

# NATIONAL FAMILY VIOLENCE PREVENTION LEGAL SERVICES

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

## Submission to the Productivity Commission Access to Justice Arrangements

### 1. Introduction

The National Aboriginal Family Violence Prevention and Legal Services Forum (National Forum) welcome the opportunity to provide input to the Productivity Commission Inquiry into Access to Justice.

Despite numerous inquiries in recent decades and countless recommendations, Aboriginal people continue to experience discrimination from the legal system, have inconsistent access to culturally safe legal services and significant unmet legal need.

The Family Violence Prevention Legal Services (FVPLS) program provides holistic, culturally safe legal services to Aboriginal and Torres Strait Islander<sup>1</sup> victims/survivors of family violence. Despite the need for such services, FVPLS services continue to be limited in terms of areas of law they can assist in and geographic service areas in which they can deliver services.

We hope that this inquiry leads to a genuine prioritisation of the legal needs of Aboriginal people, consultation with the Aboriginal community and recognition of the complex issues faced by Aboriginal victims/survivors of family violence.

### 2. About the National FVPLS Forum

The national FVPLS program was established in recognition of the gap in access to legal services for Aboriginal and Torres Strait Islander victims of family violence – predominantly Aboriginal women and children.

The Australian Government provides funding for the Family Violence Prevention Legal Services (FVPLSs). The primary function of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal adults and children who are victim-survivors of family violence, including sexual assault/abuse. FVPLSs can also provide a law reform and advocacy function, community legal education and early intervention and prevention activities.

Members of the National Forum are those organisations in receipt of Commonwealth funding to deliver Family Violence Prevention Legal Services in 31 rural and remote locations across Australia:

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<sup>1</sup> Hereafter Aboriginal

- Aboriginal Family Legal Service Southern Queensland (Roma)
- Aboriginal Family Violence Prevention and Legal Service Victoria
- Central Australian Aboriginal Family Legal Unit (Alice Springs NT)
- Family Violence Legal Service Aboriginal Corporation (SA)
- Kempsey Family Violence Prevention Legal Service (NSW)
- Marninwarnitkurra Family Violence Prevention Unit WA (Fitzroy Crossing)
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council Domestic and Family Violence Service
- Queensland Indigenous Family Violence Legal Service
- Southern Aboriginal Corporation Family Violence Prevention Legal Service (Albany WA)
- Thiyama-li Family Violence Service Inc. NSW (Moree)
- Warra-Warra Family Violence Prevention Legal Service (Broken Hill NSW)
- Western Australia Family Violence Legal Service (Perth)
- Yoorana Gunya Family Violence Healing Centre Aboriginal Corporation (Binaal Billa FVPLS, Forbes NSW)

### 3. Exploring Legal Need

#### a. Aboriginal people and legal need

Aboriginal people have been recognised in many reports and surveys as having significant unmet legal need and facing additional barriers in accessing justice. The 2009 Senate *Access to Justice* report<sup>2</sup> acknowledged the ongoing chronic disadvantage of Aboriginal women and called for a comprehensive national survey of Aboriginal women’s legal need and the development of a targeted, strategic approach to Aboriginal women’s law and justice issues. The 2004 Senate Report on *Legal Aid and Access to Justice*<sup>3</sup> said 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. The report also noted the barriers that culture and language posed for Aboriginal people attempting to access the Australian legal system.

The 2009 report found that Aboriginal people's access to justice is compromised by a lack of properly funded Aboriginal legal services and noted that people living in regional, rural and remote areas were particularly disadvantaged. However, people living in urban areas also experience challenges with policy decisions to restrict FVPLS services to rural and remote areas leading to urban Aboriginal people being ‘in effect

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

<sup>3</sup> Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, 2004 at 5.54.

abandoned to mainstream services, without adequately addressing issues of access, flexibility and relevance.’<sup>4</sup>

It is the experience of FVPLSs that the legal issues experienced by our clients are generally complex, involve a number of areas of law and the clients themselves are experiencing multiple layers of trauma. There is further evidence of this in the recent Legal Australia-Wide Survey (LAW Survey)<sup>5</sup> undertaken by the Law and Justice Foundation of NSW, which found that Aboriginal people had significantly increased prevalence of multiple legal problems, with a rate that was 1.3 times as high as that of non-Aboriginal people. In the 2008 University of NSW report *The family and civil law needs of Aboriginal people in NSW*<sup>6</sup> it was stated “the legal needs of Aboriginal clients are complex, not only often involving several areas of law, but also a range of social and cultural issues.”

