



Aboriginal Family
Violence Prevention
& Legal Service Victoria
**Standing Firm Against
Family Violence**

Submission to the
Inquiry into the external
oversight of Police
corruption and
misconduct in Victoria

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About FVPLS Victoria

Established over 14 years ago, the Aboriginal Family Violence Prevention and Legal Service Victoria ('FVPLS Victoria') is an Aboriginal Community Controlled Organisation which provides culturally safe and holistic assistance to Aboriginal and Torres Strait Islander (hereafter referred to as 'Aboriginal') victims/survivors of family violence and sexual assault. FVPLS Victoria provides frontline legal assistance and early intervention/prevention, including through providing community legal education to the Aboriginal community, the legal, Aboriginal and domestic violence sectors.

With support from philanthropic sources, FVPLS Victoria also undertakes policy and law reform work to identify systemic issues in need of reform and advocate for strengthened law and justice outcomes for Aboriginal victims/survivors of family violence and sexual assault.

FVPLS Victoria is open to Aboriginal men, women and children who have experienced or are at risk of family violence or sexual assault, as well as non-Aboriginal carers of Aboriginal children who are victims/survivors of family violence. FVPLS Victoria is not gender specific, however at last count 93% of our clients were Aboriginal women and their children.

In 2015-16, FVPLS Victoria's services impacted more than 6,000 people across Victoria.

FVPLS Victoria's legal services include advice, court representation and ongoing casework in the areas of:

- family violence intervention orders;
- child protection;
- family law;
- victims of crime assistance; and
- where resources permit, other civil law matters connected with a client's experience of family violence such as: police complaints, housing, Centrelink, child support and infringement matters.

FVPLS Victoria has a holistic, intensive client service model where each client is assisted by a lawyer and paralegal support worker to address the multitude of interrelated legal and non-legal issues our clients face. FVPLS Victoria's paralegal support workers, many of whom are Aboriginal women, provide additional emotional support, court support and referral to ensure the client is linked into culturally safe counselling and support services to address the underlying social issues giving rise to the client's legal problem and experience of family violence. This may include for example assistance with housing, drug and alcohol misuse, social and emotional wellbeing, parenting, financial and other supports.

As an Aboriginal Community Controlled Organisation, FVPLS Victoria is directed by an Aboriginal Board and has a range of systems and policies in place to ensure we provide culturally safe services in direct response to community need.

Through our culturally safe and specialist frontline service delivery, FVPLS Victoria routinely interacts with and advocates to Victoria Police on behalf of Aboriginal victims/survivors of family violence – predominantly women. Through our community education, prevention and early intervention work with Aboriginal communities throughout Victoria we routinely hear the stories of Aboriginal women's experiences with police. This submission is informed by these stories.

Introduction

FVPLS Victoria welcomes the opportunity to present this submission to the Inquiry into the External oversight of Police corruption and misconduct in Victoria.

Through our frontline legal and non legal service delivery, and primary prevention work with Aboriginal and Torres Strait Islander communities across Victoria, we see a critical need for greater transparency and accountability of Police practices, as well as improved mechanisms to ensure police remain accountable to marginalised communities, especially Aboriginal victims/survivors of family violence and Aboriginal women and children.

This submission will outline the systemic issues with the existing Police complaints process and mechanism such as:

- Discrimination, bias and fear of reporting;
- Lack of accountability of the current complaints process;
- Failure to adequately protect the safety of victims/survivors; and
- Lack of trust and confidence in the complaints process.

Our submission is based upon our extensive experience working with Aboriginal victims/survivors. This submission features examples and evidence from within the Victorian context and also refers to other jurisdictions, such as Canada, which have comparable experiences of Police misconduct and discrimination towards First Nations communities.

Recommendations

This submission provides an overview of poor police behaviour and misconduct as experienced by Victorian Aboriginal people and communities, and identifies systemic issues emerging from the experiences of our clients. FVPLS Victoria urges the Inquiry to consider this context when finalising the outcome report. Key recommendations made in this submission include:

1. Establishment of a fully independent, robust and accessible oversight and review mechanism (including complaints process) for Victoria Police, that:
 - a. sits separately to Police;
 - b. has the power to conduct investigations with criminal and/or disciplinary outcomes;
 - c. has an express legislative function of reviewing and reporting on the adequacy of Victoria Police internal investigations of police conduct; and
 - d. has an express legislative power to conduct own motion investigations of systemic and cultural issues within Victoria Police, including systemic racism and discrimination against Aboriginal victims/survivors of family violence and Aboriginal people more broadly.

In order to be truly accessible, Aboriginal victims/survivors of family violence and other Aboriginal complainants must have access to culturally safe, specialist and appropriately resourced services, such as FVPLS Victoria, to support them through the complaints process.

