



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

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Submission to the Victorian  
Government, Department of  
Justice and Regulation re:  
**Family Violence Protection  
Amendment Bill 2017**

February 2017

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## Introduction and Executive Summary

The Aboriginal Family Violence Prevention and Legal Service Victoria (**FVPLS Victoria**) welcomes the opportunity to provide this submission to the Department of Justice and Regulation concerning the *Family Violence Protection Amendment Bill 2017* (**‘the Bill’**).

FVPLS Victoria commends the Victorian Government on its commitment to promptly implement the justice-related recommendations of the Royal Commission into Family Violence (**‘the Commission’**), and its commitment to the findings and recommendations of the Commission more broadly.

This submission focuses on the anticipated impact of these amendments on Aboriginal and Torres Strait Islander (hereafter **‘Aboriginal’**) victims/survivors of family violence – predominantly women and children.

Aboriginal women in Victoria are 25 times more likely to be killed or injured as a result of family violence when compared with other Victorian women.<sup>1</sup> Despite significant under-reporting,<sup>2</sup> Aboriginal Victorians are nearly eight times more likely to be involved in a police family violence incident than non-Aboriginal Victorians.<sup>3</sup> As outlined in FVPLS Victoria’s submission to the Commission,<sup>4</sup> Aboriginal victims/survivors of family violence – predominantly women - face strong deterrents to reporting family violence and a range of barriers to accessing justice and safety for themselves and their children.

Accordingly, reforms to family violence law must be analysed with a cultural lens to understand any unique, disproportionate or adverse impacts upon Aboriginal victims/survivors, predominantly women and children, as one of the groups at greatest risk and disadvantage in the family violence system.

**In summary**, in this submission FVPLS Victoria:

- Supports the proposed amendments concerning allowing courts to order alternate service of family violence intervention orders (**“FIVOs”**) and applications (sections 28-30 and 40-41), repealing the interim order reform in the *Family Violence Protection Amendment Act 2014* (sections 66 and 76), striking out appeals against FIVOs where the appellant fails to

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<sup>1</sup> Victorian Government, Ending Family Violence: Victoria’s Plan for Change, p 3. Available at: [http://www.vic.gov.au/system/user\\_files/Documents/fv/160803.10%2010%20Year%20Plan%20Booklet%20\(Online\).pdf](http://www.vic.gov.au/system/user_files/Documents/fv/160803.10%2010%20Year%20Plan%20Booklet%20(Online).pdf)

<sup>2</sup> Matthew Willis, ‘Non-disclosure of violence in Australian Indigenous communities’, Trends & issues in crime and criminal justice No. 405 (2011) Australian Institute of Criminology available at <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.html>.

<sup>3</sup> Royal Commission into Family Violence (Victoria), Report and Recommendations, 2016, p 36, available at: [https://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](https://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf)

<sup>4</sup> Available at: <http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%2015Jul15.pdf>

appear at a first or subsequent mention or hearing (section 26), and establishing a legislative basis for the Victorian Systemic Review of Family Violence Deaths (sections 51, 52 and 54);

- Expresses partial support for and makes recommendations to strengthen the proposed amendments concerning the presumption for children to be included on FIVOs, the power of courts to make own-motion FIVOs, explaining the interaction between FIVOs and family law and child protection orders, and the amendments concerning bail; and
- Expresses reservations and makes recommendations concerning the drafting and/or implementation of the proposed amendments concerning the extension of the maximum timeframe for Family Violence Safety Notices (FVSNs); and expanding the jurisdiction of the Koori Courts to hear FVSN and FIVO breach matters.

**Key issues** emphasized in this submission include:

- The critical importance of Aboriginal victims/survivors of family violence having access to independent, culturally safe legal advice and representation at the earliest opportunity. This is especially important in the context of extending the operation period of FVSNs and the increase in pressure and risk to victims/survivors this may cause, as well as the proposed new powers for courts to make FIVOs on their 'own motion' during criminal proceedings.
- Strengthening the presumption around children being included on FIVOs to include all children in the affected family members' care, not just those who have been directly affected by violence.
- The need to establish crucial victims/survivors safeguards as a pre-condition to Koori Courts hearing FIVO and FVSN breach matters.
- Strengthening protections for victims/survivors in the Director of Public Prosecutions (DPP's) consideration of 'failure to protect' prosecutions.
- The need for a number of amendments to undergo independent evaluation within two, or so, years to examine their impact on victims/survivors' safety and wishes, as well as any other unintended adverse consequences. We have recommended such an evaluation with respect to the extended FVSN operation period, bail changes and expanded Koori Court jurisdiction to hear FIVO and FVSN breach matters.