The report discussed the difficulties in measuring Aboriginal legal need; much of the need is unrecognised due to a lack of education and understanding of family and civil law in the Aboriginal community, and resultant inability to recognise issues as being of a legal nature.

The LAW survey also stated that Aboriginal people had lower levels of finalising their legal problems, compared with non-Aboriginal people. It is our experience that this is likely due to the complex natures of the issues experienced, the interaction of a number of inter-connected legal issues, difficulties maintaining engagement with the system, not receiving sufficient legal and non-legal support and the underlying social disadvantage and trauma experienced by many clients.

The LAW survey concluded that given their disadvantage and tendency to experience multiple legal problems, Aboriginal people are likely to benefit from a more holistic or client-focused approach to their problems.

### **b. Family violence and legal need**

In 2002–03 in Australia, the total cost of domestic violence to victims, perpetrators, friends and families, communities, government and the private sector was estimated to be in excess of \$8b.<sup>7</sup> In 2008–09, the total cost of all violence against women and their children (including non-domestic violence) was estimated to have cost the Australian economy \$13.6b and, if no action were to be taken to address the problem, will cost \$15.6b in 2021–22<sup>8</sup>. This includes costs associated with:

- pain, suffering and premature mortality (which accounts for almost half of all associated costs);
- provision of health services;
- the impact on employment and productivity;
- replacing damaged property, defaulting on personal debts and moving;
- exposure to domestic violence among children, child protection services;

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<sup>4</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights Commission, *Social Justice Report*, 2006.

<sup>5</sup> Law and Justice Foundation of NSW, *Legal needs of Indigenous people in Australia*, 2013 at 2.

<sup>6</sup> Cunneen C & Schwartz M, Law Faculty University of NSW, *The family and civil law needs of Aboriginal people in NSW*, 2008.

<sup>7</sup> Access Economics, *The cost of domestic violence to the Australian economy*, 2004.

<sup>8</sup> KPMG Management Consulting, *The cost of violence against women and their children*, 2009

- the response of the criminal justice system, support services and prevention programs; and
- victim compensation and financial support from a range of sources.<sup>9</sup>

Aboriginal people are disproportionately overrepresented as victims of family violence. While available data is limited, we know that Aboriginal women are 34 times more likely to be hospitalised as a result of injuries caused by assault, than non-Aboriginal women.<sup>10</sup> One in three Aboriginal people also report having a relative who is a victim or a witness to interpersonal violence on a daily basis.<sup>11</sup>

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

FVPLSs have adopted holistic, wrap-around service delivery models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face. We understand that dealing with immediate legal problems is extremely difficult when also coping with other life issues, often including financial problems, homelessness, drug and alcohol use, ill health and ongoing trauma. While the models differ across FVPLS services, they generally 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. This supportive, client focussed model encourages clients to remain engaged with the legal system, attend and participate in court processes, as well as contributing to the cultural safety of our services.

The importance of FVPLS delivering legal services to Aboriginal women has been acknowledged in multiple reports. The 2004 *Legal Aid and Access to Justice Report* recommended that 'the Government allocate sufficient funding to... Indigenous Family Violence Prevention Legal Services to enable adequate provision of effective legal services for Indigenous women in family law and family violence matters...'<sup>12</sup> 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, stating 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>13</sup>

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<sup>9</sup> KPMG Management Consulting, *The cost of violence against women and their children*, 2009

<sup>10</sup> Commonwealth Government, Department of Health, *Aboriginal and Torres Strait Islander Health Performance Framework 2012 Report*, 2012.

