

Aboriginal Family Violence Prevention & Legal Service Victoria
(FVPLS Victoria)



Policy Paper Series – June 2010
PAPERS 1–3

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Aboriginal Family Violence Prevention and Legal Service Victoria
(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 JUNE 2010

PAPER 1 of 3

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FVPLS Victoria is an Aboriginal community-controlled organisation established in 2002 to provide assistance to victims/survivors of family violence and sexual assault, and to work with families and communities affected by violence.

Artwork by Wanda Bargo – 'Gathering of Women'.

The dark purple circles represent the strength of the Indigenous women forming the circles. The other colours represent all other women coming in to join in the celebration.

Copyeditor Julia Farrell.

This project was funded by grants from the Legal Services Board and The Felton Bequest which is managed by ANZ Trustees.



Legal Services **BOARD**
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These policy papers have been made possible through funding provided initially by the Legal Services Board Grants Program and then later also by a grant from The Felton Bequest managed by ANZ Trustees.

In 2008, following five years of legal and related service provision, FVPLS Victoria successfully sought funding from the Legal Services Board for a law reform and policy development project. The ever-growing demand placed on FVPLS Victoria for high-level policy input and identification of much needed reform to strengthen law and justice outcomes for Aboriginal and Torres Strait Islander (ATSI) women and children in particular prompted the application. No government funding was or is available to the FVPLS program for this work. Further, the 31 FVPLS units funded nationally for rural and remote services have no peak body to collaborate on systemic or operational issues.

In light of the significant gaps in legal policy development for ATSI women and children, the scope of the project was considerable. Three policy papers have been developed which focus on strengthening legal equity, accessibility and outcomes rather than on broader law reform. Generous funding through The Felton Bequest has enabled continuation of policy and program development activity at FVPLS Victoria into 2010 and has contributed to the completion of the papers.

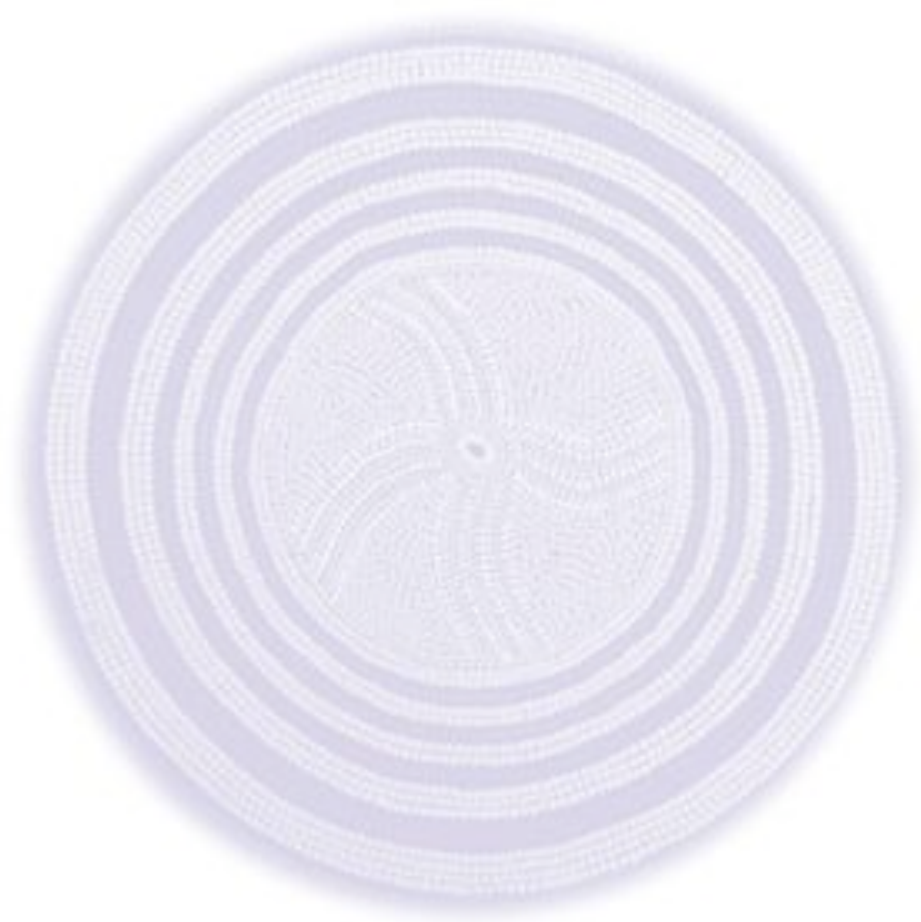
There are many people who have guided and assisted in the development of these papers. Firstly, to all of those women who agreed to be interviewed about their experiences with the justice system, thank you for sharing your experiences and knowledge with such openness and for your enthusiasm and commitment to meaningful change. These papers could not have been produced without your input.

The Steering Committee, Board of Directors, Planning Reference Group and particularly the staff at FVPLS Victoria recognise that legal reform and policy development is fundamental to improved access to justice and better outcomes for Aboriginal and Torres Strait Islander women and children impacted by family violence and sexual assault. This was reflected in the high level of support provided from across the organisation in the development of the papers.

Special thanks to those who generously provided their support and expertise, including Dr Debbie Kirkwood, Julia Farrell, John Bourke and Freehills.

It is heartening that many law and policy developments have taken place throughout the preparation of these papers. These have been incorporated to the best of our knowledge—some at the very last minute. Nevertheless, further developments will no doubt occur subsequent to publication.

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FOREWORD

Antoinette Braybrook
Chief Executive Officer
FVPLS Victoria

As an Aboriginal woman, and one who has been working in the justice sector for many years, I have gained a full appreciation of the ongoing disadvantage and inequality that our women continue to experience. I am reminded daily of and forever inspired by the resilience and strength of Aboriginal women despite the systemic racism and inequitable access to justice that still exists. It is this that drives us at FVPLS Victoria to continually advocate for systemic change to ensure greater law and justice outcomes for all Aboriginal women in every community throughout Australia.

*I am an Aboriginal woman and I was told to go and listen to the Western law. This felt all wrong to me. They didn't know me, my culture, nor the way I protected my child or my family. I felt my dignity was lost through the court system. What can your department do to make the process a lot more comfortable for mothers, fathers and children where they too don't lose their spirits? **Aboriginal woman consulted for the project***

As the CEO of FVPLS Victoria I am very pleased to announce the release of these papers. The issues explored and discussed primarily focus on Aboriginal women and children as victims/survivors of family violence and sexual assault. This is undertaken from a Victorian perspective, but I am certain that the same issues and findings would apply to women and children in other states and territories throughout Australia.

The three key areas on which the papers focus are:

- *Paper 1: Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander victims of family violence and sexual assault and women and children: National policy issues—a Victorian perspective*
- *Paper 2: Strengthening on the ground service provision for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in Victoria*
- *Paper 3: Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault*

Since the establishment of FVPLS Victoria in 2002, the Board of Directors and management have been committed to ensuring capacity within the organisation for policy and research. Aboriginal women's organisations must be properly resourced to undertake policy and advocacy work. This is the key to real change.

After making several unsuccessful applications to the Commonwealth Government, FVPLS Victoria successfully secured grants from the Legal Services Board Victoria and The Felton Bequest to employ a policy development worker. These three policy papers are the product of those grants and of course the work of Shelley Burchfield, our policy development worker, informed by many contributors who generously shared their often difficult stories, precious time and ideas for change. I would like to acknowledge all, and thank them equally for making this work happen.

It is inexcusable that, in the year 2010, Aboriginal women and children are still chronically disadvantaged in Australian society. There is no need to investigate this fact further—it is well documented in numerous reports and commented on by many high-level committees including human rights forums. Despite this, successive governments have failed to focus their attention on a strategic approach or to listen to and act upon women's voices.

It is critical that there be greater resourcing of law and justice services for Aboriginal women at state and territory and national levels. This includes the urgent need for the Commonwealth to lift the rural/remote restriction on the National Family Violence Prevention Legal Service Program, and to work with state and territory governments so that all Aboriginal women, regardless of their geographic location, have access to such an important service.

I would like to take this opportunity to acknowledge recent significant developments by the Victorian Government in providing ongoing and additional funding to FVPLS Victoria and by the Commonwealth in progressing from 12-month to 3-year funding arrangements, albeit with a funding reduction. A formal collaborative funding arrangement between the state and the Commonwealth must be struck to support effective and sustainable statewide service development.

FVPLS Victoria's policy development capacity over the past 18 months has significantly contributed to the progress the service has made and illustrates the importance of this work in supporting and complementing direct service delivery.

These papers comprise a valuable tool for Aboriginal women as they provide a platform for us as leaders, workers and nurturers in our communities to demand change. They are also a valuable reference point for policy and law makers. I strongly urge governments (both Victorian and Commonwealth) to work collaboratively with the women upon which these issues most impact to move forward in an innovative and strategic way.

It is our hope that one day Victoria will have an Aboriginal Women's Legal Service. Clearly more work is needed to explore this possibility, but if such a service were to make a positive difference to the lives of Aboriginal women and children it must happen.

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EXECUTIVE SUMMARY

Responding to Aboriginal family violence ... requires more than simply changing the law. There are also fundamental questions of access, equity and self-determination, as well as the cultural appropriateness of the services delivered.

Evidence ... confirms that Aboriginal women will use the legal system provided they are given adequate information, advocacy and support.¹

The above quotes are taken from the report *Crisis Intervention in Aboriginal Family Violence*, produced in 2000 by the Crime Research Centre University of Western Australia with Commonwealth Government support. Almost 10 years on, these same issues remain critical and, whilst some progress has been made, law and justice outcomes for Aboriginal and Torres Strait Islander (ATSI) women and children remain poor. **United Nations human rights committees continue to urge the implementation of measures to advance the human rights of ATSI women. Action by the government at numerous levels which is informed and driven by ATSI people (women in particular) and acknowledges community diversity is required urgently.**

The Senate Legal and Constitutional Affairs References Committee in its *Access to Justice* report December 2009 concluded:

... Indigenous women's needs are not being met because they are not involved in the strategic development of Indigenous women's legal services. The committee therefore supports the development of targeted Indigenous women's law and justice strategies.²

This paper, which represents the views of FVPLS (Family Violence Prevention and Legal Service) Victoria, focuses on policy issues and their national implications based upon the organisation's experience working with Victorian communities. It is the first of three cross-referenced discussion papers. The other two papers are entitled:

- *Paper 2: Strengthening on-the-ground service provision for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in Victoria* (actions required in Victoria to strengthen legal and associated services to ATSI victims of family violence and sexual assault and women and children)
- *Paper 3: Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault* (examining more culturally appropriate law and justice responses for ATSI victims/survivors and women and children)

¹ Blagg, H. with Ray, D., Murphy, R. & Macarthy, E. (2000), *Crisis Intervention in Aboriginal Family Violence: Summary Report*, Crime Research Centre, University of Western Australia, Partnerships Against Domestic Violence, Canberra, p. 12 and p. 32.

² Senate Legal and Constitutional Affairs References Committee (2009) *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia.

FVPLS Victoria, and the FVPLS program nationally, provides legal and associated services to ATSI victims/survivors of family violence and sexual assault and to non-ATSI parents/carers of Aboriginal children. The program is not exclusively for women; however, the vast majority of FVPLS Victoria clients (about 90%) are women and children, and achieving improved outcomes for ATSI women and children is the focus of this discussion paper. The need for culturally appropriate support for men as victims/survivors is also acknowledged.

The national Family Violence Prevention Legal Services program has developed over the last 10 years. Previously funded through ATSIC the program was established in response to high levels of family violence and sexual assault in ATSI communities and in recognition of the need for dedicated services in this area. The Aboriginal Legal Services (ALSs or ATSILSs), with their substantial and important focus on criminal law, are often conflicted in family disputes and are therefore not best placed to provide dedicated services and advocacy for victims/survivors.

The Commonwealth Attorney-General's Department (AGD) is now responsible for the FVPLS program which is limited to services in rural and remote locations. FVPLS Victoria is one of 31 FVPLS units funded across Australia. The Commonwealth funds FVPLS Victoria offices in the Gippsland, Barwon South West and Mildura regions which are supported by the Melbourne head office. Alternative state government and non-government/philanthropic funding has been secured to ensure continuing services for the 48% of the Aboriginal and Torres Strait Islander community living in metropolitan Melbourne.

Whilst the FVPLS program has expanded, restricted access to FVPLS services is perpetuating inequity. The program has not successfully addressed significant ongoing disadvantage for ATSI women and children across Australia, because it:

- is restricted to rural/remote locations
- has been subject to 12-month funding cycles with an annual tender process (AGD has indicated a move to longer funding cycles from 2010)
- is without a peak body or secretariat support
- is in many instances subject to external auspice by mainstream organisations or ALSs
- lacks funded research, policy development and law reform activity and
- was without a national common data system for statistical reporting for a decade (AGD implementation of a system is underway).

**Comparative funding arrangements for the FVPLS program
and other legal and ATSI programs**

	FVPLS program	Other programs
Location of services	Restricted to rural and remote areas	e.g. ATSI Health Services, Aboriginal Legal Services (ALSs) funded to urban, regional, rural and remote areas
Policy development capacity	Not funded	ALSs, ATSI Health Services receive policy funding
Peak body support	Not funded	ALSs, ATSI Health Services receive funding for national forums or peak body/secretariats
Funding arrangements	Up until July 2010 subject to 12-month cycles with annual tender (triennial funding commencing 2010–11 confirmed for FVPLS Victoria)	ALSs and CLCs: triennial funding cycles (RCIADIC recommendation)
Reporting/accountability	FVPLS program in its first 10 years of operation was not provided with a national data program (now being rectified)	Community Legal Centres have accessed the Commonwealth data system for at least fifteen years.

It has been widely acknowledged, by the Social Justice Commissioner amongst others, that the major Aboriginal and Torres Strait Islander law and justice policy initiative in Australia—the Royal Commission into Aboriginal Deaths in Custody (RCIADIC)—whilst broad ranging, lacked a specific focus on law and justice issues for ATSI women. This has resulted in a policy gap that has had continuing implications for ATSI women. **As a result, national funding of legal services and law and justice policy initiatives for ATSI women has occurred in an ad hoc, fragmented manner and seemingly without a strategic approach. This has created serious inequity in access to justice which continues despite some positive developments over the past decade.**

Greater attention is belatedly being paid by the Commonwealth Government to the safety of ATSI women and children in rural/remote communities, yet this approach is far too restrictive. The Northern Territory (NT) intervention was implemented through controversial suspension of the *Racial Discrimination Act 1975* and without consultation. There is significant Aboriginal and Torres Strait Islander diversity across Australia both amongst and within states and territories. **Law and justice outcomes for ATSI women and children are poor in all communities. A narrow ‘one size fits all’ response that is focused upon relative geographic disadvantage and relies on mainstream services as ‘primary’ service providers is bound to fail. Furthermore, imposed government solutions which are not driven by ATSI people—women in particular—are inappropriate and unlikely to succeed.**

Advancing law and justice outcomes for Aboriginal and Torres Strait Islander women and children demands a strategic approach which addresses broad-ranging disadvantage in a manner consistent with social inclusion policy. Law and justice issues *must* be recognised as integral to holistic Aboriginal and Torres Strait Islander social policy initiatives, particularly, for example, the government's Closing the Gap strategy. Yet at the present time there is limited evidence that this is the case.

ATSI women frequently experience layers of trauma and multiple hardships that require dedicated holistic responses. The legal work required is often complicated, involving a number of jurisdictions. Therefore, integrated and comprehensive legal service and support capacity is essential. FVPLS Victoria is urging for consideration of a national ATSI women-specific legal program as a concrete means to improve outcomes.

No such national legal program for ATSI women and children currently exists in Australia, just as there is no national voice for ATSI women's law and justice policy issues. Such a program would broaden and strengthen legal services and significantly address the government's identified need to improve civil and family law services for Indigenous Australians.³ It would also provide the necessary structural base for essential national, state and territory policy development and advocacy. The various fragmented funding programs for ATSI women and children could be consolidated within the program which would be delivered through ATSI community-controlled organisations.

As mentioned previously, this paper represents the views of FVPLS Victoria and is informed by:

- The experience of FVPLS Victoria in its provision of legal and associated support services over the past seven years and within the national FVPLS program.
- Confidential consultations with ATSI victims/survivors of family violence and sexual assault who have experienced aspects of the legal system. The consultations included past clients of FVPLS Victoria, and ATSI and non-ATSI workers in support, policy and legal roles (29 in total, including 21 ATSI and 8 non-ATSI participants, 16 from urban and 13 from rural areas). Twenty-four formal interviews were carried out face to face, and on average took about two hours each. The remaining five ATSI participants contributed through informal discussion about particular areas of interest. A standard set of questions for workers and non-workers was prepared relating to key legal and associated issues encountered by victims/survivors under the following categories:
 - legal services
 - experiences with police
 - experience as a victim of violence where the offender has been taken to court by the police (restorative justice was also raised here)
 - intervention orders
 - child protection
 - family law

³ Australian Government Attorney-General's Department (2009) *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, Report by the Access to Justice Taskforce, September, Recommendation 11.4: 'The Commonwealth should consider options for improving access to culturally appropriate legal assistance services for family and civil law matters for Indigenous Australians'.

- VOCAT (Victims of Crime Assistance Tribunal)
- children
- general (*Sisters Day Out*, Women's Cultural Retreat, and other issues).

Participants were able to choose which questions they wished to answer. The *Guidelines for Ethical Research in Indigenous Studies* of the Australian Institute of Aboriginal and Torres Strait Islander Studies guided the consultation process. The responses referred to in the paper reflect only the views of the individuals consulted but in many cases concur with the overall experience and understanding of FVPLS Victoria in its service provision. Informed consent was obtained from all participants who generally appreciated the opportunity to contribute to the project. Listening and responding to concerns raised during the consultation interviews was an important part of the process, and reassurance was given that concerns would be documented and addressed appropriately.

- The experience of FVPLS Victoria CEO Antoinette Braybrook in key ATSI and mainstream forums in Victoria, including the Victorian Aboriginal Justice Forum and the Victorian Indigenous Family Violence Partnership Forum.
- Previous parliamentary and non-government ATSI law and justice inquiries and studies.

It is beyond the scope of this project to provide an in-depth analysis of the broad-ranging and complex issues raised; however, it is hoped that the papers will provide a good base upon which to build. FVPLS Victoria acknowledges the commitment demonstrated by the Victorian Government in progressing ATSI law and justice outcomes in this state and looks forward to continued progress, particularly for ATSI victims/survivors, women and children. The importance of the Commonwealth and state governments working together for improved outcomes that are informed and driven by local ATSI communities cannot be underestimated.

This paper is divided into five sections, as outlined below.

Section 1: A background and overview of key law and justice issues for Aboriginal and Torres Strait Islander women and victims/survivors of family violence and sexual assault in Victoria and nationally

This section provides an overview of the current poor law and justice outcomes for ATSI women and children; a summary of key reports and findings; and an overview of current services and ATSI family violence initiatives in Victoria. The Commonwealth Government's failure to take on board successive recommendations is detailed. Section 1 also examines Australia's international human rights obligations with respect to ATSI women and children in particular, to conclude that whilst signing onto international instruments is a positive step, Australia must enforce those obligations which these instruments give rise to.

Section 2: Funding services in urban areas

Section 2 provides an overview of the Commonwealth Government commitment to only fund FVPLS units located in rural and remote areas under a policy which views the FVPLS program as

‘supplementary’ to mainstream services and concentrates on geographic areas of ‘relative disadvantage’. This section highlights the inherent flaws in this approach, which perpetuates overall disadvantage and fails to acknowledge the Royal Commission into Aboriginal Deaths in Custody findings that indicate the significance of ATSI community-controlled organisations in the delivery of legal services. Section 2 explains the position taken by FVPLS Victoria in advocating for the provision of urban funding to improve legal equity and to strengthen the structure of the FVPLS program to achieve better overall outcomes. This section also presents the argument that the complexity of family violence and sexual assault, alongside the levels of disadvantage of ATSI women and children, require similar Commonwealth funding approaches to other key ATSI service areas.

Section 3: A national Aboriginal and Torres Strait Islander women’s legal program

Section 3 outlines the proposal to introduce a national Aboriginal and Torres Strait Islander Women’s Legal Service program in Australia, in consultation with ATSI women. The aim of such a program would be to better respond to critical cultural and gender issues; to broaden and strengthen legal services; and to provide a structural base for ATSI women’s voices to be heard at the national, state and territory levels in policy development and legal reform. In its 2009 submission to the Senate Standing Committee on Legal and Constitutional Affairs, FVPLS Victoria proposed significant strengthening of the FVPLS program. Following questions posed at the Senate Hearing in Melbourne on 15 July 2009 in relation to the review of the FVPLS program—in particular concerning the ‘myriad’ of legal services provided to ATSI women and a possible national ATSI women’s legal program—a supplementary submission was provided, parts of which are annexed.

Section 4: Aboriginal and Torres Strait Islander women’s law and justice policy development

Section 4 outlines the current gaps in government support for ATSI women’s law and justice policy, and presents a strong recommendation that this inadequacy be rectified urgently to improve legal equity and outcomes for ATSI women and children. It is argued that ATSI women and ATSI community organisations working on the ground must inform and drive this work, supported by academic and broader community expertise. The implications of the absence of funding for research, policy development or law reform activity in the FVPLS program nationally are also detailed. The Commonwealth Government’s failure to act upon a strategic plan developed by FVPLS Victoria for a National Indigenous Women’s Law and Justice Advocacy Body is also discussed.

Section 5: Funding issues

This section addresses funding issues related to both the FVPLS program and ATSI Women’s Legal Services more broadly. The FVPLS program as the major legal program for ATSI women has been subject to inferior funding arrangements compared to other legal aid services. Some recent progress has been made; however, significant issues remain outstanding including the need for a joint state/Commonwealth funding arrangement. Recommendations contained in the Senate Standing Committee on Legal and Constitutional Affairs *Access to Justice* report 2009 with respect to increased funding for Indigenous legal services are included.

Section 1: A background and overview of key law and justice issues for Aboriginal and Torres Strait Islander women and victims/survivors of family violence and sexual assault in Victoria and nationally

Summary

The information in this section outlines:

- current data highlighting appalling ongoing disadvantage in law and justice outcomes for ATSI people who experience family violence and sexual assault
- an overview of the major relevant ATSI law and justice policy initiatives, both national and Victorian
- a background to legal service provision for ATSI people
- Australia's human rights obligations in relation to Indigenous rights, access to justice for ATSI people, and protection and advancement of the rights of ATSI women and children.

The continuing high levels of disadvantage for ATSI women and children have been acknowledged by the Commonwealth, and addressed in many key parliamentary and law and justice reports to which ATSI women have contributed. FVPLS Victoria is of the view that the Commonwealth Government's failure to respond strategically to this disadvantage of ATSI women and children is inexcusable.

1.1 Statistics on law and justice outcomes for ATSI women and children

The data available on law and justice outcomes for ATSI people is inadequate, and warnings are frequently made about its lack of reliability. There is clearly a need for more reliable data collection at the national, state and territory levels. It is useful, however, to base discussion about the need for strengthened service provision upon evidence of 'legal need'.

The Australian Government Productivity Commission report, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, provides the most up-to-date data. Below are listed the key areas of disadvantage detailed in the report which indicate the appalling law and justice outcomes for ATSI women and children.

Family violence

- **Indigenous females are 35.1 times more likely to be hospitalised due to family violence than are non-Indigenous females.**

- Indigenous females sought Supported Accommodation Assistance Program (SAAP) assistance in 2006–07 to escape family violence at the rate of 45.0 per 1000 population compared with 3.3 per 1000 population for non-Indigenous females.
- **Indigenous children accompanying Supported Accommodation Assistance Program clients who were escaping family violence attended a SAAP agency at a rate of 569 per 10 000 Indigenous children, whilst for non-Indigenous children this rate was 66 per 10 000.**
- Police data indicates that, in Victoria, in 2007–08 for Indigenous females, the rate of domestic violence–related assault was five times higher than the rate for non-Indigenous females (and this is likely to be an underestimate due to underreporting and failure to identify Aboriginality).

Child protection

- Out of every 1000 Indigenous children, 41 were on care and protection orders, compared to 5 per 1000 non-Indigenous children at 30 June 2008.
- **In Victoria, Aboriginal children are 12.9 times more likely than non-Aboriginal children to be on care and protection orders.**
- From 1999–2000 to 2007–08, the rate at which Indigenous children were on care and protection orders increased from 19.9 per 1000 children to 41.0 per 1000 children, whilst for non-Indigenous children the rate increased from 3.3 per 1000 children to 5.3 per 1000 children.

Imprisonment

- After adjusting for age differences, Indigenous people were 13 times more likely than non-Indigenous people to be imprisoned in 2008.
- Nationally, on 30 June 2008, Indigenous females were 21.7 times more likely than non-Indigenous females to be in prison.
- The imprisonment rate increased by 46% for Indigenous women and by 27% for Indigenous men between 2000 and 2008.
- **Nationally, on 30 June 2007, the rate of Indigenous females in juvenile detention was 24.4 times higher than the rate of non-Indigenous females in juvenile detention.**
- Indigenous juveniles were 28 times more likely to be detained than non-Indigenous juveniles at 30 June 2007. The Indigenous juvenile detention rate increased by 27% between 2001 and 2007.

1.2 The broad-ranging impacts of family violence

It is important to understand the connections amongst family violence, sexual assault, child protection and imprisonment as there are significant implications for integrated legal service provision. **Health and wellbeing outcomes are severely impacted by family violence, which therefore requires a holistic service response.** Family violence is reported in 64% of child protection cases in Victoria in which ATSI children are involved.⁴

The majority of ATSI women in prison indicate that they are survivors of family violence or sexual assault. In a survey of ATSI women prisoners in NSW, 70% of respondents revealed that they had been sexually assaulted or had suffered other types of abuse as children, whilst 44% reported that they had been sexually assaulted as adults.⁵

The Social Justice Commissioner's Report, *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities: Key Issues 2006*, states the following:

... There is a consistent pattern indicating that incarcerated Indigenous women have been victims of assault and sexual assault at some time in their lives. Indigenous women are also significantly over represented as victims of violent crime. (p. 13)

... Links must be drawn and holistic models developed and supported which address the connections between culture, drug use, alcohol use, separation from family, violence, poverty, spiritual needs, housing, health, boredom, race discrimination and gender discrimination. (p. 13)

Given that ATSI women comprise the fastest-growing prison population in Australia, addressing the connections between offending and experiences of family violence/sexual assault is critical.

The impact of family violence on physical and mental health is significant and must be addressed through a holistic approach to service delivery for ATSI women and children.

Further highlighting this need, the 2006 report of the Social Justice Commissioner states:

... I believe that a good deal of the mental health problems reported in Aboriginal and Torres Strait Islander peoples and communities—low self-esteem, depression, guilt, fear and relationship difficulties, substance abuse through to self-harm and suicide—are as much a result of exposure to violence and crime, as drivers of it. Crime victimization feeds into a broader pattern of trauma experienced by many Aboriginal and Torres Strait Islander people and that must be acknowledged by governments and policy makers. (p. 108)

⁴ State Government of Victoria (2009) *Victorian Government Indigenous Affairs Report 2007–2008*, Melbourne: Aboriginal Affairs Victoria, p. 47.

⁵ Lawrie, Rowena (2003) 'Speak Out Speak Strong: Researching the Needs of Aboriginal Women in Custody', *Australian Indigenous Law Review*, 29.

VicHealth reports that violence against women:

*... Leads to more ill-health and premature death in Victorian women under the age of 45 years than any other documented preventable health risk factor. Thus violence against women must be viewed as a significant public health issue requiring urgent attention.*⁶

1.3 Significant developments in Aboriginal and Torres Strait Islander law and justice

By way of background it is helpful to gain an overview of developments in relation to ATSI law and justice. **Much of the focus on law and justice for ATSI women has been on the family violence area, although FVPLS Victoria emphasises that law and justice policy development for ATSI women requires a much broader and more integrated approach.**

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC)

The Royal Commission into Aboriginal Deaths in Custody has been the most significant ATSI law and justice initiative in Australia to date, with implementation and oversight of recommendations remaining an ongoing concern.

