



Aboriginal Family Violence Prevention  
& Legal Service Victoria

# FVPLS Victoria

Submission to the  
Productivity Commission

Access to Justice Arrangements  
November 2013

COLLINGWOOD  
Level 3,  
70–80 Wellington Street,  
Collingwood 3066

MILDURA  
161a Lime Avenue,  
Mildura 3500  
PO Box 10059  
Mildura 3502

WARRNAMBOOL  
135–137 Kepler Street,  
Warrnambool 3280  
PO Box 404  
Warrnambool 3280

BAIRNSDALE  
210b Main Street,  
Bairnsdale 3875  
PO Box 1281  
Bairnsdale 3875

## **Introduction**

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) welcomes the opportunity to provide input to the Productivity Commission's Inquiry into Access to Justice.

FVPLS Victoria endorses the submission of the National Aboriginal Family Violence Prevention and Legal Services Forum.

FVPLS Victoria would be pleased to provide further information in addition to this submission if required, and would be pleased to appear before the Commission in a hearing.

## **About FVPLS Victoria**

FVPLS Victoria provides legal advice, referral and ongoing casework to Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault. This legal assistance encompasses civil law areas such as family violence intervention orders, child protection, victims' compensation applications, and other legal problems related to family violence issues.

To reduce the incidences of violence and abuse in Aboriginal communities, FVPLS Victoria delivers early intervention and prevention programs across the state as well as community legal education programs that encourage access to justice.

Our service is an independent, not-for-profit, Aboriginal controlled community organisation. We pride ourselves on providing a culturally safe service to Aboriginal victims/survivors of violence. A culturally safe environment is one where Aboriginal people feel safe and draw strength from their identity, culture and community.

The FVPLS Victoria head office is based in Collingwood and provides services in metropolitan Melbourne and some regional areas. Regional offices are located in Bairnsdale, Mildura and Warrnambool. FVPLS Victoria is one of fourteen services funded by the Commonwealth Attorney-General's Department under the national FVPLS program. FVPLS Victoria also receives some funding from the Victorian Government, Victoria Legal Aid and philanthropic trusts.

FVPLS Victoria utilises its knowledge and expertise of working with Aboriginal community members, particularly Aboriginal women, to advocate for systemic change and to improve access to justice. Our organisation recognises the need for effective, evidence-based advocacy and law reform work.

### Section 3 Exploring legal needs

#### The Commission invites comment on how best to define and measure legal need. How does legal need relate to the concept of access to justice?

The *Legal Australia-Wide Survey: Legal Need in Australia* Report concluded in 2012 that 'socioeconomic disadvantage appeared to largely underlie the experience and handling of legal problems'<sup>1</sup>. Aboriginal and Torres Strait Islander (hereby referred to as Aboriginal) people are the most disadvantaged group in Australia<sup>2</sup>. They experience multiple legal and non-legal needs, are far less likely to report legal problems, and experience significant barriers to justice outcomes.

Specialist Aboriginal legal services are the preferred and most culturally appropriate means of providing legal assistance to Aboriginal people<sup>3</sup>. Access to justice in this context means Aboriginal people self-determining the best ways to deliver legal and other services for their communities. FVPLS Victoria's service model of Aboriginal community-controlled, holistic, responsive case management and legal representation to Aboriginal victims/survivors of family violence is a best practice model for the delivery of legal services to Aboriginal people when properly funded.

The Australian Senate Legal and Constitutional Affairs References Committee in 2009 recommended increased funding for Aboriginal legal services<sup>4</sup> generally, stating:

*'The committee continues to agree that Indigenous legal services are not adequately funded, impacting on Indigenous people's access to justice. The committee therefore reiterates with emphasis Recommendation 27 of its 2004 Report (now also re-labelled Recommendation 27).'*

#### *Recommendation 27*

*The committee recommends that the Australian Government increase the level of funding for Indigenous legal services with a view to sufficiently resourcing this sector of the legal aid system to meet the needs of Indigenous peoples, including appropriate loadings for extra service delivery costs.'*<sup>5</sup>

FVPLS Victoria endorses these recommendations and confirms that ongoing sustained funding for initiatives that reduce Aboriginal disadvantage in a multidisciplinary and holistic way is integral to meeting the legal needs of Aboriginal people.

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<sup>1</sup> Law and Justice Foundation of New South Wales, *Legal Australia-Wide Survey: Legal Need in Australia*, Access to Justice and Legal Needs, Volume 7, August 2012, 2.

<sup>2</sup> Federation of Community Legal Centres Victoria, *Smart Justice*, 'Ending Over-Representation of Aboriginal and Torres Strait Islander Peoples in the Criminal Justice System', 1.

<sup>3</sup> Law Council of Australia, cited in the Commonwealth of Australia, Senate Legal and Constitutional Affairs References Committee, *Access to Justice*, Senate Committee Report, December 2009, 8.4, 137.

<sup>4</sup> Note that the Senate Legal and Constitutional Affairs References Committee defines the FVPLS program as an 'Indigenous legal service' in *Access to Justice*, Senate Committee Report, December 2009, 8.5, 138.

<sup>5</sup> Commonwealth of Australia, *ibid*, 8.42 and 8.43, 147.

### **Section 3 Exploring legal needs**

#### **What are the characteristics of individuals who experience multiple problems and what types of disputes are they typically involved in?**

Clients of FVPLS Victoria typically present with a number of interconnected legal and non-legal needs which stem from socio-economic disadvantage and victimisation.

Case study 1 contained in the annexure demonstrates the array of issues which FVPLS Victoria clients typically present with to the legal service.

*The Family and Civil Law Needs of Aboriginal People in New South Wales* final report refers to the complexity of legal need in Aboriginal communities as follows:

*'In discussing the legal needs of Aboriginal clients it is important to recognise that these needs are often more complex than those of other clients. Indigenous people are less likely to have the literacy and numeracy skills of the non-Indigenous population. Indigenous people are more likely to have a disability (disability rates are approximately 1.4 times higher for Indigenous people), and are twice as likely to have experienced high levels of psychological distress than non-Indigenous people. In addition, higher rates of self harm, the effects of childhood removal and drug and alcohol issues are all likely to make Indigenous clients a particularly disadvantaged group to work with. Thus 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.'*<sup>6</sup>

Aboriginal women and children are disproportionately impacted by family violence. At FVPLS Victoria over 90 per cent of clients are women, who are likely to have experienced physical abuse, sexual assault, financial abuse, verbal abuse, coercion, stalking, threats, and/or other manifestations of controlling violence, including exposure of children to violence<sup>7</sup>.