2. IBAC or any newly established oversight mechanism be required to keep a record of all complaints made concerning Police personnel, and required to regularly audit complaints and publish findings with:
 - a. Records of complaints required to include whether the complainant identifies as Aboriginal; and
 - b. Audit data disaggregated to show the number and breakdown of outcomes of complaints made by Aboriginal people.
3. Adequate resourcing for culturally safe and specialist services to support Aboriginal complainants throughout the complaints process.
4. Adequate resourcing for culturally safe and specialist services to provide community legal education and early intervention programs that support Aboriginal victims/survivors of family violence – and Aboriginal communities more broadly - to understand their legal rights in relation to police and to access oversight and complaints processes.
5. All staff of IBAC or any newly established oversight, accountability or complaints framework be required to undertake regular cultural competency training and implement partnerships with appropriate community leaders and/or institutions in order to seek advice and consultation as required when investigating matters pertaining to allegations of racism and/or discriminatory conduct on the basis of Aboriginality. Cultural competency training should include specific content in relation to the barriers faced by Aboriginal victims/survivors of family violence and Aboriginal women.
6. Should the existing model of Police complaints process remain without change, protocols and procedures should be enacted to ensure that complainants are not only notified but given a right of reply before IBAC refers a matter to Victoria Police for internal investigation. Referrals that pose a foreseeable risk to the complainant’s safety or welfare should be expressly prohibited.
7. Legislative amendments be made to ensure complainants have a direct right of appeal to IBAC, or any newly established independent oversight body, where the complainant is not satisfied with the outcome of an internal police investigation.

Overview

The current system of accountability for handling police complaints is not working. Most critically, for Aboriginal communities, who have both current and historical experiences of poor police behaviour, actual and/or perceived lack of police accountability only further adds to a sense of injustice and disempowerment. In the case of Aboriginal women, it adds another risk factor to the disproportionate levels of violence experienced.¹

The lack of a culturally safe, transparent, accessible and fully independent complaints process enables violence against Aboriginal women to continue and contributes to Aboriginal women experiencing fear and disillusionment with police and police practices.

FVPLS Victoria has consistently advocated for greater police accountability, including in relation to police complaints, and for negative, discriminatory and racist practices to be held to account. To date, despite FVPLS Victoria's work, there has been little change in the way in which Victoria Police manage and resolve complaints processes. This submission adds to the advocacy work that FVPLS Victoria regularly undertakes in calling for review of the way in which police interact with Aboriginal communities – and Aboriginal women in particular.

As a frontline organisation working directly with Aboriginal victim/survivors (predominantly women), our experience is invaluable in understanding the impact of police misconduct not being resolved and the lived consequences of a lack of police accountability to community.

For example, FVPLS Victoria has assisted clients in many cases in which victims/survivors have attempted to report alleged breaches of family violence intervention orders (IVOs), but police have declined to take action to investigate or charge. These responses indicate a number of systemic failures, along with institutional racism and discriminatory attitudes towards Aboriginal women.

Some of the many examples that FVPLS Victoria clients have reported include interactions with Victoria Police such as²:

- Comments that minimise violence, such as: *“Well, he only hit you in the face this time. Maybe things are getting better”*;
- Comments that undermine victims/survivors' trust in Intervention Orders or deter them from seeking such orders, for example: *“If you apply for an order and take him to Court that might just make him more angry, don't you think?”* and
- Comments that discourage women experiencing family violence from seeking Intervention Orders that protect their children in the absence of providing a referral for family law advice: *“Do you think it's right to keep your child from seeing his dad?”*

FVPLS Victoria maintains that, like perpetrators of violence, police must be held to account for their responses to Aboriginal women experiencing violence. A complaints process which does not

¹ Nationally, Aboriginal women are 32 times more likely to be hospitalised for family violence and ten times more likely to be killed as a result of violent assault than other Australian women. For further information about the prevalence of violence against Victorian Aboriginal women see FVPLS Victoria's submission to the Royal Commission into Family Violence, July 2015, available at:

<http://fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%2015Jul15.pdf>

² FVPLS Victoria *Submission to the Victorian Government's Gender Equality Strategy*, March 2016 pg. 11

<http://www.fvpls.org/images/files/Submission%20A%20Victorian%20Gender%20Equality%20Strategy%20FVPLS%20Victoria%20FINAL.pdf> accessed 10 August 2017

adequately hold police to account creates the perception of institutional collusion with perpetrators of violence. Aboriginal women are highly sensitive to institutional violence, having experienced it for generations. Given the level of violence experienced by Aboriginal women from men of all cultures, and by men acting on behalf of the state (police, “welfare”/child protection), a complaints system must function to send a clear message that violence against Aboriginal women will not be tolerated and that police collusion with perpetrators - through ignoring, minimising, excusing or condoning family violence - will not be tolerated.