The RCIADIC was established on 16 October 1987 with the aim of investigating and reporting on the deaths of 99 Aboriginal and Torres Strait Islander people which occurred in custody or detention between 1 January 1980 and 31 May 1989.

The focus of the RCIADIC report is on the corrections and criminal justice systems. However, critical underlying issues including alcohol and drugs, schooling, housing, principles of self-determination, health, land needs and reconciliation are also addressed in detail and included in the 339 recommendations made. The opening recommendations require all governments to ensure that processes are in place to oversee and regularly and publicly report on implementation, including through the establishment of Aboriginal Justice Advisory Committees. Implementation of the recommendations is an ongoing process, yet governments have been heavily criticised for implementation failures. The current Victorian Government has demonstrated more commitment than have some others.⁷

Whilst many of the recommendations of the RCIADIC have general application, the report does not deal directly with the particular circumstances of ATSI women.

In relation to this, the *Social Justice Report 2004* comments:

... responses to Indigenous over-representation in criminal justice processes over the past decade have been focused on responding (though not in a sustained manner or very fully) to the findings of the

⁶ VicHealth (2007) *VicHealth Partnership Activity to Prevent Violence against Women*, Melbourne, July 2007.

⁷ Victorian Parliament, *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody*, Volumes 1 and 2 An initiative of the Victorian Aboriginal Justice Agreement, Parliamentary Paper, October 2005, Melbourne: Victorian Government Printer.

*Royal Commission into Aboriginal Deaths in Custody. These almost exclusively focused on the circumstances of Aboriginal men, with none of the Royal Commission's recommendations specifically addressing the circumstances of Indigenous women. **This also has the potential to render Indigenous women invisible to policy makers.*** (p. 22, emphasis added)

More ATSI women were murdered in the Northern Territory during the period of the RCIADIC than men who died in custody;⁸ clearly, both issues require urgent attention. The above comment by the Social Justice Commissioner confirms the existence of a policy gap in the area of law and justice for ATSI women. This gap also extends to policy initiatives for ATSI children as victims of crime.

Relevant to this discussion about legal services for ATSI women, the RCIADIC report clearly supports the provision of key services for the ATSI community by ATSI community-controlled organisations because:

- **they advance equality and self-determination**
- **many ATSI people prefer ATSI organisations as their advocates and service providers, and**
- **they have proved to be more effective than mainstream organisations, are trusted, and respect ATSI culture.**⁹

Australian Law Reform Commission Report 1994

In 1994 the Australian Law Reform Commission published its report, *Equality Before the Law: Justice for Women, Part 1*. A section of the report is dedicated to Aboriginal and Torres Strait Islander women and many of the findings and comments remain highly relevant today. The following statements in particular are pertinent:

... Of all the identifiable groups of women whose concerns have been presented to the Commission, Aboriginal and Torres Strait Islander women are least well served by the legal system. This fact is related to, but not dictated by, the extreme social and economic disadvantage experienced by many Aboriginal and Torres Strait Islander women. (5.24)

Indigenous women suffer particular disadvantages both within the mainstream legal system and in the administration of Aboriginal and Torres Strait Islander legal services. Some of the discrimination they suffer, as women, is analogous to the discrimination suffered by non-indigenous women. Some of the discrimination suffered by Aboriginal and Islander women is particular to them as indigenous Australian women. (5.24)

The following excerpts from the report further highlight the extreme disadvantage faced by ATSI people:

*... **Indigenous women's experience of the legal system.** Aboriginal and Torres Strait Islander people are largely excluded from access to the benefits of the legal system. Among clients, practitioners and decision makers in the legal system, indigenous women are even fewer in number than indigenous*

⁸ Marchetti, Dr Elena, 'Indigenous Women and RCIADIC', Part 11 *Indigenous Law Bulletin* December/January 2008, vol. 7, no. 2.

⁹ RCIADIC, Chapter 4 27.4.19.

men. Historically, Aboriginal and Torres Strait Islander peoples know the Australian legal system as one which authorised the annexation of their land and the loss of their lifestyle and many of their ritual roles. This has been the case for men and women but the impact has, in some senses, been different. Women have experienced their children being forcibly taken from them, have lost many of their women specific roles as custodians of culture, have been imprisoned and died in custody, grieved over relatives who have died in custody and have been subjected to violence perpetrated by non-Aboriginal and Aboriginal men, all with the express or apparent sanction of the law. Aboriginal and Torres Strait Islander people, in particular women, are over represented in prison populations. There are 178 indigenous women compared to 9 non-indigenous women per 100,000 people imprisoned in Australia. The disproportionately high level of incarceration of indigenous people, and particularly women, exacerbates the distrust of the legal system felt in many communities. Recognition of the problem of distrust of the mainstream legal system led to the setting up of legal services for indigenous people. However, these services often fail to meet the needs of indigenous women. (5.26)

*... **Aboriginal and Torres Strait Islander women as targets of violence.** The level of violence experienced by Aboriginal and Torres Strait Islander women is generally higher than that experienced by other women. (5.27)*

*... **Ignorance of indigenous cultures within the legal profession.** There continues to be a disturbing level of ignorance of Aboriginal and Torres Strait Islander cultures in the legal profession and in the courts. While this affects both men and women it has a specific impact on women. (5.28)*

...The legal system's lack of understanding of the division between women's and men's business also often compromises the administration of justice in cases of violence against women. Evidence of women's perspectives may simply fail to be brought before the court.

... Consultations indicate that, even in cases that directly concern Aboriginal and Torres Strait Islander women, their views are being given little acknowledgment in the Australian legal system. (5.29)

Reports of the Social Justice Commissioner

Over the past decade most of the Social Justice Reports have included sections that address issues related to the ongoing disadvantage of ATSI women and children; family and community violence; and the imprisonment of Aboriginal women.

In relation to legal service provision for ATSI women the following comments were made in the 2004 Social Justice Report:

... One of the main findings of this research is confirmation that an approach that assumes that the needs of Indigenous women will be met through services designed for Indigenous men, or those for women generally, will not work. The lack of attention to the distinct needs of Indigenous women marginalises them and entrenches inequalities in service delivery. It can lead to intersectional discrimination.

... Intersectional discrimination, or intersectionality, refers to the connection between aspects of identity, such as race, gender, sexuality, religion, culture, disability and age. An intersectional approach asserts that aspects of identity are inter-connected and discussing them in isolation from each other results in concrete disadvantage.

National Indigenous Representative Body

The structure of the new National Indigenous Representative Body (the National Congress of Australia's First Peoples) was announced in 2009. It will take the form of a company, will have equitable gender representation, and will focus on:

1. ***formulating policy and advice***, providing an Aboriginal and Torres Strait Islander perspective on issues across government
2. ***advocacy and lobbying*** between Aboriginal and Torres Strait Islander peoples and the government, corporate and non-government sectors, ensuring the best interests of Aboriginal and Torres Strait Islander peoples are upheld
3. ***monitoring government service delivery and performance***, ensuring the presence and adequacy of accountability mechanisms.¹⁰

Conducting research, and contributing to processes of law reform, is listed as one of the functions that consultation participants considered important for this new body. It is noted that some opposition to this structure is being voiced within the ATSI community. Commitment by government to heed and act upon advice of the Representative Body will be critical to effective change.

National Indigenous Law and Justice Advisory Body

Early in 2009 the Commonwealth Government also called for nominations to a proposed National Indigenous Law and Justice Advisory Body. The role of the body was to:

- *provide expert advice to the Australian Government, and through it to relevant intergovernmental bodies, on a range of Indigenous law and justice issues,*
- *facilitate linkages across various levels of government, business and the community,*
- *consider government policies affecting Indigenous law and justice outcomes, and*
- *advocate for policies that promote good practice.*¹¹

Recently it has been announced that to avoid duplication the AGD has asked the National Congress to consider establishing a subcommittee to focus on law and justice 'to help address the Government's ongoing need for advice on such matters'.¹² Whilst a positive step, this subcommittee will not replace the need for on-the-ground law and justice policy development. However, the committee could assume a role in the implementation and planning of such activity. Furthermore, its role must include dedicated attention to law and justice issues for ATSI women and children.

National Aboriginal and Torres Strait Islanders Women's Alliance

The Minister for the Status of Women has recently announced funding for six National Women's Alliances, to share a budget of \$3.6 million over three years (presumably \$200,000 for each Alliance per year). The National Aboriginal and Torres Strait Islander Women's Alliance is described by the

¹⁰ Australian Human Rights Commission (2009) *Our Future in Our Hands: Creating a Sustainable National Representative Body—Community Guide*, Report of the Steering Committee for the creation of a new National Representative Body, http://www.hreoc.gov.au/Social_Justice/repbody/report2009/community_guide.html.

¹¹ <http://www.ag.gov.au/indigenouseadvisorybody>.

¹² Letter from Social Inclusion Division, Australian Government Attorney-General's Department, May 2010.

Minister as giving Indigenous women a strong voice in government decision making. This is a positive development. However, given the wide-ranging issues requiring attention for ATSI women and the limited funding allocated, this Alliance does not replace the need for a dedicated ATSI women's law and justice body or resources.

1.4 Aboriginal Legal Services and funding sources

The Victorian Aboriginal Legal Service (VALS) and Aboriginal and Torres Strait Islander Legal Services (ALSs or ATSILSs)

Until the establishment of FVPLS Victoria in late 2002 the Victorian Aboriginal Legal Service was the only dedicated provider of legal services to the Victorian ATSI community. Funded through the Commonwealth AGD, VALS—similar to other ALSs—has a criminal, family law and civil law practice with funded policy development and research/project positions. All Commonwealth AGD funding for research and policy in ATSI legal services in Victoria is directed to VALS.

Importantly, the ALSs are funded in urban, rural and remote communities across Australia (there are 84 ALS offices across Australia)¹³ and are also supported by the Commonwealth via funding for a national forum which brings the services together several times each year. There previously existed a secretariat, National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS), but this is no longer funded.

As with other ALSs, VALS's major focus has been in the criminal law area and oversight of the report of the RCIADIC. This is critically important work; however, as a result, the majority of ALS clients are men. In 2004 the Victorian Aboriginal Legal Service reported that 27% of all cases it handled were for women.¹⁴ More up-to-date data is not available.

The Office of Evaluation and Audit, Aboriginal and Torres Strait Islander Commission, Evaluation of Legal and Preventative Services Program (2003) indicated that at that time family violence case matters constituted 1.7% of ATSILS cases (nationally) and that females represented 24% of all cases handled by ATSILSs. In 2003–2004, the proportion of criminal cases dealt with by ATSILSs nationally was 93%.¹⁵ The ALS in Western Australia (ALSWA) indicates that criminal law makes up between 80 and 90% of its workload.¹⁶ This provides strong evidence that women and children as victims of family violence and sexual assault are not accessing ATSILSs for legal assistance. This is not a criticism of the ATSILSs, but it does demonstrate the practical access and equity barriers faced by ATSI women.

VALS, like other ALSs, is unable to assist victims of family violence and sexual assault in cases where it has assisted or is assisting the perpetrator, due to a conflict of interest. This has resulted in

¹³ Senate Legal and Constitutional Affairs References Committee (2009) *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia, 2.53.

¹⁴ Joint Committee of Public Accounts and Audit (2005) *Report 403: Access of Indigenous Australians to Law and Justice Services*, June, p. 23.

¹⁵ *Ibid*, p. 9.

¹⁶ Senate Legal and Constitutional Affairs References Committee (2009) *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia, 8.21.

significant inequity for victims/survivors, particularly prior to the funding of the FVPLS program. Given the limited coverage of the FVPLS units nationally, such inequity continues.

The Joint Committee of Public Accounts and Audit *Report 403 Access of Indigenous Australians to Law and Justice Services 2005* discussed at length the impediments to ATSI women accessing ALSs (from p. 23). Conflict of interest was the key barrier identified arising from the significant amount of criminal law work undertaken by the ALSs. Generally, legal ethics preclude a legal practice acting against a client for which it has previously acted; for example, where it has represented a client in a criminal case it cannot then assist another person in a family dispute with the original client.

Issues relating to conflict actual and perceived, confidentiality, safety and gender sensitivity can compromise the quality of service available to victims/survivors through ALSs and pose barriers to access. The concept of 'Chinese Walls'—developed by some ALSs in an attempt to overcome the legal conflict issue by internally separating family and criminal law services—for example, is inherently flawed, and FVPLS Victoria joins the Law Council of Australia in opposing this as a strategy:

... The Law Council of Australia supported an Indigenous women's legal service on the grounds that only a separate women's service would defeat the perception of conflict...

the concept put forward by the Law Council as being particularly important is the identification in the eyes of the consumer that it is separate and distinct and they can approach it with confidence. It is all very well for us as lawyers to talk about Chinese Walls; that means nothing to most consumers of legal services.¹⁷

ALSWA is now auspicing the FVPLS units in that state. Concerns about actual and perceived conflict of interest to which this arrangement gives rise, and about the importance of the independence of the FVPLS program as a primary service provider to ATSI women and children, have been raised in numerous quarters.¹⁸

FVPLS Victoria is of the view that it is entirely appropriate that the Victorian Aboriginal Legal Service and ALSs generally prioritise assistance in the criminal justice and related areas. As a consequence, ALSs cannot also be the primary or sole provider of services to ATSI victims/survivors of family violence and sexual assault and ATSI women and children. Aside from issues of legal conflict, the greater focus of ALSs on 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.

¹⁷ Joint Committee of Public Accounts and Audit (2005) *Inquiry into indigenous law and justice*, June, p. 35.

In the above report the Many Rivers Aboriginal Legal Service stated:

... the Chinese Walls analogy ... is justice that no other group in Australia is expected to put up with and indeed should not be. I think that is a terribly discriminatory basis upon which to be providing legal services. (p. 27)

¹⁸ McGlade, Hannah (2009) *Submission to Senate Standing Committee on Legal and Constitutional Affairs 2009*; Puertollana, Rowena (2009) *Submission to Senate Standing Committee on Legal and Constitutional Affairs 2009*; Legal and Constitutional Affairs References Committee (2009) *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia, pp. 158-160.

The Family Violence Prevention Legal Service program

Background to the FVPLS program

The FVPLS program was initially established under ATSIC's Family Violence Action Plan to assist Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault and to work with Aboriginal communities to prevent family violence. Prior to this, there had been recognition that the ALSs were often conflicted in family disputes and not the appropriate body to act as the primary legal service provider for ATSI victims/survivors.



FVPLS Victoria in-service December 2008.

The pilot FVPLS unit in Kempsey opened in 1998, followed by a service in Darwin (to service remote communities in the Top End). Further funding in or around the year 2000 for additional FVPLS services became available and 13 new FVPLS units were funded from that time, predominantly in high-need rural and remote areas of Australia, but also in Melbourne.

The program has expanded over the last decade and there are now 31 FVPLS units funded in rural and remote locations nationally, through the Commonwealth AGD. On the face of it, 31 units funded nationally gives the impression of a strong program; however, this is not the reality.

No FVPLS services are funded for urban ATSI communities. Some units, including FVPLS Victoria, are independent ATSI corporations, whilst others are auspiced, for example, by the West Australian Aboriginal Legal Service in WA, and by the mainstream Women's Legal Service in NSW. The FVPLS program has no peak body or secretariat, which fragments and weakens it as a whole: units have been subjected to 12-month funding cycles with annual tender; no unit is funded for critical research, policy development or advocacy; and for a decade the funding body failed to provide an FVPLS program data system for administrative management and reporting. The remote units in particular have had difficulty in recruiting and retaining legal staff. Legal work is restricted to family violence and sexual assault despite the broader range of legal and associated issues that impact on ATSI women and children.

Some years ago there was discussion within the Commonwealth AGD about extending funding to FVPLS units to provide broader civil law assistance; however, this did not eventuate.

FVPLS Victoria

Background

Lobbying by Victorian ATSIC Commissioners ensured that Victoria was not overlooked in relation to FVPLS funding. Current FVPLS Victoria Chairperson, and at that time ATSIC Commissioner, Marion Hansen played a key role in securing funding for Victoria. Expressions of interest were invited from the ATSI community in Victoria to form the inaugural Board for FVPLS Victoria. A workshop which

involved the Commonwealth and state governments, and ATSIC representatives, endorsed the establishment of a statewide FVPLS in Victoria. FVPLS Victoria was established in Melbourne and incorporated in October 2002.

Funding guidelines stipulate that FVPLS Victoria provide legal and counselling supports to ATSI victims/survivors of family violence and sexual assault and to parents/carers of ATSI children. Assistance is not provided to perpetrators of violence. Legal problems that fall outside of FVPLS's operational guidelines are currently referred either to VALS or to mainstream services. (On this point, a broadening of legal services is supported by FVPLS Victoria.)

With limited resourcing, FVPLS Victoria initially provided services to Victoria from the Melbourne office, targeting key locations by outreach. Through community promotion and referrals received from Elizabeth Hoffman House Aboriginal Women's Refuge and other key Aboriginal agencies based in Melbourne, a significant caseload developed in the Melbourne metropolitan area. (It must be noted that some 48% of the Aboriginal and Torres Strait Islander population in Victoria resides in the Melbourne metropolitan area.)

With the abolition of ATSIC in 2004, funding responsibility for the FVPLS program transferred to the Commonwealth Attorney-General's Department. In 2005 the Commonwealth AGD directed that FVPLS Victoria relocate to either Mildura or Gippsland, based upon the 'one size fits all' policy of confining units to rural and remote locations. FVPLS Victoria took the position that the Commonwealth was effectively attempting to defund FVPLS Victoria which at that time had established and built upon its Melbourne base with acquiescence from the funding body and was carrying a significant urban caseload (150 urban legal and counselling clients), demonstrating the level of service demand. Whilst prepared to focus more attention on rural areas, the FVPLS Board rejected the 'relocation' directive. Based on its experience, FVPLS Victoria would not accept the view that ATSI women in urban areas could or would access mainstream services.

Following the findings of the University of Western Australia Crime Research Centre Report published in December 2004, the 'Expansion of FVPLS Services Program Report' commissioned by the Commonwealth AGD, funding was made available for the establishment of a second FVPLS Unit for Victoria to cover the Mildura and Wentworth (NSW) regions in 2004–2005. The Mildura Aboriginal Corporation successfully tendered to be the host auspice organisation. (In July 2008 FVPLS Victoria became the auspice body for the Mildura FVPLS service.)

In 2006 the Commonwealth AGD informed FVPLS Victoria that it must only service the Barwon South West and Gippsland regions with Commonwealth FVPLS funding, and that it was required to relocate to one of those locations despite an approximate 700-kilometre distance between the regions.

Satellite service model

In response to the AGD's directive, FVPLS Victoria again took the position that in the best interests of the service and the Victorian ATSI community, it would not relocate but that it would retain the Melbourne base and establish satellite or outreach offices in the Gippsland and Barwon South West regions. Successful negotiations took place between FVPLS Victoria and the Commonwealth AGD, out of which emerged a funding model in which one paralegal support worker and one solicitor

would be funded for each region, with other administrative and program support functions to be performed at the Melbourne head office.

FVPLS Victoria offices are now established in Warrnambool (servicing the Barwon South West region) and in Bairnsdale (servicing the Gippsland region), with solicitors and paralegal workers based full time in both regions. As mentioned already, in 2008 FVPLS Victoria successfully tendered as the auspice body for the Mildura unit and an FVPLS office is now located in Mildura. The success of the satellite model is thought to have contributed to FVPLS Victoria gaining the Mildura auspice.

Funding for urban services

Given the lack of Commonwealth funding for urban areas, it has been essential that FVPLS Victoria obtain alternative funding for the high-demand, metropolitan Melbourne work. In 2007, Victoria Legal Aid entered an agreement with FVPLS Victoria to provide a family law secondee. The secondee is able to provide family law assistance under the legal aid guidelines for clients of FVPLS Victoria, focused on the Melbourne metropolitan area and to a lesser extent other Victorian regions not funded by the Commonwealth. This secondment arrangement has recently been extended for a further three years.

FVPLS Victoria also receives funding from Victoria Legal Aid and the Department of Justice Victoria for a family violence solicitor to work on family violence law (primarily intervention orders and victims assistance/compensation). This position has been extended to 2012. A 12-month, one-off Legal Services Board grant has been utilised for critical child protection legal services, primarily for clients in the Melbourne metropolitan area, recently extended by the state government for a further 12 months. Additional capacity for FVPLS Victoria to support metropolitan Koori family violence and child protection court initiatives is indicated.

Whilst FVPLS Victoria recognises these significant commitments, there remains substantial unmet need—particularly given the fact that about 48% of the Koori population in Victoria reside in metropolitan Melbourne and that the Melbourne-based positions must also service unfunded rural areas. Complementary Commonwealth support for a statewide service model and a formal collaborative funding arrangement with the state is urgently required. FVPLS Victoria's success in securing alternative funding outside of the FVPLS funding program and statewide service model is unique to the FVPLS program nationally.

Community legal education/policy

The Commonwealth AGD funds an FVPLS Victoria community legal education position which is also restricted to rural locations.

Funding is also received through the Commonwealth AGD Early Intervention and Prevention Program for the highly successful *Sisters Day Out* (SDO) wellbeing workshops for young Koori women (again restricted to rural locations). Additional state and Commonwealth (Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA)) funding has been secured to run these workshops across Victoria. Over 2000 ATSI women and children have attended these workshops since 2007. In a culturally and gender-safe environment, the program combines wellbeing activities with legal information and advice, and is delivered by FVPLS Victoria in local

communities across the state. ATSI women who would not normally access more conventional forms of legal assistance have been reached through this program.

Fixed-term policy positions have been funded through the Department of Justice Victoria (for a Koori Family Violence Police Protocols Project which was recently extended for a further 12 months), the Legal Services Board, and recently The Felton Bequest for a 12-month program/policy development position. No policy development or law reform funding is provided by the Commonwealth AGD for the FVPLS program nationally although FVPLS Victoria has unsuccessfully submitted for funding for the past two years. The Aboriginal Legal Services are funded for research and policy activity (see Section 4: Policy development, law reform and advocacy in the area of Aboriginal and Torres Strait Islander women's law and justice).

Operational support

The Ross Trust has funded a part-time program coordinator position for a fixed term which provides essential operational support for the FVPLS Victoria service model. The model would be unsustainable without this critical funding.

Indigenous Women's Outreach Project Program

Within the Commonwealth AGD Community Legal Centre funding program is an Indigenous Women's Project (IWP) funding arrangement. It consists of reasonably limited grants and in most cases is provided to mainstream women's legal services. In theory it provides scope for a broader range of legal services.

Victoria has in the past received short-term funding through this program (Women's Legal Service Victoria) but has not done so since 2001. For more information about this see Section 5: Funding.

The Joint Committee of Public Accounts and Audit Committee activities (inquiries and reports) Inquiry into Indigenous Law and Justice June 2005 made the following comment and specific recommendation in relation to Indigenous Women's Projects:

... The committee was concerned at the myriad of programs and services that provide legal services to Indigenous women. Perhaps the most apparent area for potential overlap is the FVPLSs and the Indigenous Women's Projects run out of designated CLCs. (5.45)

Recommendation 13

That the Attorney-General's Department rationalize funding of Indigenous legal services by incorporating Indigenous Women's Projects, that are currently administered through mainstream Community Legal Centres, into the Family Violence Prevention Legal Services program.

This recommendation has not been implemented and, as mentioned previously, Victoria has had no access to Indigenous Women's Project funding since 2001. FVPLS Victoria's written enquiries directed to the Commonwealth AGD about this in December 2008 remain unanswered.

The Senate Legal and Constitutional References Committee, in its recent 2009 *Access to Justice* report, has again raised the issue of the 'myriad' of legal services funded for ATSI women and noted that a dedicated Indigenous Women's Legal Service might be a better approach.¹⁹

1.5 Key Commonwealth inquiries and reports on the provision of legal services and access to justice for ATSI women

Numerous government and parliamentary inquiries and reports have addressed issues surrounding Aboriginal and Torres Strait Islander access to justice, some looking at the situation for ATSI women. ATSI women have informed these inquiries in which conclusions have been drawn about the need to strengthen services for women, especially in the family law and civil law areas. A commitment by government to follow through, however, has been largely absent.

Joint Committee of Public Accounts and Audit Inquiry into Indigenous Law and Justice June 2005

This inquiry examined the adequacy of access to legal services amongst Indigenous Australians. The report includes a chapter on Indigenous women and their access to legal services.

The Committee made the following key comments and recommendations:

3.86 If FVPLSs are to be considered as major Indigenous specific service providers of family violence prevention, family and civil law services, these services should not be confined to regional and remote Australia but rather, like ATSILS, be located in all areas of significant need.

Recommendation 4

That the Attorney-General's Department acknowledge that urban Indigenous populations also require family violence, family and civil law services and locate FVPLS services accordingly.

Recommendation 5

3.93 That the Attorney-General's Department ensure that Indigenous men are provided full access to all Family Violence Prevention Legal Services. [FVPLS Victoria's position on this is detailed in Section 4]

The Committee discussed the lower levels of family and civil law services provided by the ATSILSs, which are restricted by the criminal law focus of ATSILSs; the potential for conflict of interest; and ATSILSs' funding limitations. On these issues, the Committee stated the following:

... 2.18 The preponderance of criminal law matters dealt with by ATSILSs raises questions of access by Indigenous Australians to legal services in family and civil law matters. People seeking access to family and civil law services are often victims or potential victims of family violence.

... 2.31 A final major reason for the ATSILSs not taking on family law matters involved conflict issues.

¹⁹ Senate Legal and Constitutional Affairs References Committee (2009) *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia, 8.130.

... 2.49 *If AGD considers that family and civil law services should be provided to Indigenous Australians by organizations other than ATSILS, the evidence shows overwhelmingly that the designated providers should be Indigenous owned and that designated providers should be required to maintain a network of Community Legal Workers.* (Emphasis added)

The Senate Legal and Constitutional References Committee, Parliament of Australia, Legal Aid and Access to Justice (2004) and Access to Justice (2009)

This Senate Committee conducted an Access to Justice Inquiry in 2004 and a further inquiry in 2009, both incorporating Indigenous-specific issues. FVPLS Victoria made submissions to the recent inquiry, particularly directed to concerns about funding of the FVPLS program and access to justice for ATSI women.

The 2004 Senate report included the following:

... 5.54 *The Committee received evidence that, almost ten years after the ALRC [Australian Law Reform Commission] report, Indigenous women remain chronically disadvantaged in terms of their access to legal services, awareness and exercise of their legal rights, and domestic violence support.*

... Recommendation 29

5.133 The Committee recommends that the Commonwealth Government commission a comprehensive national study to determine accurately the legal needs of Indigenous women.

... Recommendation 30

5.134 The Committee recommends that the Commonwealth Government and state/territory governments address the needs of Indigenous women as a matter of urgency by improving, developing and promoting appropriate legal and community services, community education programs, domestic violence support networks and funding models to ensure that the experience of Indigenous women within the justice system is fair and equitable. In implementing this recommendation, the Commonwealth Government, state/territory governments, legal aid commissions and other key stakeholders should consult widely with Indigenous women, so that the impetus for change comes from Indigenous women themselves.

... Recommendation 31

5.135 The Committee recommends that the Government allocate sufficient funding to Indigenous legal services and Indigenous Family Violence Prevention Legal Services to enable adequate provision of effective legal services for Indigenous women in family law and family violence matters, including funding for additional culturally sensitive services in areas of highest need.

Five years on, in its December 2009 report, the Senate Committee acknowledged ongoing chronic disadvantage of ATSI women in terms of their access to justice; reiterated its 2004 recommendation for a comprehensive national survey of the legal needs of Indigenous women; and urged development of a targeted strategic approach to ATSI women's law and justice issues in

which ATSI women are involved.²⁰ It is extremely frustrating that these 2004 recommendations have been ignored by the government.

A Strategic Framework for Access to Justice in the Federal Civil Justice System, Report by the Access to Justice Taskforce, Australian Government Attorney-General's Department, September 2009

In acknowledging a gap in family and civil law services for ATSI people, this report states:

... FVPLS assist Indigenous adults and children who are victims of family violence, including sexual abuse, or who are at immediate risk of such violence. However, the availability of culturally appropriate legal assistance services for Indigenous people with family and civil law problems is limited and this compromises the ability of Indigenous Australians to realise their full legal entitlements. It also introduces a danger that civil or family law issues can escalate to criminal acts resulting in charges and a perpetuation of the cycle of over-representation in the criminal justice system. (p. 143)

Recommendation 11.4

The Commonwealth should consider options for improving access to culturally appropriate legal assistance services for family and civil law matters for Indigenous Australians.