Aboriginal women are often the primary carers of their children. The multiple discrimination that Aboriginal women experience on the basis of race and gender however 'actively discourages Aboriginal women from accessing much needed services for fear of child protection intervention'<sup>8</sup>. For these reasons, FVPLS Victoria clients are often unwilling to engage with and participate in the civil justice system without culturally specific assistance and, when engaged, they typically require long-term support.

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<sup>6</sup> Chris Cunneen and Melanie Schwartz, *The Family and Civil Law Needs of Aboriginal People in New South Wales* Final Report, University of NSW, 2008, 15.

<sup>7</sup> 'Section 9AH: Family Violence' in *Crimes Act 1958 (Victoria)*.

<sup>8</sup> FVPLS Victoria, *Standing Firm for Change: A Journey To Justice*, National Conference 2012: A summary of key themes and FVPLS Victoria recommendations, October 2013, 18.

## **Section 4 The costs of accessing civil justice: Simplicity and usability**

### **Which particular mechanisms, processes or court practices have improved the 'user friendliness' of the legal system?**

There is an urgent need for courts, justice processes, and agencies to actively ensure that they are culturally responsive to the needs of Aboriginal people accessing justice services. The areas below demonstrate best practice in responding to the cultural needs of Aboriginal people accessing the legal system.

#### **FVPLS Victoria's holistic model**

FVPLS Victoria provides holistic legal services including early intervention and prevention, case management, legal representation, and counselling services to Aboriginal victims/survivors of family violence. Our holistic model identifies both legal and non-legal needs to respond to the underlying causes of family violence, and provides the additional supports required to overcome barriers to accessing justice. This holistic model is dependent upon FVPLS Victoria receiving sustained funding in general and in particular for our paralegal support worker positions which are integral to this method of service delivery.

The paralegal support worker is the first point of contact when potential clients contact the service. Paralegal support workers assist clients across a range of areas such as housing, Centrelink, access to counselling and access to a range of other services such as parenting programs or drug and alcohol rehabilitation. The paralegal support worker also provides essential personal support for clients attending court. This has led to 'higher numbers of our clients attending and participating in the court system and consequently has translated to our clients obtaining better outcomes'<sup>9</sup>. In accordance with cultural safety principles, where possible, FVPLS Victoria employs Aboriginal women in these roles.

#### **Victorian Aboriginal Justice Agreement, Victorian Aboriginal Justice Forum, and the Koori Justice Unit of the Victorian Department of Justice**

Numerous positive outcomes have flowed from the Victorian Aboriginal Justice Agreement, the Victorian Aboriginal Justice Forum and the Koori Justice Unit in Victoria. The commitment by the Victorian government to maximise the contribution of the Aboriginal community in the design, development and delivery of justice policies and programs which impact on Aboriginal people is commendable.

The Victorian Aboriginal Justice Agreement has taken a lead role in addressing the victimisation of Aboriginal women. The projects which have taken place under this agreement go directly to Aboriginal women and children's access to justice and tackling underlying causes of inequality such as systemic racism. The Koori Court and the Koori Children's Court (both in the criminal jurisdiction) are actions arising from the Aboriginal Justice Agreement that are practical examples of how government can implement culturally safe practices and court procedures. However, more is to be done in the civil justice jurisdiction. Despite the extremely successful Koori Court

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<sup>9</sup> FVPLS Victoria, *Annual Report: 2012-13*, October 2013, 6.

evaluation<sup>10</sup>, there are still no plans to introduce Aboriginal-specific lists in the Children's Court of Victoria (Family Division) or the Family Court of Australia. FVPLS Victoria refers the Commission to the Victorian Department of Justice's discussion paper *Koori Children, Families, and the Family Division of the Children's Court*, which recommended in 2010 that a Koori Children's Court be established within the Family Division<sup>11</sup>.

The Victorian Aboriginal Justice Agreement has also gone some way to identify the lack of prison diversion programs for Aboriginal women in Victoria. In recent years the Victorian Aboriginal Justice Forum has responded to rising incarceration rates of Aboriginal women and has seen the need for Aboriginal women's imprisonment to be a last resort. If funded properly, this work can have a long term impact on improving Aboriginal women's access to justice.

The Koori Family Violence Police Protocols project, which aims to improve police responses to reported incidents of Aboriginal family violence, is also a commendable initiative arising from the Victorian Aboriginal Justice Agreement. With project partners including FVPLS Victoria, Victoria police, the Department of Justice, this initiative forges local partnerships between police, service providers and communities for the purpose of improving police responses to Aboriginal people and building Aboriginal people's trust and confidence in disclosing family violence to police. However, further funding is required for this project to be rolled out statewide and for comprehensive monitoring to be possible. Many Victorian programs and projects such as the protocols remain limited in ability to effect sustainable change because governments cannot commit to ongoing funding models.

Short-term funding commitments by government characterise much of the experience of FVPLS Victoria and is a recurring theme throughout this submission.

### **Cultural awareness training**

Further gains are required in the civil law area in relation to the cultural competency of all courts and systems. In particular, the Family Court of Australia and the Federal Circuit Court are often perceived by FVPLS Victoria clients as unfriendly environments with minimal respect for Aboriginal culture and a lack of understanding of Aboriginal extended family arrangements. All staff of the Family Law Courts, both judicial and non-judicial, as well as all staff of the Children's Court and Magistrates' Court jurisdictions should experience cultural awareness training as a matter of course to improve cultural responsiveness. More comprehensive training in the dynamics of family violence training should also be undertaken.

For example, FVPLS Victoria has long been concerned with how family court report writers have dealt superficially with both Aboriginal culture and the issue of family violence. On a number of occasions FVPLS Victoria solicitors have seen family reports

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<sup>10</sup> Rosie Smith, 'Healthy Change at the Micro-Level – Victoria's Koori Courts', in *Beyond Band-aids: Exploring the Underlying Social Determinants of Aboriginal Health*, Lowitja Press, 226.