Moreover, the perception of police collusion with perpetrators of family violence can have the very real and damaging effect of enabling and condoning the use of violence. As outlined further below, Aboriginal women – and Aboriginal peoples - already have a profound mistrust in police resulting from Australia’s history of colonisation. The perception of police collusion with perpetrators of violence renders Aboriginal women even less likely to report family violence and seek assistance – putting vulnerable women and children at even greater risk.

The Royal Commission into Family Violence acknowledged the catastrophic level of violence experienced by Aboriginal women³ and called for a number of reforms across the family violence response sector, particularly the Justice system. Specifically, the Commission acknowledged that police conduct and compliance with the Victoria Police Code of Practice could be strengthened in both Recommendation 43 and 44.

Recommendation 43:

Victoria Police ensure that specialist family violence position holders perform regular random file and case reviews in order to monitor compliance with the Victoria Police Code of Practice for the Investigation of Family Violence and other important procedural requirements relating to family violence—for example, in relation to investigations of contraventions of family violence intervention orders. Victoria Police should set timing targets for these file and case reviews [within 12 months].

Recommendation 44:

The Victorian Government and Victoria Police establish a regular cycle of comprehensive and independent audits of Victoria Police’s compliance with the Victoria Police Code of Practice for the Investigation of Family Violence. The results of the audits should be published, and include, among other things, any divisional variation and the measures that will be taken to resolve any concerns.

Beyond creating additional barriers to reporting for Aboriginal women, where poor policing becomes particularly problematic is the structure of the complaints process. Currently in Victoria, an Aboriginal woman is required to report her complaint either directly to police or to IBAC (and where a complaint is directed to IBAC it may be referred by IBAC back to police).

The irony of an accountability system that demands Aboriginal women, who have intergenerational experiences of police misconduct and discrimination, report police misconduct directly back to police should not be lost. For Aboriginal women who manage make a complaint in spite of this situation, what occurs in reality is a process which has severe limitations due to subconscious bias, systemic discrimination, a lack of impartiality and potential for conflict of interest to arise given that police are investigating themselves. In addition, the current complaints process contributes to

³ Royal Commission into Family Violence, *Summary and Recommendations*
<http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf> pg.33 accessed 11 August 2017

perceptions of police (wittingly or unwittingly) colluding with perpetrators of family violence with little concern for the safety and protection of Aboriginal women.

The process of IBAC inquiries is just as fraught, in particular for Aboriginal women who have been identified as the most legally disadvantaged group in Australia⁴ and face additional barriers to reporting violence due to multiple compounding factors such as fear of child removal, poverty, homelessness, over-policing and criminalisation, lack of awareness of legal rights and – in many areas – lack of access to culturally safe services and supports.

Whilst in theory IBAC has scope to investigate complaints against police, IBAC is not mandated to hold police accountable and it is also exempted from adhering to Victorian Freedom of Information Law. This means that Aboriginal women have no recourse to gaining information relevant to their complaint, how it has been reviewed and resolved.

Faced with such limited and disempowering options, it isn't difficult to appreciate why Aboriginal women do not make complaints to either police or IBAC. Until the complaints process in Victoria changes, Aboriginal women will continue experience systemic and institutionalised discrimination.

This submission will now outline these key issues in further detail.

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Fear of reporting

One of the key issues with oversight of police misconduct is the level of fear and distrust Aboriginal people have of police. This is deeply entrenched and stretches back to colonisation, dehumanising legislation enforced by police, through to discriminatory practices and attitudes of police today.

Compounding Aboriginal women's historical and intergenerational experience of poor policing is the inextricable link between police and child protection agencies. FVPLS Victoria has written extensively about our concerns with what is often an inappropriately punitive and judgmental approach taken towards Aboriginal victims/survivors of family violence – predominantly mothers – in the child protection system. This concern was highlighted by the Royal Commission into Family Violence in its' final report.⁵ A report by the Commissioner for Aboriginal Children and Young People revealed that close to 90% of Aboriginal children are removed because of men's violence against women.⁶

Within the family violence and child protection systems in Victoria, police are required, and have discretion, to report children 'at risk' to child protection authorities. Historically, child protection authorities, in association with police, have forcibly removed Aboriginal children from their families, for a range of policy reasons, constituting attempted genocide. The profound trauma and ongoing effects of this history continue in the lives of Aboriginal communities today.

The fear of child protection involvement means that some Aboriginal women feel that reporting violence to Police is not an option, and are reluctant to invite the added scrutiny that may follow – or be perceived to follow - making a complaint about police misconduct. This fear is entirely understandable given family violence is the leading contributor to child protection intervention and child removal in Victoria.⁷ In fact, the numbers of Aboriginal children in the Victorian child protection system are currently at the highest level since colonisation.⁸

Accordingly, the fear of reporting to Police needs to be understood within the context of an entire service system that perpetuates institutionalized violence against women. Attempts to remove barriers to ensure Aboriginal women's access to police complaints processes must recognise the interconnected nature of systemic failures that generates an ongoing fear of reporting to police.