Implementation of the above recommendation must consider either a strengthening and broadening of the FVPLS program—which FVPLS Victoria has already commenced on its own initiative—or the introduction of a national ATSI women's legal program.

Draft National Indigenous Law and Justice Strategy 2007 and National Indigenous Law and Justice Framework 2009–2015

The National Indigenous Law and Justice Strategy was developed by the Commonwealth AGD to 'recognise and address issues relating to law and justice and crime prevention in Indigenous communities at a national, state and territory and regional level'.

This Strategy placed emphasis on law and justice strategy for Indigenous women to address the acknowledged ongoing levels of disadvantage and lack of dedicated policy attention.

A table setting out the measures and processes detailed for Indigenous women was attached to the Strategy. Some of the key measures included:

- increase recognition of the legal and justice needs of Indigenous women
- increase legal aid services and justice-related initiatives for Indigenous women
- assess Indigenous women's needs for access to appropriate legal aid services, particularly in civil and family law matters

²⁰ Ibid.

- consider adoption of a national strategy aimed at reducing the number of women and young people in prison
- obtain a clearer and more comprehensive picture of the offences for which women are imprisoned
- expand (family violence) services available at the community and local level.

The National Indigenous Law and Justice Framework 2009–2015, prepared by the Standing Committee of Attorneys-General Working Group on Indigenous Justice, does not contain the same dedicated focus on addressing the disadvantage experienced by ATSI women. Moreover, there is inadequate acknowledgement of the need for a commitment to strategic responses. Given the documented ongoing disadvantage of ATSI women (and children), and the volume of recommendations made by both Australian parliamentary and United Nations committees, this is astounding.

Proposal 1

In recognising the ongoing and unique disadvantage of Aboriginal and Torres Strait Islander women and the lack of dedicated law and policy development to address this issue, that the National Indigenous Law and Justice Framework incorporate specific provisions directed at strengthening law and justice outcomes for Aboriginal and Torres Strait Islander women and children.

Improved integration of law and justice issues into social inclusion policy and Closing the Gap initiatives is required.

Closing the Gap

The Commonwealth Government's Closing the Gap initiative lacks necessary inclusion of law and justice issues which must be integrated within broader social policy and program development.

For example, there is a need to acknowledge the strong connection between the increasing imprisonment rates of ATSI women and young people as well as their health and wellbeing and the need for improved legal awareness, prevention activity and strengthened culturally accessible legal and associated services around family violence and sexual assault. Properly resourced national, state and territory ATSI women's law and justice policy forums that are able to link with other key ATSI peak bodies could provide improved integration and policy development. The National Indigenous Law and Justice Framework states that it is:

... intended to support the COAG [Council of Australian Governments] agenda to Close the Gap in Indigenous disadvantage, particularly in relation to community safety, and will be instrumental in achieving COAG objectives.

However, practical integration is not evident. In addition, the inadequate focus on dedicated law and justice initiatives for ATSI women and children within the Framework does not inspire confidence in terms of real on-the-ground holistic change.

1.6 Victorian initiatives

The Victorian Government has demonstrated its commitment to working with the Victorian ATSI community to advance law and justice outcomes for ATSI people. Particular attention has been paid to the criminal justice, corrections and, more recently, family violence areas.

Victorian Aboriginal Justice Agreement

In place since June 2000, the Victorian Aboriginal Justice Agreement is a partnership agreement between the Victorian Koori community and the Victorian Government, led by the Department of Justice, which is aimed at reducing the overrepresentation of ATSI people in the criminal justice system. The second phase of the agreement was launched in June 2006 (AJA2), which includes a greater focus on victims.

The Victorian Aboriginal Justice Forum is the peak body for overseeing the Aboriginal Justice Agreement. Chairs of Regional Aboriginal Justice Advisory Committees participate in the Forum. FVPLS Victoria CEO Antoinette Braybrook and Frank Guivarra, CEO of the Victorian Aboriginal Legal Service, also participate. Local Aboriginal Justice Action Committees (LAJACs) have been established under the AJA2.

Whereas phase 2 of the Victorian Aboriginal Justice Agreement includes strategies that place a greater emphasis on reducing victimisation, improving responses for victims of family violence and diversion of women from prison, it lacks a necessary overall framework for advancing law and justice outcomes for ATSI women.

Given the acknowledged lack of dedicated law and justice policy concerning ATSI women, specific measures including oversight and implementation processes are needed to ensure comprehensive and equitable progress. Resourcing for dedicated law and justice policy development for Aboriginal women in Victoria is required (for further elaboration see Section 5, and Paper 2, Section 1).

Family violence initiatives in Victoria

Initiatives have been developed in Victoria in relation to ATSI family violence and family violence, generally under the Women's Safety Strategy. The government-led integrated family violence strategy aims to have police, courts, community services and government working better together. The need for improved integration between mainstream and ATSI family violence initiatives is discussed in Paper 2, and the new Victorian family violence legislation is explored in Paper 3.

The Women's Safety Strategy, developed under the Forward Plan for Women 2000–2003, included the development of an Indigenous Family Violence Strategy. The process was outlined in a document entitled *Framework for the Development of an Indigenous Family Violence Strategy: A Partnership Approach between Victorian Indigenous Communities and Government*, and included the establishment of an independent Indigenous taskforce on family violence to lead the strategy development.

The Victorian Indigenous Family Violence Task Force held its inaugural meeting in October 2001 and published its final report in December 2003.

The primary role of the Task Force included:

1. to engage Indigenous communities throughout the state in the development of 'community led' strategies for addressing Indigenous family violence issues; and
2. to provide a Final Report to the Victorian Government including recommendations in relation to a culturally appropriate statewide strategy for addressing family violence issues in an integrated and holistic manner.

From 2002, nine Regional Indigenous Family Violence (IFV) Action groups and nine regional IFV Support Officer positions, including a statewide IFV coordinator, were established. Based within and funded through the Department of Human Services, the role of the IFV workers is to support ATSI communities in developing a greater awareness and understanding of family violence in their community, and to facilitate the development of community-based responses appropriate to local conditions and need.

The Task Force made 18 recommendations set out at page 240 of the final report, some relating specifically to supports for victims/survivors. The Victorian Government responded to the Task Force report with initiatives including Healing Services, Time Out Services, an Indigenous scholarships scheme, a new Men's Resource Advisory Service, Indigenous Family Support Innovation projects and an extension of the Aboriginal Family Decision Making Program.

One of the key recommendations of the Task Force report was the establishment of the Victorian Indigenous Family Violence Partnership Forum to lead the development of a 10-year plan to prevent and eliminate family violence in Indigenous communities. In accordance with this recommendation the Forum was established in April 2005 and in June 2008 the document *Strong Culture, Strong Peoples, Strong Families: toward a safer future for Indigenous families and communities* was published, outlining the 10-year plan.

Appropriate strategy, respective responsibility and a timeline for implementation, supported by adequate funding of the proposed actions in the 10-year plan, will be key to its success. Concerns have been raised that evidence of such is lacking.²¹ Again, a dedicated focus upon law and justice access issues for ATSI women and children is critical. A Koori Family Violence Court Support pilot and Koori Children's Court Family Division project have been recently initiated in Victoria. These are important examples of the positive commitment that is required.

Victorian Government contribution to FVPLS Victoria

As mentioned, Victoria Legal Aid has seconded a family lawyer to FVPLS Victoria and VLA/Department of Justice Victoria has funded a family violence solicitor. Support for a child protection legal position for a further 12-month period is anticipated. DHS Victoria also provides funding for the *Sisters Day Out* program for locations not covered by Commonwealth funding and

²¹ Cripps, Kylie and Miller, Leanne (2009) 'Mutant Messages 2: Victoria's Indigenous Family Violence Plan', *Indigenous Law Bulletin*, May/June 2009, Vol. 7, No. 12, p. 11.

has recently committed to funding two paralegal support positions through the Homelessness program.

In 2002 the Victorian Government rejected a Victorian Parliamentary Committee recommendation that it fund an Indigenous Women's Legal Service in Victoria on the basis that Commonwealth funding to Victoria under the Indigenous Women's Project program remained unresolved (at that time) and that its consideration of this recommendation should be deferred until Commonwealth funding was resolved.

As Commonwealth funding under the IWP program to Victoria has still not been resolved, no further action has been taken by the Victorian Government. Unlike some other states, Victoria does not have a broader ATSI Women's Legal Service, although FVPLS Victoria does maintain a significant focus on ATSI women and children (see Sections 3 and 5). An extended range of legal services could be provided through an ATSI Women's Legal Service and the Victorian Government must now assume leadership of this initiative.

1.7 Human rights obligations

*We are the first Australians—we need our own services. I see more international stuff that is happening for Aboriginal people. Need separate Indigenous places for Indigenous people. **Aboriginal woman, victim/survivor***

*We have expertise and know what is best ... if we know how we want to move forward we should have the right to an Aboriginal service ... we are the first people of this nation. **Aboriginal woman, support worker***

United Nations human rights committees continue to express concern about law and justice outcomes for ATSI people, ATSI women in particular (CEDAW Committee 2006 and the UN Human Rights Committee 2009).²² It is important that the government takes all steps within its capacity to comply with and enforce the responsibilities that come with signing on to these conventions and declarations.

ATSI women require practical measures that strengthen their access to justice and give them a voice and ownership of law and justice issues. Access to necessary legal assistance is also needed to bring governments to account in relation to human rights obligations.

Human rights instruments to which Australia is a party or signatory include provisions that promote the human rights and legal equity of ATSI women and children; require states to take measures to protect women and children against violence and abuse; and stipulate respect for Indigenous cultural rights. The current government has shown greater commitment to its human rights responsibilities by signing on to both the *Declaration of the Rights of Indigenous Peoples* and the Optional Protocol to the *Convention on the Elimination of All Forms of Discrimination against*

²² Concluding comments of the Committee on the Elimination of Discrimination against Women, Thirty-fourth session CEDAW/C/AUL/CO/5 3 February 2006, para 31. CCPR/C/AUS/CO/5, Concluding Observations of the Human Rights Committee Australia Ninety-fifth session Geneva Advanced unedited version, 2 April 2009, para 17.

Women (the latter providing the option for complaints to be taken to the UN where domestic remedies are exhausted).

Signing on and acting on are, however, two very different things. There has long been a disconnect between Australia's stipulated international human rights responsibilities and what actually happens on the ground in this country. This is bound up with the difficulty of pursuing and enforcing international human rights obligations but also with the significant barriers to access to justice for ATSI people.

There has been progress in Australia in the form of some states and territories incorporating human rights principles into domestic law. Victoria has adopted a *Human Rights and Responsibilities Charter* which recognises the special importance of human rights for the ATSI people of Victoria and contains provisions that may be relied upon to advance law and justice outcomes for ATSI women and children. Furthermore, the Australian Capital Territory (ACT) has a *Human Rights Act*,²³ and a consultation process is currently underway to determine how Australia can best protect and promote human rights nationally.

It is critical that Aboriginal and Torres Strait Islander people inform the manner in which Indigenous rights are incorporated nationally. The government must also consider a constitutional framework. It seems appropriate that the National Indigenous Representative Body and the proposed National Indigenous Law and Justice Advisory Body should inform this discussion.

The Australian Government, in improving law and justice outcomes for ATSI women and children, is obliged to comply with the key human rights instruments to which it is a signatory, which are outlined below.

Human rights instruments relevant to law and justice for Aboriginal women and victims/survivors of family violence and sexual assault

a) Declaration on the Rights of Indigenous Peoples

In 2009 Australia endorsed the United Nations *Declaration on the Rights of Indigenous Peoples 2007*, which is a welcome development. Australia was originally one of four countries at the United Nations to vote against this Declaration in 2006.

The Declaration is not legally binding; however, it sets out standards and principles for the treatment of Indigenous peoples to which signatory governments commit:

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

²³ *Human Rights Act 2004* (ACT).

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.

These two articles taken together confirm the right of ATSI women to drive, have ownership of and administer initiatives to improve their law and justice outcomes and advance their human rights.

b) Convention on the Elimination of All Forms of Discrimination against Women

In another welcome development, Australia has recently ratified the Optional Protocol of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). This means that Australian women who have experienced discrimination can now take their complaints directly to the United Nations (provided that all domestic remedies have been exhausted). In theory at least, this improves enforcement mechanisms for Australian women.

The 2006 concluding comments of the CEDAW Committee for Australia expressed concern at the ongoing inequalities suffered by Indigenous women, whose enjoyment of human rights remains unsatisfactory in many areas, and it recommended that Australia 'adopt and implement targeted measures, including temporary special measures ... to improve indigenous women's enjoyment of their human rights in all sectors'.²⁴ It is noted that Australia is due to be reviewed by the CEDAW Committee again.

In relation to law and justice outcomes for Aboriginal women, the following are several articles of importance:

... Article 15

States Parties shall accord to women equality with men before the law.

... Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

The failure of the Commonwealth Government to do the following is inconsistent with the spirit of CEDAW:

- fund a comprehensive national ATSI Women's Legal Service program

²⁴ Concluding comments of the Committee on the Elimination of Discrimination Against Women, Thirty-fourth session CEDAW/C/AUL/CO/5 3 February 2006, para 31.

- fund FVPLS services for ATSI women in urban areas
- fund ATSI community-controlled women's organisations and FVPLSs for dedicated research, policy and law reform activity and
- support an ATSI women's law and justice advocacy body.

The government has effectively ignored the CEDAW Committee's urging to implement special measures to advance the human rights of ATSI women.

c) United Nations *Declaration on the Elimination of Violence against Women* 1993

The preamble to this declaration states the following:

... Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,

... Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence...

In relation to law and justice issues, Article 4 of the Declaration is key:

... Article 4

... States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should...

... (f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

... (g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

... (h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

... (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

... (l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

Article 4(l) can be seen as a clause that promotes special measures to support and advance the rights of ATSI women.

d) *International Covenant on Civil and Political Rights*

The United Nations Human Rights Committee's 2009 report on Australia's compliance with the *International Covenant on Civil and Political Rights* expresses concern at the high levels of violence against Aboriginal and Torres Strait Islander women and calls for strengthened efforts aimed at the elimination of such violence.²⁵ It further states that the NT Emergency Response is inconsistent with the provisions of the Covenant, was adopted without adequate Indigenous consultation and must be redesigned.²⁶ The Committee urges measures to improve access to the justice system for Indigenous people.²⁷

At paragraph 17 the report states:

... The Committee is particularly concerned at the higher number of reports of violence against indigenous women in proportion to reports of violence against non-indigenous women. (Articles 2, 3, 7 and 26)

... The Committee notes with concern the lack of adequate access to justice for marginalized and disadvantaged groups, including indigenous peoples and aliens. (Articles 2 and 14)

... The State party should take effective measures to ensure equality in access to justice, by providing adequate services to assist marginalized and disadvantaged people, including indigenous people and aliens. The State party should provide adequate funding for Aboriginal and Torres Strait Islander legal aid, including interpreter services.

Other human rights instruments including the *Convention on the Rights of the Child* and the International Covenant on Economic, Social and Cultural Rights also contain relevant and important provisions, including those covering the best interests of the child, which inform all actions relating to children, and entrenching rights to health, education and social security.

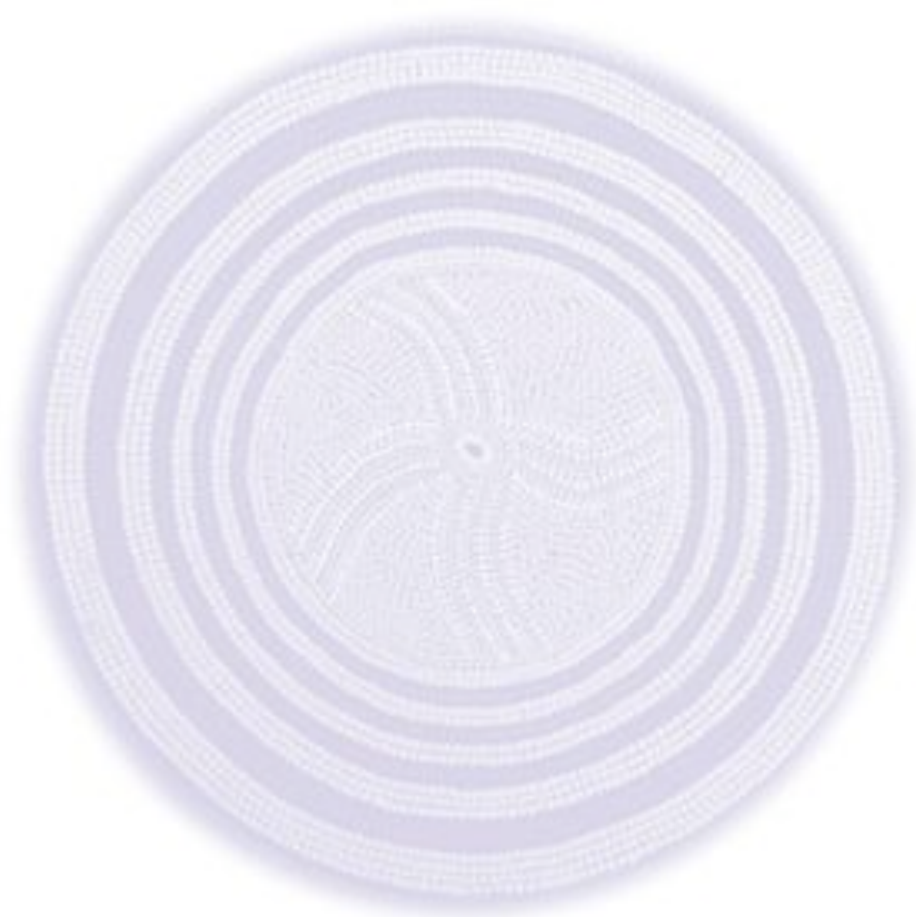
²⁵ CCPR/C/AUS/CO/5, Concluding Observations of the Human Rights Committee Australia Ninety-fifth session Geneva Advanced unedited version 2 April 2009, para 17.

²⁶ Ibid, para 14.

²⁷ Ibid, para 25.

Proposal 2

That the Commonwealth Government take, in consultation with ATSI people, all steps within its capacity to comply with and enforce international human rights instruments to which it is a signatory with respect to the human rights and access to justice of Aboriginals and Torres Strait Islanders, paying particular attention to the provisions relating to protecting and advancing the rights of ATSI women and children. In consultation with ATSI women, special measures must be adopted to address the significant ongoing disadvantage of Aboriginal women and children.



Section 2: Funding services to urban areas

Summary

*... This is a ridiculous policy. There is a huge population of Indigenous people in the Melbourne metro area—the issues of family violence and sexual assault are not only in remote areas. If you take away the service it would leave a huge gap in the work that is needed. Indigenous women will often not access mainstream services—this is not the preference. **Aboriginal victim/survivor***

*... A place-based approach is a practical way to implement initiatives designed to combat disadvantage in urban and regional areas to achieve real and sustainable outcomes. This approach recognises the diversity of issues and allows local initiatives to be delivered in a manner that is appropriate, and therefore likely to be effective for each community. **Council of Australian Governments (COAG) National Indigenous Reform Agreement, Closing the Gap: National Urban and Regional Service Delivery Strategy for Indigenous Australians, July 2009***

2.1 Introduction: The issues

The 31 FVPLS units funded by the Commonwealth AGD only service rural and remote Australia. The Commonwealth maintains that resources are being appropriately targeted to rural and remote locations identified as high need, based on the presumption that urban areas offer a broader range of mainstream services which ATSI victims/survivors of family violence and sexual assault (mainly women and children) can access.

This narrow policy approach focuses on relative geographic disadvantage rather than on the development of strategic approaches to Aboriginal and Torres Strait Islander disadvantage as a whole. It is informed by misconceptions about the nature of urban Aboriginal communities and a narrow view of the purpose and value of ATSI community-controlled organisations. This approach also fails to acknowledge the wealth of evidence indicating that Aboriginal women are not accessing mainstream services for family violence/sexual assault issues.

The Commonwealth's funding of small FVPLS units to service limited rural and remote locations is an entirely deficient approach to the highly complex and broadly impacting issue of family violence and sexual assault experienced by ATSI women. Multifaceted but integrated national, state and territory initiatives led by ATSI people are required.

Concentration on rural/remote disadvantage extends to other areas of Aboriginal and Torres Strait Islander funding policy; however, some key areas have been quarantined. For example, in the health and criminal law/incarceration areas, dedicated ATSI services are funded to all locations, and research and policy development is incorporated into funding along with peak advocacy bodies. The Commonwealth apparently accepts that the complexity and sensitivity of those issues mean that mainstream services alone are inadequate. In the view of FVPLS Victoria, family violence and sexual

assault in the ATSI community, with its disproportionate impact on ATSI women and children, should be treated similarly.

FVPLS Victoria recognises the importance of appropriate funding for services in rural and remote locations. However, a funding approach that addresses disadvantage and the issue of family violence and sexual assault as a whole will be more likely to improve overall outcomes. The current policy has discriminatory impact and goes against the spirit of human rights instruments to which Australia is a party.

Project consultations

Project consultations revealed extremely strong support for urban funding from both urban- and rural-based participants. See Annexure 1 for the full range of comments made.

Reasons and factors cited in support of urban FVPLS services included:

- family violence occurs in all communities, not only rural/remote locations
- people who experience family violence move around the state and need to be able to access FVPLS services in all locations
- women need to relocate to urban areas for safety, as safety in small rural towns can often be too difficult
- for women to disclose violence, services that they can trust must be available in both urban and rural areas
- there is a huge ATSI population in metropolitan Melbourne—lack of an FVPLS urban service creates a gap that potentially prevents people from accessing any service
- the size of the Melbourne metropolitan area
- culturally sensitive service delivery is critical in both urban and rural locations
- clients are not accessing mainstream services
- Indigenous-specific organisations know best how to work with, and advocate for, their clients—they bring cultural awareness to the system.

Evidence given to the Senate Access to Justice Inquiry in 2009 confirmed many of these points, as well as the disincentive for ATSI women to move to metropolitan areas to use extended family and support networks for safety, due to a lack of dedicated ATSI legal and associated supports in those locations.²⁸

2.2 Background to FVPLS Victoria and the FVPLS program

Section 1 of this paper has provided a detailed background to the development of FVPLS Victoria and the difficulties the organisation has confronted as a result of changing Commonwealth Government policy on geographic service provision. The unit was initially funded for a Melbourne base to service

²⁸ Senate Legal and Constitutional Affairs References Committee (2009) *Access to Justice Report*, Commonwealth of Australia, December 2009, 8.103. Rowena Puertollano cited.

Victoria. A significant urban caseload expanded between 2004 and 2007, in line with community expectations about the availability of the service to metropolitan Melbourne residents.

A directive by the Commonwealth in 2006 to limit services to the Barwon South West and Gippsland regions, with relocation of FVPLS Victoria to one of those regions, was viewed by the FVPLS Board as essentially a defunding of the existing service. In addition, from July 2007 the service was left with a significant unfunded urban legal caseload (150 urban legal and counselling clients). After a long and challenging battle with the Commonwealth, an arrangement was reached whereby FVPLS Victoria would retain its Melbourne head office which would support satellite offices in Warrnambool and Lakes Entrance (now Bairnsdale). In 2008, FVPLS Victoria also established a Mildura office, having been successful for the tender of that service.



Principal Solicitor Jenni Smith with Reiki therapist Maureen Keenan at a Sisters Day Out.

Alternative funding for the metropolitan and unfunded rural areas has been secured through Victoria Legal Aid, the state government, the Legal Services Board and philanthropic sources in recognition of the restricted Commonwealth program.

All Commonwealth funding of FVPLS Victoria—for example, for legal services, counselling, community education and the early intervention program (including *Sisters Day Out*)—is limited to designated rural/remote areas. Supplementary funding from state government or other sources is required to maintain all services to urban areas.

Philanthropic funding is currently ensuring critical program coordination from the Melbourne head office. **The extent of FVPLS Victoria's success in providing services has been in spite of Commonwealth Government policy. However, the challenge of sustaining the service in this environment is ongoing and diverts energies from the core business of the service. The Commonwealth must support service provision to metropolitan Melbourne and enter a formal collaborative arrangement with the Victorian Government that supports the FVPLS Victoria statewide service model. This collaborative model is likely to also benefit other states and territories.**

FVPLS Victoria 2008–2009 legal assistance statistics

FVPLS Victoria data for 2008–2009 indicate continuing significant demand in the Melbourne metropolitan area. The Victoria Legal Aid (VLA) family law secondee and the VLA-funded family violence solicitor had a combined total of 210 files opened at 30 June 2009.

a) Commonwealth AGD FVPLS Program Funding 2008–2009

Barwon South West and Gippsland Regions: Number of clients assisted each quarter 2008–2009

	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Female	96	109	105	108
Male	17	20	12	16

Mildura (service commenced July 2008)

	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Female	16	40	73	92
Male	4	2	5	14

b) Victoria Legal Aid and Department of Justice Victoria Funding (Metropolitan Melbourne and other Victoria) 2008–2009

	<i>Victoria Legal Aid family law secondee</i>	<i>Victoria Legal Aid–funded family violence solicitor</i>
Files carried over from 2007–2008	89	29
New files opened	94	122
Files open at 30 June 2009	102 (69 urban)	108 (103 urban)

The FVPLS Victoria structural model

The FVPLS Victoria service model is intended to provide the best possible service to the Victorian ATSI community given the available funds. The Melbourne head office is integral to this model. It provides essential program and administrative support to the rural offices and also enables FVPLS Victoria to significantly input as a key stakeholder to statewide and local systemic policy and law reform initiatives which lie at the heart of real on-the-ground change. It also services a large urban ATSI population.

Support provided by the Melbourne office (supplemented by alternative funding sources) to the rural offices includes:

- administration and finance support
- HR and staff support expertise and coordination (recruitment, debriefing, work cover etc.)
- program policy support (particularly where complex operational issues arise)
- easy and flexible referral where clients move to an urban area for safety reasons
- coordination of learning, expertise and development within the legal practice
- community Legal Education coordination with local adaptation

- a base for research, policy development and law reform activity (FVPLS Victoria's statewide focus ensures representation on the Aboriginal Justice Forum and its subcommittees, on the Indigenous Family Violence Partnership Forum and on other key ATSI and mainstream statewide forums)
- professional development coordination
- the *Sisters Day Out* program base which develops workshops with local communities across Victoria
- coordination and management of community development initiatives e.g. the cultural awareness and working better together workshops with mainstream service providers
- a central base for identification and development of alternative funding opportunities (FVPLS Victoria's ability to attract state government, philanthropic and non-government funding is enhanced by its structural model).

2.3 Population/family violence statistics

In determining where dedicated FVPLS or ATSI women's services are required, recognition of the diversity of Aboriginal and Torres Strait Islander populations across Australia is critical.

According to ABS 2006 census data, at 30 June 2006 around one third of all ATSI Australians lived in major Australian cities. A further 21% lived in inner regional Australia and 22% in outer regional Australia. The remainder lived in remote Australia (9%) or very remote Australia (15%).

A 2009 COAG report states:

... whereas there are large Indigenous populations living in remote Queensland, Western Australia and the Northern Territory, in most jurisdictions (other than the NT), urban and regional locations are the predominant locations in which Indigenous people live.

... The proportion of the Indigenous population resident in urban and regional areas rose markedly from 44 percent in 1971 to 74 percent in 2001.²⁹

Approximately 48% of Victoria's Aboriginal and Torres Strait Islander community lives in metropolitan Melbourne. Other states with relatively high proportions of ATSI people living in major cities include South Australia (48% of the total state Indigenous usual residence count), and New South Wales (42%). Indigenous regions with the largest populations were Sydney (41,800), Brisbane (41,400) and Coffs Harbour (40,000). The 2006 census indicated that:

... as in previous censuses high Indigenous population growth occurred in more urbanised locations.

In 2004, the inner Melbourne local government area of Darebin was one of the top five locations for Indigenous family violence in Victoria, based on police data, and three Melbourne metropolitan locations were in the top five, based on SAAP data.³⁰

²⁹ The national urban and regional service delivery strategy to close the gap in Indigenous disadvantage, July 2009, p. 3.