## About FVPLS Victoria

Established over 14 years ago, FVPLS Victoria is an Aboriginal Community Controlled Organisation which provides culturally safe and holistic assistance to 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 counseling 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.

## Extending the Maximum Period of Operation of Family Violence Safety Notices to 14 Days (section 6)

Section 6 of the Bill provides that the first mention date for an application commenced by a FVSN must be no later than 14 days after the notice is served. This has the effect of extending the maximum period of operation of FVSNs from 5 to 14 calendar days. There is an exception for circumstances where the FVSN includes an exclusion condition and the police applicant believes the respondent may not have access to temporary accommodation, in which case the first mention date must be as soon as practicable.

FVPLS Victoria acknowledges the pressures on Courts and Police services that have led to this recommendation. However, we have some concerns about its impact on vulnerable parties, namely Aboriginal victim/survivors of family violence – predominantly women and children.

In the experience of FVPLS Victoria lawyers, victims/survivors who are the subject of a FVSN often do not engage a lawyer until the first mention date. Extending the time before the matter is heard by a Court therefore means many victims/survivors will spend up to a fortnight following a critical family violence incident with no legal advice or representation. Drawing on our frontline experience representing Aboriginal victims/survivors of family violence, we understand that in the immediate period following a family violence incident, victims/survivors are particularly vulnerable to pressure from the perpetrator, his family and/or other community members to reconcile the relationship, recant allegations and/or ask police to drop the matter. Increasing the timeframe between the incident and the first court appearance simply increases this period of vulnerability. The longer the victims/survivor is forced to wait the greater the chance that her resolve will weaken and expose her to a greater likelihood of being left without the protection of a Family Violence Intervention Order (“**FIVO**”) despite being at risk of harm.

In addition, the strained relationship between Police and the Aboriginal community makes the prospect of an extended period without legal representation even more risky for Aboriginal victims/survivors of family violence. The ongoing legacy of colonisation including the Police force’s role in multiple forms of state oppression - such as forced assimilation, forced dislocation from country and culture, and the stolen generations - have left Aboriginal communities with a profound mistrust of Police. This is compounded by the over-criminalisation and incarceration of Aboriginal people today and the vastly disproportionate rate at which Aboriginal children are removed from their families by the State.<sup>5</sup>

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<sup>5</sup> For more detail see FVPLS Victoria, Submission to the Royal Commission into Family Violence, July 2015, available at: <http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>

For Aboriginal victim/survivors of family violence, systemic discrimination by Police is a bitter reality. FVPLS Victoria routinely hears stories of poor practices by Victoria Police towards our clients. This includes responses from Police that disbelieve, minimize or trivialize our clients' experiences of family violence and fail to appropriately pursue FIVO applications and breaches. The following case study is just one recent example. (For further detail, please see pages 46 to 53 of our submission to the Victorian Royal Commission into Family Violence.<sup>6</sup>)

### ***Case study***

A young Aboriginal woman, Ms X, was the protected person on a full no-contact, interim FIVO made on application by Police (following Police issuing a FVSN).

Ms X contacted FVPLS Victoria in distress after Police informed her that they would be withdrawing their application for a FIVO and would not represent her at the Contested Hearing listed in less than a week's time. Ms X was afraid for her life and terrified of what might happen if Police withdrew the FIVO application or settled for a lesser order permitting contact.

The FVPLS Victoria lawyer contacted Police on Ms X's instructions. The Police officer responsible for Ms X's matter told our lawyer there was not enough evidence for a contest as Ms X had not sufficiently "cooperated" with Police.

This was despite credible evidence that the respondent had subjected Ms X to years of serious violence including choking her on some 40 occasions. There were also a number of incidents of family violence that Police had been called to attend to, including one where the respondent was hiding in her property, in breach of the Interim FIVO. Our lawyer set out the history of violence and ongoing risk factors in the case.

