors of family violence and sexual assault. The recent Senate inquiry into Domestic Violence in Australia has highlighted the crisis in family violence as a national priority, including the disproportionate impacts on Aboriginal and Torres Strait Islander women and children. Now is the time to strengthen, consolidate and further resource FVPLSs as a core service supporting access to justice for Aboriginal and Torres Strait Islander individuals, families and communities.

We ask that this Senate inquiry lead to a firm allocation of existing resourcing and opportunities to compete for additional resourcing that is relative to the impact family violence has in Aboriginal and Torres Strait Islander communities. The National Forum asks that the FVPLSs model be protected, with a recognition of its unique role and specialist expertise in an area of national priority.

1. About the FVPLS Program

FVPLSs were established 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.

The Australian Government provides national funding for FVPLSs over 31 rural and remote locations. 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 have adopted a holistic, wrap-around service delivery models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face.

FVPLSs are important, experienced and specialist legal assistance service providers delivering critical services to highly disadvantaged Australians with complex, multiple legal and socio-legal needs.

The Productivity Commission's *Access to Justice Arrangements Draft Report* noted that: "Legal assistance services are essential for the operation of the civil justice system. The four legal assistance providers — legal aid commissions (LACs), community legal centres (CLCs), Aboriginal and Torres Strait Islander legal services (ATSILS) and family violence prevention legal services (FVPLS) — have different and specialised but complementary roles in the legal assistance landscape."¹ The Productivity Commission also found that, "specialised legal assistance services for Aboriginal and Torres Strait Islander people remain justified".²

FVPLSs 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. They support 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.

2. About the National FVPLS Forum

The National FVPLS Forum was established in May 2012. The goal is to work in collaboration across FVPLS Services and increase access to justice for Aboriginal and Torres Strait Islander victims/survivors of family violence. The National FVPLS 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 building, good governance, training and evaluation and data collection.

National Forum members are:

- Aboriginal Family Violence Prevention and Legal Service Victoria (Melbourne HO, Mildura, Gippsland, Barwon South West)

¹ Productivity Commission, *Access to Justice Arrangements Draft Report*, 2014,610.

² Productivity Commission, *Access to Justice Arrangements Draft Report*, 2014, 677.

- 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)

3. Funding threat to FVPLSs under the *Indigenous Advancement Strategy*

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 will be cut from Indigenous Affairs over the next 5 years.

In December 2013, responsibility for the National Family Violence Prevention Legal Services Program was shifted from the Attorney General's Department (AGD) to 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 a frontline legal service.

FVPLS model cut

The new funding Guidelines for the *Indigenous Advancement Strategy* were released on 8 August 2014. The Guidelines state that the Government intends for much of the funding to be available through 'open competitive grant rounds' which will open on 8 September 2014. Under these Guidelines, FVPLSs are no longer regarded by Government as a standalone program or as a core service model that includes legal assistance services. In theory, FVPLSs have an opportunity to apply for funding for this model as one of many potential activities under a broad 'Safety and Wellbeing Programme'.

As at 22 August 2014 however FVPLSs have not been able to confirm that legal assistance services are even eligible under the Guidelines. FVPLSs have submitted a request to be considered immediately for a direct allocation of funding for existing providers, in order to protect its existing capacity and technical expertise and the integrity of the FVPLS service model.

The 'Safety and Wellbeing Programme' allows for funding of activities that aim to prevent family violence or support victims of family violence. However, if agencies apply to deliver the FVPLS

service model and are assessed as eligible, the 'priorities' of decision makers may still determine whether any funding is available, or whether the funding is committed to competing activities. This will mean that FVPLSs will have to compete with over one hundred and fifty former programs for funding and new competitors including large care organisations and territory and state governments.

There is also an incentive for aspiring applicants to compromise the existing service model, potentially reducing for example the critical non-legal support that ensures the legal assistance services are appropriate and effective for victims/survivors of family violence in Aboriginal communities.

This continued uncertainty has a substantial impact on FVPLSs service provision, most significantly on maintaining trust in Aboriginal and Torres Strait Islander communities. In particular, victims/survivors of family violence will not know whether FVPLSs will be available to assist them for the entirety of their legal matters and may feel themselves at risk if they proceed without this knowledge. This uncertainty also makes it difficult to recruit and retain qualified and experienced staff, especially in regional and remote locations.

The National FVPLS Forum is seeking a direct allocation of funding for current providers for at least the next three years, in order to preserve access to justice for FVPLS clients through existing capacity and technical expertise, ongoing delivery of services and the integrity of the FVPLS service model.