³⁰ Clare, Joseph, Morgan, Frank, Ferrante, Anna and Blagg, Harry (2004) *Expansion of Family Violence Prevention Legal Services Program Report*, Crime Research Centre, University of Western Australia, December.

A Koori Family Violence Court Support project currently in development by the Victorian Department of Justice has been proposed as a pilot program for the Melbourne region, in response to indications of high reporting of family violence incidents in the Aboriginal community. It is essential that FVPLS Victoria has the capacity to provide services for this pilot.

Data documenting family violence in which ATSI people are victims is unreliable and inadequate. High levels of non-reporting of family violence and sexual assault together with victims either not identifying as Aboriginal and/or Torres Strait Islander, or agencies, including police, failing to properly obtain that information, skews what data is currently available.

It is clear, however, from the population distribution that FVPLS services or services for Aboriginal and Torres Strait Islander women and children are required in urban areas and that funding approaches must respond to ATSI population diversity across Australia. The growth of Aboriginal and Torres Strait Islander populations in urban areas must also inform strategic planning and funding policy.

Academic Megan Davis has recently questioned the rationale on which funding of FVPLS services is based:

... The decision to only fund rural and remote services is supposedly evidence based. However, I do not know on what methodological basis this decision is formulated but I would ask the committee to investigate this further given the majority of Aboriginal people live in urban areas and given the evidence based reality of violence against Aboriginal women in urban areas.³¹

2.4 Commonwealth Aboriginal and Torres Strait Islander funding policy

The Commonwealth Grants Commission Report on Indigenous Funding 2001 significantly informed government policy with respect to focusing Indigenous funding on areas of relative disadvantage, and its proposals have been implemented in the development of the FVPLS program.

The Commonwealth Grants Commission Report on Indigenous Funding (2001)

The Terms of Reference required the Commission to:

... report on the relative needs of groups of Indigenous Australians in key functional areas of works and services for each geographic region, State and Territory;

The main findings are outlined in the following statements:

... 6. In all regions, and across all functional areas examined in our Inquiry, Indigenous people experience entrenched levels of disadvantage compared to non-Indigenous people.

... 7(v) The indicators we measured consistently point to the highest needs per

³¹ Senate Legal and Constitutional Affairs References Committee (2009) *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia, para 8.102, p. 161.

person (or per household) being in the remote ATSI regions.

The report also noted widespread criticism of its methodology:

... Views of Other Parties to the Inquiry

... 8. Most of the organisations and people who contributed to the Inquiry argued that addressing the large gap between Indigenous and non-Indigenous people is more important than redistributing existing funding by reference to differences in need between groups of Indigenous people. They thought we should estimate the total level of resources required to provide Indigenous people with services comparable to those received by non-Indigenous people.

... 9. It is, however, clear that the terms of reference did not ask us to estimate the total resources required to remove Indigenous disadvantage. They asked us to 'determine the needs of groups of Indigenous Australians relative to one another'. By asking for relative need, they sought a ranking of groups of Indigenous people from highest to lowest need, and an indication of the gaps between each group. This implied that achieving equity within the Indigenous community, interpreted broadly as the people in each region being treated equally and the more effective targeting of Commonwealth funds, should be guiding principles for the Inquiry. (Emphasis added)

The report concludes that addressing disadvantage and ensuring allocation of dedicated Commonwealth resources to areas of highest need (remote regions) will depend on improving accessibility to mainstream services. It states that Indigenous-specific programs intended to supplement mainstream services are actually being required to do much more due to a failure of mainstream services, and as a result are not focusing on the most disadvantaged.

The FVPLS program provides an example of implementation of the above policy. Commonwealth funding is being directed to remote areas, on the basis that other disadvantaged ATSI communities will access mainstream services (despite entrenched and ongoing failures). This narrow approach to the role of ATSI-specific services, and to identifying the means to best address extremely complex issues of family violence and sexual assault, is not achieving best outcomes for urban or remote communities—indeed it is perpetuating disadvantage. **At its heart, this issue is not about the failure of mainstream services to be culturally accessible. It is about the importance of ATSI people and ATSI services driving and having ownership of key services as the only way to achieve effective and sustained on-the-ground change.**

Council of Australian Governments (COAG) National Indigenous Reform Agreement: The National Urban and Regional Service Delivery Strategy to close the gap in Indigenous Disadvantage (July 2009)

This COAG strategy, focusing on urban and regional ATSI development, signals a shift from the narrow 'relative geographic disadvantage' focus of the Grants Commission Report. The strategy recognises the significant proportion of the ATSI population who live in urban and regional areas and the need to address ATSI diversity at local levels. It states:

... Indigenous disadvantage is not just because Indigenous Australians are more likely to live in remote towns or outstations. Even within the same suburb or large regional town, Indigenous Australians for a range of reasons fare relatively poorly in terms of employment, education, income and housing.

The report does acknowledge the need for a multi-faceted approach, yet does not specifically include law and justice strategy/legal services (see Sections 1–1.5). It is critical that law and justice services and policy are consistently incorporated into broader social inclusion policy.

Key statements in the strategy document include:

... A place-based approach is a practical way to implement initiatives designed to combat disadvantage in urban and regional areas to achieve real and sustainable outcomes. This approach recognises the diversity of issues and allows local initiatives to be delivered in a manner that is appropriate, and therefore likely to be effective for each community.

... Strengthening individual, family and community wellbeing and capacity is critical in urban and regional locations and provides an opportunity for developing responses to local needs which are driven by both the community and government.

Inclusion of law and justice services and policy within this strategy would result in a greater focus on the benefits of urban FVPLS services and on the best overall outcomes for ATSI women and children.

Crime Research Centre University of Western Australia, Expansion of Family Violence Prevention Legal Services Program Report (December 2004)

In considering expansion of the FVPLS program in 2004, the Commonwealth AGD contracted UWA to:

... identify and rank areas of greatest need for Family Violence Prevention Legal Services (FVPLS) units for Indigenous Australians. A particular requirement was to identify at least 13 potential new locations for FVPLS units. (p. 1)

The research was required to take into account:

- *Rates of family violence*
- *Needs of individuals in particular locations*
- *Identification of existing national infrastructure (relevant and related services)*
- *A particular need to provide service to rural and remote areas of Australia*
- *Other matters as identified relevant to the project outcomes. (p. 1, emphasis added)*

FVPLS Victoria is of the view that a more appropriate Commonwealth approach would have been to seek a strategic plan aimed at strengthening services for ATSI victims/survivors of family violence and sexual assault Australia wide, taking into account state and territory diversity and location of existing units. Within this framework, program structures and holistic issues could have been addressed. By restricting the focus to areas of geographic need, a significant opportunity was lost.

The final report noted:

... and, after consideration of a wide range of areas:

... within each state, local areas have been rated as either '1' or '2', based on their within-state priority and state level needs. Where an area has been rated '1', the researchers have judged that area as a strong national priority of need. Where an area has been rated '2', the case has been judged to be less convincing, although there is no doubt that all of the areas identified in the report would be able to lay a claim for FVPLS unit services. (p. 3, emphasis added)

Whilst identifying high-need locations in rural/remote Australia that require new FVPLS services, the report also clearly documented widespread disadvantage. However, this issue does not appear to have been of concern in the AGD approach.

In Victoria, Mildura was selected as the location for the second FVPLS unit. Until 2008, it was auspiced by a local ATSI organisation in Mildura. It is now auspiced and supported by FVPLS Victoria infrastructure which is proving successful. This is the type of strategic thinking which should have occurred in 2004.

The report makes note of the deficiency in reliable national data upon which to base its findings; however, data confirms that in 2004 there was high need for family violence services in metropolitan Melbourne (p. 26).

Limitations of the Commonwealth funding approach to the FVPLS program

The approach to the provision of services through rationed, targeted implementation, rather than a holistic approach that meets the needs of all Aboriginal and Torres Strait Islander people, weakens overall outcomes and leads to the exclusion of ATSI women in urban areas from the benefits of legal service provision.

The nature of this approach also fails to support optimum development of the FVPLS program. FVPLS Victoria recognises the significant diversity of Aboriginal and Torres Strait Islander communities across Australia and the need for service models that are driven by and best suited to local communities. It is worth considering, however, that urban FVPLS units could bring strength to the program overall whilst also respecting the independence and self-determination of rural/regional units.

Some limitations of the Commonwealth funding model include:

- FVPLS units located in rural/remote locations struggle to recruit and retain staff (particularly lawyers) and lack a support infrastructure.³² Extending the program to urban areas would provide the opportunity to strengthen the rural and remote units also insofar as the urban units could potentially take on key support functions.
- In Western Australia, the Aboriginal Legal Service based in Perth auspices FVPLS units. Given the major focus of ALSs on criminal law and advocacy for offenders, this is not an appropriate arrangement. Independent services dedicated to the safety and wellbeing of

³² Watkins, Leah and Chadwick, Rona (2008) The Starfish Report, *The Presence of Justice: Recruitment and retention issues in WA's Family Violence Prevention and Legal Service Units*, Melbourne: Starfish Consulting.

ATSI women which are free from actual and perceived conflict of interest are essential. With a stronger FVPLS program base, or a national legal service program for ATSI women, external auspice arrangements would not be necessary.

- Systemic law and policy change lies at the heart of improving on-the-ground law and justice outcomes for ATSI victims/survivors, and women and children specifically. For example, addressing the barriers faced by ATSI women to accessing the justice system, and making the system more culturally appropriate, requires initiative at local, state and national levels. By fragmenting and concentrating minimally funded services to 'high-need rural and remote locations' the opportunity for these initiatives to be driven by the ATSI organisations involved in the service delivery is negligible. The program requires research and policy development funding together with peak body advocacy and funding for urban services.
- FVPLS Victoria's urban presence has also facilitated a relationship of mutual understanding and respect with the Victorian Aboriginal Legal Service. With both organisations represented on key law and justice initiatives, representation (and advocacy) on behalf of the respective client bases and services is equitable and effective. A good example is representation of both organisations on the Aboriginal Justice Forum, the Victorian Indigenous Family Violence Partnership Forum and the Victorian Legal Assistance Forum.

2.5 Access of ATSI people to mainstream services

The Commonwealth AGD's refusal to fund FVPLS services in urban areas is also based on the assumption that urban areas are covered by mainstream services which ATSI people can access.

However, a plethora of government and non-government reports have found that ATSI people are not successfully accessing mainstream services. Many government reports have concluded that mainstream services must be made accessible rather than recommending funding of dedicated ATSI services. This analysis is flawed, and ongoing disadvantage of ATSI women requires an urgent change in policy direction. Consultations for this project indicate there are intractable, ongoing barriers for many ATSI women seeking to access mainstream services.

It is acknowledged that some ATSI people prefer not to access ATSI services and that mainstream services must therefore be culturally accessible. However, dedicated ATSI services must be available as an option, particularly given the complex and extremely sensitive areas of family violence and sexual assault and the ongoing disadvantage of ATSI women and children in terms of law and justice outcomes.

The Law Council of Australia has recently acknowledged that specialist Indigenous legal services are the preferred and most culturally appropriate means of providing legal assistance to Indigenous people.³³

a) **Self-determination**

The funding of ATSI community-controlled organisations to deliver services is also linked to self-determination—directly dealt with in the Royal Commission into Aboriginal Deaths in Custody.

Chapter 4 of RCIADIC discusses with the subject of self-determination in relation to service delivery as follows:

... 27.4.18 On the Aboriginal side, it is quite clear that on those matters which are closest to specialist Aboriginal interest, such as legal rights, primary health care, child care, maintenance of languages, Aboriginal culture, arts and crafts, land ownership and lease, and many others, Aboriginal people as a whole greatly prefer their own organisations and services. This is very understandable given the treatment and relationship which Aboriginal people have had from departments in the past. Separate organisations in these areas are very close to Aboriginal conceptions of equality and self-determination (in some cases close to self-management).

*... 27.4.19 However, in my opinion self-determination cannot be a reality if governments fail to recognise that **Aboriginal people have clearly voiced their preference for using Aboriginal organisations; not only as their negotiators, but as the agents for delivering services. The Aboriginal organisations, when given adequate funding and when placed in a position in which they are respected negotiators and service deliverers, have performed much more effectively than the majority of mainstream agencies have performed in relation to Aboriginal people. They are trusted, they know and respect Aboriginal society and culture and they enhance self-respect within the Aboriginal community as they fulfil their roles.*** (Emphasis added)

Article 23 of the *Declaration of the Rights of Indigenous Peoples* to which the Commonwealth Government has recently signed on is also relevant:

... Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

b) **Acknowledgement of the failure of mainstream services**

The project consultations within this study supported the view expressed in numerous other reports that many ATSI people do not successfully access mainstream services in key areas including legal assistance. The cultural and gender sensitivity surrounding certain issues, including sexual assault

³³ Senate Legal and Constitutional Affairs References Committee (2009) *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia, 8.4.

and family violence, clearly requires the option for ATSI people to access adequately resourced and effective ATSI-specific services for both legal assistance and community education. Participants in the project consultations talked about:

- the importance of cultural understanding—wanting to be sure that culture will be understood
- trust being vital in the area of family violence and sexual assault—confidential ATSI services will engender trust for disclosure
- ATSI organisations accessing Aboriginal women in culturally safe ways (in community education/community forums)
- ATSI people as first Australians having a right to access ATSI services
- ATSI people not being prepared to even walk in the door of mainstream services
- the more holistic and supportive approach of ATSI organisations
- ATSI organisations bringing knowledge to client support and providing cultural education within the system
- the complexity of cases and family dynamics, requiring the ability to understand kinship systems, which mainstream organisations lack.

Mainstream options must be available, particularly where issues of confidentiality prohibit use of an ATSI service. A few project participants had accessed mainstream legal services in the past and observed that as long as the mainstream service was good and culturally appropriate they would use it. Yet some also said that, upon transferring to FVPLS Victoria, they were much happier with the approach taken to their case. Other ATSI women, perhaps those at highest risk, claimed they would never access a mainstream service.

Annexure 2 presents all of the comments made about the access to mainstream services of ATSI victims/survivors of family violence and sexual assault.

Recognition of the failure of mainstream services has been detailed in the following key reports/studies:

Commonwealth Grants Commission, Report on Indigenous Funding 2001

... Despite the physical accessibility of services in urban areas, a range of factors clearly constrains access of Indigenous people to them. The result is that mainstream services are not meeting the needs of Indigenous people equitably. (p. 61)

Australian Law Reform Commission, Equality before the Law: Justice for Women Part 1, Report No 69 (1994)

... Indigenous women suffer particular disadvantages both within the mainstream legal system and in the administration of Aboriginal and Torres Strait Islander legal services. (5.24)

... The need for legal services which are responsive to the needs of Aboriginal and Torres Strait Islander women is urgent. In many instances the most appropriate solution would seem to be separate legal

services for indigenous women. Consultations indicate strong support for specific legal services for indigenous women as a strategy that could successfully increase their access to justice. (5.35)

House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, We can do it! The needs of Urban Dwelling Aboriginal and Torres Strait Islander Peoples (2001)

... The Committee acknowledges that there are many mainstream government services that Indigenous people find currently neither easy to use nor appropriate to their circumstances. (1.37)

*... The Committee makes recommendations in the following chapters to encourage effective Indigenous involvement in all aspects of service planning and delivery ... **Alternatively, it may require a recognition that certain services for Indigenous people may be best met through Indigenous specific organisations.** (2.49) (Emphasis added)*

This report also refers to institutionalised discrimination and a lack of cultural awareness and respect for gender differences, which creates isolation and barriers to ATSI people's access to mainstream services (p. 42). Primary health care is cited as an example of an area in which it is more effective to deliver services through ATSI than mainstream organisations (3.44).

The Senate Legal and Constitutional References Committee, Parliament of Australia, Legal Aid and Access to Justice (2004)

*... The Committee urges the Government to ... **acknowledge that there is a clear continuing need for self-determination and for targeted, culturally sensitive and specialised Indigenous legal aid services...***

... The Committee is also deeply concerned by the extremely high levels of violence within Indigenous communities which impact largely on women, and by evidence indicating that Indigenous women face significant impediments from within their own communities in attempting to exercise their rights and seek access to justice. (5.130) (Emphasis added)

The Senate Legal and Constitutional Affairs Reference Committee Access to Justice report December (2009)

... Submitters acknowledged the policy reasons for restricting FVPLS Units to RRR areas only, but essentially argued that there is a disconnect between policy, legal need and the appropriateness of legal services.

... Ms. Megan Davis submitted that the policy rationale fails to appreciate the hidden difficulties that Indigenous women face in accessing mainstream legal assistance services or culturally appropriate services.

... People talk about providing a culturally appropriate service and say they do this and that for Aboriginal women, but when we look at the actual practice and processes that are being engaged in we have to say as Aboriginal women that it has not been appropriate for us. The net effect has been

to, if you like, silence the Aboriginal women's voice and to undermine us and undermine our position ... (Women's Legal Services Australia and Women's Law Centre WA)³⁴

Aboriginal and Torres Strait Islander Women's Task Force on Violence, Queensland Government (Department of Aboriginal and Torres Strait Islander Policy and Development), The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report 2000

This report details the difficulties ATSI women have in accessing mainstream Legal Aid and Community Legal Services, and lists the following as reasons given by ATSI women as to why they are unable to use those services:

- *personal experiences with the justice system;*
- *culturally linked shame and fear and community attitudes towards violence;*
- *limited education (both cultural and mainstream);*
- *community distrust of the justice system;*
- *formality of the legal system and associated services;*
- *lack of knowledge of legal rights, processes and procedures;*
- *lack of Indigenous family support workers;*
- *lack of cultural awareness, sensitivity, and compassion among justice system personnel and legal service providers;*
- *few Indigenous personnel (in particular Indigenous women) within the justice system; and*
- *little confidence in the confidentiality, support and empathy offered in accessing programs and services. (pp. 235, 236)*

Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Social Justice Report 2006

With reference to the false assumptions that urban Indigenous people will access mainstream services because of their greater availability and that urban Indigenous people follow similar lifestyles to non-Indigenous people, the report emphasises that similar barriers to access also cause disadvantage in urban areas.

... Cultural practices and social arrangements are also important determinants of the lower uptake, relative to the wider population, of mainstream services by Indigenous peoples in urban areas.

... The persistence of Indigenous difference, and evolving Indigenous norms and customs, including in urban areas, results in mainstream services often being unsuitable or unworkable.

... As well, past bad experiences with mainstream service providers, and the confidence-sapping effects of a lifetime led in the shadow of racism, can all be real barriers to accessing services.

... Thus, as I pointed out in the Social Justice Report 2004, the emphasis in the new arrangements on remote discrete Indigenous communities poses difficulties for Indigenous peoples in urban areas.

³⁴ Senate Legal and Constitutional Affairs References Committee (2009) *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia, 8.127.

Urban Indigenous peoples may in effect be abandoned to mainstream services, without adequately addressing issues of access, flexibility and relevance.

Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Social Justice Report 2004

... One of the main findings of this research is confirmation that an approach that assumes that the needs of Indigenous women will be met through services designed for Indigenous men, or those for women generally, will not work. The lack of attention to the distinct needs of Indigenous women marginalises them and entrenches inequalities in service delivery. It can lead to intersectional discrimination.

... Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender ... The unique dimensions of violence against Aboriginal women are a result of complex factors and socio-historical and contemporary experiences and must be considered when attempting to provide solutions that are relevant to the specific situations and needs of Aboriginal women. Solutions to problems, no matter how well-intentioned, can create further problems for subordinated groups within a society, particularly when the 'solutions' are based in a systemic structure that has functioned abusively on the subordinated group. (p. 49)

Joint Committee of Public Accounts and Audit, Report 403: Access of Indigenous Australians to Law and Justice Services (June 2005)

This Report reinforces the importance of Aboriginal-owned community legal services and refers to the success of the ATSILS and FVPLS programs in improving access to justice (p. 81). It emphasises the need for Aboriginal women to feel comfortable and trusting in order to disclose family violence and sexual assault issues:

*... South Eastern Aboriginal Legal Service stated that Indigenous women:
tell their own kind a lot more than they will tell outsiders and it takes a long time to get their understanding or their faith so they can actually tell you things. (p. 24)*

The Committee concluded that FVPLSs were appropriate as major Indigenous service providers in family law and civil services and therefore that, like the ATSILSs, they should be located in all areas of significant need including urban areas.³⁵

Office of Evaluation and Audit, Aboriginal and Torres Strait Islander Commission, Evaluation of Legal and Preventative Services Program (2003)

This report found that:

- *Indigenous clients accounted for only 6% of all Legal Aid Commission cases in 2000–2001 (well below their representation in the legal system).*

³⁵ Recommendation 4, p. 38.

- *Family violence cases accounted for 0.5% of all cases represented by LACs and 1.7% represented by ATSILS.*
- *Females represented 29% of all Indigenous cases handled by LACs and comprised 24% of ATSILS clients (due to the large criminal caseloads and lower incidence of criminal charges against females). (p. 36)*

Evaluation of the Legal Aid for Indigenous Australians Program, Office of Evaluation and Audit (Indigenous Programs) (July 2008)

This report acknowledges the importance of Indigenous Legal Services for the following reasons:

- *continuing poor indicators, including as reported in Overcoming Indigenous Disadvantage in 2003, 2005 and 2007, in relation to law and justice issues such as imprisonment rates, child protection notifications and victims of crime rates and*
- ***difficulties Indigenous Australians face in accessing culturally appropriate and high-quality legal services through mainstream legal services and legal aid providers.*** (p. 2, emphasis added)

*... the unique needs of Indigenous Australians and the fact **that Indigenous organisations are best placed to understand these needs, and provide the necessary services in an appropriate and sensitive manner.*** (p. 7, emphasis added)

Victoria Legal Aid Annual Report (2007–2008 and 2008–2009)

These two VLA annual reports indicate that of all the people who received a grant of Legal Aid in Victoria 1.8% identified as Aboriginal or Torres Strait Islander in 2007–2008 and about 2% in 2008–2009. (This includes grants of assistance where the legal representative is FVPLS Victoria or the Victorian Aboriginal Legal Service.) In 2008–2009 about 68% of grant recipients were male. In 2007–2008 over 60% of all grants were for criminal law matters and 80% of those grants were to males.

The percentage of grants to Aboriginals or Torres Strait Islanders does not appear to equate with the overrepresentation of ATSI people in the justice system or as victims of family violence. Given the gender breakdown for grants overall, it is likely that the percentage of ATSI women assisted is low.

The placement of a VLA family law secondee at FVPLS Victoria has been extremely successful. The preparedness of VLA to support such an approach is an acknowledgement of the importance VLA places upon the role of ATSI services, and is welcomed.

Community Legal Centres

Available data (excluding VALS and FVPLS Victoria) indicates limited access by ATSI people to Victorian Community Legal Centres.

Thirty-five out of 51 Victorian CLCs record their work on the Community Legal Service Information System (CLSIS). Issues such as consistency in recording data, funding levels and changes to the

number of CLCs recording on CLSIS need to be taken into account when interpreting CLSIS data. Nevertheless, CLSIS data provides a reasonably good and broad measure of trends in CLC work.

For the period 1 July 2007 to 30 June 2009 data indicates that 1% of CLC clients were identified as ATSI. The reliability of the data is unclear because we do not know how frequently CLC clients are asked whether they identify as ATSI. However, regardless this figure reflects limited access. A gender breakdown of ATSI clients accessing CLCs as victims of family violence or sexual assault is not available; however, the more general figures confirm FVPLS Victoria's observation that ATSI women are reluctant to access mainstream services.

In addition, Community Legal Centres, due to limited resourcing and the broad nature of their purpose, generally do not take on high-volume, complex casework. For example, contested family law or child protection work would likely be referred elsewhere. In cases where ATSI women present in situations of family violence or sexual assault, there are usually associated child protection, family law proceedings and/or victims of crime issues in addition to the requirement for an intervention order. It is in the best interests of ATSI women that a seamless service be offered by a single organisation to avoid the creation of any additional barriers through referral processes or fragmenting of the legal issues. The Joint Committee of Public Accounts and Audit Report 403 Access of Indigenous Australians to law and Justice Services 2005 states:

... The general effectiveness of referring Indigenous people to non-Indigenous service providers was questioned by ALRM: The chances of a person dropping out in a referral process are enormous. It is a high-risk approach to enforcing or exploring legal rights. The ability to provide comprehensive casework when needed as one smooth operation is essential to the smooth delivery of services. (p. 24)

The option of accessing mainstream services must be available, as some ATSI clients prefer not to access ATSI services. Most importantly, however, ATSI women must have the choice to access a culturally safe ATSI organisation to seek assistance for these complex and sensitive issues.

Culturally accessible community legal education is also most successfully driven by ATSI organisations.

... cases are complex ... family systems are complex ... white people don't understand kinship systems ... we [the community] have expertise and know what is best ... choice is very important in accessing services. Aboriginal support worker

2.6 The role of Aboriginal Legal Services in urban areas

Whilst Aboriginal Legal Services are located in urban areas, this does not abrogate the need for FVPLS services or dedicated legal services for ATSI women and children in urban areas.

The experience of FVPLS Victoria over its five years of legal practice is that women often do not want to access VALS for legal assistance in situations of family violence or sexual assault. This is generally because the perpetrator has been assisted by VALS at some stage, that the perpetrator or his family has strong connections with the service, or because women perceive VALS as not appropriate to

assist them as victims/survivors. For reasons of safety, confidentiality and gender sensitivity, women often prefer to access a completely separate but still culturally appropriate service, where they know they will receive support from women staff to deal with the sensitive issues of family violence and sexual assault.

Those participants in the project consultations who had been working in or involved in the area of family violence prior to FVPLS Victoria commencing operation reflected that some women, if they received a lot of support, might access private solicitors for assistance, but believed that many women were not accessing legal assistance in relation to family violence or sexual assault at all.

... advocate strongly for FVPLS in urban areas. No other service like it that can support women. VALS not always appropriate for victims ... may be supporting the Indigenous perpetrator—not as expert in family violence issues either. Aboriginal regional domestic violence coordinator

... Rare for VALS to do work with victims/survivors regionally. Field officers would not be approached with this issue (family violence) because they are blokes. Rapport with males not geared toward working with women and children as victims. Perception that VALS don't do black on black cases.
Lawyer

The Senate Legal and Constitutional References Committee, Legal Aid and Access to Justice (2004)

In relation to the need for a national study to determine the legal needs of ATSI women and who is best placed to conduct such a study, Aboriginal and Torres Strait Islander Services (ATSIS) within Commonwealth AGD states:

... we do not have a comprehensive national database of unmet need, particularly as it relates to female Indigenous people. It is an important gap. We are between a rock and a hard place with our legal services. As you pointed out, almost 90 per cent of its business is focusing on criminal matters. (p. 93)

Australian Human Rights Commission, Social Justice Report (2003)

The difficulties ATSI women face when attempting to access legal assistance are compounded when services are conflicted or not accessible.

... The effect of delayed access to justice for Indigenous women is even more severe given the cultural inhibitions in their own communities such as beliefs in the sanctity of kinship and fear of community retribution. If they overcome this threat and seek representation, only to be met with refusal by the underresourced ATSILS, the lesson can be devastating. These considerations have often led to reluctance in seeking legal advice by many women. (p. 23)

In a 2008 article in the *Criminal Law Journal* Professor Chris Cuneen and Melanie Schwartz confirm that the difficulties for ATSI women in accessing assistance from ALSs as victims are ongoing:

... Indigenous women and children are most likely to be disadvantaged in the conflict dynamic as victims of domestic violence or other crimes, where the perpetrator is represented by an ATSILS,

*although Family Violence Prevention and Legal Services will pick up some matters **in the few cases where they are located.***

... Inaccessibility of family and civil law services compromises the ability of Indigenous people to realise their full legal entitlements. It also introduces a danger that civil or family law issues can escalate to criminal acts, resulting in charges and a perpetuation of the cycle of overrepresentation.³⁶ (Emphasis added)

2.7 Quarantining some complex services from broader Aboriginal and Torres Strait Islander funding policy

Not all ATSI services are subjected to restricted funding policy based on relative geographic disadvantage. There is recognition that the complexity and sensitivity of some key service areas, such as primary health services, require a broader funding policy, as discussed below.

a) ALS provision to urban areas

Aboriginal Legal Services are funded for all communities including urban areas. The concentration of ATSI funding has not been limited to areas of relative disadvantage. In relation to the ALSs, the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice and prison systems, together with the recommendations of the RCIADIC, has led to the recognition that these key legal services cannot be adequately provided by mainstream services in urban areas.

b) Primary Indigenous health services funded for urban areas

Provision of primary health services is another area for which it is accepted that ATSI services are required in urban areas.