Case Study One: the lived consequences of poor policing and police misconduct

This case study from 2017 illuminates poor policing practices towards an Aboriginal victim/survivor of family violence and contravenes the Police Code of Conduct to 'provide service excellence to everyone' and the Victoria Police SELF test⁹ relating to fair and lawful behavior.

⁵ Royal Commission into Family Violence (Victoria), Report and recommendations, 2016, p 175
https://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf

⁶ Commission for Children and Young People, 2016, 'Always was always will be Koori children - systemic inquiry into services provided to Aboriginal children and young people in out-of home care in Victoria', pg. 47, available at <http://www.ccp.vic.gov.au/downloads/always-wasalways-will-be-koori-children-inquiry-report-oct16.pdf>

⁷ Commission for Children and Young People, 2016, 'Always was always will be Koori children - systemic inquiry into services provided to Aboriginal children and young people in out-of home care in Victoria', pg. 47, available at <http://www.ccp.vic.gov.au/downloads/always-wasalways-will-be-koori-children-inquiry-report-oct16.pdf>

⁸ FVPLS Victoria 'Submission to the Victoria Law Reform Commission Reference on Adoption' pg. 5
<http://www.fvpls.org/images/files/Submission%20FVPLS%20Victoria%20Adoption%20Act%201984%20Review%20Victoria%20Law%20Reform%20Commission.pdf>

⁹ Victoria Police Code of Conduct- Professional and ethical standards pg. 3
http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=53208 accessed 16 August 2017.

An Aboriginal woman, Ms X, was physically assaulted by her ex-partner and went immediately to her local police Station to report the incident and ask for help. Ms X spoke to the Constable on duty and told him a number of times that she wanted assistance to obtain an Intervention Order for herself and her children. The Constable responded by telling Ms X that he could charge her with assault for slapping her ex-partner during the course of the incident. The police refused to help Ms X obtain an Intervention Order and did not refer her to independent legal advice or support.

The Constable also said to Ms X words to the effect of, “Don’t you think you’re being unreasonable not allowing your ex to see the kids?” and that her ex-partner had equal rights to see the children. The Constable was not aware – and did not take steps to make himself aware - of our client’s previous visits to the police station nor the ongoing violence from which our client was trying to shield her children.

Ms X left the station without any support and an increased sense of fear about reporting violence to police, particularly in relation to the possible consequences for her children. She contacted FVPLS Victoria for advice and, on her behalf, FVPLS Victoria followed up with the police station to urge them to take a written statement from Ms X about the violence she had been experiencing and assist with applying for an Intervention Order as requested.

The police said that as they did not attend on the day they would not assist. FVPLS Victoria ultimately obtained an Intervention Order and initiated family law proceedings to ensure that appropriate court orders were in place for the children’s safe care. Without support from FVPLS Victoria, Ms X would have been left at significant risk by police’s refusal to act.

Instances such as this are not uncommon among FVPLS Victoria’s clients and this is just one example of where fear of reporting to police has been well founded. Ensuring appropriate action is taken to rectify a poor response by police is often at the bottom of the priority list for our clients who are focused on their immediate survival.

Accordingly, effective police oversight requires more than just a complaint system. Complainants, especially victims/survivors of family violence and other particularly vulnerable groups, need support to assist them through that system. Aboriginal Community Controlled Organisations, such as FVPLS Victoria, play a vital role in supporting Aboriginal victims/survivors of family violence to navigate and access justice through legal and other complaints systems, and must be appropriately resourced to do so.

Lack of accountability of the current complaints process

At the core of the issue surrounding police misconduct is the fact that the complaints process relies on police to investigate police¹⁰. While there are three ways that a complainant can submit a complaint about police in Victoria, two are directly to police. In theory IBAC can investigate complaints against police however the reality in practice is that the overwhelming majority of complaints by the public are sent back to the police for investigation – the Flemington Kensington Community Legal Centre suggests that only 1% of complaints about Victoria Police are investigated by IBAC.¹¹

This is a fundamentally flawed process as there is significant opportunity for conflicts of interest to arise, compounding any inherent discriminatory attitudes by police towards Aboriginal people. The process of a complaint being received or investigated first by police is a significant barrier and deterrent for Aboriginal complainants.