<sup>11</sup> Courts and Tribunals Unit, Victorian Department of Justice, *Koori Children, Families and the Family Division of the Children's Court*, A Discussion Paper for the 'Children's Koori Court (Family Division)' Project, Draft, 2010, 59.

where cultural issues are dealt with inappropriately or the issue of the child being Aboriginal is not addressed at all. 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<sup>12</sup>. In another case, where a report writer failed to address cultural concerns, FVPLS Victoria's solicitors had to make an application for another report writer to fairly and adequately evaluate the case<sup>13</sup>.

FVPLS Victoria's clients have provided feedback that when they disclose family violence the report writer does not adequately capture the true impact of family violence<sup>14</sup>. Due to the structure of Victoria Legal Aid's funding FVPLS Victoria is generally unable to obtain reports from private experts who have expertise in family violence and cultural issues<sup>15</sup>.

### **Aboriginal Liaison Officers**

FVPLS Victoria strongly supports the creation of dedicated Aboriginal Liaison Officers and Aboriginal-specific protocols in the Family Law Courts and Children's Courts.

In the *Indigenous Australians & Family Law Litigation: Indigenous Perspectives on Access to Justice* Report, Stephen Ralph highlights the importance of the Family Court of Australia's past Indigenous Family Liaison Officers (IFLO) program. The marked decline in Aboriginal peoples' engagement in the Family Court of Australia in 2008-2009 has been attributed, at least in part, to the cessation of the IFLO program during this period<sup>16</sup>. FVPLS Victoria proposes the reintroduction of this program as one method by which to increase Aboriginal people's engagement in the Family Court.

### **Koori Family Violence Court Support Program in Melbourne**

The Koori Family Violence Court Support Program in the Melbourne Magistrates' Court demonstrates a model for improving court accessibility for Aboriginal court users. This project was piloted in 2011-12 by the Victorian Department of Justice in collaboration with the Victorian Aboriginal Justice Forum and the Victorian Indigenous Family Violence Partnership Forum.

The strengths of this program stem from the employment of Aboriginal staff: a program manager, a Koori women's family violence support worker, and a Koori men's family violence support worker. The Koori violence support workers provide support to Aboriginal people both applying for and responding to a family violence intervention order. They explain court processes; refer people to specialist support and legal services; and also play a role in educating judiciary staff on cultural issues.

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<sup>12</sup> FVPLS Victoria, Submission to the Family Law Council, *Family Violence: Improving the Family Law System for All*, May 2011, 5.

<sup>13</sup> *Ibid*, 5-6.

<sup>14</sup> *Ibid*, 6.

<sup>15</sup> *Ibid*, 6.

<sup>16</sup> Stephen Ralph, *Indigenous Australians & Family Law Litigation: Indigenous Perspectives on Access to Justice*, Commonwealth of Australia, October 2011, 41.

FVPLS Victoria's state funded Family Violence Lawyer from the Koori Justice Unit, Victorian Department of Justice, works closely with this Melbourne Magistrate's Court program. FVPLS Victoria commends this program model and recommends its extension and expansion beyond the limited capacity of the Melbourne Magistrates' Court. Funding for both the FVPLS Victoria Family Violence Lawyer and the program need to be made recurrent.

### **Koori List of the Victims of Crime Assistance Tribunal**

The commencement of the Koori List of the Victims of Crime Assistance Tribunal (VOCAT) is another example of a particular mechanism which has improved the user friendliness and the responsiveness of the state legal system.

A substantial number of applicants in the VOCAT Koori List are represented by FVPLS Victoria solicitors<sup>17</sup>. In its review report, VOCAT found that since the commencement of the Koori List in 2006, 'the number of applications for financial assistance by Koori victims of crime has increased, case processing times for these applications has decreased, and the outcome of applications are consistent with those for non-Koori applicants'<sup>18</sup>. The success of this initiative has been significant given it has simultaneously improved cultural competency and decreased costs and processing times for Koori applicants. (The processing time of Koori applicants prior to the creation of the List was on average 31 months, compared to an average of 14 months after the formation of the List)<sup>19</sup>.

Successful models such as the VOCAT Koori List require a commitment to sustained funding for agencies such as FVPLS Victoria to provide not only legal support, but community education to the Aboriginal community to enhance knowledge of and access to the VOCAT system.

Further measures to improve cultural responsiveness and safety should also be considered within the Koori List at VOCAT, such as the provision of culturally safe counselling and healing options, increased use of video links, and employment of Aboriginal liaison officers.

### **Section 4 The costs of accessing civil justice: Geographic constraints Which particular regions, groups or case types face geographic constraints to accessing the justice system?**

Aboriginal victims/survivors of violence, predominantly women and children, require access to Aboriginal community controlled civil law services in all geographic regions across Victoria.

Currently, the Commonwealth government continues its policy to fund legal services assisting Aboriginal victims/survivors of family violence only in rural and remote areas of Australia. This decision is based on a fundamental misconception that Aboriginal

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<sup>17</sup> Victims of Crime Assistance Tribunal, *Koori VOCAT List Pilot: Review and Recommendations*, VOCAT, February 2010, 43.

<sup>18</sup> *Ibid*, 38.

<sup>19</sup> *Ibid*, 17.

victims/survivors of violence in urban centres can easily and satisfactorily access mainstream or other Aboriginal legal services.

However, evidence overwhelmingly indicates that Aboriginal people are not successfully accessing mainstream services. This may be due to the inherent barriers that Aboriginal people experience when accessing such services, and/or the inadequacies of mainstream services in responding to the needs of Aboriginal clients. The decision to not fund FVPLS services in urban areas particularly discriminates against Aboriginal women, who are likely to be unable to access other Aboriginal legal services such as the Victorian Aboriginal Legal Service (VALS) when conflict of interest issues exist.

As noted above, FVPLS Victoria has been fortunate to source alternative funding for its metropolitan services based in Melbourne from the Victorian Government, philanthropy and other one-off grants. However, the lack of ongoing sustained funding and the need to continuously apply for and report to numerous funding bodies detracts from core service delivery. It also has impacts including job insecurity, the loss of experienced staff, and increased administrative burdens. The policy of short-term funding for Aboriginal victims/survivors' legal services raises serious implications for service continuity and unnecessarily creates trust/mistrust issues for Aboriginal clients and communities.