<sup>11</sup> Aboriginal Affairs Victoria, *The Victorian Indigenous Family Violence Taskforce*, 2003.

<sup>12</sup> Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, 2004 at 5.135.

<sup>13</sup> Joint Committee of Public Accounts and Audit, *Inquiry into Indigenous Law and Justice*, 2005 at 32.

The FVPLS model that addresses legal issues within a holistic, client-focused context should continue to be supported as the most effective way to support Aboriginal victims/survivors of family violence.

#### **4. Effective and responsive legal services**

##### **a. Legal assistance services**

###### FVPLSs & legal services for Aboriginal women

As a result of generations of negative experiences with the justice system, including ongoing experiences of discrimination and racism, Aboriginal victims/survivors of family violence are often reluctant to engage with the legal system and to access legal assistance.

It is the experience of FVPLSs that Aboriginal victims/survivors will and do access legal services where there are culturally safe services available to them. FVPLSs have established reputations as legal services that provide culturally safe services. This reputation is built on factors including community relationships, holistic understandings of client needs, Aboriginal leadership and confidentiality.

FVPLSs are recognised within the Aboriginal community as providing legal services only to victims/survivors of family violence, not to perpetrators of violence, and this is stipulated in funding agreements with the Commonwealth Government. It has been the experience of services that women who have experienced family violence are more likely to access our legal services when they are assured that neither the perpetrator nor anyone connected to the perpetrator will also be accessing the service. Concerns about safety, family and community backlash are mitigated by confidentiality and trust in the service.

As discussed above, Aboriginal people accessing FVPLSs typically have multiple, complex legal needs. The ability to provide legal services across a range of jurisdictions and legal issues is critical to the work of FVPLSs. However, FVPLSs are limited by our funding guidelines to providing services in the areas of family law, child protection, victim's assistance, family violence and other legal issues directly related to the family violence. This means that for assistance with any other legal issues, not directly related to their experiences of violence, clients must either access another service, or their additional legal issues remain unresolved.

The LAW Survey observed that there remains a paucity of Aboriginal legal services for family and civil law. The results 'firmly entrench civil and family legal needs among the multiple legal needs that should be addressed for Indigenous peoples.' In a recent report on the FVPLS program commissioned by the Commonwealth Attorney-General's Department, it was stated that in the local government areas analysed, no other service providers (except FVPLSs) offered a comparable mix of practical support and legal services for victims in a culturally appropriate manner.<sup>14</sup>

Aboriginal Legal Services (ALS) are funded to provide assistance for some legal issues not covered by FVPLSs. They also service some geographic areas where there are no FVPLS units. However the primary focus of ALS is criminal law and the majority of their

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<sup>14</sup> NOUS Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, 2013 (unpublished).

clients are men, meaning their capacity to assist women is limited. Many women are conflicted out of the ALS in their area, and are not able to be assisted by the service, even if capacity exists. This can be an overwhelming barrier to women accessing justice. The 2003 Social Justice Report stated

... The effect of delayed access to justice for Indigenous women is even more severe given the cultural inhibitions in their own communities, such as beliefs in the sanctity of kinship and fear of community retribution. If they overcome this threat and seek representation, only to be met with refusal by the under-resourced ALS, the lesson can be devastating. These considerations have often led to reluctance in seeking legal advice by many women.<sup>15</sup>

Even if there are ALS located in urban areas, this does not abrogate the need for FVPLS services in these areas. Women are often reluctant to access a service that also provides support to perpetrators of family violence, especially when the perpetrator or his family often has strong connections with the service. For reasons of safety, confidentiality and gender sensitivity, women prefer to access a completely separate but still culturally appropriate service.

Several states, including Queensland and NSW have funded Aboriginal and Torres Strait Islander Women's Legal Services. These services can only provide assistance in some areas and have limited capacity.