At the Directions Hearing almost 6 months prior, through her FVPLS Victoria lawyer, Ms X had provided the Police with names and contact details of multiple witnesses they could call to give evidence at a Contested Hearing. When pressed, the Police officer admitted they had not contacted these witnesses. The officer could not explain what conduct Ms X had done that was uncooperative, aside from not answering her phone promptly when Police called.

Our lawyer explained Ms X's circumstances, including her lack of consistent access to mobile phone credit and wariness of Police as an Aboriginal woman. The police officer remarked "She's whiter than I am!" and accused the lawyer of looking for "politically correct excuses".

Ultimately, with the support of culturally safe legal representation from FVPLS Victoria Ms X was granted a final, full no-contact FIVO for her protection. Without this advocacy from a trusted, specialised Aboriginal legal service provider, it is unlikely Ms X would have been able to have her wishes, and level of serious risk, respected by police or accepted by the Court.

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<sup>6</sup> Available at

<http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>;

As outlined by the case study above, access to culturally safe and appropriately specialised legal assistance services for Aboriginal victims/survivors is critical.

We note that the Commission envisaged that the Support and Safety Hubs it recommended would assist to ensure that both protected persons and respondents to FVSNs would have access to specialist service providers prior to the first mention date. FVPLS Victoria has been asked to consult with the Victorian Government about the design of the Support and Safety Hubs and we understand this is still at a preliminary stage. It is concerning then that these amendments concerning the extension of FVSNs may come into operation prior to the Support and Safety Hubs being rolled out – leaving uncertainty as to how victims/survivors will be able to access crucial supports.

Were this proposal to proceed, FVPLS Victoria recommends certain safeguards be imposed to ensure the appropriate levels of safety and timely access to legal advice and representation for Aboriginal victims/survivors until their matter is brought before the Court. Specifically, we recommend:

- Section 6(a) be altered to include an additional sub-paragraph as follows: *“the affected family member is at high risk of serious harm”*;

A Police manual or practice direction should be issued to give guidance on how such a classification is to be made. The development of that Police manual or practice direction should take place in close consultation with specialist family violence agencies and legal assistance services that specialise in assisting victim/survivors of family violence, especially Aboriginal victims/survivors. It could draw upon the Common Risk Assessment Framework (“CRAF”) and, explicitly, include as a consideration whether the protected person is at risk of intimidation and manipulation intended to make her withdraw her allegations against the respondent;

- A statutory requirement that Aboriginal victims/survivors be referred to a culturally safe legal assistance service, both orally and in writing, upon a FVSN being issued. With regard to written referral, an information pamphlet should be produced which is annexed to the FVSN which sets out a victim/survivor’s right to independent legal advice, explains that the police are not bound to act on the victim’s instructions and that it is important that she (or he as the case may be) obtain independent legal advice at the earliest possible opportunity, and provide a list of appropriate services together with a specific reference to culturally safe Aboriginal services including FVPLS Victoria;
- Legislative amendments to explicitly provide victim/survivors with legal standing as a party to FIVO applications commenced by a FVSN. This will allow victim/survivors’ legal representatives to appear in Court on their client’s behalf without difficulty, and seek information from Police and the Courts and make application for an urgent hearing where necessary; and

- There be an independent evaluation of the operation of the increased FVSN period, after two years, as recommended by the Commission. The terms of reference for that independent evaluation should include identifying any unintended or adverse consequences, including increased risk to victims/survivors of family violence generally, and to specific groups including Aboriginal victims/survivors of family violence.

## Presumption That Children Are To Be Protected By Family Violence Intervention Orders (sections 8-10, 13-15, 19 and 20)

FVPLS Victoria supports the introduction of a presumption in favour of children being included on FIVOs as a crucial step forward in recognising the impact of family violence on children, and limiting the capacity of perpetrators to exert further intimidation and control over victims/survivors through their children.

However, we propose that the rebuttable presumption should not be limited to circumstances where the child has had direct experience of family violence but should apply to all situations where the applicant has a child in their care. The standard form order should include an exception to allow contact in accordance with a family law parenting order or agreement. Such a presumption would put the onus on the perpetrator to satisfy the Court that their contact with the child would be safe and would not expose the affected family member on the FIVO to additional avenues of violent and controlling behaviour. It would also provide an important signal to perpetrators, and the community at large, that children are adversely impacted by family violence – regardless of whether it is perpetrated directly against them or they directly witness it.