### **State and Territory funding**

The Commonwealth's disproportionate allocation of resources and services in favour of the Northern Territory over Victoria must also be challenged. In 2012, the Commonwealth diverted national funding for prevention and early intervention programs in Victoria to the Northern Territory's Stronger Futures program, 'due to a rationale of greater need'<sup>20</sup>. This justification is disturbing as it effectively discredits the needs of at-risk Aboriginal women in regions other than the Territory, and forces states and territories to compete for funding. Rashida Manjoo, United Nations Special Rapporteur on Violence against Women has argued that geography is irrelevant to women escaping violence and trying to access legal support services<sup>21</sup>.

The effects of the loss of early intervention and prevention funding in Commonwealth Attorney-General Department's funding regions is discussed in the section 'early intervention and prevention in practice: Sisters Day Out ®' below.

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<sup>20</sup> FVPLS Victoria, *Standing Firm for Change: A Journey To Justice*, National Conference 2012: A summary of key themes and FVPLS Victoria recommendations, October 2013, 14.

<sup>21</sup> *Ibid*, 14.

## **Section 5 Is unmet need concentrated among particular groups? What groups are particularly disadvantaged in accessing civil justice and what is the nature of this disadvantage?**

Aboriginal women have been described as the ‘most legally disadvantaged group in Australia’<sup>22</sup>. Since the 1980s, policy development has largely focussed on Aboriginal involvement in the criminal justice system rather than the civil justice system. In response to the Royal Commission into Aboriginal Deaths in Custody, Aboriginal offenders, specifically men, have been the subject of much research and policy attention. During this time however, Aboriginal victims of family violence and abuse, who are mostly women, have been rendered ‘invisible to policy makers’<sup>23</sup>.

Consequently today ‘there is a paucity of Indigenous legal services for family and civil law’<sup>24</sup> as Aboriginal and Torres Strait Islander Legal Services (ATSILS) across Australia tend to concentrate on criminal law matters. This highlights the necessity of the FVPLS program as a holistic service specialising in civil law matters stemming from family violence. Numerous parliamentary and non-government reports have recommended the strengthening of legal services for Aboriginal women nationally. In 2009, the Senate Legal and Constitutional Affairs References Committee referred to evidence of continuing chronic disadvantage in access to justice for Aboriginal women and children and noted that a dedicated national Aboriginal Women’s Legal Service program might better provide for that need<sup>25</sup>. FVPLS Victoria supports this recommendation.

### **Policy and advocacy capacity**

A lack of funding of the policy and advocacy capacity of Aboriginal women’s organisations has contributed to the legal disadvantage and invisibility of Aboriginal women. As previously mentioned, funding for Aboriginal advocacy work in Victoria has traditionally focused on Aboriginal men, and as a result Aboriginal women have not enjoyed equal profile in policy debates. Currently services funded under the National FVPLS program, which work mostly with Aboriginal women, are the only category of legal services under the National Partnership Agreement not funded for policy and law reform capacity.

Without dedicated policy capacity, FVPLS Victoria would not be able to participate in inquiries such as Commission’s Inquiry into Access to Justice. Furthermore we would be limited in opportunities to share our expertise, gained through eleven years of working with Aboriginal women and men, to ensure that government policy addresses the needs of Aboriginal victims/survivors of family violence. FVPLS Victoria should be supported by funding bodies to contribute to policy discussions at both local and national levels.

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<sup>22</sup> 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, 4.

<sup>23</sup> Tom Calma, Social Justice Commissioner, Australian Human Rights Commission, *2004 Social Justice Report*, cited in FVPLS Victoria, *A Force To Be Reckoned With 2002-2012*, 11-12.

<sup>24</sup> Law and Justice Foundation of New South Wales, *Legal Australia-Wide Survey: Legal Need in Australia*, Access to Justice and Legal Needs, Volume 7, August 2012, 237.

<sup>25</sup> Commonwealth of Australia, Senate Legal and Constitutional Affairs References Committee, *Access to Justice*, Senate Committee Report, December 2009, 8.130, 168.

FVPLS Victoria has been fortunate enough to secure some limited funding from philanthropic trusts for its policy and advocacy function. This has allowed our service to make significant gains in improving awareness of access to justice issues faced by Aboriginal victims/survivors of violence. For instance in 2010, utilising a one-off grant from the Legal Services Board and the Felton Bequest, FVPLS Victoria developed a series of policy papers which have allowed our service to establish itself as a campaigner for Aboriginal women's access to justice.

These policy papers put forward a number of recommendations for change which have informed our advocacy platform. Ongoing lobbying has facilitated improvements to Victorian justice processes such as the Koori Family Violence Court Support Program at the Melbourne Magistrates' Court and the Koori List of the Victims of Crimes Assistance Tribunal which directly improve the civil justice outcomes of Aboriginal women. A further limited funding grant from the William Buckland Foundation has provided FVPLS Victoria with the capacity to engage with the United Nations Economic and Social Council, develop relationships with federal and state government departments, and secure longer funding cycles for key legal positions within the FVPLS Victoria service. A recent review of FVPLS Victoria's policy papers found that out of 83 policy recommendations, significant progress has been achieved in relation to 26 of these, and considerable progress has been made against 43 others.

The sustainability of the policy capacity of FVPLS Victoria however is in a constant state of uncertainty. Significant resources are spent seeking and advocating for further policy funding from a limited number of philanthropic sources. Ongoing sustained funding of FVPLS Victoria would be both an effective and efficient use of the knowledge and expertise of FVPLS Victoria in relation to Aboriginal victims/survivors of family violence and sexual assault.

### **Section 5 Is unmet need concentrated among particular groups?**

#### **Why do individuals or organisations choose to represent themselves in courts?**

#### **What has driven the apparent growth in self-represented litigants?**

In late 2012, Victoria Legal Aid (VLA) announced changes to its eligibility guidelines to cut funding for legal representation in family law trials. For FVPLS Victoria clients these trials generally include child custody issues within the context of child abuse allegations, relationship violence, and histories of intimidation. The restriction on funding for FVPLS Victoria clients to engage a barrister in such circumstances has been extremely detrimental to clients' personal wellbeing, the length of time taken up by court matters, and case outcomes.