Consideration must be given to expansion of the FVPLS program or funding of a new Aboriginal community-controlled legal services program that provides a broader range of legal services to Aboriginal women.

#### Access to legal aid

FVPLSs rely on legal aid grants to support clients in a range of areas, including family law and child protection. The National Forum understands that funding for legal aid is not keeping pace with growth in demand. The Commonwealth is responsible for the funding of family law services, and a significant increase is required in this area.

To manage budget pressures, in 2013 Victoria Legal Aid announced very significant cuts to its eligibility guidelines. Funding for family law matters has been significantly tightened, with a risk that more women will be forced to face abusive former partners unrepresented in court.

Changes to child protection matters means grandparents, aunties and uncles are unable to access funding when they are seeking access or primary care of children. This is a significant concern in the Aboriginal community, where Aboriginal children are ten times more likely to be in out-of-home care<sup>16</sup> and 31% of those children were placed with non-Aboriginal carers (44% in Victoria).<sup>17</sup>

Similarly parents are no longer eligible where they are seeking access or changes to existing conditions, not primary care. This could impact on the maintenance of connections between children and their mothers, the likelihood of reunification and children's connection to culture.

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<sup>15</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights Commission, *Social Justice Report*, 2003, at 23.

<sup>16</sup> AIHW, *Child Protection Australia 2011-12*.

<sup>17</sup> AIHW, *Child Protection Australia 2011-12*, at 81 table A25.

While funding and eligibility for legal aid varies across the states and territories, it is clear that Legal Aid Commissions are struggling to meet rising demand under current funding. The strict eligibility changes in Victoria area an example of the significant risk to the ability of FVPLSs to provide legal support to vulnerable clients.

#### **b. Legal assistance service funding**

The 2005 Joint Committee on Public Accounts and Audit *Inquiry into Indigenous Law and Justice* recommended that the Attorney-General's Department acknowledge that urban Indigenous populations also require family violence, family and civil law services and locate Family Violence Prevention Legal Services accordingly.<sup>18</sup> However, eight years later government policy continues to restrict FVPLS service delivery to rural and remote locations, on the basis of 'relative need' and because they assert that Aboriginal people can access mainstream services in urban areas.

This policy fails to appreciate the hidden difficulties that Aboriginal women face in accessing mainstream legal assistance services. For example, the 2001 report *We can do it! The needs of Urban Dwelling Aboriginal and Torres Strait Islander Peoples*<sup>19</sup> acknowledged that there are many mainstream government services that Aboriginal people find neither easy to use nor appropriate to their circumstances. The report referred to the institutionalised discrimination and lack of cultural awareness and respect for gender differences, which create isolation and barriers for Aboriginal women accessing mainstream services. When Aboriginal people do access mainstream legal services it is also our experience that the complexity of their needs and the underlying social and cultural issues are usually not being appropriately addressed.

As early as the 1980s, governments recognised the importance of dedicated Aboriginal legal services in providing legal assistance to Aboriginal people. Research has consistently showed that Aboriginal people, women in particular, are dissuaded from approaching mainstream legal services. The Law Council of Australia has recognised that specialist Indigenous legal services are the preferred and most culturally appropriate means of providing legal assistance to Aboriginal people.<sup>20</sup> The 2004 *Legal Aid and Access to Justice Report* '...urged the Government to... acknowledge that there is a clear and continuing need for self-determination and for targeted, culturally sensitive and specialised Indigenous legal aid services.'<sup>21</sup>

The option of accessing mainstream services must be available, as some women prefer not to access Aboriginal specific services. However, Aboriginal women must have the choice to access culturally safe Aboriginal organisations to seek assistance for complex and sensitive issues.

With approximately one-third of the Aboriginal population living in capital cities, and a further 25% living in inner-regional areas, the restriction means large numbers of Aboriginal people are unable to access specialist culturally safe family violence legal service.<sup>22</sup> A recent report commissioned by the AGD stated that "the FVPLS units collectively service an area that covers approximately half the Indigenous population,

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<sup>18</sup> Joint Committee of Public Accounts and Audit, *Inquiry into Indigenous Law and Justice*, 2005 at 3.87

<sup>19</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *We can do it! The needs of Urban Dwelling Aboriginal and Torres Strait Islander Peoples*, 2001 at 1.37.