The House of Representative Standing Committee on Aboriginal and Torres Strait Islander Affairs in 2001 reported:

... Mainstream primary health care services (provided by general practitioners funded under the Medical Benefits Scheme) are structured to provide for a patient caseload that is characteristically high volume and low complexity. In contrast, there is an increasing proportion of Indigenous people who require more complex management.

... Primary health care delivery is an example of an instance where it is currently more effective to deliver tailored services to Indigenous people through Indigenous organisations rather than through mainstream service providers. (3.44)

It is notable that the following principles set out in the National Strategic Framework for Aboriginal and Torres Strait Islander Health, and in specific health strategies, could equally apply to the area of

³⁶ Cunneen, Chris and Schwartz, Melanie, 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access', *Criminal Law Journal* Vol. 32, 2008, p. 50.

family violence and sexual assault in ATSI communities. The first four of the nine principles are as follows:

- *Cultural respect: ensuring that the cultural diversity, rights, views, values and expectations of Aboriginal and Torres Strait Islander peoples are respected in the delivery of culturally appropriate health services.*
- *A holistic approach: recognising that the improvement of Aboriginal and Torres Strait Islander health status must include attention to physical, spiritual, cultural, emotional and social well-being, community capacity and governance.*
- *Health sector responsibility: improving the health of Aboriginal and Torres Strait Islander individuals and communities is a core responsibility and a high priority for the whole of the health sector. Making all services responsive to the needs of Aboriginal and Torres Strait Islander peoples will provide greater choice in the services they are able to use.*
- *Community control of primary health care services: supporting the Aboriginal community controlled health sector in recognition of its demonstrated effectiveness in providing appropriate and accessible health services to a range of Aboriginal communities and its role as a major provider within the comprehensive primary health care context. Supporting community decision-making, participation and control as a fundamental component of the health system that ensures health services for Aboriginal and Torres Strait Islander peoples are provided in a holistic and culturally sensitive way.³⁷*

c) The complexity of family violence and sexual assault requires a similar approach

Given the highly complex, sensitive and broadly impacting nature of family violence and sexual assault, together with statistical evidence of the continuing disadvantage of ATSI women and children, it is clear that ATSI family violence and sexual assault services, including those specific to women and children, must also be similarly ‘quarantined’ from this restrictive ‘relative disadvantage’ funding approach. These services must be funded as primary rather than supplementary services across urban, rural and remote communities.

The following factors demonstrate why family violence and sexual assault are complex issues that require dedicated ATSI service options:

- ATSI women and children are vastly overrepresented as victims/survivors of family violence and sexual assault.
- There remains a gap in dedicated strategic policy for ATSI women’s law and justice.
- Whilst all ATSI people have been subjected to discriminatory and racist government policies and abuse, the experiences of ATSI women are unique and have ongoing impact. ATSI women have been subjected to domestic slave conditions, rape and sexual assault,

³⁷ Human Rights and Equal Opportunity Commission, *Social Justice Report 2005*, Sydney, JS McMillan Printing Group, p. 34.

removal of their children, and institutionalisation. They are also disproportionately victims of family violence and domestic murder.

- Family violence is a significant factor in child protection intervention. ATSI children are 12 times more likely to be on care and protection orders in Victoria than are non-ATSI children.
- In the experience of FVPLS Victoria, and as documented by other studies, many women who experience family violence as adults are survivors of childhood sexual assault and experience intergenerational trauma.
- ATSI women comprise the fastest-growing prison population in the country and the majority of ATSI women in prison have experienced family violence or sexual assault.
- Underreporting of sexual assault by ATSI women is considered to be significant.³⁸
- ATSI women and children who present for legal assistance in relation to family violence almost always have multiple and complex legal issues to deal with, including intervention orders; child protection issues; child disputes often requiring family law intervention; and victims compensation rights for both current and past crimes.
- ATSI women and children who are victims of family violence and sexual assault also have complex emotional and psychological issues which can only be dealt with successfully in a culturally safe and appropriate environment.
- Health outcomes for ATSI women are closely connected to family violence.
- ATSI women continue to feel distrust and alienation when dealing with the legal system and prefer to work with and be supported by women.

d) Policy development and best practice development in Aboriginal community-controlled organisations with strong structural (including urban) bases

Those Aboriginal and Torres Strait Islander services that have received funding for urban areas also have significant research, policy development, and national, state and territory advocacy functions incorporated into their funding. Presumably this is because they are identified as complex, high-priority areas of Indigenous disadvantage. Again, given the appalling statistics on family violence and its serious, broad-ranging impacts, and the ongoing and intractable disadvantage of ATSI women and children in law and justice outcomes, this area must receive equal priority within Commonwealth Government policy directives.

The Aboriginal Legal Services based in urban areas receive research and policy funding from the Commonwealth AGD. They also receive funding for national forums to meet several times a year,

³⁸ Lievore, Dr Denise, *Non-reporting and Hidden Recording of Sexual Assault: An international Literature Review*, Australian Institute of Criminology for the Commonwealth Office of the Status of Women, p. 62.

although it is noted that their peak body NAILSS is no longer funded. (FVPLS Victoria supports increased funding for policy/law reform and peak body support for ATSI legal services generally.) The Aboriginal Health Services, also funded to urban areas, have both state/territory and national peak bodies. In Victoria, VACCHO (Victorian Aboriginal Community Controlled Health Organisation) is the peak body for Aboriginal community-controlled health organisations. Every state has a similar set-up and together these form NACCHO (the National Community Controlled Health Organisation).

The website for NACCHO states the following:

... The solution to address the ill health of Aboriginal people can only be achieved by local Aboriginal people controlling the process of health care delivery. Local Aboriginal community control in health is essential to the definition of Aboriginal holistic health and allows Aboriginal communities to determine their own affairs, protocols and procedures.³⁹

... NACCHO's work is focussed on:

- *Promoting, developing and expanding the provision of health and well being services through local ACCHSs/AMSS*
- *Liaison with organisations and Governments within both the Aboriginal and non-Aboriginal community on health and wellbeing policy and planning issues*
- *Representation and advocacy relating to health service delivery, health information, research, public health, health financing, health programs, etc.*
- *Fostering cooperative partnerships and working relationships with agencies that respect Aboriginal community control and holistic concepts of health and wellbeing.*

This holistic approach, which ensures ATSI community control of program development and strong research and advocacy activity, must be applied either to the FVPLS program or to a program of services delivered to ATSI women. A model that incorporates urban funding will ensure a structure that supports this approach.

The Social Justice Report 2005 refers to a review of Aboriginal and Torres Strait Islander primary health care which describes certain key functions that cannot be delivered by mainstream services as follows:

... As the recent review of Aboriginal and Torres Strait Islander primary health care also noted:

... the role of Indigenous-specific services is not simply one of substitution for mainstream services. They also provide a base for training of both Indigenous and non-Indigenous health professionals and for research and development of new approaches to Indigenous health (either alone or in partnership with mainstream agencies and researchers). This aspect is particularly important in urban services, because of their proximity to medical schools etc. and to the headquarters of mainstream specialist providers (e.g. the leadership of child and adolescent mental health services tends to be based in capital cities)...

... They are also the appropriate base for community development approaches to improving health. (p. 75)

³⁹ <http://www.naccho.org.au/>

Whilst these functions are obviously unique to health services the same analysis can be applied to legal services that deal with complex family violence and associated legal work, as requiring the following:

- targeted training of staff in working with ATSI victims/survivors and ATSI women and children
- developing unique and culturally appropriate approaches to service delivery and community legal education in sensitive family violence and sexual assault areas (e.g. the *Sisters Day Out* program)
- engaging in community-based research for legal policy development and law reform
- linking with and having meaningful representation on statewide Aboriginal and mainstream expert forums and committees and
- establishing community development approaches to family violence prevention and education of and linking with relevant mainstream service providers.

One very good example of the broader benefits of ATSI-specific services is the *Sisters Day Out* (SDO) program developed by FVPLS Victoria and delivered to Aboriginal communities across Victoria. If FVPLS Victoria were still limited to fragmented service delivery in Bairnsdale, Lakes Entrance and Mildura, without the strong structural and administrative urban base and urban service delivery, it is highly unlikely that the *Sisters Day Out* program would have developed. The SDO program has a strong cultural foundation, and could not be developed or delivered by a mainstream service; and it has been accessed by Aboriginal women who would not have otherwise contacted a legal service.

... I think it is wonderful. I met other organisations there ... I was talking about it for weeks on end. Women there had a whole new look on their faces that I had not seen for many years. Harshes of women who had gone to hell and back had a happy look on their face.

Aboriginal victim/survivor

... The SDOs access women who would not normally seek legal assistance.

Aboriginal coordinator of family violence service

2.8 Perceptions of Aboriginal and Torres Strait Islander people in urban areas

... Need to acknowledge diversity of Indigenous communities including urban communities. Victorian Koori community is often overlooked but is a very strong community.

... Example of meeting a federal politician who walked past a number of Aboriginal women for a photo opportunity with the darkest [skinned] Aboriginal woman there.

Aboriginal domestic violence coordinator

The Commonwealth Government's refusal to fund dedicated ATSI services in urban areas is also based on misconceptions about the nature of urban ATSI communities.

Academic Larissa Behrendt, in her 2006 article 'The Urban Aboriginal Landscape', discusses the difficulties confronted by urban Aboriginal communities:

... There are some tenacious stereotypes about Aboriginal people in urban areas like Sydney. I often get asked, "How often do you visit Aboriginal communities?" And I reply, "Everyday, when I go home." The question reveals the popular misconceptions that "real" Aboriginal communities only exist in rural and remote areas. And it is a reminder of how invisible our communities are to the people who live and work side-by-side with us.

... The focus on—and romanticism about—the "cultural", especially in the stagnant "traditional" stereotypes of Aboriginal people in urban areas, often occurs at the expense of the "social" and the "economic" needs of those communities.

... Poorer levels of health and distinct health issues, lower life expectancy and higher mortality rates, lower levels of education, higher levels of unemployment and large and increasing levels of over-representation of Aboriginal people in the criminal justice system are all dimensions of the unique needs and circumstances of Aboriginal people in the Sydney area (Australian Productivity Commission, 2006). And it is not surprising that specific services, such as the Aboriginal Medical Service and the Aboriginal Legal Service, were first formed in the Redfern area to address the unique needs of Aboriginal people living in the area and as a response to the racism that many felt they were experiencing when they did try and access mainstream services.

... Under the current national arrangements for Indigenous funding, there is an increasing focus on Aboriginal communities in rural and remote areas. This has already meant a redirection of funds away from urban centres like Sydney to those places that are now seen as the government priority. This focus on remote communities has been driven by the findings of the Commonwealth Grants Commission's 2001 Report on Indigenous Funding. The report identified areas of relative need and found that those areas were predominantly in remote areas. No-one would quibble about the need of remote communities, especially those who have seen the disadvantage and social problems up close, but there is just as much need in other Aboriginal communities—and the statistics back this up—that it seems an abandonment of government responsibility to not provide adequate resources to address the needs in one type of community because the government has a preference for another.

... When looking at the poverty in areas like Mount Druitt and the Redfern Block and in looking at the range of socio-economic issues that face those communities, a policy that states that these are issues just as easily tackled by mainstreaming—as opposed to targeted—policy and program delivery is not convincing.

... While it is perhaps easier politically to gather support from the broader Australian community for dealing with problems in Aboriginal communities where the population looks more like "real" Aborigines—the ones who look and live the way that many Australians think "authentic" Aboriginal people should look and live, it is irresponsible—and in the end, bad policy—to ignore the other 76% of the Aboriginal community.

... The policy of diverting resources from urban/rural to rural/remote communities is also underpinned by the ideology of mainstreaming and the belief that communities in urban areas in particular should be serviced by mainstream organisations. The danger with the move is that policies of "mainstreaming" have failed in the past to shift the poorer health, lower levels of education, higher levels of unemployment and poorer standard of housing that Aboriginal communities have experienced and have not offered ways to protect Aboriginal cultural heritage, interest in land,

*language. To date, they have not offered a way in which Aboriginal people can play the central role in making decisions that will impact on their families and communities.*⁴⁰

2.9 Discrimination

*... should be no different [where you live] ... still Aboriginal women needing support. **Aboriginal victim/survivor***

Aboriginal and Torres Strait Islander women are being discriminated against as a result of Commonwealth Government funding policy for the FVPLS program.

The Commonwealth Government is not upholding Article 15 of the *Convention on the Elimination of All Forms of Discrimination against Women* in relation to equality before the law.

Given the CEDAW Committee's 2006 comments in relation to the inequalities suffered by Indigenous women and its recommendation of special measures to improve their human rights, refusal by the Commonwealth to extend funding of FVPLS services or legal services for ATSI women to urban areas is entirely inconsistent with the Committee's comments.

The Australian Government has signed on to the CEDAW optional protocol and the *Declaration on the Rights of Indigenous Peoples*, which is commendable. However, it is failing to implement measures to address disproportionate levels of violence against ATSI women and to ensure legal equity, in line with the spirit of the above-mentioned human rights instruments.

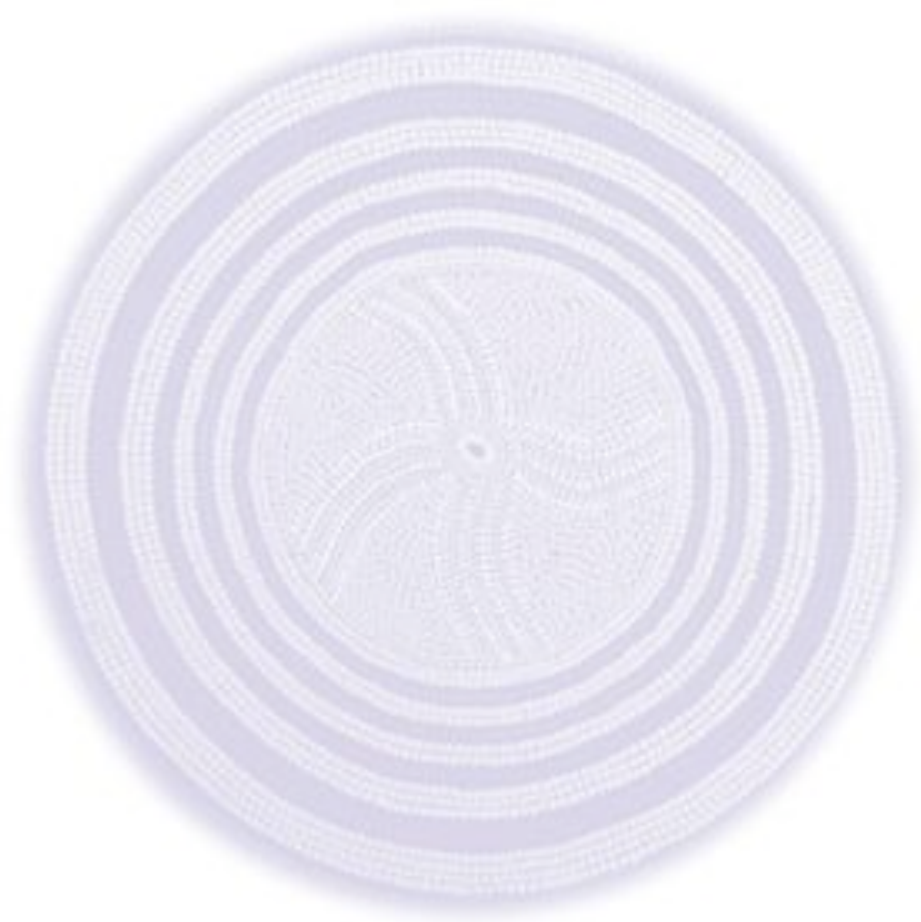
Proposal 3

(Also see Proposal 4 urging consideration of a broader national ATSI Women's Legal Services program)

That, in conjunction with and informed by ATSI women, the Commonwealth Government:

- acknowledge the FVPLS program as a primary rather than supplementary provider of legal services to ATSI victims/survivors of family violence and sexual assault and ATSI women and children
- fund the FVPLS program or an alternative national ATSI Women's Legal Service program to provide comprehensive legal and associated services that address disadvantage in *urban*, regional, rural and remote communities.

⁴⁰ Behrendt, L.Y. (2006) 'The Urban Aboriginal Landscape' in Anderson, K. Dobson, R. Allon, F. Neilson, B. (eds), *After Sprawl: Post-Suburban Sydney*. E-Proceedings of Post-Suburban Sydney: The city in Transformation Conference.



Section 3: A national Aboriginal and Torres Strait Islander women's legal program?

Summary

*Access to legal services may mean the difference between being properly represented or not—lack of legal services adds to the problems Aboriginal communities have to deal with—I should know as an Indigenous woman that I can get access to culturally appropriate legal services when I need and am ready to receive it. **Aboriginal victim/survivor***

An ATSI Women's Legal Service which is jointly funded through Commonwealth and state government needs urgent consideration in Victoria.

FVPLS Victoria CEO Antoinette Braybrook

To improve legal services for ATSI women and children the FVPLS national program—with its restricted geographic funding, narrow legal casework guidelines, weak structural base and lack of policy capacity—needs to be dramatically strengthened. Alternatively, a new program for ATSI women must be implemented, which better integrates law and justice services and addresses the systemic and disproportionate disadvantage currently experienced by ATSI women. FVPLS Victoria's position is that this latter option should be considered for Victoria. It is only through limited-term philanthropic, non-government and state government funding that FVPLS Victoria has been able to establish more comprehensive services for ATSI women and children in Victoria. The Commonwealth, whilst appearing to acknowledge the success of FVPLS Victoria, continues with its narrow policy approach to the FVPLS program.

As detailed earlier, numerous parliamentary and non-government reports have recommended the strengthening of legal services for ATSI women nationally, and suggested strategies to achieve this. **Most recently, in its December 2009 *Access to Justice* report, the Senate Legal and Constitutional Affairs References Committee referred to evidence of continuing chronic disadvantage in access to justice for Indigenous women (and children) and noted that a dedicated national Indigenous Women's Legal Service program might better provide for that need.**⁴¹ The report recommends a comprehensive national survey of unmet need for legal assistance services in ATSI communities that includes a particular focus on Indigenous women.⁴²

The Social Justice Commissioner has consistently emphasised the importance of dedicated services for ATSI women to appropriately address intersecting gender and cultural discrimination and disadvantage. Fifteen years ago the Australian Law Reform Commission also highlighted this in a comprehensive report on women's access to justice.

⁴¹ Senate Legal and Constitutional Affairs References Committee, *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia, 8.87 and 8.130.

⁴² *Ibid*, Recommendation 1 2.35.

Recent Productivity Commission data indicates continuing appalling law and justice outcomes for ATSI women and children, and United Nations human rights committees have called on the Australian Government to take urgent action in collaboration with ATSI people to address the situation.

The Victorian Family Violence database 1999–2008 indicates that in 2007–2008 over 90% of Indigenous victims of family violence were female.⁴³

Despite all of this, there has never been a broad-based national Aboriginal and Torres Strait Islander women's legal program in Australia. The national FVPLS program, whilst largely assisting women and children, is restricted in terms of service location and in the nature of its work. **The Commonwealth AGD acknowledges the need for strengthened access to family and civil law services for ATSI people—broadening the FVPLS program or introducing a national ATSI women's legal program could significantly address this gap.**⁴⁴

A 2005 Joint Parliamentary Committee, whilst acknowledging the need for strengthened legal services for ATSI women and expressing concern over the 'myriad' of programs and services, did not support the establishment of Indigenous women's legal services. It concluded that separate ATSI legal services for men and women would be the result, and that this would not be a progressive outcome. With all respect to the Committee, this analysis and conclusion:

- disregards or misunderstands fundamental issues relating to the entrenched disadvantage of ATSI women and children, including in relation to access to justice
- fails to account for the complexity and breadth of civil, family and other legal disputes which often require multiple legal representatives and
- perpetuates inequity in that this analysis has not been applied to mainstream women's legal services where provision of choice for women has been a priority.

To reiterate, the 'special measures' urged by the CEDAW Committee to improve the human rights of ATSI women must be at the forefront of any policy deliberations.⁴⁵

3.1 Current Commonwealth funding for Aboriginal and Torres Strait Islander Women's Legal Services

FVPLS units are restricted to the provision of legal assistance to family violence/sexual assault victims in rural and remote locations and receive no policy/law reform funding. The majority of clients are women and children. Indigenous Women's Project funding comprises relatively small grants that are administered through the CLC program and provided to mainstream women's legal services. Victoria has had no access to IWP funding since 2001. ALSs receive funding to assist women

⁴³ Department of Justice Victoria, *Measuring Family Violence in Victoria: Victorian Family Violence Database Nine Year trend analysis 1998–2008*, December, Melbourne.

⁴⁴ Australian Government Attorney-General's Department (2009) *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, Report by the Access to Justice Taskforce, September 2009. Recommendation 11.4: 'The Commonwealth should consider options for improving access to culturally appropriate legal assistance services for family and civil law matters for Indigenous Australians'.

⁴⁵ CEDAW Committee.

and children in urban, rural and remote locations; however, due to the criminal focus of their work and the significant proportion of their clients being men, their assistance to women is limited. Resourcing to ALSs for civil legal assistance is limited, yet they do receive policy/law reform funding. Several states fund an ATSI Women's Legal Service, but Victoria is not amongst them.

3.2 Australian Law Reform Commission

The Australian Law Reform Commission, in its report *Equality Before the Law: Justice for Women Part 1 1994*, found Aboriginal women to be the most disadvantaged in the legal system and made a number of recommendations which are also referred to in Section 1. The introduction of Aboriginal Women's Legal Services to provide culturally responsive services to Aboriginal women was recommendation 5.2. The report states:

... Indigenous women's need for access to legal advice and representation seems to be greatest in the areas of civil law, family law, family violence, sexual assault and victims' compensation. Responses need to be specific to women and to the communities. (5.31)

... It is essential that measures to increase indigenous women's access to justice begin by giving status to women. This requires that women determine the nature of the service and control the delivery of the service. (5.33)

The report also made the following comments about the importance of specialist legal services for women:

*... **Providing appropriate services.** The need for legal services which are responsive to the needs of Aboriginal and Torres Strait Islander women is urgent. In many instances the most appropriate solution would seem to be separate legal services for indigenous women. Consultations indicate strong support for specific legal services for indigenous women as a strategy that could successfully increase their access to justice. (5.35)*

*... **The role of services for indigenous women***

*... **Culturally appropriate information, referral and representation.** An Aboriginal and Islander women's legal service could provide culturally appropriate information and referral on any legal matter. Many indigenous women's alienation from existing services is such that they rarely approach a lawyer for initial advice and are even less likely to pursue a legal remedy in relation to a legitimate legal claim. (5.36)*

... A service where Aboriginal and Torres Strait Islander women could freely discuss women's business is likely to increase their use of and participation in the legal system. (5.36)

*... **Indigenous women's legal services as educators.** Presenting accurate information to courts serves an educative function. In addition, like other community legal services, Aboriginal and Islander women's legal services could engage in community education and law reform as well as providing legal advice. The ignorance of indigenous women's cultures which currently creates a barrier between indigenous women and the legal system can be redressed through education. The people best able to*

increase knowledge about the realities of Aboriginal and Torres Strait Islander women's lives are Aboriginal and Torres Strait Islander women. (5.37)

3.3 The Senate Legal and Constitutional Affairs *Access to Justice* report December 2009

The key points made by the Committee with respect to access to justice for ATSI women and children are:

- **That the needs of Indigenous women are not being met because they are not involved in the strategic development of Indigenous Women's Legal Services.** (xix)
- Targeted Indigenous women's law and justice strategies must be developed.
- That a national survey of unmet legal need for ATSI communities be undertaken with particular reference to Indigenous women (Recommendation 1).
- That it is not clear whether, and if so how, Recommendations 29–30 made in the senate 2004 *Access to Justice* report have been actioned, but that Recommendation 29 is re-endorsed. (Recommendation 29 called for a comprehensive national study to determine the legal needs of Indigenous women. Recommendation 30 urged Commonwealth and state governments to address legal and associated needs through improved services and programs to ensure fair and equitable experiences within the justice system. It urged consultation to ensure that impetus for change is driven by Indigenous women themselves.)
- That there is currently no national Indigenous Women's Legal Service program although some states and territories have an IWP program administered by Women's Legal Services.
- That a dedicated Indigenous Women's Legal Service might better provide for Indigenous women's legal needs, as well as relieve pressures on other legal assistance service providers and the Australian justice system. (8.130)
- That a submission from Women's Legal Services Australia acknowledged that community connection and cultural appropriateness is best achieved by having a service that is developed and managed by Aboriginal women (8.127)—a point also supported by the Law Council of Australia. (8.4)
- The Committee hopes that Indigenous women are properly represented on the proposed National Indigenous Law and Justice Advisory Body and are able to have a greater impact on Indigenous women's law and justice and social justice policies, including development of strategic approaches. (8.131)

- That the Australian Government increase funding for Indigenous Legal Services. (8.43 Recommendation 27)
- That family and civil law services require strengthening. (8.44)

3.4 Project consultations

Aboriginal and Torres Strait Islander women themselves indicate that they prefer seeking assistance from women in relation to family violence, sexual assault and other legal issues. This includes women lawyers as well as counsellors, support workers, police, court staff and magistrates. FVPLS Victoria's successful *Sisters Day Out* program demonstrates that culturally and gender-safe environments attract women and provide opportunities to deal with otherwise hidden issues.

Whilst there was no specific discussion in the project consultations about women's services, comments from victims/survivors included:

- *Trusted FVPLS because you are women.*
- *Women are more in touch with the issues ... women understand women. More understanding of emotional side of things.*
- *Women's doctor with understanding of the issues needed ... who can link in to other services early.*
- *Found the counsellor good to talk to. It was a woman ... must be a woman, we don't trust men because of the violence.*
- *Need to look after women better.*
- *Dealt with mainly women police ... women are easier to talk to ... prefer women police for these things.*
- *Female [Tribunal Member] ... and that was important ... made it easier. She made things comfortable.*
- *When photo's taken at the police station ... it was me and a couple of blokes. I thought ... what do I say to them. With women would have talked more ... got more off my chest.*
- *Women can be themselves ... calm down ... be able to talk about issues and share problems [at women specific events].*
- *Police woman was supportive to me and committed to following through. Let me know she was understanding of family violence herself. I felt like I was being understood.*

3.5 Service delivery implications

A strategic approach to the development of law and justice services/support for ATSI women and children by the Commonwealth and state governments is well overdue. Ongoing high levels of disadvantage demand this. The diversity amongst ATSI communities in states and territories requires a flexible approach that is informed by ATSI women in those states and territories.

It has been argued that for optimum legal service delivery and accessibility for ATSI women, the ability to provide legal services across a range of overlapping jurisdictions including family law, child

protection, family violence law and victims assistance, and to see those cases through to conclusion, is also critical. A further broadening of legal assistance types through the creation of an ATSI Women's Legal Service would benefit ATSI women and children and the justice system as a whole. Various options for the development of an Aboriginal and Torres Strait Islander Women's Legal Service for Victoria should be explored. One option is that it could potentially subsume funding of the FVPLS program and the IWP program, and could also be funded for a broader range of legal casework services beyond family violence and sexual assault. It could address the fragmentation of services—currently a significant frustration at FVPLS Victoria—resulting from uncoordinated Commonwealth and state funding arrangements. Funded policy development and law reform capacity should also be integral to such a program.

It is important that ATSI male victims of violence, including as children, also have access to culturally appropriate legal services. Within the development of a strategic approach to services for ATSI women and children, this matter must also receive attention. FVPLS Victoria is of the view that children, including boys, should have access to a national ATSI women's legal program, perhaps with the exception of boys who are offenders. FVPLS Victoria is prepared to explore options to ensure that men as victims of crime have independent access to a culturally appropriate and confidential service.