Aboriginal victims/survivors of family violence in the Family Court are now more likely to be cross-examined by the other party who may have abused them or their children, and in turn have to personally cross-examine the other party. The process of a final hearing is extremely inhibiting for those not trained in the law and particularly impacts upon those experiencing mental health issues, acquired brain injuries, depression, substance addictions and/or chronic illness. The absence of legal representation means that parties may be subject to inappropriate exchanges including threatening behaviour, and there is a risk that key issues may not be communicated to or considered by the

presiding judge. The outcomes of these trials have binding, final and profound ramifications on family relationships.

FVPLS recommends that as a matter of urgency family violence is considered as an exception to the rule of not providing VLA funding for legal representation in family law trials.

### **Section 7 Preventing issues from evolving into bigger problems**

#### **The Commission invites comment on strategies for the avoidance and early resolution of civil disputes. What evidence is there of the benefits and costs of these approaches and strategies? How can early intervention programs be best targeted and delivered?**

A model of legal services which is only funded to provide casework is neither efficient nor effective. The Commission should have regard to the importance of prevention and early intervention programs and community legal education, particularly in Aboriginal communities.

#### **Early intervention and prevention**

The Australian Institute of Criminology has reported that early intervention ‘has been identified as crucial to disrupting the intergenerational transmission of domestic violence’<sup>26</sup>. In Aboriginal communities impacted by disproportionate rates of family violence coupled with high rates of non disclosure (studies indicate that around 90 per cent of violence against Aboriginal women is not disclosed)<sup>27</sup>, proactive early intervention and prevention programs are critical.

Sustained, culturally safe early intervention and prevention programs aim to de-normalise violence, promote equal and respectful relationships, strengthen cultural identity, reduce the effects of prior exposure to violence, and improve access to resources and systems of support.

Despite the critical importance of prevention programs in Aboriginal communities, the Commonwealth cut funding to family violence prevention programs across Australia in May 2012. This included the loss of funding for FVPLS Victoria’s highly successful Sisters Day Out program (as detailed below). FVPLS Victoria believes that such funding cuts from established programs with proven effectiveness is not only inefficient, but continues to undermine trust between Aboriginal communities and government. Whilst FVPLS Victoria is encouraged by the recent commitment from the Victorian government to provide funds to our early intervention and prevention programs, again this funding is not recurrent and the repeated loss of these programs affects the trust and expectations built with the Victorian Aboriginal community.

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<sup>26</sup>Kelly Richards, ‘Children’s Exposure to Domestic Violence in Australia’, Australian Institute of Criminology, Trends & Issues in Crime and Criminal Justice No. 419, June 2011, 6.

<sup>27</sup> Matthew Willis, ‘Non-Disclosure of Violence in Australian Indigenous Communities’, Australian Institute of Criminology, Trends & Issues in Crime and Criminal Justice No. 405, January 2011, 1.

## **Early intervention and prevention in practice**

### **Sisters Day Out®**

The Sisters Day Out program targets Aboriginal and Torres Strait Islander women in communities across Victoria for a day of pampering, relaxation and respite from life stressors. Each workshop includes a range of well-being activities such as hairdressing, massage, manicures and other forms of pampering that enhance and promote self-esteem. Dance and exercise activities establish a tone of supportive informality that unites women across generations.

Each workshop includes a presentation and general discussion about family violence issues. Women experiencing violence can privately consult FVPLS Victoria solicitor and/or counsellors during the day to exercise their right to feel safe and secure in their homes and community.

The workshop also provides an opportunity for local community agencies, both mainstream and Aboriginal specific, to set up information booths and engage participants in a relaxed and supportive environment. This interaction assists to break down some of the barriers that prevent Aboriginal and Torres Strait Islander women from accessing services.

The day succeeds in strengthening and facilitating cultural and wider intergenerational family ties, while simultaneously educating people about what constitutes family violence and what help is available – from both mainstream agencies and Aboriginal-specific services.

Since the Sisters Day Out program was developed by FVPLS Victoria six years ago, 80 events have been delivered in 38 locations across Victoria with over 5,500 Aboriginal women attending the programs.

The government's commitment to effective prevention programs such as Sisters Day Out must be demonstrated through the provision of adequate and sustainable funding. It is strongly recommended that this resourcing is in addition to the adequate resourcing of legal services for victims/survivors of family violence, as funding for early intervention and prevention programs combating family violence should not occur in competition to funding for crisis response services.

Case study 2 attached in the Annexure demonstrates how Sisters Day Out introduces Aboriginal victims/survivors of violence/abuse to our service.

### **Community legal education**

Early intervention and prevention programs do not replace the need for community legal education programs. Community legal education is integral to improving the capacity of Aboriginal communities to respond to violence and to 'empower women, children and elders who are generally the most isolated from law and justice services'<sup>28</sup>.

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<sup>28</sup> Attorney General's Department, cited in FVPLS Victoria, *A Force To Be Reckoned With 2002-2012*, 32.

Following a history of disadvantage and alienation from the legal system, Aboriginal victims/survivors and Aboriginal communities are likely to be unaware of their legal rights. For instance, at FVPLS Victoria's 2012 conference *Standing Firm For Change: A Journey to Justice* it was highlighted that the lack of familiarity with and knowledge of the international human rights framework in Aboriginal communities limits the utility of these mechanisms locally. Rashida Manjoo explained that this results in a lack of accountability for human rights abuses<sup>29</sup>.

The 2006 Report *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities* prepared by the Aboriginal and Torres Strait Islander Social Justice Commissioner included human rights education in Aboriginal communities as a key challenge in addressing violence and abuse<sup>30</sup>. The lack of knowledge in Aboriginal communities of 'legal obligations and protections, and that individuals have rights'<sup>31</sup> is linked to a lack of knowledge of the civil law mechanisms which can be pursued by individuals.