Police accountability, and access to effective complaints processes, is fundamentally important for Aboriginal people and communities. Within Australian society, there is no other group of people over which the police have had such high levels of control nor such destructive impacts. Due to racist policies of assimilation and protection, police have historically been charged with the role of ‘Protectors’ determining all aspects of Aboriginal people’s lives including approval to work and marry, control of wages and involvement in removing children from families.¹² As discussed above, discriminatory practices have continued through to today with examples including police involvement in child removal, over-policing and poor responses to Aboriginal victim/survivors of family violence.¹³

Consequently, many Aboriginal people and communities have very little confidence in services delivered by Police, let alone confidence in an internal complaints mechanism that relies on Police’s review of Police. A brief overview of the *Koori Complaints Report* is useful to illuminate this point with the report noting that most ‘Aboriginal people were of the view that making a complaint about police behaviour was futile and, in some cases, counter-productive’.¹⁴

Undertaken by the Indigenous Justice Unit at the Department of Justice as an initiative of the Victorian Aboriginal Justice Agreement, the report investigated complaints by Koori people in Victoria over a 13 year period. It is important to note that prior to this project being implemented, there was no data capture on the Police database about ‘Indigenous Status’ and a key

¹⁰ Police Accountability Project, *Independent Investigation of Complaints against the Police Policy Briefing Paper* Pg. 3 http://www.policeaccountability.org.au/wp-content/uploads/2015/11/CLCpaper_final.pdf accessed 15 August 2017

¹¹ Police Accountability Project *Complaints Against Police in Victoria* <http://www.policeaccountability.org.au/police-complaints/> accessed 15 August 2017

¹² Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Report 2006-2008* pg. 7 <http://www.policeaccountability.org.au/wp-content/uploads/2016/04/Koori-Complaints-Project-Final-Report-2008.pdf>

¹³ National Family Violence Prevention Legal Services *Australian Law Reform Commission Inquiry into the Incarceration of Indigenous Australians Comments on the Draft Terms of Reference* pg. 4 http://www.nationalfvpls.org/images/files/Comments_on_the_Terms_of_Reference_ToR_ALRC_Inquiry_Incarceration_of_Indigenous_Australians-final.pdf

¹⁴ Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Report 2006-2008* pg. 18 and pg. 23 <http://www.policeaccountability.org.au/wp-content/uploads/2016/04/Koori-Complaints-Project-Final-Report-2008.pdf>

recommendation of this project was to implement the identification of Indigenous status in October 2006.

The bulk of complaints reviewed were in relation to assaults by police at arrest. Injuries recorded included permanent brain damage, broken cheekbones, severe facial injuries, cuts, dislocations, abrasions and soft tissue injuries including eye injuries.

The number of 'substantiated' complaints was reported as being very low. In fact only 1.2% of the most serious and most common complaint (assault by police) were substantiated. For Aboriginal people who made complaints about police assault and received an 'unsubstantiated' outcome, this only further eroded their confidence in the system.¹⁵

A system that does not hold police accountable for how and why complaints are not considered substantiated only further compounds the injustices experienced by Aboriginal people and communities and further silences Aboriginal victims/survivors of family violence.

Case study: Police silencing victim/survivors of family violence

This case is an example of institutional violence in which police minimized and mischaracterized family violence and failed to provide appropriate assistance – ultimately silencing the woman involved. Without intervention from FVPLS Victoria and the presiding Magistrate this young woman would have been left without protection despite being at risk of ongoing violence.

In early 2017, a young Aboriginal woman in Regional Victoria, Ms A, sought police assistance after experiencing an episode of family violence by her ex-partner and father of the children residing with her. Police attended Ms A's home and took a handwritten statement from her. In the process of giving her statement, Ms A told the police officers that she had sustained injuries to her arms. One of the police officers held a torch over Ms A's arms and told her that they could not see any bruises. They stated that there was 'nothing there.'

Over the following two days, deep bruises emerged on Ms A's arms and she fled to a refuge where she was connected with FVPLS Victoria. At this time Ms A contacted the police station to inquire into the progress of her statement and was put through to an officer in the Family Violence Unit. This officer questioned Ms A about whether she had a gambling problem.

FVPLS Victoria subsequently attended Court with Ms A to apply for an IVO where the presiding Magistrate commented that the matter should proceed as a police application and asked FVPLS Victoria to make inquiries as to why the police had not brought the application.

Police subsequently filed an affidavit outlining their reasons for not applying for an IVO for Ms A's protection. The primary reason being that the relevant officers had decided that Ms A's ex-partner was the Affected Family Member and that Ms A was the Respondent. No information was provided about family violence committed by Ms A to justify such a finding. Instead the police Affidavit stated:

- There were no injuries evidenced on the client
- The client gambles at local pokies venues and is in significant debt
- The client's ex-partner says that he gets invited into the house and he provides the client with food and money and pays for her utility bills
- The ex-partner says the client uses drugs and sleeps a lot during the day

¹⁵ Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Report 2006-2008* pg. 23 <http://www.policeaccountability.org.au/wp-content/uploads/2016/04/Koori-Complaints-Project-Final-Report-2008.pdf>

When the IVO matter returned to Court, Ms A's ex-partner appeared and sought legal advice. He subsequently consented to an IVO being granted against him.