Specifically, FVPLS Victoria recommends that in section 52A the proposed text be altered to read: *“Before deciding whether to make an interim order, the court must consider whether there are any children **residing with the protected person.**”* The proposed section 53AA(1)(a)(iii) should then be altered to read:

*“If the court decides to make an interim order under section 53(1)(a) or (c) in relation to an affected family member, subject to subsection (4), the court must –*

*(a) include in the interim order as a protected person any child who court is satisfied, on the balance of probabilities, **resides with the affected family member;**”*

The phrase *“a child who has been subjected to family violence committed by the respondent”* be substituted with the phrase *“a child who resides with the affected family member”* for all corresponding sections, namely 53AA, 53AB, 73I and 77.

Upon amendment, robust mechanisms must be developed and rolled out to ensure Police, the legal profession, family violence services and the community (including potential victims/survivors) are aware of the changes. These actions are

important to enable victims/survivors and their children receive the benefit of this important reform.

We otherwise support section 20 and other related sections as proposed.

## **Explaining How Family Violence Intervention Orders Interact with Family Law and Child Protection Orders (sections 11 & 18)**

FVPLS Victoria supports the proposed transfer of the obligation to give oral explanation of the effect of an interim FIVO from the registrar to the Magistrate and the proposed additional requirement for Magistrates to explain the interaction between the FIVO and any family law or child protection orders in place. We also support the proposal that parties to interim and final FIVOs must be given written explanations which include how the order interacts with any existing family law or child protection orders.

In the case of Aboriginal parties to FIVOs, such explanations should be delivered in a culturally competent manner and supported by the parties having access to culturally safe legal assistance to ensure the victim/survivor and respondent fully understand the order and all its implications. This is critical to supporting FIVOs to operate effectively for the safety of Aboriginal victims/survivors. It may also assist to minimise breaches of FIVOs and child protection orders, as well as reduce the risk of violence, intimidation and harassment surrounding family law negotiations between parties to a FIVO.

FVPLS Victoria recommends the Court consult with the Aboriginal community through the Aboriginal Justice Forum and Indigenous Family Violence Partnership Forum around the steps necessary to support Magistrates to provide culturally appropriate oral explanations and ensure the development of culturally appropriate written explanations for Aboriginal parties to FIVOs. Written explanations should also include information about the importance of seeking independent legal advice in relation to child protection and family law matters and include contact information for Aboriginal legal service providers, namely FVPLS Victoria and the Victorian Aboriginal Legal Service (VALS).

## **Own Motion Family Violence Intervention Orders in Criminal Proceedings (sections 4, 12, 20, 22-25, 27 & 37)**

In principle, FVPLS Victoria supports the proposal to empower Courts to make own motion FIVOs in criminal proceedings. However, FVPLS Victoria shares the Commission's view <sup>7</sup> that it is critical that the agency and choices of victims/survivors are not compromised or limited through the operation of these new Court powers and that victims/survivors must have the opportunity to participate in the making of any final orders.

Accordingly, our support for this is contingent upon the insertion of legislative safeguards to protect the rights and agency of victims/survivors, including the right to exercise choice over their lives and participate in proceedings that affect them. Without such safeguards there is a risk of paternalism in the operation of these provisions, particularly with respect to Aboriginal victims/survivors who may be the subject of unconscious judicial or Police bias as fed by racist and derogatory stereotypes that permeate mainstream culture.

In the case of Aboriginal victims/survivors, FVPLS Victoria emphasises the critical need for culturally sensitive referral protocols to ensure Aboriginal victim/survivors who are the subject of an own motion family violence intervention order receive culturally safe advice and assistance in the matter. This is important, not only to ensure the victim understands the order made but also to ensure that the victim's wishes and evidence in relation to risk (including risk to children) are duly considered in relation to the making of a final order, and the victims/survivors can access advice concerning implications for other legal matters, such as child protection and family law, in a timely manner.

With respect to safeguards, FVPLS Victoria recommends that steps be taken to ensure that victims/survivors are kept informed at all times of the progress of the matter, have access to independent legal advice and standing to appear in the matter if they so wishes.