A targeted and comprehensive community legal education program to raise awareness in the Aboriginal community about legal rights, how to obtain legal assistance, and how the civil law system works is required. FVPLS Victoria's ability to offer a state-wide, culturally-appropriate legal education program for the Victorian Aboriginal community is restricted by our reliance on short-term grants rather than receiving sustained resourcing from government. A coordinated, ongoing, government-funded legal education program is required to improve Aboriginal peoples', and in particular Aboriginal women's understanding of human rights, the law, and access to justice services.

### **Community legal education in practice: child protection proceedings**

Family violence is a significant factor in child protection interventions by the state. Data from the Victorian Government illustrates that family violence is the single biggest risk factor for substantiations of Aboriginal child abuse in Victoria, and that family violence is present in 64 per cent of child protection cases where Aboriginal children are involved<sup>32</sup>.

FVPLS Victoria has found that clients have been unaware of their legal rights prior to signing formal or informal agreements with child protection authorities. Consequently Aboriginal victims/survivors of family violence are often forced to comply with agreements that are characterised by overly onerous conditions and unsubstantiated requirements. When these agreements are then invariably breached, the matter escalates to a court hearing and there is risk of the child being placed in out of home care.

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<sup>29</sup> FVPLS Victoria, *Standing Firm for Change: A Journey To Justice*, National Conference 2012: A summary of key themes and FVPLS Victoria recommendations, October 2013, 18.

<sup>30</sup> Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities: Key Issues*, June 2006, 5.

<sup>31</sup> *Ibid*, 5.

<sup>32</sup> *The Victorian Government Indigenous Affairs Report 2007/2008*.

FVPLS Victoria has addressed this issue through community legal education activities targeted at both community members, and other agencies that work with Aboriginal people. A new resource has been developed and key messages of all education activities include the right to legal advice, the importance of legal advice as soon as child protection become involved, and how to access legal assistance.

In this way sustained funding for community legal education activities can significantly impact upon the early resolution of legal matters while also impacting on the over-representation of Aboriginal people in family violence and child protection-related matters. FVPLS Victoria recommends to the Commission that the Commonwealth government devotes ongoing funding to community legal education in Aboriginal communities.

### **Section 8 Effective matching of disputes and processes**

#### **How might people with complex legal issues be better directed to multiple legal and non-legal services to meet their needs? How can services be ‘joined up’ to assist in this regard?**

In order to ‘join up’ services, FVPLS Victoria encourages collaboration between state and Commonwealth governments in preventing and responding to people’s legal problems. Commonwealth and state governments must work collaboratively to resolve geographic and other service gaps for Aboriginal people with civil law needs. Policy models which play Commonwealth government resources and departments against Victorian government departments are unfair as substantive change for Aboriginal people and the wider community depends on integrated and coordinated service provision. The current climate of contest for funding of men’s or women’s programs, and prevention programs or crisis response programs, is also damaging to efforts to reduce and prevent family violence and to address victims/survivors’ needs.

Advancing Aboriginal people’s self determination is fundamental to addressing family violence in Aboriginal communities. United Nations Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, stated in relation to the Australian context that he is ‘concerned about any initiatives that duplicate or replace the programmes of Aboriginals and Torres Strait Islanders already in place, or that undermine local decision-making through [I]ndigenous peoples’ own institutions’<sup>33</sup>. FVPLS Victoria encourages partnerships and shared initiatives between mainstream organisations and Aboriginal community controlled organisations while supporting the view that Aboriginal people are best placed to provide effective programs for Aboriginal people. Within this context mainstream organisations should support the work of Aboriginal organisations, but should not attempt to build capacity by taking funding away from Aboriginal organisations.

In order to improve the ‘joined up’ nature of services, it is essential that Commonwealth and state governments are first committed to a coordinated, best practice approach which addresses the needs of Aboriginal victim/survivors of violence and abuse. This

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<sup>33</sup> James Anaya, *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, James Anaya, as he concludes his visit to Australia*, Available online <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/313713727C084992C125761F00443D60?opendocument>, 27 August 2009.

must include eliminating FVPLSs service delivery gaps, committing to facilitating self-determination by resourcing Aboriginal community controlled services, and incubating community capacity and expertise by stopping inefficient funding cuts. Better organisation and integration of government resources will reduce the administrative burdens that detract from program delivery when services are not provided with long-term funding. An improved dialogue between all levels of government should also address the disproportionate allocation of resources between states and territories.

The Sisters Day Out workshop is a practical example of how mainstream organisations and state and local government can support Aboriginal community initiatives. The Sisters Day Out activity invites both mainstream and Aboriginal-specific agencies to attend, creating familiarity between these organisations and breaking down the barriers that Aboriginal women experience when accessing mainstream services. Agencies which regularly participate include the Victorian Department of Human Services - Centrelink, the Victorian Department of Health, the Magistrates' Court of Victoria, Ombudsman Victoria, local Family Relationships Centres, Quit Victoria, Victoria Legal Aid, Aboriginal Co-operatives and numerous Aboriginal-specific services.

The FVPLS Victoria model is already 'joined up' in that we collaborate closely with other agencies and that our paralegal support workers coordinate access for clients to a range of other supplementary programs and services. Case study 2 attached in the Annexure demonstrates the long-term nature of our case management and the crucial role of FVPLS Victoria paralegal support workers.

### **Section 9 Using informal mechanisms to best effect**

**What evidence is there that ADR translates into quicker, more efficient and less costly dispute resolution without compromising fairness and equity (particularly where there is an imbalance of power between disputants)? What is the potential for resolving more disputes through ADR without compromising fairness or equity?**

FVPLS Victoria supports less formalised approaches to dispute resolution. As discussed in section 4, the intimidating nature and the formality of the courts have produced negative outcomes for Aboriginal people. The legal system has not been, nor is it today, culturally understanding.

Alternative dispute resolution (ADR) processes are not always appropriate in circumstances where family violence is present<sup>34</sup>. Women who are victims/survivors of serious violence and abuse should not be asked to mediate with the perpetrator of that harm. Where ADR processes are appropriate it is the experience of FVPLS Victoria that identification of Aboriginality continues to be done poorly, as does identification of family violence.