The police in this matter failed to seek any protection for a client who reported physical violence, sustained injury and was in fear for her ongoing safety. The police affidavit reveals an extremely poor understanding of the dynamics of family violence by both the First Constable and the Assistant Sergeant and effectively silences and discredits the victim by including extraneous, non-relevant information. Minimisation of violence is also apparent in the police affidavit, with the officer describing the family violence that resulted in serious bruising as "*minor only verbal dispute over money*".

This experience has been deeply distressing and traumatising for Ms A and has led to her feeling a deep distrust for the police station involved. With support from FVPLS Victoria, Ms A has lodged a police complaint and is awaiting the outcome.

A 2016 IBAC audit of the 'Victoria Police complaints handling systems at a Regional level' recognised that "*where complainants lack confidence in the complaints process, they are less likely to report alleged police misconduct*".¹⁶ The audit identified that there were a number of areas where 'timeliness, accountability and accessibility of its complaint handling process could be improved' including:

- Investigation plans, investigation logs and final checklists are not being included on investigation files, making it more difficult for senior Victoria Police officers and IBAC to oversight investigation files;
- Some officers who investigate complaints have a poor understanding of the Victorian Charter of Human Rights and have difficulty applying the charter to complaint investigations; and
- The 'correspondence file' classification is overused. This results in matters that appear to be clear complaints not being recorded as 'complaints' on Victoria Police's systems and notification not being provided to IBAC.¹⁷

A lack of accountability to Aboriginal communities in relation to how police complaints are handled is echoed across jurisdictions that have faced long standing discrimination and poor treatment by police. In a Human Rights Watch (HRW) submission to the Government of Canada, outlining the abuse and failures by police to protect First Nations women, HRW highlighted that poor police handling of complaints only further contributes to existing and unequal power structures, noting that:

*A lack of accountability also exacerbates long-standing tensions between police and Indigenous communities. Despite law and policy reform, in some jurisdictions allegations of serious police misconduct may still result only in police investigating police.*¹⁸

¹⁶ Independent Broad Based Anti-Corruption Commission Victoria (IBAC) 'Audit of Victoria Police complaints handling systems at regional level', September 2016, pg. 3, <http://www.ibac.vic.gov.au/docs/default-source/reports/summary-report-audit-of-victoria-police-complaints-handling-systems-at-regional-level.pdf?sfvrsn=6> accessed 16 August 2017

¹⁷ Independent Broad Based Anti-Corruption Commission Victoria (IBAC) 'Audit of Victoria Police complaints handling systems at regional level', September 2016, pg. 3, <http://www.ibac.vic.gov.au/docs/default-source/reports/summary-report-audit-of-victoria-police-complaints-handling-systems-at-regional-level.pdf?sfvrsn=6> accessed 16 August 2017

Prior to taking up her position as Victorian Ombudsman, Ms. Deborah Glass wrote in her review of the Police complaints process in England and Wales that it ‘would be a mistake to keep creating new bodies simply to monitor existing bodies’. Glass stated that ‘ultimately, accountability comes down to public transparency and the integration of integrity agencies as permanent features of the political system’.¹⁹

Without an effective, accessible and functioning mechanism to hold police accountable, Aboriginal victims/survivors are likely to experience the complaints process as one of institutional collusion with perpetrators of violence – the very same perpetrators police are mandated to bring to account. For a police complaints process to be truly effective therefore, measures must be taken to address the root causes of Aboriginal victims/survivors experiences of discrimination, racism and structural violence by Police.

FVPLS Victoria endorses the model proposed by the Flemington and Kensington Community Legal Centre below as at *Figure 1. Police Accountability Project, a project of Flemington and Kensington Community Legal Centre.*²⁰

In addition to the benchmarks recommended below, FVPLS Victoria advocates for a system that is culturally competent and safe, with a thorough knowledge of the institutional acts of colonisation perpetrated by the State against Aboriginal people – and ongoing trauma associated with this.

This must entail Aboriginal complainants – particularly victims/survivors of family violence - having access to appropriately resourced and culturally safe services (such as FVPLS Victoria) to support them through the complaints process.

Figure 1: Designing a better system: Human rights standards and community expectations demand that investigations of complaints against police be conducted by a body which meets these five benchmarks:

- a. Independent of the Police—hierarchically, practically, culturally and politically;
- b. Capable of conducting an adequate investigation;
- c. Prompt;
- d. Open to public scrutiny; and
- e. Victim-centred, and enables the victim to participate in the investigation.