The following are key points of the submission by FVPLS Victoria to the Senate Constitutional and Legal Affairs Reference Committee in response to questions raised by the Committee at a hearing on 15 July 2009 about a review of the FVPLS program and about Aboriginal Women's Legal Services. It is a preliminary discussion about the potential benefits of an ATSI women's legal program. An extract of the submission is annexed.

The submission highlights the following:

- That Australia, in compliance with international human rights obligations, must take measures to address poor law and justice outcomes for ATSI women.
- The need for a broad strategic review of funding for ATSI legal services for ATSI women and children which includes the FVPLS program, with a view to implementing a stronger and more cohesive program base.
- That within this review a national Aboriginal and Torres Strait Islander women's legal program should be considered to address the ongoing disadvantage in law and justice outcomes for ATSI women and children.
- That, in accordance with the principle of self-determination and proven effectiveness, and the preference shared by many ATSI people for accessing Aboriginal services, legal services for ATSI women must be administered by ATSI community-controlled organisations.
- That an ATSI women's legal program, providing a broader range of legal services within a holistic service delivery model, would be more consistent with social inclusion policy and

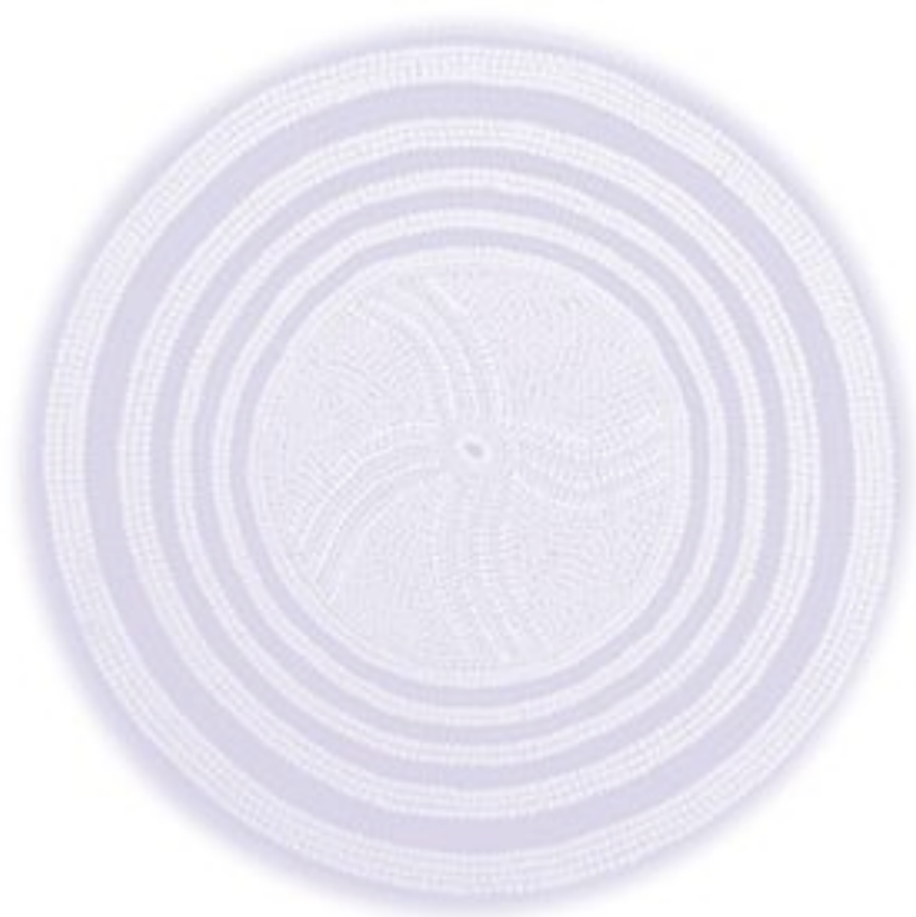
provide an opportunity to strengthen identified weaknesses in family and civil law services.

- That an ATSI women's legal program could reduce broad community prejudice and stigma attached to the association between the ATSI community and family violence, whilst still targeting family violence and sexual assault prevention. Greater confidentiality could also be afforded to women accessing the service.
- That, through a coordinated approach amongst legal service providers, an ATSI women's legal program could strengthen overall law and justice outcomes.
- That a strategic review as proposed must also address the lack of funding for policy development, law reform and advocacy for ATSI women's law and justice issues at national and state and territory levels. A national ATSI women's legal program could provide the necessary structure for this work and could also incorporate a National Aboriginal and Torres Strait Islander Women's Law and Justice Advocacy Body.

Proposal 4

That legal services and law and justice policy for Aboriginal and Torres Strait Islander women and children in Australia be reviewed in a timely manner, in consultation with ATSI women, with the aim of ensuring the following:

- access to ATSI community-controlled legal services for ATSI women and children in urban, rural and remote Australia
- strategic development of a model for a national legal program for ATSI women and children that best supports and recognises local, state and territory diversity. (The current FVPLS Victoria structural model which has a Melbourne office that supports rural units has been effective in Victoria.)
- a strong national, state and territory policy development and advocacy base with meaningful avenues for necessary government support and engagement.



Section 4: Policy development, law reform and advocacy in the area of Aboriginal and Torres Strait Islander women's law and justice

Summary

The inadequate attention paid by the government to policy development, research and law reform activity in the area of ATSI women's law and justice was directly acknowledged in the Commonwealth AGD draft *National Indigenous Law and Justice Strategy 2007*. It has also been an issue of concern for the Social Justice Commissioner for a number of years.

Implementation of the RCIADIC recommendations remains a priority. However, additional dedicated attention is required to the development and implementation of law and justice policy to respond to the unique situation of ATSI women and children, which was not specifically addressed in the RCIADIC. Recommendations of the RCIADIC with more general application will be significant within this.

FVPLS Victoria is of the view that, to enable successful advances in law and justice policy for ATSI women nationally, the work must:

- be advanced through ATSI community-controlled organisations
- be located with on-the-ground dedicated legal service provision for ATSI women and children
- incorporate funded state and territory and local policy development/law reform capacity
- ensure a process for broad-based input by ATSI women
- link with academic institutions and researchers including through management or steering committee oversight and
- be supported by channels for state and Commonwealth government engagement.

Much of the systemic change required will involve improving ATSI people's access to, and the responsiveness of, law and justice processes. The on-the-ground work is what best and most honestly informs this. Strong links with academic and broader community knowledge and expertise to integrate a range of inputs will ensure the depth and strength of the outcomes.

Given that state and territory governments have responsibility for many law and justice issues, research, law reform and advocacy must respond to the various layers of government responsibility and ATSI community diversity to have any chance of success. National advocacy aimed at ensuring effective engagement with the Commonwealth Government on all issues is also critical.

Successful international experiences (e.g. the Native Women's Association of Canada) must also inform Australian developments.

4.1 The current situation

NNIWLS

Previously, a National Network of Indigenous Women's Legal Services provided a central focus for ATSI women's law and justice services. This organisation, which had limited resourcing and was based in Western Australia, was independently incorporated (and not structurally linked to community organisations, yet was networked with them). NNIWLS has not operated since 2007.

ATSI Legal Services Network

Within the national community legal centre network an ATSI Legal Services Network was established following the demise of NNIWLS, which provides a support base for ATSI people working within community legal centres.

Academia

Academic work in this area is taking place around the country, but the nature of academic institutions results in fragmented, uncoordinated activity. Those academic initiatives that link with the community appear to provide the strongest model for empowering the community and achieving real change. An Aboriginal and Torres Strait Islander women's law and advocacy program in Australia which provides a focal point of coordination and integration for all of this academic work and links directly to the community would be an extremely positive development for both the academic and community sectors.

FVPLS and ALS programs

As stated, no funding is made available within the FVPLS program for research, policy development or law reform, and the FVPLS program has no peak body or secretariat to assume a national advocacy role on family violence or sexual assault issues. It is acknowledged that law and justice issues for ATSI women are broader than family violence and sexual assault. However, at the present time the FVPLS program, with its large client base of women and children, is the most significant dedicated provider of legal services to ATSI women.

A Law and Justice Advocacy Development Program has been established within the Commonwealth AGD to 'advocate for the advancement of the legal rights of Indigenous Australians'.

To our knowledge, no funding from this program has been provided to the FVPLS program nationally. FVPLS Victoria has had two successive submissions for policy development/law reform capacity rejected, in 2008–2009 and 2009–2010. The Commonwealth AGD advises that all funding for Victoria is directed to the Aboriginal Legal Service. We understand that the program and funding guidelines are currently under review.

As previously discussed, due to their significant criminal law focus the ALSs are restricted not only in terms of direct legal service provision, but also in relation to policy development and law reform. There are inherent tensions in advocating on behalf of both male perpetrators and women and children victims of family violence and sexual assault, particularly when many ATSI women prefer to access FVPLS services for reasons of gender sensitivity and privacy. It is unlikely that the policy position taken on behalf of victims of family violence will always be entirely consistent with the position with respect to perpetrators.



FVPLS Director Damien Goodall with Policy Development Worker Shelley Burchfield.

In addition, it is more efficient for services to develop distinct areas of expertise. For example, a service advocating on behalf of ATSI women is best positioned to research, develop policy and investigate required legal change in that area based upon its work with ATSI women. Issues of family violence and sexual assault and their impact upon women's imprisonment and child protection interventions are a prime example. There are particular gender and cultural sensitivities involved in this work that require a dedicated response. ATSI women must be positioned to advocate without compromise.

Commonwealth Law and Justice Advocacy Development Program

The Commonwealth Law and Justice Advocacy Development Program which administers Indigenous law and justice policy activity is currently under review.

The previous guidelines for the program stated that:

... Service providers will also be expected to ensure that they offer accessible and culturally appropriate services to Indigenous Australians in the specified service region, regardless of gender, sexual preference, family relationship, location, disability, literacy or language.⁴⁶

On the face of it, this appears prohibitive of funding for dedicated women's (or men's) programs. Indeed, these guidelines require change for a number of reasons, including: the cultural issues in relation to women's and men's business; the urging of the CEDAW Committee for Australia to implement special measures to advance the human rights of Indigenous women; the Social Justice Commissioner's recommendations for dedicated initiatives for ATSI women; and the established ongoing disadvantage of ATSI women and children. At least some funding must be dedicated to particular men's and women's programs/policy initiatives.

There has been a lack of dedicated funding allocated under this program for community organisations to engage in law and justice advocacy for ATSI women and children. The National

⁴⁶ Australian Government Attorney-General's Department Indigenous Justice and Legal Assistance Division, *Program Guidelines 2009–10*, Law and Justice Advocacy Development (Justice Advocacy), p. 1.

Network of Indigenous Women's Legal Services previously received funding through this program but this network ceased operating in 2007 and has not been replaced.

4.2 National, state and territory Aboriginal and Torres Strait Islander women's law and justice advocacy

A structure for national and state/territory advocacy

In 2008 FVPLS Victoria was contracted by the Commonwealth AGD to develop a strategic plan for a National Indigenous Women's Law and Justice Advocacy Body. The plan is currently with the Commonwealth AGD. The process is referred to in the report by the Department of Finance and Deregulation, *Evaluation of the Law and Justice Advocacy Development Program: Office of Evaluation and Audit (Indigenous Programs) May 2009*, in which the following is stated:

... 5.19 A consultancy, the 'Indigenous Women's Law and Advocacy Project', commenced in June 2008 and was completed in October 2008. The project was funded through Reconciliation Australia, to establish the need for, and structure of, a new Indigenous women's organisational unit or peak body. The aims of the consultancy were to 'develop a strategic plan for an organisational unit or peak body with an Indigenous Women's Law and Advocacy focus that will deliver ... advocacy for policy, law reform and improved service delivery ... government engagement ... community legal education [and] community education'.

... 5.21 The consultancy report was submitted to AGD in September 2008. AGD has since reported that an FVPLS will be funded to host a national coordinating structure that will include representation from all the other FVPLSs across Australia. The structure would thus work in the same way as the peak group for ATSILS. AGD anticipated that there would be a public statement made about the status of the new women's advisory structure. At the time of the evaluation a public statement announcing the status of a new women's advisory structure had not yet been made.

As at May 2010, nothing more had been heard from the Commonwealth AGD with respect to further consultation or implementation which given ongoing levels of disadvantage is totally unacceptable, but not altogether surprising. Very early in the development of the strategic plan, it was established that for a national body to be sustainable in the long term, to achieve on-the-ground change in states and territories, and to be driven by a broad and diverse base of ATSI women, it must have state, territory and national capacity and be located with ATSI community organisations that provide on-the-ground legal services.

The AGD compromise position outlined above—of funding an FVPLS peak body rather than a broader national Aboriginal women's law and advocacy body—is likely to be related to the current lack of a national ATSI Women's Legal Service program structure (the creation of which FVPLS Victoria recommends), to which a well-structured national women's advocacy body could be attached.

Attaching a national women's advocacy body to the existing FVPLS program is problematic because units are funded only in rural and remote locations and there is no existing policy capacity upon which this work could be based. In addition, the FVPLS program is limited to family violence/sexual assault issues, yet the requirement of advocacy in the area of law and justice for ATSI women is much broader than this. Finally, the FVPLS program is not a women-specific program.

An FVPLS program or national Aboriginal women's legal program with urban units/head offices supporting rural and remote units would be more likely to provide the strong base needed to support advocacy in women's law and justice as a whole. Policy development capacity would need to be spread across the state or territory, to ensure that remote, rural, regional and urban issues were all addressed.

In the event of a national ATSI women's legal program being established, the peak body could host the national advocacy body, the head offices in each state and territory could host policy capacity, and other policy development positions could be located within rural/remote units as determined appropriate in each state or territory in response to diverse circumstances.

Steering or management committees could comprise academic experts to ensure partnerships with research institutions and strong support and mentoring for project workers and project work. Broader community input would also be ensured through committee representation. As previously mentioned, channels for government engagement at all levels will be required to guarantee the work translates into real on-the-ground change.

Several concrete examples of how the lack of funding for effective law and justice advocacy capacity for ATSI women has impeded input and progress (there are many more) include:

- The National Human Rights consultation—without national or state/territory policy development capacity, a coordinated submission from ATSI women across Australia could not occur.
- Family law reform—Indigenous access to the family law system and appropriate handling of family violence is critical, particularly from the perspective of ATSI women as victims/survivors of family violence and sexual assault. There is currently no avenue for ATSI women or ATSI victims/survivors of violence to put forward a coordinated state/territory or national position.
- It is noted that the Australian Law Reform Commission is currently undertaking a broad-ranging family violence inquiry. It is essential that ATSI women are able to submit to this inquiry; however, capacity for this remains extremely limited.

An FVPLS peak body and FVPLS policy/law reform capacity

In the absence of an ATSI Women's Legal Service program, funding of FVPLS units for policy development/law reform/research capacity, and introduction of a peak FVPLS body, must occur.

It is essential that at least some FVPLS units in all states and territories receive funding for research, law reform and policy development activity. This work would focus on areas of legal assistance stipulated in the FVPLS operational guidelines (family violence law, family law, victims compensation/assistance and child protection) and be focused on the experiences of ATSI victims of family violence and sexual assault.

FVPLS Victoria has been fortunate to gain funding for a 10-month policy project from the Legal Services Board Victoria followed by a further 12-month philanthropic funding from The Felton Bequest, which has provided FVPLS Victoria with greater capacity for policy and program development activity. Some of the work that this has enabled includes: pushing for greater Aboriginal and Torres Strait Islander accessibility in the family law system; highlighting the impact of family violence in the significant overrepresentation of ATSI children in the child protection system in Victoria and contributing to current reviews of the system; contributing to a government Koori Family Violence Court Support project for intervention orders; contributing to an inquiry into victims assistance law in Victoria, and further development of the Koori list within the Victims of Crime Assistance Tribunal (VOCAT); and consulting with ATSI women about their experiences in the legal system. The policy/program development position has also contributed to service development.

Good legal advocacy and service provision will be frustrated by entrenched systemic problems, many of which can only be addressed at a higher policy level, requiring:

- sustained commitment over a long period of time
- empirical research
- coordinated efforts (which take time to develop)
- the earning of respect of the advocate organisation in its on-the-ground service provision and policy work
- effective government and broader community engagement and
- adequate support and resourcing for all of the above.

Short-term project funding can make a positive contribution but is inadequate in the longer term. A sustained government funding commitment is required which will produce long-term benefits.

4.3 National Indigenous Law and Justice Advisory Body

It is noted that the Commonwealth has been considering the establishment of a National Indigenous Law and Justice Advisory Body which is proposed to have a membership of 12 drawn from across Australia. It is important that the membership of this body reflect gender equity and that law and justice issues for ATSI women and children receive dedicated attention. It would be appropriate for this body to advise further upon the development of a National Indigenous Women's Law and Justice Advocacy Body and upon the strengthening of services for ATSI women. The National Indigenous Representative Body should be similarly involved. The status of this initiative is uncertain at the time of writing.

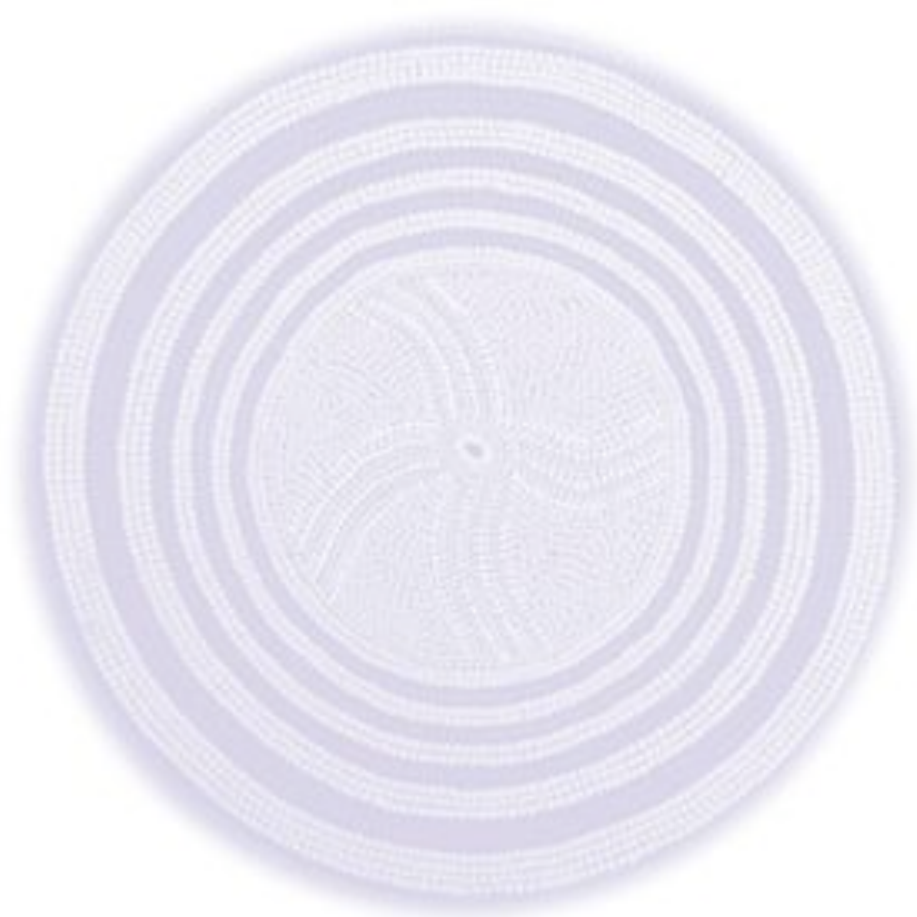
4.4 National Aboriginal and Torres Strait Islanders Women's Alliance

As previously stated the Commonwealth has recently announced funding for a National Aboriginal and Torres Strait Islander Women's Alliance (\$200,000 per year for 3 years). This is a positive development; however, this Alliance does not replace the need for a dedicated ATSI women's law and justice body or resources.

Proposal 5

That the Commonwealth Government urgently strengthen research, policy development and law reform capacity in the area of Aboriginal and Torres Strait Islander women's law and justice. The following options should be considered:

- a) through the implementation of a national Aboriginal and Torres Strait Islander Women's Legal Service program, the funding of policy development/law reform capacity in each state and territory with a national Aboriginal women's law and advocacy body attached to the national secretariat of the national Aboriginal Women's Legal Service program or
- b) the funding of a national Aboriginal and Torres Strait Islander women's law and advocacy body supported by funded policy development/law reform capacity in each state and territory
- c) the urgent funding of a national FVPLS advocacy or peak body, accompanied by the funding of policy development/law reform positions within selected FVPLS units in each state and territory.



Section 5: Funding issues

Summary

Funding arrangements and management and support of the FVPLS program within the Commonwealth Attorney-General's Department have been extremely problematic. The program has received inferior treatment compared to other Legal Aid services. Given that the majority of clients of FVPLS Victoria are women and children, the consequence of this treatment has been to entrench inequity. FVPLS Victoria is encouraged by a recent Commonwealth AGD initiative to trial

and roll out a national FVPLS data collection program and to move the national FVPLS program beyond the current 12-month funding and tender cycles from 2010–2011. Other pressing issues, however, remain outstanding.

Commonwealth funding arrangements must be reviewed to address the ongoing disadvantage experienced by ATSI women and children in law and justice outcomes, in recognition of the complex and resource-intensive nature of family violence legal practice, to ensure existing services are more appropriately resourced and to attend to geographic service gaps and broader unmet legal need. It is imperative that collaboration with state and territory governments occurs to ensure funding meets the needs of diverse ATSI communities, thereby enhancing on-the-ground outcomes for ATSI women and children.

5.1 Key issues of concern

Major issues of concern relating to the funding of the FVPLS program and the funding of legal services for ATSI women identified in previous sections include:

- the failure of Commonwealth and state governments to work collaboratively on funding ATSI law and justice services for women and children directed toward state and territory diversity (Section 1)
- the Commonwealth Government policy of funding ATSI services based on relative geographic disadvantage rather than on addressing disadvantage in law and justice as a whole (Section 2)
- the refusal by the Commonwealth to fund the FVPLS program to urban areas, seen as tied to treatment of the program as a supplementary rather than primary service for ATSI women and children. This has a particular impact upon states and territories with large urban ATSI populations (Section 2)
- the lack of a strategic approach and inadequate funding of legal and associated services for ATSI women and children more broadly as highlighted in the 2009 *Access to Justice* senate report (Section 3)
- the lack of recognition of the requirement for greater resources for family, child protection and civil legal cases
- the failure to fund research, policy development and law reform activity within the FVPLS program or for ATSI women and children more broadly (Section 4)
- the dependence of the national FVPLS program on 12-month funding and tender cycles, and associated program management difficulties

- the failure by the Commonwealth throughout the past decade to fund a common national data reporting program for FVPLS units (although recent action to rectify this is a welcome development).

Issues dealt with in other sections will not be repeated in detail here. Suffice to say that the fundamental underlying principles of funding policy for ATSI women's (and children's) law and justice require urgent revision if real change is to occur. An approach must be developed that includes strategically addressing ATSI disadvantage as a whole (rather than focusing on relative geographic disadvantage), that acknowledges the significant ATSI diversity across Australia, that is underpinned by acceptance of the need for special measures to address the significant inequity that has been allowed to continue, and finally that is informed by ATSI women.

5.2 Funding of the FVPLS program

All FVPLS units nationally have been on 12-month funding cycles with annual tender. This has meant that in February every year FVPLS units have been required to submit a detailed application to be able to provide services for designated locations for the ensuing year. During the production of these papers it has been indicated that this situation will change from 2010, with the introduction of a three-year funding cycle. This is an important and positive development. The following reflections on FVPLS Victoria's experience reinforce the importance of this move and the associated issues it addresses, particularly given that some FVPLS units are likely to remain subject to short-term funding arrangements.



Attorney General Rob Hulls with
FVPLS Victoria Chairperson
Marion Hansen and CEO
Antoinette Braybrook

In 2009 (not unlike other years) the Commonwealth AGD commenced negotiations with respect to the FVPLS Victoria funding submission for 2009–2010 in mid June 2009, continuing into September. The 12-month funding cycle has been a significant barrier to long-term planning and has impeded the ability of organisations to commit to any liability beyond 12 months (rental arrangements being a prime example). FVPLS Victoria encountered difficulties securing rental premises (suspected to be linked to it being an ATSI community organisation), and advising prospective landlords of the limited 12-month funding guarantee created almost insurmountable problems. Securing alternative funding outside of the FVPLS program has also been complicated by this AGD policy.

*... Funding for programs ... not 12-month projects ... ongoing projects ... if figures are so high in the family violence area ... and high care levels [are needed for] family violence ... put resources in for the long term ... takes long-term initiatives. **Aboriginal support worker***

The 12-month funding cycle has provided the Commonwealth with significant flexibility in regularly changing service guidelines and funding directives within the program. The Commonwealth has relied on this flexibility to the detriment of FVPLS units and the communities they service. It has been damaging for ATSI communities to build expectations and confidence in local service provision, to then find those services reduced or removed.

The impact of the short-term funding also created unacceptable tension and uncertainty internally, negatively affecting staff morale. This funding arrangement demonstrated a lack of genuine and sustained commitment to the work being undertaken on the ground in already highly stressful circumstances. Changes in Commonwealth funding and operational directives diverted attention from this on-the-ground work. The implied message was that the Commonwealth was failing to respect the FVPLS program and in turn the importance of addressing family violence in ATSI communities.

The Royal Commission into Aboriginal Deaths in Custody made the following comments and recommendations directly on this funding issue:

... Commentary

27.4.20 Aboriginal organisations would undoubtedly perform better if some of the unnecessary constraints were removed. The funding of them on an annual basis, with quarterly payments being made, makes forward planning difficult.

... Recommendation

195. That, subject to appropriate provision to ensure accountability to government for funds received, payments by government to Aboriginal organisations and communities be made on the basis of triennial rather than annual or quarterly funding. (4:30)

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, in its report of 2001, *We Can Do It! The Needs of Urban Dwelling Aboriginal and Torres Strait Islander Peoples*, also deals with funding arrangements in some detail.

The report states the following about the length of funding arrangements:

... 3.25 The needs of Indigenous people are often intractable and complex and require long-term solutions and commitments. Short-term funding for agencies or programs that is only guaranteed on a year-by-year basis does not allow enough certainty for long-term planning either by mainstream agencies or grant recipients, nor encourages people to invest effort in programs.

*... 3.26 At the macro level agencies, including ATSIC, need program funding certainty, **and at the community level grant funding cycles need to be long enough to allow time for projects to demonstrate successful outcomes. The Committee believes that, generally, funding on a triennial basis is appropriate.** (Emphasis added)*

Proposal 6

That the Commonwealth Government fund FVPLS units on triennial funding cycles commencing in the year 2010 (implemented for FVPLS Victoria from 1 July 2010).

5.3 A national data system for the FVPLS program

In the 10 years of FVPLS national program funding (through the Commonwealth AGD since 2004) no national data or reporting system was provided to FVPLS units. The provision of such a system was, however, regularly raised as urgent by various units.

Data collection systems are critical for appropriate legal administration, particularly for: managing conflict; managing and overseeing legal caseloads; accurately recording client data; and providing a statistical base for organisational planning and development.

After significant lobbying, in 2009 FVPLS Victoria was granted access to CLSIS, the data system provided for the national Community Legal Centre program, on a trial basis. The AGD has now announced that it will roll out this program nationally in 2010. Again, this is a positive development; however, the delay in implementation has impeded organisational development.

5.4 Levels of funding and legal need

The December 2009 senate *Access to Justice* report made recommendations with respect to funding arrangements for ATSI legal services. It proposed a comprehensive legal need analysis for ATSI women to inform strategic funding.

Recommendation 1

2.35 The committee recommends that the federal, state and territory governments jointly fund a comprehensive national survey of demand and unmet need for legal assistance services in Aboriginal and Torres Strait Islander communities, with particular identification of rural, regional and remote communities and Indigenous women's needs, to be jointly undertaken with state/territory legal aid commissions, community legal centres, Aboriginal legal services, National Legal Aid and the Law and Justice Foundation NSW.

FVPLS Victoria believes that support for urban services and for high-need unserved rural locations, together with support for a broader range of legal services for ATSI women and children beyond family violence and sexual assault, is a priority for Victoria. Collation of existing data and information from various key sources would limit the range of this task.