In addition, Aboriginal victims/survivors of violence typically have highly complex matters where drug testing, psychiatric assessment and counselling are required. The

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<sup>34</sup> FVPLS Victoria, Submission to the Family Law Council, Family Violence: Improving the Family Law System for All, May 2011, 4.

family dispute resolution institutions generally do not have the ability to respond appropriately to these issues<sup>35</sup>.

A positive initiative has been the introduction of New Model Conferences in the Children's Court of Victoria, effective from September 2013. The New Model Conference system allows for additional culturally appropriate elements to be incorporated into the dispute resolution, such as a Koori co-convenor, where a child of Aboriginal heritage is involved<sup>36</sup>. The guideline of these Koori Conferences stipulates that 'the role that extended family, identity and community play in the child's life'<sup>37</sup> will be taken into account.

### **Involvement of legal representatives in alternative dispute resolution processes for Aboriginal victims/survivors of violence/abuse**

Aboriginal victims/survivors of family violence are at an extreme disadvantage in alternative dispute resolution proceedings if not supported by an informed legal representative.

In Aboriginal Family Led Decision Making conferences, for example, the Victorian Department of Human Services' guidelines have recently excluded legal representatives in conferences<sup>38</sup>. These conferences determine the placement of Aboriginal children in out of home care and have long-term implications for parents' contact with or separation from their children. Given the extreme disadvantage and over-representation of Aboriginal people in the child protection system, the human rights implications, the significant power differentials between the parties, and the duress, conflict and vulnerability issues involved, it is the view of FVPLS Victoria that legal representation at these conferences is paramount.

### **Section 11 Improving the accessibility of courts**

#### **How might modern management and communication practices inform alternative approaches to the administration and delivery of court services?**

#### **Childcare in the Family Law Courts**

Childminding is a recurring difficulty for Aboriginal victims/survivors of family violence when using the courts system. Aboriginal women who are victims/survivors of family violence and sexual abuse are often separated from their support networks and may also have travelled to escape violence. As a result they are far more disadvantaged in organising childcare arrangements for court hearings due to a lack of family or friends to assist.

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<sup>35</sup> Ibid, 4.

<sup>36</sup> Children's Court of Victoria, *Dispute Resolution Conferences: Guidelines for New Model Conferences*, effective 9 September 2013, 4.3, 5.

<sup>37</sup> Ibid, 4.3, 5.

<sup>38</sup> Section 3, 'Legal representatives', in Victorian Department of Human Services, *Family Led Decision-Making Program Guidelines*, Version 1, July 2013, 29.

'It is often assumed that refuges, family violence workers or legal services will be able to provide child care services (or funding for them) when this is not the case'<sup>39</sup>. Providing child care facilities in the court precinct or funding for victims/survivors of violence to have somewhere safe to leave their children during Family Court proceedings would alleviate one further barrier to accessing justice for Aboriginal women.

### **Success of models with Aboriginal staff and Liaison Officers**

As highlighted in section 4, the 'user friendliness' of the courts system, justice models are more likely to produce successful outcomes with the involvement of Aboriginal staff, Aboriginal support workers and culturally responsive systems that incorporate Aboriginal-specific lists and programs.

Section 4 details the success of the Victorian model after the introduction of the Victorian Aboriginal Justice Agreement and the Koori Justice Unit in the Victorian Department of Justice, the importance of the reinstatement of Aboriginal Liaison Officers in the Family Law Courts, and the need for the continuation of programs that work, such as the Melbourne Magistrates' Court Koori Family Violence Court Support Program.

### **Section 12 Effective and responsive legal services**

#### **How might the development of legal skills for non-legal professionals improve access to justice, especially for those users who face significant barriers?**

Section 4 detailed the vital role played by paralegal support workers at FVPLS Victoria in ensuring that all of the client's legal and non-legal support needs are met. By providing direct support to clients attending agencies, police stations and court, paralegal support workers assist clients to overcome the inherent barriers that may hinder their engagement, and ensure better legal outcomes where access to housing, counselling and other supports will impact on the legal resolution. Continued funding of these paralegal support worker positions is essential in order for FVPLS Victoria to retain its continuity of service provision, culturally safe environment and respect in the Aboriginal community.

### **Section 12 Legal assistance services**

#### **Is the current model of legal assistance service delivery efficient, effective and appropriately focused on specific legal needs?**

The FVPLS program plays an irreplaceable role in the 'mixed model' of legal service delivery in Victoria and Australia. As noted by the Australian Centre for the Study of Sexual Assault, 'many Aboriginal women turn away from accessing non-Aboriginal services given the role they are seen to have played in the destruction of Indigenous communities, in terms of imprisoning their men, in removing their children, and in alienating them from their lands and communities'<sup>40</sup>.

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<sup>39</sup> FVPLS Victoria, *Improving Accessibility of the Legal System for Aboriginal and Torres Strait Islander Victims/Survivors of Family Violence and Sexual Assault*, Policy Paper Series, Paper 3 of 3, June 2010, 24.

<sup>40</sup> Monique Keel, *Family Violence and Sexual Assault in Indigenous Communities: "Walking the Talk"*, Australian Centre for the Study of Sexual Assault, Briefing No. 4, September 2004, 9.

As an independent Aboriginal community controlled organisation, FVPLS Victoria offers a confidential and free service for Aboriginal victims/survivors of family violence and sexual assault. Aboriginal women in particular require access to a culturally safe legal service, which is distinct from the VALS, given VALS' major focus on criminal law. Whilst the work of VALS is critically important, 'in most cases it will be the offender, rather than the victim who is eligible for legal aid through ATSILS'<sup>41</sup>. For this reason, aside from obvious issues of legal conflict, the greater focus on VALS' support for male offenders 'does not lend itself to the gender and cultural sensitivities required to support victims/survivors who are in the main women and children'<sup>42</sup>.

Aboriginal community controlled culturally safe services are 'environments of cultural resilience'<sup>43</sup> within Aboriginal communities and boost the cultural competency of mainstream agencies who engage with such services. For example, FVPLS Victoria utilises our knowledge of community/cultural issues and barriers to justice at high level mainstream forums whereby such information would not otherwise be considered.

James Anaya, United Nations Special Rapporteur on the Rights of Indigenous Peoples, found upon his visit to Australia in 2009 that successful community-operated programs which are 'culturally appropriate and adapted to local needs (...) need to be included in and supported by the Government response, both logistically and financially'<sup>44</sup>. FVPLS Victoria supports this sentiment and hopes to see the Commission recommend resources to build the capacity of Aboriginal community controlled legal services Australia-wide.