¹⁸ Submission to the Government of Canada, ‘*Police Abuse of Indigenous Women in Saskatchewan and Failures to Protect Indigenous Women from Violence*’.

https://www.hrw.org/sites/default/files/supporting_resources/canada_saskatchewan_submission_june_2017.pdf Pg. 17, accessed 9 August 2017 quoting British Columbia Civil Liberties Association, *Police-Involved Deaths: The Failure of Self-Investigation*, 2012, <https://bccla.org/wp-content/uploads/2012/05/20101123-McAllister-Report-Police-Involved-Deaths-The-Failure-of-Self-Investigation.pdf> (accessed March 15, 2017)

¹⁹ Deborah Glass, Commissioner, Independent Police Complaints Commission, ‘*Towards greater public confidence: A personal review of the current police complaints system for England and Wales*’, March 2014 pg. 40 <http://www.policeaccountability.org.au/wp-content/uploads/2016/04/A-review-of-the-complaints-system-by-Deborah-Glass-March-2014.pdf> accessed 10 August 2017

²⁰ <http://www.policeaccountability.org.au/independent-investigations/its-time-for-parliament-to-legislate-for-the-independent-investigation-of-complaints-against-police/> accessed 9 August 2017



Failure to protect: safety of victims/survivors

As discussed in the first part of this submission, the absence of a truly independent, accessible and effective complaints process fails to hold police to account and has a significant impact on the safety of victims/survivors of family violence – predominantly women and children. Clients of FVPLS Victoria regularly report experiences of poor police conduct to FVPLS Victoria. Such experiences not only expose our clients to additional trauma, they put Aboriginal women and children at even greater risk by compounding Aboriginal women’s avoidance of engaging police.

Poor police responses reported to FVPLS Victoria include responses that minimise violence, discriminate against Aboriginal clients, fail to accord with appropriate procedure (such as the Koori Family Violence Police Protocols) and ultimately deter victims from reporting violence and seeking assistance to ensure their safety and that of their children. For further information and case study examples, we encourage the Committee to read the section on police responses in FVPLS Victoria’s submission to the Royal Commission into Family Violence.²¹

Case Study: Cultural incompetency and police inaction putting the lives of Aboriginal women and children at risk

The following is an example of racist behavior by a Police officer. Exemplified in this case is not only an inability to provide a family violence informed response because of a discriminatory attitude towards an Aboriginal victim/survivor, but also a failure to protect someone at an escalated risk of experiencing severe violence or death.

Ms Y was a mother of two young children who had experienced long standing, multiple forms of violence within her relationship, including having recently been choked a number of times – an accepted indicator of high risk.

Police initially supported Ms Y by obtaining an interim IVO for Ms Y’s protection, in accordance with her wishes. However approximately one week before the matter was listed for a contested hearing, Ms Y was informed by police that they were going to withdraw their IVO application, leaving her to proceed on her own without support and in significant risk and distress.

Instead of having her safety prioritized by police, Ms Y was subjected to behaviour that appeared to be influenced by attitudes some police staff held about Aboriginal and Torres Strait Islander people. This includes statements made by police to FVPLS Victoria staff such as;

- “She is whiter than I am!”; “How Aboriginal is she?”; and “Which side of her family is Aboriginal and how far back?”.

The officer advised that our client had “plenty of chances to co-operate but has not wanted to speak with them”.

On Ms Y’s behalf, FVPLS Victoria explained highlighted some of the casual factors behind why our client may face barriers in approaching or accessing police, including the history of discriminatory behaviour toward Aboriginal people and distrust of police. The officer responded by saying that ‘her being Aboriginal had nothing to do with not making a statement to police’ and accused FVPLS Victoria of looking for ‘politically correct excuses’.

²¹ FVPLS Victoria, Submission to Royal Commission into Family Violence, July 2015, pp 46 to 53, available at: <http://fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>

On behalf of our client FVPLS Victoria reported this issue to the officer's superior and lodged a complaint with command at the police station. In response to this complaint, FVPLS Victoria was advised that command at that particular police station had implemented the following measures:

- Cultural awareness training for staff;
- Internal communications around the importance of asking the SIQ (Standard Indigenous Question); and
- Made a successful funding bid for an ACLO (Aboriginal Community Liaison Officer) to be based at that station.

While the outcome of this particular case is positive, it is limited to the local level and unable to contribute to reforming systemic issues of police conduct towards Aboriginal victims/survivors which are prevalent across the state. Accordingly, it is critical that complainants have direct access to an independent, robust complaints mechanism with capacity to generate systemic accountability and oversight across all levels of Victoria Police.

Finally, it is important to note that without the intervention of FVPLS Victoria, the woman in the above case study would likely have been unable to proceed to court and obtain an IVO for her protection, despite being at heightened risk of significant harm or even death.

Unfortunately Victoria is just one of many jurisdictions where police failures can have catastrophic consequences for Indigenous women's safety. The tragic and wholly preventable number of deaths of First Nations women in Canada should be a warning and lesson to all jurisdictions facing a similar set of circumstances: institutional and systemic discrimination, entrenched poverty and disproportionately high levels of violence against Indigenous women and children.