<sup>20</sup> Law Council of Australia, *Submission to Senate Access to Justice Inquiry*, 2009.

<sup>21</sup> Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, 2004 at 5.130.

<sup>22</sup> NOUS Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, 2013 (unpublished).

though much of this coverage in remote areas is extremely limited and often consists of one or two days per month.<sup>23</sup>”

Commonwealth funded FVPLSs are currently only available in 31 rural and remote locations across Australia. As well as urban centres, this means other regional centres are not serviced by an FVPLS, except where the units themselves have been able to identify other (usually limited) sources of funding. For example regional centres such as Cairns and Dubbo are not covered by current funding agreements.

There are also a number of very high needs rural and remote areas that are not among the 31 locations that are 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 (for example, in urban Melbourne the funding is often uncertain and short term. Continuity of service provision is a key component of cultural safety; short term funding leads to difficulties in recruiting and retaining quality staff and ultimately results in frustration from the community who rely on a service that is unable to be consistently delivered. Longer term funding promotes culturally safe service delivery, builds the capacity of services to best respond to Aboriginal victims/survivors of family violence and enables a focus on longer term strategic planning, rather than continual efforts to sustain current service delivery.

The National FVPLS Forum recommends that governments consult with the National FVPLS Forum about increasing funding to FVPLS services to cover existing service gaps and enabling delivery of FVPLS services in all Aboriginal communities across Australia.

### **c. Service delivery in rural and remote areas**

Geographic issues lead to considerable 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 have to charter flights to fly in, or spend many hours travelling by road. Although arrangements can sometimes be made to share resources with other services, such as ALS, who are also travelling to remote communities, this is not always possible or appropriate in the circumstances.

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, and difficulties in building trust between the client and the lawyer.

Another challenge to service delivery in remote areas is language, with many Aboriginal people speaking limited English, as a second or third language. Complicated legal language can exacerbate the problem. Although translators are an option, the costs and practicalities of engaging interpreters makes service delivery more difficult.

Face to face contact between lawyers and their clients is very important. Where 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, including body language. Telephone contact may also be inappropriate in the context of family

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<sup>23</sup> NOUS Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, 2013 (unpublished).

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 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, may not be appropriate. Many clients have little or no access to computers or the internet. Emailed communication, especially when clients are using public 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.

Difficulties in serving of documents in remote communities also creates 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 can be served. An FVPLS service in Alice Springs provided a recent 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 significant cost to the legal service, as well as a risk to the client's safety.

#### **d. A responsive legal profession**

##### Recruitment and Retention of Lawyers

Recruiting and retaining skilled lawyers remains a challenge for FVPLS services, especially those in rural and remote locations. The funding provided is not sufficient to attract and retain qualified and experienced staff, when services are required to compete with the wages and conditions offered by government and legal aid departments. As well as high turnover rates this means many FVPLSs recruit young lawyers with limited experience who require additional support and supervision from principal and senior lawyers. FVPLSs are required to dedicate increased time and resources to recruitment, training and supervision, at the expense of direct service delivery.

Some FVPLS units report being unable to fill vacancies for significant lengths of time which has led to gaps in legal service delivery. This is a particular issue for offices in remote locations, staffed by only one or two staff. When there is a vacancy, the office may be unable to provide services at all. 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.

Programs such as the Western Australian Country Lawyers program have assisted FVPLSs in remote areas. The Country Lawyers program, administered by Legal Aid WA involves regional rotations for three years. New graduates are provided with additional training and up-skilling in Perth before commencing the often difficult and isolated work in rural and remote communities. Similar programs should be considered in other states and territories.

However, even where programs like the Country Lawyers program are effective, FVPLSs are still in competition with government services and Legal Aid, whose higher salaries and working conditions we are unable to match under current funding arrangements. In

addition, FVPLSs report practical challenges, including difficulties in identifying suitable housing for lawyers relocating to remote areas.