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<sup>41</sup> Australian Human Rights Commission, Submission to the Senate Legal and Constitutional Affairs Committee, Inquiry into Access to Justice, 20 October 2009, 4.3, paragraph 23.

<sup>42</sup> FVPLS Victoria, *Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander Victims/Survivors of Family Violence and Sexual Assault and women and children: National policy issues – A Victorian perspective*, Policy Paper Series, Paper 1 of 3, June 2010, 15.

<sup>43</sup> Australian Human Rights Commission, 'Chapter 4: Cultural Safety and Security: Tools to Address Lateral Violence', *Social Justice Report 2011*, 2011, 4.2.

<sup>44</sup> James Anaya, *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, James Anaya, as he concludes his visit to Australia*, Available online <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/313713727C084992C125761F00443D60?opendocument>, 27 August 2009.

# Annexure

## Case Study 1

Kelly was referred to our service by Elizabeth Hoffman House Aboriginal Women's Service. She had been in a violent relationship with her partner, the father of her five children, for ten years. Kelly had issues with drugs and alcohol. Her partner spent time in prison for assaulting Kelly, in addition to serving time for other offences. When her partner was incarcerated Kelly showed a real willingness to address her issues with substance abuse and to end the cycle of violence. However, when her partner was not in custody his influence was such that she once again became a victim of violence and her issues with drugs and alcohol returned.

After a particularly brutal assault in 2011, the Victorian Department of Human Services (DHS) removed the children from Kelly's care, placing them with their maternal aunt. To begin with Kelly was reluctant to engage with our service and was difficult to contact. She struggled to find the strength to stay away from her partner when he was not in custody. But as time went on and trust was established with her FVPLS Victoria paralegal and lawyer, she engaged more frequently and willingly allowed our service to assist.

The paralegal support worker and lawyer arranged for Kelly to attend Winja Ulupna, where she spent three months in drug and alcohol rehabilitation. On her release the paralegal support worker was able to link her in with a community housing organisation to assist her with safe housing.

The lawyer ensured that an Aboriginal Family Led Decision Making meeting with DHS took place, and Kelly was supported by a paralegal support worker at this meeting. Subsequent to her completing rehabilitation, her lawyer worked with both her and DHS to develop a plan which gradually re-introduced more regular access between Kelly and her children.

Over time Kelly became willing to attend counselling, and a culturally appropriate private counsellor was secured close to where Kelly lived. Parenting courses were also identified by her paralegal support worker and assistance provided for Kelly to attend. The real turning point for Kelly and her children was when she was accepted to participate in the Restoration House program through the Victorian Aboriginal Child Care Agency (VACCA).

At the New Model Conference, attended by Kelly and her lawyer, DHS praised the client for how she had turned her life around and how well she was caring for her children. DHS have now withdrawn their involvement.

The paralegal support worker also assisted Kelly with preparing an application for the Victims Register, which kept Kelly updated on her ex-partner's release date.

The ex-partner was recently released from prison. He immediately contacted Kelly and asked for contact with the children. She ignored his request and within six days he had found out where she lived, broken into her home and left a note threatening her and the children. Police responded after the incident and issued a Family Violence Safety Notice, however it did not protect Kelly's children. An FVPLS Victoria lawyer attended court and persuaded the police to amend the application and also made submissions to the court regarding the significant history of family violence. As a result, an indefinite Intervention Order was made including all of the children's names. An urgent application was filed by the lawyer to obtain safety-related items from the Victims of Crime Assistance Tribunal. New locks and a security system have now been fitted to Kelly's property.

## Case Study 2

Sue contacted our service following a *Sisters Day Out* event where she had heard one of our lawyers speaking about victim's compensation. Sue had been in an on-again/off-again relationship with the father of her four children for 12 years. During that time she had been assaulted by him on many occasions although most of these she had felt too scared to report. A final assault and abduction had taken place six months before she had attended the *Sisters Day Out* event.

Our lawyer organised an appointment at Sue's local library to talk to Sue as she no longer had a car and was unable to attend our office. Her car had been written off a year ago by her ex-partner. It quickly became evident that Sue was terrified of being in a house so far from public transport without a car. She was anxious that her ex-partner would locate her and harm her and the children when released from jail.

Our lawyer initially made a claim with the Koori List of the Victims of Crime Assistance Tribunal for urgent assistance in relation to a motor vehicle. Our client was subsequently awarded a vehicle by the Tribunal which allowed her to feel safe and also able to get the children to their new schools.

Sue was also experiencing significant financial hardship due to the conduct of her former partner. He had used the family's income (primarily Centrelink benefits) to support his ice addiction. Further, he had incurred numerous speeding and tollway infringements driving the vehicle that had been in Sue's name. There were other assorted fines that Sue had incurred on various occasions but had been unable to deal with due to the trauma of family violence. In total, Sue had incurred approximately \$8,000 in fines. The lawyer was successful in applying to have some fines revoked and others withdrawn on the basis of representations in the Special Circumstances List.

As her former partner's release date was approaching, the FVPLS Victoria paralegal support worker arranged with Sue to have her name added to the Victims Register so that she would be informed of her former partner's release date. In addition to this, the lawyer attended Melbourne Magistrates' Court with Sue to apply for an Intervention Order so that it would be in place upon her ex-partner's release from prison. FVPLS Victoria's family lawyer also worked with Sue to draft a parenting plan so that the ex-partner's contact with the children could be formalised.

At the final hearing of Sue's victim's compensation matter, a paralegal support worker attended as Sue was nervous about going to court. The paralegal support worker asked the barrister to further explain what the judge had determined when it became clear that Sue had been overwhelmed and had not taken in the barrister's information due to the formal and legalistic way it had been communicated to her. A significant award was made including costs for counselling and items to assist recovery, such as a family holiday, computers, education and health and fitness. The paralegal support worker under supervision of the lawyer arranged for all of the items to be claimed from the Tribunal ensuring that the holiday was able to be arranged quickly and that computers were delivered prior to the start of the children's new school year.