The senate report also recommends increased funding for Indigenous legal services generally:

... 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.*⁴⁷

The funding difficulties experienced by the FVPLS program are also acknowledged and the report confirms in principle agreement with its relevant 2004 recommendation that:

*... the Commonwealth Government allocate sufficient funding to Indigenous Legal Services and Indigenous Family Violence Prevention Legal Services to enable adequate provision of effective legal services for Indigenous women in family law and family violence matters, including funding for additional culturally sensitive services in areas of highest need.*⁴⁸

The Joint Committee of Public Accounts and Audit *Report 403: Access of Indigenous Australians to Law and Justice Services* 2005 also noted the greater resources required for family and civil law cases, which must be acknowledged in government funding arrangements:

... 2.26 The far greater resources required to conduct civil and family law cases was supported by the National Association of Community Legal Centres (NACLC). NACLC estimate that the amount of time needed for civil and family matters is six or seven times greater than that needed for criminal matters.

The 2009 senate *Access to Justice* report includes acknowledgement of critical staff recruitment and retention issues. Legal and associated work undertaken by FVPLS units in the family violence and sexual assault area is often highly stressful, slow to progress and complicated by systemic access and equity barriers.

Recommendation 29

8.77 The committee recommends that the federal, state and territory governments jointly, and in conjunction with affected stakeholders, review current salary levels across legal aid commissions and Aboriginal and Torres Strait Islander legal services, and propose salary level reforms for this sector of the legal aid system with a view to eliminating wage disparity.

Paper 2 deals more specifically with funding requirements for FVPLS Victoria in its service provision.

5.5 Commonwealth/state government collaboration

At the present time there is no formal funding agreement between the Commonwealth and the state for FVPLS services or for legal services for ATSI women and children more generally. Family violence law and legal issues for women and children incorporate Commonwealth and state jurisdictions with many overlaps. The Australian Law Reform Commission is reviewing family

⁴⁷ Senate Legal and Constitutional Affairs References Committee, *Access to Justice*, Senate Committee Report, December 2009, Commonwealth of Australia, p. 147.

⁴⁸ Senate Legal and Constitutional Affairs Committee, *Inquiry into Legal Aid and Access to Justice June 2004*, Commonwealth of Australia, Recommendation 31.

violence cross-jurisdictional issues and it is likely that recommendations which lead to a more seamless legal system will be made, with implications for funding of legal services. The siloed approach to funding and service provision, as occurs between state and federal jurisdictions (e.g. Family Court, Children's Court, Magistrates Court), will not be sustainable.

As mentioned previously, the Victorian Government has recently extended funding for FVPLS Victoria to continue to service metropolitan Melbourne and to provide a limited service to rural Victoria not funded by the Commonwealth. This situation is unique to FVPLS Victoria and provides greater capacity to support ATSI women and children across the state. However, there is no joint commitment between the state and the Commonwealth to a long-term solution that supports this statewide service model.

Without formal collaboration, significant gaps remain and services are unnecessarily restricted and fragmented. For example, FVPLS Victoria as a statewide service is funded for one community legal education position divided between Gippsland and Barwon South West. Philanthropic funding supports complex and otherwise unresourced program coordination. Significant management energy is being diverted to address these funding tensions, which a coming together of state and Commonwealth governments could resolve.

On this point the senate *Access to Justice* report 2009 states:

Recommendation 26

8.27 The committee recommends that the federal, state and territory governments inquire into and report on joint funding for the Legal Aid for Indigenous Australians program and related services with a view to more equitably apportioning financial responsibility for Indigenous legal services funding.

The Joint Committee of Public Accounts and Audit *Report 403: Access of Indigenous Australians to Law and Justice Services 2005* also made the following relevant comments:

... The Committee applauds the increased coordination between areas responsible for legal aid funding to mainstream and Indigenous specific providers within AGD. However, coordination at this level must be followed through: at the level of service providers; and between Commonwealth and state and territory agencies responsible for funding providers of legal aid.

... 5.36 To take the second of these coordination issues first, the argument of whether the Commonwealth or states and territories are responsible for a particular service often occurs in federal systems of government. The Committee is of the view that in regards to the provision of legal services to Indigenous people, this issue needs to be resolved as a matter of urgency and that it should not be left for ATSILSs, LACs or Law Societies to push for this resolution.

Another prime example of the frustration experienced in the face of the lack of cooperation between state and Commonwealth governments arose with respect to Commonwealth Indigenous Women's Program funding. A previous state government parliamentary committee recommended in

2001 that the Victorian Government fund an Indigenous Women's Legal Service.⁴⁹ The government responded as follows:

*... The Victorian Government is of the view that any decision about state funding for an Indigenous women's legal service should be deferred pending allocation of existing funds by the Commonwealth.*⁵⁰

Commonwealth funding to Victoria under the IWP program has never been resolved—hence there has been no progress.

FVPLS urges enhanced cooperation through COAG and SCAG (Standing Committee of Attorneys General) for the funding of ATSI Women's Legal Services in general, and for the FVPLS program in particular.

5.6 Improving funding structures for ATSI women's law and justice: Primary service provision

FVPLS Victoria, in proposing consideration of a national ATSI Women's Legal Service program, has suggested some consolidation and broadening of funding, whilst also clearly maintaining the critical importance of dedicated ATSI community-controlled organisations within this.

It is noted that the Commonwealth considers the FVPLS program to provide only supplementary legal services to ATSI victims of violence and to ATSI women. The 2005 Joint Parliamentary Committee stated the following in relation to this:

... 5.37 ATSIILSs, and increasingly FVPLSs, are the primary providers of legal services to Indigenous Australians. In 2003 Indigenous Australians constituted 21 percent of the national prison population and thus they constitute a significant proportion of criminal justice business. In the view of the Committee this context makes it difficult to sustain an argument that ATSIILSs and FVPLSs are supplementary legal services.

*... 5.38 State and territory governments should acknowledge that insufficient support for the work of ATSIILSs and FVPLSs is likely to result in greater Indigenous prison populations and consequently a greater cost to state tax payers.*⁵¹

The Committee also stated the following about funding for legal services for Indigenous women:

... 5.45 The Committee was concerned at the myriad of programs and services that provide legal services to Indigenous women. Perhaps the most apparent area for potential overlap is the FVPLSs and the Indigenous Women's Projects run out of designated CLCs.

⁴⁹ Victorian Parliament Law Reform Committee (2001) *Review of Legal Services in Rural and Regional Victoria*, May 2001, Recommendation 37.

⁵⁰ Government response to the Parliamentary Law Reform Committee's *Review of Legal Services in Rural and Regional Victoria*, June 2002.

⁵¹ Joint Committee of Public Accounts and Audit, *Report 403: Access of Indigenous Australians to Law and Justice Services*, June 2005.

Recommendation 13

... 5.46 That the Attorney-General's Department rationalise funding of Indigenous Legal Services by incorporating Indigenous Women's Projects, that are currently administered through mainstream Community Legal Centres, into the Family Violence Prevention and Legal Services Program.

In its response to the above report, the Commonwealth rejected this recommendation on the basis that the IWP program is broader than the narrowly defined guidelines of the FVPLS program and that nothing would be gained by subsuming one program within the other.⁵² This narrow approach highlights the government's failure to comprehend what is required to develop a strategic approach to ATSI women's law and justice in which ATSI women and ATSI services are central.

As outlined in Section 3, FVPLS Victoria seeks consideration by the Commonwealth and state governments of the feasibility of introducing an ATSI community-controlled Women's Legal Service in Victoria. Examination of the most appropriate funding arrangement for this service should incorporate possible consolidation and expansion of existing Commonwealth and state funding for ATSI women and children. In consultation with ATSI women, consideration of a national ATSI women's legal program should also occur. This program would be a primary provider of legal services to ATSI women and their children, who would also importantly have the option to access mainstream services where preferred. Strategic funding of services for ATSI women and children that addresses disadvantage as a whole must be a cornerstone of all future funding arrangements.

Proposal 7

National

That the state and Commonwealth governments cooperate in ensuring appropriate funding of the FVPLS program nationally, including in urban areas.

That the Commonwealth incorporate the Indigenous Women's Outreach Project Program funding into the national FVPLS program.

That, in consultation with ATSI women, the Commonwealth consider funding a national Aboriginal and Torres Strait Islander Women's Legal Service Program.

Victoria

That the Commonwealth and state governments acknowledge the inequity which has arisen as a result of Victoria not receiving funding through the national Indigenous Women's Outreach Project Program over the past eight years, and collaborate to ensure that specific funding for expanded legal services for ATSI women is allocated to Victoria through the FVPLS program as soon as possible.

That consideration be given by the Commonwealth and state governments to the feasibility of funding of an ATSI Women's Legal Service in Victoria.

⁵² Government Response to Joint Committee of Public Accounts and Audit, Report 403, p. 9.

ANNEXURE 1

Project consultation comments: Funding of urban FVPLS services

- Why can't they [fund urban services] ... What if people are moving around the state ... come to urban areas ... doesn't make sense. It's not right. It's better coming to an Aboriginal Legal Service ... same as whether live in Warrnambool or Melbourne. **Victim/survivor**
- Should be no different [whether urban or rural]. Still Aboriginal people needing support. **Victim/survivor**
- Domestic violence does not only happen in rural/remote areas ... no geographic restriction on where family violence happens ... service should be there for all women ... trust is really important for disclosure ... important in rural and urban areas. **Victim/survivor**
- This is a ridiculous policy. There is a huge population of Indigenous people in the Melbourne metro area ... the issues of family violence and sexual assault are not only in remote areas. If you take away the service this would leave a huge gap ... Indigenous women will often not access mainstream services ... this is not the preference. **Victim/survivor**
- Should be available to everybody. **Victim/survivor**
- It's important because a lot of Indigenous families live in Melbourne. The Indigenous design on the window of the service in the street means young women will go in because they think the service will understand cultural issues ... this is needed in urban areas as well. **Victim/survivor**
- There is a need for them on the same basis as in regional areas which is about culturally sensitive service delivery to ATSI clients ... know majority live in urban centres and there needs to be appropriate services ... or we will continue to have a sector of the community not accessing legal services. **Non-ATSI Lawyer**
- They are needed ... clients not accessing mainstream services ... even when referral comes from us clients not great at following up with mainstream services. **Non-ATSI lawyer**
- Is movement between regions ... should be extended to urban areas. **Non-ATSI rural support worker**
- They are needed because dedicated services understand how to communicate with their own people ... understand family dynamics ... family environments. Advocate strongly for FVPLS in urban areas. No other service like it that can support women. Need to acknowledge diversity of Indigenous communities including urban communities. **Aboriginal domestic violence regional coordinator**
- There is a perception in regional Victoria that metro gets most services but urban areas need dedicated services because of their size ... need the trust of an Indigenous organisation initially ... lot of non-disclosure because of intergenerational issues. **Aboriginal coordinator of Aboriginal family violence service**
- Women need to access urban areas for safety reasons ... it is easier to keep a woman safe in urban areas ... small communities make it very hard to keep people safe ... **Key statewide Indigenous service**
- Services are needed in urban areas ... clients don't stay in regions ... clients freak when they move to places where culturally appropriate services are not available. **Non-ATSI lawyer**

- Absolutely needed ... because our people are not accessing mainstream services ... victims feel won't be understood ... don't feel comfortable ... shame and embarrassment ... family violence and sexual assault big shame job but that is how it is perceived ... choice is very important in accessing services ... people need to be fully informed about options ... maybe can't go to Aboriginal service ... maybe pointing finger at prominent person in community ... Aboriginal service can still assess and refer. **Aboriginal support worker**
- They know it's safe for them ... people are more understanding to cultural needs. In area of family violence and sexual assault ... there is more trust ... Indigenous-specific organisations/workers go beyond what they are supposed to do ... do the extra bit which other workers don't do. **Aboriginal support worker**
- Even with cultural awareness training of mainstream organisations will always be more appropriate that Aboriginal agencies do the work ... Indigenous organisations know what information to look for when working with and advocating for people. **Aboriginal domestic violence regional coordinator**

ANNEXURE 2

Project consultation comments on ATSI and mainstream legal services

- FVPLS Victoria is more understanding to needs and culture than mainstream legal services. Some women won't go to non-Indigenous organisations ... they are too shy and want to see someone who knows about Aboriginal culture. **Victim/survivor**
- Felt safe with FVPLS. Only got information from FVPLS ... Only felt secure with FVPLS. **Victim/survivor**
- I disagree that we will access mainstream services. We are the first Australians ... we need our own services. I see more international stuff than is happening for Aboriginal people here. Indigenous people should be first. Need separate Indigenous places for Indigenous people. **Victim/survivor**
- As long as lawyer doing a good job I don't mind whether Indigenous or not ... I was not happy with my [mainstream] lawyer. **Victim/survivor**
- No difference between Indigenous and mainstream as long as cultural understanding. **Victim/survivor**
- Felt comfortable with FVPLS because my mother was ... wish I had had legal advice earlier. **Victim/survivor**
- I didn't have a preference that day I got the information but the service was there and accessible. If FVPLS hadn't come along I may have been still floating around with stuff in my head. I didn't understand that what was happening to me was family violence ... the workshop [FVPLS information session] explained a bit more about family violence ... what it is and how it impacts. The workshops are a good way to get the information out. **Victim/survivor**
- Came to FVPLS because would have been conflict with VALS. **Victim/survivor**
- Prefer the more relaxed approach ... people here take more time to listen. I would feel I had to present differently to be heard and listened to in a mainstream environment. **Victim/survivor**
- When I was 16 I didn't know about my legal rights ... it took a more recent incident to find out ... I would have never known if I hadn't come to FVPLS. **Victim/survivor**
- I prefer an Aboriginal service ... feel better supported ... better support system. **Victim/survivor**
- The private lawyer was really focused on the legal work ... not on bigger support issues. **Victim/survivor**
- I was worried about the community knowing where I was going ... needed to go somewhere I knew would be confidential. **Victim/survivor**
- Trusted FVPLS because you are women...Mainstream can be OK as long as understanding me as an Aboriginal woman ... I haven't had any contact with mainstream about personal issues such as family violence. **Victim/survivor**
- Originally I had a mainstream private lawyer ... felt lacked cultural sensitivity ... the family law issues and the way they are dealt with are about more than the family itself ... it's about culture and connection. **Victim/survivor**

- I should know as an Indigenous woman that I can get access to culturally appropriate legal services when I need and am ready to receive it. **Victim/survivor**
- Mainstream lawyers are local men ... other local women would not use them for these issues either. **Victim/survivor**
- Clients not going to go to a service where they know service does not understand family dynamic ... more likely to judge actions or inactions. With personal issues much prefer Aboriginal [organisation] assistance. **Non-ATSI lawyer**
- Aboriginal legal service will be encouraging and culturally appropriate ... way of opening the door to Aboriginal people to get services they would not otherwise get. **Non-ATSI lawyer**
- Clients not great at following up with mainstream services ... formality of process even with VLA is a problem. **Non-ATSI lawyer**
- Two parts to culturally sensitive approach ... education about sensitive issues of family violence and sexual assault then once through the door more flexible approach to service provision. **Non-ATSI lawyer**
- Dedicated services understand how to communicate effectively with their own people and also have an understanding of what the barriers in the legal system are ... they bring Indigenous cultural awareness to the justice system. **Aboriginal domestic violence regional coordinator**
- Don't access mainstream services ... because of cultural sensitivity ... women go into services and are alienated because they are black. **Aboriginal coordinator family violence service**
- Important to have Indigenous specific and mainstream options. Primarily women pick up Indigenous services but must give options. ... Need trust to access all types of legal assistance ... this is more likely through Indigenous services ... lack of trust and barriers intensified by trauma and fear of officialdom. **Key statewide Indigenous service**
- Mainstream lack cultural awareness ... doesn't inform service delivery efforts. **Lawyer**
- Our people are not accessing mainstream services. **Aboriginal support worker**
- Cases are complex ... family systems are complex ... white people don't understand kinship systems. **Aboriginal support worker**
- If we know how we want to move forward ... we should have the right to an Aboriginal service ... we are the first people of this nation ... stop putting us in with multicultural groups. **Aboriginal support worker**
- In the area of family violence and sexual assault ... there is more trust ... Indigenous-specific organisations/workers go beyond what they are supposed to do. **Aboriginal support worker**
- Women must be given choice to access an Indigenous or non-Indigenous service ... Would look for Indigenous organisation first because of acceptance from moment go in there ... dedicated services needed ... running community awareness ... getting to community that would never have thought to come forward ... to have confidence to sit down with a lawyer and paralegal and go through the problem ... huge step for women ... treatment at first point of contact critical. **Aboriginal coordinator of family violence service**
- People who use our service versus mainstream get a lot more support ... more personalised service. **Aboriginal support worker**

ANNEXURE 3

Excerpts from FVPLS Victoria's supplementary submission to the Senate Constitutional and Legal Affairs Reference Committee 2009⁵³

We wish to respond further to the Committee's questions with respect to our view on:

- the approach to a broad strategic review of the provision of legal services to Indigenous women, and*
- the possible introduction of an Indigenous Women's Legal Services program, whether it should be incorporated within mainstream women's legal services or be funded as a dedicated Indigenous program, and where and how the Family Violence Prevention and Legal Service Program should sit within any such development.*

a) Possible introduction of an Indigenous Women's Legal Services program

- 1. In our initial submission and at the hearing we emphasised the unacceptable gap in dedicated Indigenous women's law and justice policy in Australia and the lack of strategic planning and development in the area of law and justice service provision for Aboriginal women.*
- 2. FVPLS Victoria therefore strongly supports the funding of Indigenous Women's Legal Services across Australia. This measure would also go some way to addressing criticism by international human rights committees about the ongoing disadvantage of Indigenous women in Australia. In 2006 the CEDAW committee specifically urged that special measures be taken by the Australian Government to advance the human rights of Indigenous women. The recently released Productivity Commission report on Indigenous Disadvantage makes it clear that the situation is not improving.*
- 3. Funding for Indigenous Women's Legal Services should not be attached to mainstream women's legal services. It is critical that Aboriginal women have ownership of and drive future initiatives to advance law and justice outcomes. This is the key to successful government engagement and will lead to real on-the-ground change. Locating program funding such as is proposed within mainstream women's legal services will once again frustrate, disappoint and anger Aboriginal women. This is not the time to repeat the errors of the past.*
- 4. The report of the Royal Commission into Aboriginal Deaths in Custody made the following pertinent comments in this regard:*

... 27.4.18 On the Aboriginal side, it is quite clear that on those matters which are closest to specialist Aboriginal interest, such as legal rights, primary health care,

⁵³ Full FVPLS Victoria submissions can be located at
http://www.aph.gov.au/senate/committee/legcon_ctte/access_to_justice/submissions.htm

child care, maintenance of languages, Aboriginal culture, arts and crafts, land ownership and lease, and many others, Aboriginal people as a whole greatly prefer their own organisations and services. This is very understandable given the treatment and relationship which Aboriginal people have had from departments in the past. Separate organisations in these areas are very close to Aboriginal conceptions of equality and self-determination (in some cases close to self-management).

... 27.4.19 However, in my opinion self-determination cannot be a reality if governments fail to recognise that Aboriginal people have clearly voiced their preference for using Aboriginal organisations; not only as their negotiators, but as the agents for delivering services. The Aboriginal organisations, when given adequate funding and when placed in a position in which they are respected negotiators and service deliverers, have performed much more effectively than the majority of mainstream agencies have performed in relation to Aboriginal people. They are trusted, they know and respect Aboriginal society and culture and they enhance self-respect within the Aboriginal community as they fulfil their roles.

5. *We refer to the United Nations Declaration on the Rights of Indigenous Peoples which Australia has now ratified and to Articles 22 and 23 in particular which clearly support development of dedicated programs for Indigenous women.*

Article 22

1. *Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.*
2. *States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.*

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

7. *It is well established both in literature and through the experience of FVPLS Victoria that many Aboriginal women are reluctant to access mainstream services and prefer culturally safe environments, particularly in relation to issues of family violence and sexual assault. In addition family violence and sexual assault impact broadly, including upon Aboriginal women's increasing imprisonment rates, child protection interventions*

and health and mental health issues. Aboriginal women must have the option to access dedicated and holistically based Indigenous legal services.

- 10. The FVPLS program could be subsumed within a national Indigenous Women's Legal Service program. The Indigenous Women's Legal Services would of course provide assistance in a broader range of legal matters than the areas currently stipulated within the FVPLS program. This would strengthen law and justice services to Aboriginal women significantly, would provide far greater flexibility and integration in service provision and vastly improve law and justice outcomes. One concrete example of this is that the majority of Aboriginal women in prison are survivors of family violence and sexual assault; however, these women are currently required to access separate legal services for these matters. Given the entrenched barriers to Aboriginal people accessing the justice system, every attempt should be made to avoid constructing unnecessary new ones.*
- 11. A more integrated and holistic approach in legal service provision for Aboriginal women (as opposed to the more confined family violence legal services) is also more consistent with social inclusion policy objectives.*
- 12. Indigenous Women's Legal Services must be provided in urban, regional and remote areas to ensure equitable access to justice across states and territories. The FVPLS Victoria model in which a head office in Melbourne provides specialist legal, administrative, program and policy development support to rural and remote units is one which may be considered. The model has proved successful in Victoria and has been developed by FVPLS Victoria in spite of Commonwealth AGD restricted funding policy.*
- 13. It will be important that children are able to access Indigenous Women's Legal Services, including boys (perhaps only excluding boys who are offenders). Adult male victims of crime currently assisted through the FVPLS program would require referral to other services (ALSs or mainstream providers where conflicts arise).*
- 14. Current Indigenous Women's Project funding would also be sensibly incorporated into the Indigenous Women's Legal Services program.*
- 15. The Aboriginal Legal Services would continue to operate as they do now; however, women currently accessing ALSs for matters outside of the FVPLS legal casework guidelines (e.g. criminal law, discrimination, and welfare matters) would be able to choose which service to access for a particular matter. ALSs would not become men-only services. In many cases, including family disputes and child protection proceedings, there are frequently multiple parties within the extended Aboriginal family requiring separate representation. Additional culturally appropriate Indigenous legal service options would strengthen legal equity and access to justice. MOUs between the services to clarify respective service guidelines and referral systems would strengthen overall service delivery.*

16. *In addition, under this model of operation much-needed but underresourced civil law services would also be strengthened as a result of all Indigenous legal services having some capacity for this work.*
17. *Subsuming the Family Violence Prevention and Legal Service Program into an Indigenous Women's Legal Program and renaming the organisations would also overcome broad community prejudice and stigma which is overtly perpetuated as a result of the direct association between the Aboriginal and Torres Strait Islander communities and family violence/sexual assault. For example, the Indigenous Women's Legal Service Mildura is a preferable title to the Aboriginal Family Violence Prevention and Legal Service Mildura. Women may access an Indigenous Women's Legal Service for any one of a range of legal issues which also provides more privacy and confidentiality to the broader community.*
18. *It is noted that the Committee commented on the 'myriad' of Indigenous legal services currently provided. It must be clarified, however, that the level and scope of funding within this is manifestly inadequate, particularly in relation to dedicated law and justice services for Aboriginal women. The fragmented and restricted funding approach adopted by the Commonwealth has in fact operated as a significant barrier to advancing access to justice for Aboriginal women. A strategic review as outlined above provides the opportunity to address these concerns. Collaboration between Commonwealth and state governments within this review is of critical importance.*
19. *The development of Indigenous Women's Legal Services in all states and territories, in accordance with the diverse Indigenous communities in each, would also support Indigenous women's law and justice advocacy activity. A national Indigenous women's law and advocacy body could be attached to a national secretariat for Indigenous Women's Legal Services. To ensure critical state and territory advocacy bases for this work, policy/advocacy positions could be attached to a designated office in each state and territory. This would ensure connection between policy development and on-the-ground service provision. The national advocacy body could have a steering committee which links broader community input and academic expertise to guide and oversee critical research activity. In 2008 FVPLS Victoria was engaged by the Commonwealth Attorney-General's Department to produce a strategic plan for an Indigenous women's law and advocacy body which might be informative on these matters. The document is currently with the AGD.*
21. *In conclusion, we note that the National Indigenous Law and Justice Framework recently released by the Commonwealth AGD for comment does not include the strong focus on Indigenous women's law and justice as was contained in the 2007 draft National Law and Justice Strategy from which the framework was developed. FVPLS Victoria is both concerned by and disappointed with this development.*

PROPOSALS

Section 1: A background and overview of key law and justice issues for Aboriginal and Torres Strait Islander women and victims/survivors of family violence and sexual assault in Victoria and nationally

Proposal 1

In recognising the ongoing and unique disadvantage of Aboriginal and Torres Strait Islander women and the lack of dedicated law and policy development to address this issue, that the National Indigenous Law and Justice Framework incorporate specific provisions directed at strengthening law and justice outcomes for Aboriginal and Torres Strait Islander women and children.

Improved integration of law and justice issues into social inclusion policy and Closing the Gap initiatives is required.

Proposal 2

That the Commonwealth Government take, in consultation with ATSI people, all steps within its capacity to comply with and enforce international human rights instruments to which it is a signatory with respect to the human rights and access to justice of Aboriginals and Torres Strait Islanders, paying particular attention to the provisions relating to protecting and advancing the rights of ATSI women and children. In consultation with ATSI women, special measures must be adopted to address the significant ongoing disadvantage of Aboriginal women and children.

Section 2: Funding services to urban areas

Proposal 3

(Also see Proposal 4 urging consideration of a broader national ATSI women's legal program)

That, in conjunction with and informed by ATSI women, the Commonwealth Government:

- acknowledge the FVPLS program as a primary rather than supplementary provider of legal services to ATSI victims/survivors of family violence and sexual assault and ATSI women and children
- fund the FVPLS program or an alternative national ATSI Women's Legal Service program to provide comprehensive legal and associated services that address disadvantage in *urban*, regional, rural and remote communities.

Section 3: A national Aboriginal and Torres Strait Islander women's legal program?

Proposal 4

That legal services and law and justice policy for Aboriginal and Torres Strait Islander women and children in Australia be reviewed in a timely manner, in consultation with ATSI women, with the aim of ensuring the following:

- access to ATSI community-controlled legal services for ATSI women and children in urban, rural and remote Australia
- strategic development of a model for a national legal program for ATSI women and children that best supports and recognises local, state and territory diversity. (The current FVPLS Victoria structural model which has a Melbourne office that supports rural units has been effective in Victoria.)
- a strong national, state and territory policy development and advocacy base with meaningful avenues for necessary government support and engagement.

Section 4: Policy development, law reform and advocacy in the area of Aboriginal and Torres Strait Islander women's law and justice

Proposal 5

That the Commonwealth Government urgently strengthen research, policy development and law reform capacity in the area of Aboriginal and Torres Strait Islander women's law and justice. The following options should be considered:

- a) through the implementation of a national Aboriginal and Torres Strait Islander Women's Legal Service program, the funding of policy development/law reform capacity in each state and territory with a national Aboriginal women's law and advocacy body attached to the national secretariat of the national Aboriginal Women's Legal Service program or
- b) the funding of a national Aboriginal and Torres Strait Islander women's law and advocacy body supported by funded policy development/law reform capacity in each state and territory
- c) the urgent funding of a national FVPLS advocacy or peak body, accompanied by the funding of policy development/law reform positions within selected FVPLS units in each state and territory.

Section 5: Funding issues

Proposal 6

That the Commonwealth Government fund FVPLS units on triennial funding cycles commencing in the year 2010 (implemented for FVPLS Victoria from 1 July 2010).

Proposal 7

National

That the state and territory and Commonwealth governments cooperate in ensuring appropriate funding of the FVPLS program nationally, including in urban areas.

That the Commonwealth incorporate the Indigenous Women's Outreach Project Program funding into the national FVPLS program.

That, in consultation with ATSI women, the Commonwealth consider funding a national Aboriginal and Torres Strait Islander Women's Legal Service Program.

Victoria

That the Commonwealth and state governments acknowledge the inequity which has arisen as a result of Victoria not receiving funding through the national Indigenous Women's Outreach Project Program over the past eight years, and collaborate to ensure that specific funding for expanded legal services for ATSI women is allocated to Victoria through the FVPLS program as soon as possible.

That consideration be given by the Commonwealth and state governments to the feasibility of funding of an ATSI Women's Legal Service in Victoria.