A CEDAW Committee report into the treatment of First Nations women of Canada noted Police failure to consider and properly pursue all investigative strategies; failure to follow "major case management" practices and policies; failure to address cross-jurisdictional issues and ineffective coordination between police forces and agencies; and failure of internal review and external accountability mechanisms²²

The Committee reiterated that under International law, the obligation is on the State to protect women and to:

'take appropriate and effective measures to overcome all forms of sex and gender-based discrimination that fosters violence against women, whether by public or private actors...State parties may be responsible for private acts if they fail to act with due diligence in combating gender-based violence, which entails a duty to prevent, investigate, prosecute and punish such acts of violence against women, and to provide for reparation'.²³

²² Committee on the Elimination of Discrimination Against Women 'Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' pg. 32 http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf accessed 9 August 2017

²³ Committee on the Elimination of Discrimination Against Women 'Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' pg. 47, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf accessed 9 August 2017.

Lack of trust and confidence in the complaints process

FVPLS Victoria’s direct experience with Aboriginal communities indicates that many people will not complain to Victoria Police because of the perception that it is not independent. This is compounded by the practice of IBAC referring complaints to police at the local level – a system that may serve as a particular disincentive for wronged complainants in regional areas where the local police station only has a small number of serving officers. IBAC are not explicitly mandated to hold police accountable and are also prevented, by legislative exemption, from adhering to Victorian Freedom of Information Law.

Similarly, the B.C. Civil Liberties Association, which operates in an analogous context in relation to First Nations people in Canada highlighted the issue of grave public mistrust in their report “Police Involved deaths: the failure of self-investigation”:

*A number of high profile death in-custody cases have brought the issue of whether it is necessary and appropriate to allow police to investigate themselves to the forefront of public attention. The call for reform has grown out of the inherent dangers in allowing the police to investigate themselves, where the prospect of any objectivity, legitimacy, or truth is questionable. This dubious practice has led to grave public mistrust of the police and a complete lack of faith in the entire complaints system... The trust of the public can only be preserved if the police complaints process is handled and investigated by an independent third party*²⁴

Another related and critical issue is the lack of cultural competence of Police when engaging with Aboriginal people and communities, which diminishes trust in the complaints process. The Royal Commission into Family Violence noted the importance of Aboriginal community control and the need to ‘...tailor justice system responses that recognise the history and culture of Aboriginal people’.²⁵

For Aboriginal people navigating the complaints process, support from an ACCO is vital. The Koori Complaints Report noted how critical this support is stating that ‘It would be relatively safe to conclude that without assistance, there would be virtually no Koori complaints.’²⁶

Case study: Police breach of trust and failure to respond

Prior to obtaining legal representation from FVPLS Victoria, our client attended Court as a self-represented litigant and was granted an interim IVO. In the days after the interim IVO was granted, our client received threatening and abusive text messages and phone calls from the perpetrator in breach of the IVO.

She attended her local police station to report the breach in person but struggled to be taken

²⁴ ‘Police-Involved Deaths The Failure of Self-Investigation Final Report’ B.C. Civil Liberties Association. p.37, <https://bccla.org/wp-content/uploads/2012/05/20101123-McAllister-Report-Police-Involved-Deaths-The-Failure-of-Self-Investigation.pdf> accessed 9 August 2017.

²⁵ Royal Commission into Family Violence, *Summary and Recommendations* <http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf> pg.33 accessed 11 August 2017

²⁶ Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Report 2006-2008* pg. 26 <http://www.policeaccountability.org.au/wp-content/uploads/2016/04/Koori-Complaints-Project-Final-Report-2008.pdf>

seriously:

- the officer at the desk advised our client that “there was not enough in it” to take a statement for a breach; and
- the officer refused to advise our client whether the IVO had been served or provide any information about the enforceability of her IVO despite a number of requests for clarification by our client.

In addition to attending in person, our client also telephoned the Police Station to report the breach and was told “someone would call her back”. This did not occur.

Between getting the order and the subsequent court appearance to finalise the IVO, our client contacted FVPLS Victoria for family violence and family law advice. With assistance from FVPLS Victoria, a Final IVO for 12 months was granted. No further assistance or follow up was provided by police which only further damaged our client’s perception of police and her faith in the capacity of both police and IVOs/the justice system to provide meaningful protection.

This case highlights where Police have not followed the code of conduct, particularly in relation to professionalism such as ‘strive for service excellence’ and put victims/survivors of family violence at even greater risk. That risk is two-fold: failing to provide adequate protection in the short term and alienating victims/survivors from trusting and engaging in future with the system that is supposed to protect them.

Accordingly, FVPLS Victoria makes the seven recommendations outlined at page 4 of this submission.