### Aboriginal lawyers

There remains a need for more Aboriginal people to be employed in the legal profession. Aboriginal staff can enhance the cultural responsiveness of the system, provide mentoring to other non-Aboriginal staff and improve the overall accessibility of the justice system for Aboriginal clients. When FVPLS Victoria consulted clients in the development of a series of policy papers in 2010,<sup>24</sup> a number of people consulted indicated the option to see an Aboriginal lawyer would have been of benefit to them.

Organisations like Tarwirri in Victoria, which supports Aboriginal law students and Ngalaya Aboriginal Corporation which supports all NSW Aboriginal people in the legal profession are very welcome.

However even when people are supported to enter and remain in the profession, FVPLSs often find it difficult to attract applicants, as they are required to compete with the more attractive salaries and working conditions that can be offered by the government and private sectors. As well as parity in funding, that allows for higher wages, other possible initiatives to address this could include secondments of Aboriginal staff between government and the community sector, and government funding of clerkships in Aboriginal organisations.

Working in family violence is recognised as one of the most challenging areas for lawyers. This is particularly true for Aboriginal staff who often both live and work in their communities and as a result are less able to 'switch off'. The potential for burn out must be recognised through additional support for Aboriginal staff, and additional training and mentoring from other Aboriginal people in the sector may be appropriate.

## **5. Preventing issues from evolving into bigger problems**

Unresolved legal problems can potentially lead to health and mental health 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 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.

It is the experience of FVPLSs that there is very limited knowledge within Aboriginal communities about the legal system, legal rights and services that are available to provide support. This can lead to people not recognising their problems are of a legal nature, and not accessing support until the situation reaches a crisis point. Aboriginal people may also equate the legal system with only criminal justice and child protection and be unwilling to engage as a result of negative experiences with these parts of the system.

Culturally appropriate community legal education that engages local communities to discuss issues, inform people of their rights and options and identify local responses is

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<sup>24</sup> Aboriginal Family Violence Prevention and Legal Service Victoria, *Strengthening on the ground service provision for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in Victoria*, 2010 Paper 2 at 67.

critical to addressing the legal needs of Aboriginal communities. Some FVPLSs are funded by the Commonwealth Government to provide community legal education in the regions they service. This program should be extended to all Aboriginal communities, and include capacity for resource development and ongoing community engagement.

Government's currently do not place appropriate priority on the funding and delivery of early intervention and prevention programs. For example, in 2012 funding for the FVPLS Early Intervention Program was redirected to the Northern Territory Emergency Response. This meant a number of programs with experience in engaging with local communities and providing legal information and support to victims/survivors of family violence were forced to cease operation, or find alternate sources of funding. Another example is the underfunding of perpetrator intervention programs that can lead to long term change and reduce family violence rates. FVPLS units in some regions noted the dire shortage of behavioural changes programs, necessary to assist perpetrators of family violence to address the underlying causes of their behaviour.

## **6. Improving the accessibility of courts**

### **a. Family Court and Federal Circuit Court**

Statistics from both the Family Court (FCA) and the Federal Circuit Court (FCC) indicate the numbers of Aboriginal and Torres Strait Islander people accessing the courts are low. The formality of the courts is often intimidating for Aboriginal people and the historic association between the family courts and 'welfare' raises fears that children will be removed as a result of engaging with the court processes. The FCA and FCC are generally perceived by FVPLS clients as unfriendly environments with minimal respect for Aboriginal culture and a lack of understanding of Aboriginal extended family arrangements.

A number of recent reports have highlighted the barriers in accessing the family and civil law systems for Aboriginal clients, including most recently:

- *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*, Family Law Council 2012;
- *Indigenous Australians and Family Law Litigation: Indigenous perspectives on access to justice*, Stephen Ralph on behalf of the FCA and FCC 2013.