The value of the grant funding is currently less than \$20 million per annum, which currently resources the entire national FVPLS programme and would be continued over 3 years. This compares to economic costs of domestic violence in 2013, estimated at \$14.4 billion per annum, or 1.1% of Australia's GDP.³

FVPLSs as a frontline legal assistance service

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* demonstrated 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...entrenched inequalities in service delivery."

Available data shows that Aboriginal and Torres Strait women are 31 times more likely to be hospitalised as a result of injuries caused by assault,⁴ and that 1 in 5 has been a victim of violence in the last year.⁵

Without FVPLSs, unresolved legal problems can potentially lead to health and mental problems, and to a range of other long-term impacts, including unemployment, poverty and ongoing engagement with child protection and other systems. Unmet legal needs in relation to family

³ White Ribbon Australia, *Submission to the Inquiry into Domestic Violence in Australia*, 2014.

⁴ The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2011*, 4, available at http://www.pc.gov.au/_data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf

⁵ The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2011* available at http://www.pc.gov.au/_data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf

law can lead to further family violence arising from the frustration involved and the lack of appropriate services available. People must be supported and encouraged to engage with the legal system as soon as possible.

One of the primary rationales for the establishment of FVPLSs was due to the high number of legal conflicts with Aboriginal and Torres Strait Islander Legal Services (ATSILS). ATSILS predominantly service individuals accused of, rather than people victimised by, crime and are not always equipped to respond effectively to those seeking other forms of help.

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 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.

Reducing and eliminating family violence will not be achieved without genuine commitment to an informed, integrated and united government approach. This must include investment in early intervention, prevention and community education approaches, increased inter-disciplinary, multi-agency whole-of-government systemic and strategic national responses and genuine consultation with experienced community services and their consumers. While this is a Commonwealth responsibility, state and territory governments are also recognising the urgency of the issue. For example, the Queensland Government has just established a bipartisan task force, headed by Quentin Bryce, to identify ways to address the growing problem. At the Commonwealth level, the nature and significance of this program means it crosses the portfolio responsibility of the Prime Minister, Minister for Indigenous Affairs, the Minister Assisting the Prime Minister for Women and the Attorney General.

4. Income Support

Family Payments

Changes introduced to family payments and the age pension will negatively impact on Aboriginal and Torres Strait Islander women and children escaping family violence. The reforms to Family Tax Benefits A and B (including freezing of Family Tax Benefit rates until 2016) will be felt most significantly by single parents, many of whom do not have an alternative support network.

Changes to eligibility requirements for Family Tax Benefit B will mean that only families with children under six will be eligible for the payment. It is estimated that single income families with older children will lose \$58 per week with this change⁶. This compounds the impacts of changes made by the previous government in 2012 to move single parents off parenting payments when their youngest child turned eight. From January 2013 about 84,000 single parent families saw their benefits cut by as much as \$110 a week.⁷

The detrimental impact of this on women's economic independence has potential to affect victim/survivors decisions about their safety and wellbeing. For example, it may influence decisions about whether to stay with or return to a violent partner rather than face the risks

⁶ ACOSS, *The Budget that divides the nation*, May 2014, 30.

⁷ Australian Council of Social Services (ACOSS), *Stop Cuts to Sole Parent Payments*, 2013, available at http://www.acoss.org.au/take_action/campaign_to_reverse_cuts_to_single_parenting_payments_acoss_has_been_speaking_out_against_the_feder/.

and stressors associated with poverty and financial insecurity. Victims of family violence will find it increasingly difficult to afford not only housing but also the everyday essentials of life.

Working Age Payments

Major changes to income support payments under the 2014-15 Budget include topping income support payments for unemployed people under 30 for six months of every year and transferring unemployed people under 25 from Newstart Allowance to the lower Youth Allowance. This will affect over 100,000 young people without paid employment. Estimates suggest an unemployed 23 year old will lose \$47 per week or eighteen percent of their disposable income. An unemployed single parent with one eight year old child is expected to lose \$54 per week or twelve percent of their disposable income.⁸

These changes will detrimentally affect victims/survivors of family violence, many of whom rely on income support payments to leave violent relationships. A National Victims of Crime Survey in 2006 found that young women aged 18-24 years reported incidents of violence just over twice as often as the general population of women.⁹ It will also have a disproportionate impact on Aboriginal and Torres Strait Islander people who have more people in this age bracket than the general population. At June 2011, the Aboriginal and Torres Strait Islander population had a median age of 21.8 years compared to 37.6 years for the non-Indigenous population.¹⁰

These changes make young people in violent relationships more financially dependent on their partners or other family members, making it more difficult for them to escape to safety. Victims/survivors who do escape family violence will find it extremely difficult to pay for the cost of living, which makes them vulnerable to homelessness and other impacts of poverty. It also creates incentives for young people to enter into dependent relationships that may be unsafe.