We note that the consultation paper which accompanied the first draft of the amendments stated that following the making of an own motion interim FIVO, the Court was required to set the further hearing and notify the protected person of that hearing. In addition, the consultation paper stated that before making a final own motion FIVO, the Court was required to provide the protected person and respondent with a reasonable opportunity to be heard. These elements do not appear in section 12 of the amendments as currently drafted.

FVPLS Victoria strongly recommends the re-insertion of these elements into the Bill. In addition, with regard to the making of an interim own motion FIVO, we recommend that upon providing notification to the protected person of the further hearing of the FIVO matter (as outlined in the previous version of the proposed amendment), the protected person must also be informed of the importance of obtaining independent legal advice and be provided with a list of

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appropriate legal assistance services including FVPLS Victoria as the only Aboriginal legal service in Victoria dedicated to victims/survivors of family violence. With regard to the making of a final own motion FIVO after finalization of criminal proceedings, we recommend that as part of the duty on the Court to provide the protected person and the respondent with a reasonable opportunity to be heard prior to making an order, the Court must ensure the parties are informed of their right to obtain independent legal advice and given every opportunity to do so including through application of appropriate referral protocols within court registries and, in the case of Aboriginal parties, from mainstream duty lawyer services to culturally safe services such as FVPLS Victoria.

### **Family violence and Bail (sections 38, 39 and 44-49)**

FVPLS Victoria supports amendments to bail as an important step in strengthening the safety and protection of Aboriginal victims/survivors of family violence, and sending a strong message to the community that family violence will not be tolerated.

FVPLS Victoria maintains that the safety of Aboriginal victims/survivors of family violence, predominantly women and children, must be the paramount concern. However, current high rates of criminalisation and incarceration within Aboriginal communities mean that amendments such as these could lead to the increased incarceration of Aboriginal people. As such, they must be considered carefully.

We therefore recommend that within two years of these amendments coming into force, an independent evaluation be carried out to examine the amendments' effectiveness in keeping victims/survivors safe, and any unintended consequences including consequences relating to marginalized groups such as Aboriginal people.

### **Extending the Jurisdiction of the Koori Magistrates' and County Courts (sections 55, 56, 58 and 59)**

FVPLS Victoria understands that this proposal follows not only the recommendation of the Commission, but also the recommendation made by the Koori Court Model Review Project as endorsed by the Aboriginal Justice Forum.

While FVPLS Victoria welcomes efforts to improve the cultural responsiveness of Courts and the justice system, we have expressed a number of concerns around the proposed expansion of the jurisdiction of the Koori Magistrates and County Courts ('**Koori Courts**') to hear contraventions of FVSNs and FIVOs. We therefore strongly urge the Department of Justice and Regulation, Court Services and Koori Court management to ensure as a priority that the Koori Courts' expansion of powers to hear FVSN and FIVO matters is made contingent on a number of crucial safeguards being put in place first.

FVPLS Victoria strongly recommends inclusion of a number of specific safeguards, including:

- Ensuring the safety of victim/survivors and their children remains paramount at all stages of the Koori Court proceedings.

This could be explicitly specified in legislation and imposed as a statutory obligation for magistrates and elders to consider in FIVO and FVSN breach matters.

In addition, we recommend a requirement that all parties involved in the Koori Court process, including Magistrates and elders, have specific training and understanding of family violence and the barriers faced by Aboriginal victims/survivors, predominantly women and children.

It will also be important to ensure that victims/survivors who may make contact with the Koori Court are offered appropriate referrals to culturally safe services and supports, as awaiting the outcome of criminal processes can be a particularly stressful time in which the victim/survivor may be at increased risk of violence and re-traumatisation.

- Ensuring Koori Court Magistrates and elders have sufficient expertise in family violence and understand its impacts on victims/survivors.

In addition, to our recommendation regarding training above, we encourage consideration of whether specialist Magistrates and elders could be designated to hear FIVO and FVSN breach matters. This would assist the Koori Courts to provide a consistently informed and family violence attuned approach that balances providing a culturally safe offender focus (the current goal of the Koori Court) alongside the important task of holding the offender to account for their actions and demonstrating to the community the seriousness of family violence.