Both these reports recommend the reinstatement of Aboriginal liaison workers within the Family Court system. The additional investment in these positions will be off-set by the increased access of Aboriginal people to the court system and the resultant finalisation of legal issues that may otherwise remain unresolved.

The perceptions of the family law system among Aboriginal clients are exacerbated by the resource constraints experienced by the system. For example, there is no Family Law Registry in Alice Springs, meaning that appearances for mention and interim hearings are made via phone. This arrangement further alienates clients from a system already perceived by many as daunting and intimidating. Appearances by telephone create difficulties for both clients and lawyers. For clients speaking English as a second or third language, proceedings are more difficult to follow. Where there is considerable legal argument required, practitioners can be disadvantaged by not being able to see the judge or the other party. It is also very difficult for the court to assess a witnesses'

demeanour. The use of video-link technology would go some way consistently in all courts across the country.

The complexity of many Aboriginal and Torres Strait Islander family law disputes, and the layers of trauma and disadvantage experienced by many Aboriginal and Torres Strait Islander families, requires strong cultural understanding and the dedication of sufficient time to the issues. An example of the need for better cultural responsiveness and training for staff is how court report writers have dealt poorly with the issue of family violence and Aboriginal culture. FVPLS clients have provided feedback that when they disclose family violence the report writer has not adequately captured the true impact of the violence.

On a number of occasions we have seen family reports where cultural issues are dealt with inappropriately or the issue of the child being Aboriginal is not addressed at all. For example, in one case where the other parent was non-Aboriginal the recommendation was made that the child's cultural connections could be met by the non-Aboriginal parent taking the child to NAIDOC week activities once a year.

## **7. Using informal mechanisms to best effect**

### **a. Alternative dispute resolution**

In general, where family violence is present, we do not feel the alternative dispute resolution process in the Family Court (FDR) is appropriate for Aboriginal victims of family violence. Clients have reported that when they disclose family violence in the FDR process it is not dealt with adequately. For example, in one case where there was significant family violence, the FDR proposed a shared care arrangement. FVPLS clients have highly complex matters where drug testing, psychiatric assessment and the like are required and the FDR institutions generally do not have the ability to deal with these issues.

In circumstances where Aboriginal people are undertaking FDR all FDR processes should be culturally appropriate. Clients who have participated in FDR processes report that rarely are cultural identity issues raised by the mediator. The FRC staff should have cultural awareness training that incorporates family violence and gender issues. Complex cultural issues, such as shame and fear of being reported to child protection, are a significant barrier to disclosing family violence for Aboriginal and Torres Strait Islander clients during the intake process. Consideration should be given to recruiting Aboriginal and Torres Strait Islander consultants.

## **8. Policy and Advocacy Capacity**

National funding for Aboriginal advocacy has historically focused on Aboriginal men, and as a result Aboriginal women have not enjoyed equal profile in national policy debates. Without dedicated policy capacity, we would not be able to participate in inquiries such as these. The on-the-ground experience of FVPLS services contributes to ensuring that government policy addresses the needs of Aboriginal victims/survivors of family violence. All FVPLS units should be supported by funding bodies to contribute to policy discussions at both local and national levels. Currently the FVPLS services are the

only category of legal services under the National Partnership Agreement not funded for policy and law reform capacity, leaving Aboriginal women again disadvantaged.

## **9. Conclusion**

The National Family Violence Prevention and Legal Service Forum looks forward to engaging with the Productivity Commission as this important inquiry continues. For further information on any of the issues raised in this submission, or to discuss the role of Aboriginal Family Violence Prevention Legal Services in supporting Aboriginal victims/survivors of family violence to access justice, please contact:

**Antoinette Braybrook**

**National Convenor, Aboriginal Family Violence Prevention Legal Services Forum**

c/o Aboriginal Family Violence Prevention and Legal Service Victoria, Suite 18, Level 3,  
70-80 Wellington St Collingwood VIC 3066

[secretariat@fvpls.org](mailto:secretariat@fvpls.org)

(p) 03 9244 3333