Requirements to participate in the Work for the Dole Scheme and/or apply for an increased quota of jobs per month may be particularly difficult for people leaving violent situations, particularly for those in regional and remote communities.

Other changes to Working Age payments including reassessing people under 35 who receive the Disability Support Pension against new impairment tables and abolishing the Pensioner Education Supplement which is paid primarily to single parents. Both of these changes may have a negative financial impact on victims/survivors of family violence..

Income Management

The Budget committed \$110.1 million to continue and expand Income Management. This program does not apply to everyone, but to individuals and families living in targeted communities. The targeting of communities is clear and has a disproportionate impact on

⁸ Peter Whiteford and Daniel Nethery, Sharing the Budget Pain, available at https://crawford.anu.edu.au/sites/default/files/news/files/2014-05/sharing_the_budget_pain_background_note.pdf.

⁹ Professor D Chung, *Understanding the Statistics about Male Violence against Women*, White Ribbon Research Series Paper No. 5, May 2013, available at <http://www.whiteribbon.org.au/uploads/media/Donna-Chungs-Research-Report.pdf>

¹⁰ ABS, *Estimates of Aboriginal and Torres Strait Islander Australians*, 2011.

Aboriginal and Torres Strait Islander communities. It also creates specific risks for women and children at risk of family violence.

Income management has been introduced in some of the areas that are serviced by FVPLSs, and is for people who:

- have been referred by a social worker or child protection authority
- have been referred by a department social worker
- are a young person who is not a full time student or apprentice and
 - have been granted the Unreasonable to Live At Home rate of payment
 - under the age of 16 and granted a Special Benefit payment
 - under the age of 25 and released from prison and have received a Crisis Payment in the last 13 weeks
- volunteer for Income Management

While arguments have been made that income management protects women and children experiencing family violence, these arguments are unsubstantiated and should not be accepted without appropriate evidence to support them. In fact, the ability for agencies refer people to income management without their consent has potential to deter help seeking behaviour and may therefore increase the risk of harm.

For example, in Ceduna concerns have already been expressed that victims/survivors do not want to share their circumstances with the agency providing domestic violence counselling, emergency relief and financial counselling because they are afraid the agency will refer them to income management. Similarly, mandated income management for young people likely to have experienced family violence, which includes young people on the Unreasonable to Live At Home payment, Special Benefit and young people who have been released from prison, may deter them from seeking safety and/or accessing support.

Conversely, the evidence shows that supporting women and young people's economic independence, help seeking behaviour and access to early intervention and support are effective strategies for keeping victims/survivors of family violence safe.

5. Health

In the Budget, Indigenous health services were cut by \$165.8 million. Changes to Medicare included the introduction of a \$7 co-payment for visiting a General Practitioner.

Indigenous Advancement Strategy

Indigenous health services have been cut by \$165.8 million in the 2014-15 Budget. Many health services have been collapsed into the *Indigenous Advancement Strategy* and may have to compete for funding with FVPLSs to survive. This includes Indigenous specific alcohol and other drug programs such as petrol sniffing prevention strategies. Placing Indigenous family violence and health services in competition with each other is not appropriate and will not achieve national priority outcomes including but not limited to objectives set under Closing the Gap.

Family violence has significant health impacts on victims/survivors who require medical treatment more often. Cutting funding to Aboriginal and Torres Strait Islander health services

while also raising the cost to go to the doctor will worsen systemic health issues for Aboriginal and Torres Strait Islander people, including victims/survivors of family violence. This is very concerning in light of extensive research showing that Aboriginal and Torres Strait Islander people are already less healthy than the general population, have a lower quality of life and are likely to die younger.¹¹

Medicare

The introduction of a \$7 co-payment for visits to general practitioners and other health services will be significant for victims of family violence, who are often on income support payments or low to moderate incomes. Concerns have been raised about the viability of co-payments to Aboriginal and Torres Strait Islander Health Services specifically, as patients who visit these services cannot afford to contribute to the cost of care.

Women experiencing family violence are in greater need of medical assistance than the population generally and, with increased rates of family violence, Aboriginal and Torres Strait Islander women are particularly vulnerable.

The COAG Reform Council found that, “data available to us for the first time show(sic) that more than two out of five (Indigenous people aged 15 years and over delayed or did not go to a dental professional due to cost. One-third (34.6%) delayed or did not fill a prescription and one in eight (12.2%) delayed or did not go to a GP.”¹²

Given the inability of many Aboriginal and Torres Strait Islander patients to afford the co-payment, many Aboriginal and Torres Strait Islander Services have indicated that they will not be in a position to charge the co-payment to their clients. Further the financial losses they are facing could mean closing some services¹³.