- The development of strategies to combat the potential deterrent impact of victims/survivors not wanting to report breaches for fear of community pressure and backlash if their matter goes to Koori Court. A commitment to resource the development of community education and other strategies and thorough consultation will be required to address this important issue.
- Strategies to ensure victims/survivors confidence in confidentiality and the protection of sensitive information.

FVPLS Victoria recommends that at the commencement of a sitting of the Koori court where a FIVO or FVSN breach matter is scheduled to be heard, the Magistrate makes an order requiring all parties not directly linked to the accused (i.e. family), to remain out of Court.

This practice should ensure that other community members or organisations do not hear confidential or personal information shared during the hearing and pleas in relation to the breach and would help create a greater level of comfort for the victim/survivor so she feels safe to report breaches in the future. Ensuring that victims/survivors feel confident that private, personal or sensitive personal information is not on display is critical to their well-being and ability to access justice and safety in future.

- Ensuring the victim/survivor's views are taken into account and the victim/survivor is given the opportunity to participate in the Koori Court process through providing a Victim Impact Statement ("**VIS**") or through a legal representative if she so wishes.

This could include making it a requirement of all FIVO/FVSN breach matters going before the Koori Court that a VIS be provided, unless the victim/survivor chooses not to provide one.

Victoria Police are currently the primary source of VIS collection. In order to establish culturally competent, best practice in obtaining VIS, we recommend specific training of Victoria Police staff should be undertaken. However, given the history of poor relations between Police and the Aboriginal community, and issues of ongoing mistrust of Police by Aboriginal communities, we recommend consideration of a new model where VIS can be completed with the assistance of dedicated staff within Aboriginal organisations.

With appropriate resourcing, FVPLS Victoria would be well placed to provide this service through our paralegal support workers who already provide holistic support to Aboriginal victims/survivors.

Alternatively, some victims/survivors may wish to have a culturally safe legal representative make submissions to the Koori Court on their behalf concerning the impact the breach has had on them. To this end, we recommend victims/survivors be given standing to participate in Koori Court proceedings. This will be particularly important in the event that the victim/survivor wishes to make application for a variation or extension of the FIVO as a result of the breach. Indeed, given the proposal in these amendments for courts to be given the power to make an 'own motion' FIVO during criminal proceedings it will be even more critical for victims/survivors to have a right to participate in proceedings if they so wish and be supported to do so through provision of adequately resourced, culturally safe legal representation.

FVPLS Victoria would be happy to consult further with the Department, Court Services and Koori Courts around the implementation of these safeguards.

## **DPP Approval for ‘Failure to Protect’ Prosecutions (section 61)**

FVPLS Victoria supports the proposed amendment requiring the DPP to approve prosecutions for ‘failure to protect’ offences. However in our view this does not go far enough. We recommend that a rebuttable presumption against the prosecution of a family violence victim/survivor be inserted into the legislation. This would mean that in addition to considering whether the alleged offender was a victim/survivor of family violence and considering her (or his) circumstances, the onus would be on the DPP to show cause as to why a prosecution should be carried out.

FVPLS Victoria shares the concerns of the Commission with respect to ‘failure to protect’ offences under section 327 of the *Crimes Act*. When it was introduced, FVPLS Victoria advocated for the express limitation of this offence due to concerns it could lead to the unwarranted prosecution and criminalisation of victims/survivors of family violence, with the accompanying defences offering insufficient protection for victims/survivors.

We also had serious concerns about the ‘chilling’ effect this offence could create for Aboriginal victims/survivors who already face a number of significant barriers and deterrents to reporting family violence. Aside from a general deterrent effect, the existence of this offence could be used by perpetrators to threaten and intimidate their victims – rendering them more likely to remain in abusive situations, with their children at ongoing risk. For example, a man who uses family violence on his wife and abuses their child may threaten her that if she reports him to Police she will be arrested and put in jail for failing to go to the Police earlier. This is not an unlikely prospect given FVPLS Victoria clients have reported analogous threats from abusive partners that child protection will take their children away if they go to the Police for help.

As part of the implementation of this provision, consideration should be given to the need to develop guidelines to assist and provide consistency in the DPP’s consideration of such matters. Training in relation to the dynamics of family violence, including its specific impacts and implications for Aboriginal victims/survivors, should be considered for the DPP and all staff who may be delegated decision-making power in relation to approval of these prosecutions.