The closing of Aboriginal and Torres Strait Islander Health Services would have significant impacts on Aboriginal and Torres Strait Islander victims/survivors of family violence and their ability to access decent health care, particularly those living in rural and remote areas and who may not have access to other health services. The abolition of Medicare Locals will also have significant impacts on our rural and remote clients who benefit from the locally driven programs, which may also reflect specific areas of need such as family violence.

Victims of family violence experience wide ranging abuse including denial of financial autonomy. By requiring a \$7 co-payment, victims of family violence may be required to approach the perpetrator of violence for the money needed to attend a GP. Clearly such a situation is untenable and would serve to deny essential medical assistance to many victims of family violence.

The National Forum advocate that victims of family violence should be exempt from the co-payments.

¹¹ Productivity Commission, *Report on Government Services*,

http://www.pc.gov.au/data/assets/pdf_file/0014/132350/rogs-2014-volume-sectore.pdf

¹² COAG Reform Council, *Healthcare in Australia 2012-2013: Comparing Outcomes by Indigenous Status*, 26 May 2014, 22.

¹³ Wild. K, *NT Indigenous health services will not charge GP co-payment, 'resulting in service cuts'*, ABC News. 13 August 2014, available at: <http://www.abc.net.au/news/2014-08-13/nt-indigenous-health-services-will-not-pass-on-co-payment/5669154>

6. Housing

Rather than relieving pressures on affordable housing and specialist homelessness shelters the 2014-15 Federal Budget will instead detrimentally impact on victims/survivors and their ability to find a safe and affordable place to live. The single greatest reason people in Australia present to homelessness accommodation services is family violence.¹⁴ Aboriginal and Torres Strait Islander women are also 15 times more likely to seek assistance from crisis homelessness services than non-Aboriginal people.¹⁵ Homelessness Australia has repeatedly said that to reduce homelessness, you must first reduce family violence.

National Rental Affordability Scheme (NRAS)

Victims of family violence rely on the availability of affordable housing when seeking to escape violent circumstances. Defunding of the National Rental Affordability Scheme (NRAS), which aimed to address the shortage of affordable housing, will worsen the housing crisis and decrease housing options for victims of family violence. It will also increase pressures on homeless shelters, which are already struggling to keep up with the demand. Aboriginal and Torres Strait Islander women, in particular, face discrimination in the housing market with higher birth rates¹⁶ creating the need for four or five bedroom homes, which are in short supply. Homeless shelters may also not have the capacity to accept a woman with several children.

The end of NRAS will mean that at 12,000 affordable dwellings which were to be constructed will no longer proceed. This will put added pressure on the community and crisis housing sectors, including homelessness services.

National Partnership Agreement on Homelessness (NPAH)

One in ten Aboriginal and Torres Strait Islander women used a specialist homelessness service in 2012-2013.¹⁷ Although the National Partnership Agreement on Homelessness (NPAH) has been extended for a further 12 months by the Federal Government, the lack of a long term commitment creates uncertainty for many homelessness organisations. This is particularly concerning given that funding was not provided in the forward estimates in the Budget post-2015 for the NPAH.

The NPAH provides crucial services and support to homeless people, with some FVPLS units receiving funding under the agreement. For example, FVPLS Victoria is funded for two frontline positions. These positions assist Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault with case management and court support when they are escaping violence.

In the Commission of Audit 2014, it was recommended that funding for homelessness programs become a state responsibility, confining the Commonwealth's social housing role to rental assistance payments. The Government has also announced a review of its role in housing and homelessness funding and programs nationally. The National Forum has concerns about this

¹⁴ Australian Institute of Health and Welfare, *Domestic Violence a major factor in homelessness among women and children, 2008*, available at <http://www.dpvc.gov.au/women/publications-articles/safety-women/women-synthesis-report-HTML.cfm>.

¹⁵ Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women's Offending*, 2010, 28.

¹⁶ ABS, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, 2010.

¹⁷ Australian Institute of Health and Welfare, *Homelessness among Indigenous Australians*, 2014.

direction, particularly in light of the recent NSW state government decision to stop directly funding specialist homelessness services but instead move to a tender system where smaller services such as women's refuges must compete with large care organisations through the 'Going Home Staying Home' strategy. Commonwealth oversight of homelessness services has the potential to protect national principles and objectives, including targeted access for victims/survivors of family violence.