Aboriginal Family Violence Prevention and Legal Service Victoria
(FVPLS VICTORIA)



Strengthening on-the-ground service provision for
Aboriginal and Torres Strait Islander victims/survivors
of family violence and sexual assault in Victoria

POLICY PAPER SERIES JUNE 2010
PAPER 2 of 3

ACKNOWLEDGEMENTS

These policy papers have been made possible through funding provided initially by the Legal Services Board Grants Program and then later also by a grant from The Felton Bequest managed by ANZ Trustees.

In 2008, following five years of legal and related service provision, FVPLS Victoria successfully sought funding from the Legal Services Board for a law reform and policy development project. The ever-growing demand placed on FVPLS Victoria for high-level policy input and identification of much needed reform to strengthen law and justice outcomes for Aboriginal and Torres Strait Islander (ATSI) women and children in particular prompted the application. No government funding was or is available to the FVPLS program for this work. Further, the 31 FVPLS units funded nationally for rural and remote services have no peak body to collaborate on systemic or operational issues.

In light of the significant gaps in legal policy development for ATSI women and children, the scope of the project was considerable. Three policy papers have been developed which focus on strengthening legal equity, accessibility and outcomes rather than on broader law reform. Generous funding through The Felton Bequest has enabled continuation of policy and program development activity at FVPLS Victoria into 2010 and has contributed to the completion of the papers.

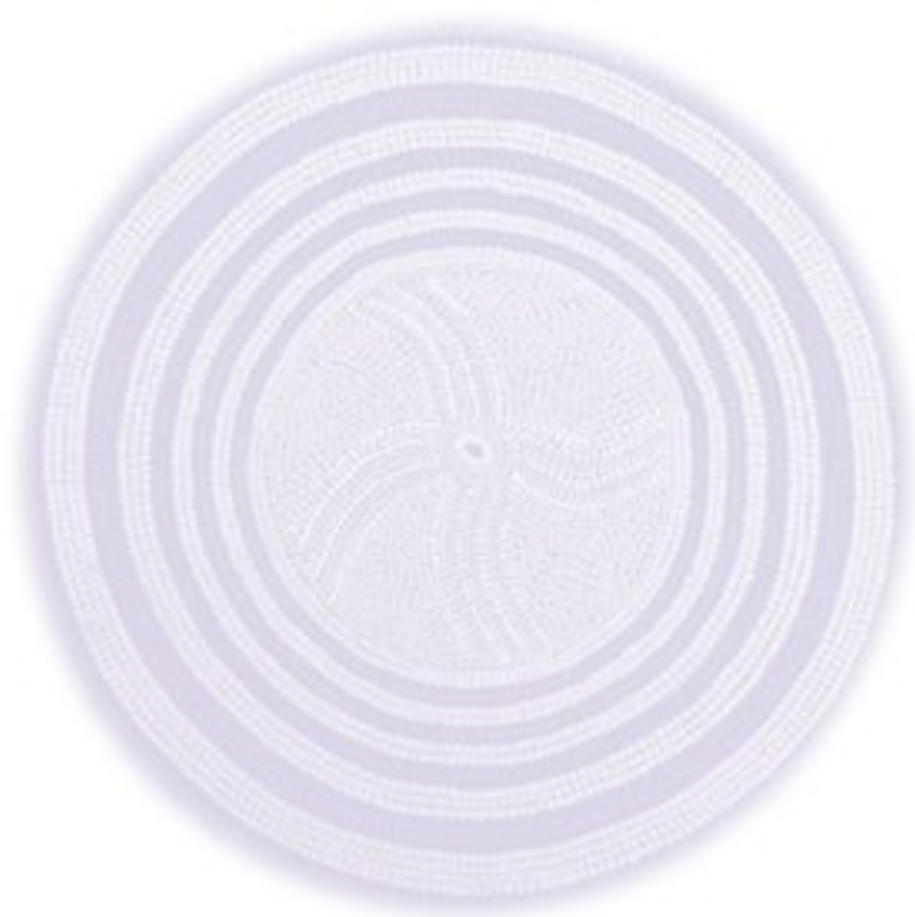
There are many people who have guided and assisted in the development of these papers. Firstly, to all of those women who agreed to be interviewed about their experiences with the justice system, thank you for sharing your experiences and knowledge with such openness and for your enthusiasm and commitment to meaningful change. These papers could not have been produced without your input.

The Steering Committee, Board of Directors, Planning Reference Group and particularly the staff at FVPLS Victoria recognise that legal reform and policy development is fundamental to improved access to justice and better outcomes for Aboriginal and Torres Strait Islander women and children impacted by family violence and sexual assault. This was reflected in the high level of support provided from across the organisation in the development of the papers.

Special thanks to those who generously provided their support and expertise, including Dr Debbie Kirkwood, Julia Farrell, John Bourke and Freehills.

It is heartening that many law and policy developments have taken place throughout the preparation of these papers. These have been incorporated to the best of our knowledge—some at the very last minute. Nevertheless, further developments will no doubt occur subsequent to publication.

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FOREWORD

Antoinette Braybrook
Chief Executive Officer
FVPLS Victoria

As an Aboriginal woman, and one who has been working in the justice sector for many years, I have gained a full appreciation of the ongoing disadvantage and inequality that our women continue to experience. I am reminded daily of and forever inspired by the resilience and strength of Aboriginal women despite the systemic racism and inequitable access to justice that still exists. It is this that drives us at FVPLS Victoria to continually advocate for systemic change to ensure greater law and justice outcomes for all Aboriginal women in every community throughout Australia.

*I am an Aboriginal woman and I was told to go and listen to the Western law. This felt all wrong to me. They didn't know me, my culture, nor the way I protected my child or my family. I felt my dignity was lost through the court system. What can your department do to make the process a lot more comfortable for mothers, fathers and children where they too don't lose their spirits? **Aboriginal woman consulted for the project***

As the CEO of FVPLS Victoria I am very pleased to announce the release of these papers. The issues explored and discussed primarily focus on Aboriginal women and children as victims/survivors of family violence and sexual assault. This is undertaken from a Victorian perspective, but I am certain that the same issues and findings would apply to women and children in other states and territories throughout Australia.

The three key areas on which the papers focus are:

- *Paper 1: Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander victims of family violence and sexual assault and women and children: National policy issues—a Victorian perspective*
- *Paper 2: Strengthening on the ground service provision for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in Victoria*
- *Paper 3: Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault*

Since the establishment of FVPLS Victoria in 2002, the Board of Directors and management have been committed to ensuring capacity within the organisation for policy and research. Aboriginal women's organisations must be properly resourced to undertake policy and advocacy work. This is the key to real change.

After making several unsuccessful applications to the Commonwealth Government, FVPLS Victoria successfully secured grants from the Legal Services Board Victoria and The Felton Bequest to employ a policy development worker. These three policy papers are the product of those grants and of course the work of Shelley Burchfield, our policy development worker, informed by many contributors who generously shared their often difficult stories, precious time and ideas for change. I would like to acknowledge all, and thank them equally for making this work happen.

It is inexcusable that, in the year 2010, Aboriginal women and children are still chronically disadvantaged in Australian society. There is no need to investigate this fact further—it is well documented in numerous reports and commented on by many high-level committees including human rights forums. Despite this, successive governments have failed to focus their attention on a strategic approach or to listen to and act upon women's voices.

It is critical that there be greater resourcing of law and justice services for Aboriginal women at state and territory and national levels. This includes the urgent need for the Commonwealth to lift the rural/remote restriction on the National Family Violence Prevention Legal Service Program, and to work with state and territory governments so that all Aboriginal women, regardless of their geographic location, have access to such an important service.

I would like to take this opportunity to acknowledge recent significant developments by the Victorian Government in providing ongoing and additional funding to FVPLS Victoria and by the Commonwealth in progressing from 12-month to 3-year funding arrangements, albeit with a funding reduction. A formal collaborative funding arrangement between the state and the Commonwealth must be struck to support effective and sustainable statewide service development.

FVPLS Victoria's policy development capacity over the past 18 months has significantly contributed to the progress the service has made and illustrates the importance of this work in supporting and complementing direct service delivery.

These papers comprise a valuable tool for Aboriginal women as they provide a platform for us as leaders, workers and nurturers in our communities to demand change. They are also a valuable reference point for policy and law makers. I strongly urge governments (both Victorian and Commonwealth) to work collaboratively with the women upon which these issues most impact to move forward in an innovative and strategic way.

It is our hope that one day Victoria will have an Aboriginal women's legal service. Clearly more work is needed to explore this possibility, but if such a service were to make a positive difference to the lives of Aboriginal women and children it must happen.

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EXECUTIVE SUMMARY

This is the second of three FVPLS Victoria papers addressing the need to improve law and justice responses for Aboriginal and Torres Strait Islander (ATSI) victims/survivors of family violence and sexual assault and ATSI women and children. The other papers are entitled:

- *Paper 1: Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander victims of family violence and sexual assault and women and children: National policy issues—a Victorian perspective* (examines national policy and program issues within a human rights framework).
- *Paper 3: Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault* (looks at addressing access barriers and improving culturally appropriate responses). Police responses are dealt with in Paper 3.

As the title indicates, this paper looks at how legal and associated services for ATSI victims/survivors of family violence and sexual assault can be improved in Victoria. Whilst statewide coordination is required, the importance of recognising local ATSI community diversity and of the need to develop local strategy is essential. The commitment of the Victorian Government to Koori law and justice initiatives is acknowledged, and relevant strategy and action within the Victorian Indigenous family violence ‘10-year plan’ is incorporated throughout.¹

FVPLS Victoria is one of 31 units funded nationally through the Commonwealth Attorney-General’s Department to provide legal and associated assistance to Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in rural and remote locations. FVPLS Victoria is based in Melbourne and has offices in Bairnsdale, Warrnambool and Mildura. Alternative limited-term funding from the Department of Justice Victoria, Victoria Legal Aid, philanthropy and other non-government sources has been secured to service metropolitan Melbourne and other high-need areas in Victoria. FVPLS Victoria is a stand-alone ATSI corporation. This independence has been critical to the organisation’s strength and accessibility in providing family violence and sexual assault legal and associated supports.

The Commonwealth government’s lack of a strategic approach to law and justice services for Aboriginal and Torres Strait Islander victims/survivors, and ATSI women (and children), is examined in detail in Paper 1, particularly in light of human rights obligations. Paper 1 also presents recommendations directed toward improved outcomes in this area. FVPLS Victoria supports the strategic development of the FVPLS program, and legal services for ATSI women and children more broadly, led by ATSI women. **The introduction of a national Aboriginal and Torres Strait Islander women’s legal program (incorporating children) should also be considered in relation to this. A broadening of dedicated ATSI legal services for women and children would greatly strengthen**

¹ *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities 10 year plan*, Department of Planning and Community Development, 2008.

their access to justice and provide more holistic and effective responses. It is acknowledged that culturally appropriate services and supports are also required for men as victims/survivors.

Project consultations and FVPLS Victoria's experience on the ground have identified a number of key issues related to the strengthening of services for ATSI victims/survivors and women and children in Victoria, which are discussed in this paper, accompanied by practical proposals for change. These issues include:

- greater attention to ATSI women and children's law and justice needs, informed by ATSI women at state and Commonwealth levels
- extension and broadening of culturally appropriate, specialist legal services
- more flexible Legal Aid guidelines
- more effective links between key ATSI and mainstream services
- the development of culturally responsive after-hours and crisis services (police responses are dealt with separately in Paper 3)
- improved services and supports for children impacted by family violence
- greater attention to culturally appropriate counselling/healing
- recommencement of a Koori-specific sexual assault initiative
- cultural awareness development of lawyers, judges, magistrates and justice staff, and employment of more ATSI people in legal services and legal roles
- support for community legal education including for young people
- greater recognition within the development of community services of ATSI women's imprisonment rates and the significant impact of family violence and sexual assault
- support for an ATSI women's cultural retreat in Victoria.

Most of the proposals made require additional funding—a mixture of short and long term—over which state and Commonwealth governments must collaborate. FVPLS Victoria is already sourcing significant non-government and philanthropic funding. Aboriginal and Torres Strait Islander women must be ensured a voice that informs and drives all necessary developments.

This paper and the proposals contained within it are informed by:

- What FVPLS Victoria has learnt to date about providing legal and associated services on the ground in Victoria.
- Broader ATSI community and government initiatives in Victoria, particularly in relation to addressing family violence and sexual assault. Relevant actions contained in the *Strong Culture, Strong Peoples, Strong Families Towards a safer future for Indigenous families and communities 10 year plan*² ('the 10-year plan') are detailed alongside proposals made.
- Confidential consultations with ATSI victims/survivors of family violence and sexual assault who have experienced aspects of the legal system. The consultations included past clients of FVPLS Victoria, and ATSI and non-ATSI workers in support, policy and legal roles (29 in total,

² Ibid.

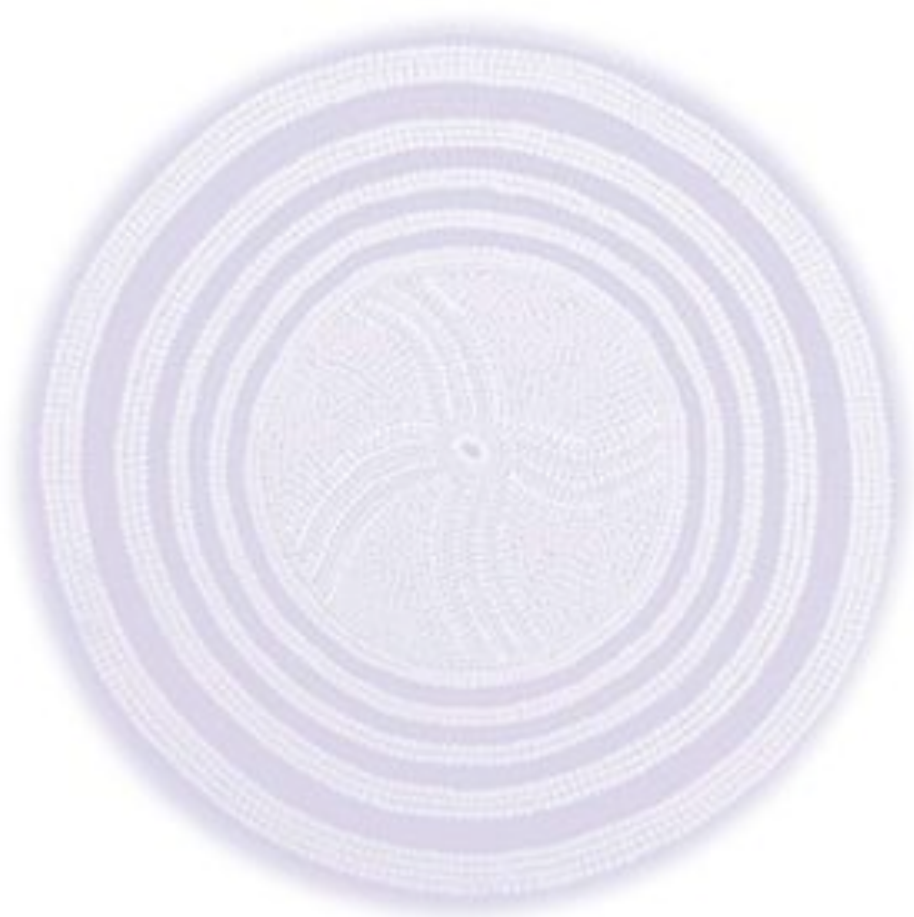
22 ATSI and 7 non-ATSI, 16 from urban and 13 from rural areas). Twenty-four formal interviews were carried out face to face, and on average took about two hours each. The remaining five ATSI participants contributed through informal discussion with respect to particular areas of interest. A standard set of questions for workers and non-workers was prepared about key legal and associated issues encountered by victims/survivors under the following headings:

- legal services
- experiences with police
- experience as a victim of violence where the offender has been taken to court by the police (restorative justice also raised here)
- intervention orders
- child protection
- family law
- VOCAT (Victims of Crime Assistance Tribunal)
- children
- general (*Sisters Day Out*, Women's Cultural Retreat, other issues).

Participants were able to choose which questions they wished to answer. The Guidelines for Ethical Research in Indigenous Studies of the Australian Institute of Aboriginal and Torres Strait Islander Studies guided the consultation process. The responses referred to in the paper reflect only the views of the individuals consulted but in many cases also concur with the overall experience and understanding of FVPLS Victoria in its service provision in Victoria. Informed consent was obtained from all participants, who generally appreciated the opportunity to contribute to the project. Listening and responding to concerns raised during the consultation interviews was an important part of the process, and reassurance was given that concerns would be documented and addressed appropriately.

- An advisory committee was established for the project. The contribution of the committee members is gratefully acknowledged.

FVPLS Victoria takes the view that it is essential that ATSI women and young people who have experienced family violence and sexual assault have the opportunity to inform service delivery and legal reform developments. FVPLS Victoria is extremely grateful to all participants who gave their time for this research.



Section 1: Introduction

The majority of FVPLS Victoria's client group are women and their children (about 90%) who are therefore the priority focus of this paper. Gender and cultural safety in family violence and sexual assault service provision is paramount; the uptake of legal assistance through FVPLS Victoria since its commencement confirms this.

Women and children are disproportionately victims of family violence in all communities—the gendered nature of family violence is unquestionable. Levels of family violence and sexual assault in ATSI communities are high, exacerbated by the devastating racist and discriminatory treatment of ATSI people which has led to ongoing trauma and entrenched disadvantage. ATSI women who experience family violence must also often deal with intergenerational trauma and multiple forms of disadvantage. The legal problems arising from this violence have layers of complexity and the legal system lacks culturally appropriate approaches to dealing with these issues. High levels of support together with capacity for comprehensive legal casework services are essential.

FVPLS Victoria also assists male victims/survivors, and it is acknowledged that culturally and gender appropriate services for men as victims must also be assured. The service is not funded to assist perpetrators of violence; however, FVPLS Victoria recognises the importance of separate services for men as perpetrators of violence. ATSI women and children are subjected to family violence by both ATSI and non-ATSI perpetrators.

Strategies adopted to achieve best overall safety outcomes in family violence situations vary. In some but not all instances, legal intervention is the preferred option; in other cases, such as in the child protection area, legal intervention is imposed. In the latter scenario, in particular, legal representation to ensure the protection of rights is critical. Availability of culturally accessible legal services to increase knowledge and understanding of legal options is a key element to improved law and justice outcomes.

Importantly, legal responses are only effective as part of a broader safety and support plan on the individual/family level and as part of culturally strong community prevention strategies. Holistic service delivery and good relationships between relevant Koori and mainstream agencies is critical. It is also essential that women have access to culturally appropriate counselling and paralegal workers who can provide the support needed to engage in and sustain the legal process. As mentioned previously, capacity to provide a broader range of legal services to ATSI women and children would also improve outcomes on the ground.

Legal services for victims/survivors form part of a broader community response to family violence and sexual assault. However, law and justice issues are often not adequately incorporated into the big picture. It is the view of FVPLS Victoria that a national ATSI women's legal program would significantly address the wide-ranging disadvantage currently experienced by ATSI women and children.

In relation to family violence, strong community initiatives are underway in Victoria including the Indigenous Family Violence Partnership Forum, the Regional Family Violence Action Groups, the 10-year plan and also more broadly with the Victorian Government through the Aboriginal Justice Forum and the Victorian Aboriginal Justice Agreement. Whilst the 10-year plan implementation strategy remains a little unclear, and the Victorian Aboriginal Justice Agreement could benefit from a greater focus on law and justice policy for ATSI women, these initiatives are extremely positive and provide good bases for progress. The Koori Family Violence Court Support Project to be piloted in Melbourne has arisen from the 10-year plan and is an excellent leading initiative.

The need for improved connection between mainstream integrated family violence strategies and ATSI-specific initiatives is discussed in Section 7.

Without systemic improvements the success of legal services within established legal systems is constrained. Aboriginal and Torres Strait Islander law and justice policy has focused predominantly on criminal law and justice issues for ATSI men. A greater focus on a broader range of law and justice issues, particularly those affecting ATSI women and children, is urgently needed. Family violence, with its broad law and justice impacts, is just one priority area. Processes that facilitate dedicated attention in this area must be encouraged.

Proposal 1

That there be greater dedicated emphasis on law and justice policy development for Aboriginal and Torres Strait Islander women and children in Victoria.

Action

That consideration be given to the Victorian Aboriginal Justice Agreement 3, incorporating a discrete section related to advancing law and justice outcomes for ATSI women in Victoria, supported by the establishment of an ATSI women's law and justice advisory body to advance its objectives.

That the voices and experiences of ATSI women and young people who have experienced family violence and sexual assault inform the development of services and legal reform through the provision of confidential and safe processes.

That a specific implementation plan for law and justice strategy and action identified within the 10-year Plan be developed that incorporates key ATSI agencies.

Responsibility

Victorian Government, Aboriginal Justice Forum, Indigenous Family Violence Partnership Forum, FVPLS Victoria, Victorian Aboriginal Legal Service

Section 2: Providing legal services to ATSI victims/survivors of family violence and sexual assault: Some key issues

In the provision of legal services for ATSI victims/survivors of family violence and sexual assault, cultural respect, safety, confidentiality, trust and recognition of the layers of trauma and life issues faced by most victims/survivors are perhaps the most important overriding factors.

Paper 1 details the consultation feedback and other evidence supporting the importance of women having access to both confidential and safe ATSI community-controlled services and mainstream assistance as needed. Improved communication and relationships between ATSI and mainstream law and justice services are also identified as important to achieving better on-the-ground outcomes.

Legal services, including FVPLS Victoria, that are dedicated to providing support for victims/survivors are sometimes viewed as running counter to the notion of strengthening the ATSI community as a whole; and intervention imposed by the mainstream legal system can be viewed similarly. This is because legal interventions can involve police; give rise to criminal proceedings; rely on orders and outcomes which separate families in the name of safety; and often involve culturally inappropriate legal and court responses.

The nature of family violence and sexual assault, however, with its extremely serious ramifications and impact upon victims and survivors, must be fully and openly acknowledged and addressed. Legal responses are often required and sought to protect and advance the best interests of victims. Improving the cultural appropriateness of these legal responses is therefore necessary. Bringing families together to resolve issues outside of legal processes may be appropriate in some circumstances, but this approach to family violence and sexual assault fails to acknowledge the complexity of the crimes and the circumstances involved. On this point, a regional domestic violence coordinator commented during the consultations:

If you haven't worked closely with victims of family violence you can't understand the psychological trauma and the way it affects people ... it has taken me a long time to understand how victims feel and the process of healing. **Aboriginal regional family violence coordinator**

FVPLS Victoria regards the safety of clients as the ultimate priority in service provision and legal options are always discussed based on best safety outcomes. Sometimes taking legal action is the best option for safety reasons or to deal with intractable disputes that are likely to escalate unless some level of intervention occurs. In this sense, legal intervention can also have a preventative role. In other situations, legal intervention is not the most appropriate response but may become so at a later time. The provision of information and options in a supportive, confidential and culturally safe

environment is key, as is understanding of the individual choices people make based on their circumstances at a given time.

Whilst the new emphasis in Victoria is on ensuring that victims of family violence are not forced to leave their homes, remaining in or returning to situations in which safety and wellbeing are at significant risk is not appropriate. Having effective and culturally safe legal and other assistance in place at the earliest possible time is critical in supporting victims to make difficult and often pressured decisions about the best plan of action.

Section 3: Access to legal services for ATSI victims/survivors

3.1 ATSI dedicated primary services for urban, rural and remote communities

For reasons already outlined, and due to the ATSI community's often devastating experiences with the legal system and with authority, ATSI victims/survivors are more reluctant to access legal assistance or to engage with the legal system. It is *not* the overall experience of FVPLS Victoria, however, that ATSI women, unlike other women, do not want to access legal assistance with respect to family violence and family disputes. The situation is far more complex.

The failure of ATSI people to access the legal system in situations of family violence is likely to be in part the result of the lack of dedicated gender and culturally appropriate legal services and community education and development in this area. The uptake at FVPLS Victoria in both urban and rural areas since commencement confirms this. Initiatives to strengthen cultural accessibility within the legal system in Victoria have also been critical.

Paper 1 challenges the Commonwealth Government policy of funding FVPLS services only to rural/remote locations on the basis of 'relative need' and because ATSI women and children can access mainstream services in urban areas. Mainstream services are not appropriate as primary service providers for ATSI people and are not being adequately accessed. A policy that acknowledges FVPLS or ATSI services as primary services for ATSI women and children would strengthen outcomes on the ground and facilitate ATSI leadership in key law and justice policy development.

ATSI community-controlled services for victims/survivors and women and children must be available

*... our people are not accessing mainstream services ... victims feel they won't be understood ... don't feel comfortable ... cases are complex ... family systems are complex ... choice is very important in accessing services. **Aboriginal support worker***

*... Dedicated services understand how to communicate effectively ... and also have an understanding of what the barriers in the legal system are ... they bring Indigenous cultural awareness to the justice system. **Aboriginal regional domestic violence coordinator***

*... Even with cultural awareness training of mainstream organisations it will always be more appropriate that Aboriginal agencies do the work ... Indigenous organisations know what information to look for when working with and advocating for Indigenous people. **Aboriginal support worker***

FVPLS services must be available in urban, rural and remote locations

*... Domestic violence does not only happen in rural/remote areas ... no geographic restriction on where family violence happens ... service should be there for all women ... trust is really important for disclosure ... important in rural and urban areas. **Aboriginal victim/survivor***

*... This is a ridiculous policy. There is a huge population of Indigenous people in the Melbourne metro area ... If take away the service would leave a huge gap ... Indigenous women will often not access mainstream services ... this is not the preference. **Aboriginal victim/survivor***

*... Women need to access urban areas for safety reasons ... it is easier to keep women safe in urban areas ... small communities make it very hard to keep people safe ... Koori grapevine means information gets around in a small community. **Key statewide Indigenous service***

*... Services are needed in urban areas ... clients don't stay in regions ... clients freak when they move to places where culturally appropriate services are not available. **Non-ATSI lawyer***

*... Advocate strongly for FVPLS in urban areas. No other service like it that can support women. May be an epidemic of issues in the community if women only have to access mainstream services. **Aboriginal regional domestic violence coordinator***

FVPLS Victoria has recently secured additional and ongoing funding from the state government, which will ensure capacity for services in metropolitan Melbourne. It is imperative that the Commonwealth and state governments work together to effectively support FVPLS Victoria's statewide service model.

Proposal 2 (Also see Proposal 3, Paper 1)

That dedicated ATSI legal services for ATSI victims/survivors of family violence and sexual assault and ATSI women and children be funded in urban and regional areas as well as in rural/remote locations.

Action

That a strategic review of the FVPLS program be conducted nationally to address overall disadvantage and to strengthen law and justice outcomes for ATSI women and children.

That consideration be given to establishing an ATSI women's legal service in Victoria and a national ATSI women's legal program in consultation with ATSI women.

Funding to FVPLS Victoria for statewide services including metropolitan Melbourne should be provided through a joint Commonwealth/state funding arrangement.

Responsibility

Commonwealth Attorney-General's Department and Department of Justice Victoria through COAG and SCAG, Victoria Legal Aid

3.2 Rural Victoria

FVPLS Victoria is currently stretching limited resources to provide services in Gippsland, Barwon South West, Mildura, metropolitan Melbourne and other high-need areas in Victoria. For example, in Gippsland—a huge region—FVPLS Victoria currently only has one lawyer and one paralegal worker based in Bairnsdale. In Northern Victoria, the need for services for Swan Hill, Shepparton and Echuca has been identified as a priority. The Mildura service is currently stretching its capacity servicing its designated catchment area. In so far as FVPLS is the appropriate primary provider of

legal services for ATSI victims/survivors of family violence and sexual assault (with other mainstream services and ALSs supplementing this service), it is imperative that funding be extended to facilitate better geographic coverage. This should occur through a collaborative Commonwealth/state funding arrangement. Section 5, Paper 1 deals with program funding issues.



Mildura FVPLS team, 2009.

... having one service covering a large catchment is unrealistic ... at the end of the day all it does is increase community expectation ... many more resources are required within a large catchment ... there are some communities that are more disadvantaged re. transport and communication options.

Non-ATSI lawyer

... location of services in rural areas [is a barrier to access] ... [some areas] not covered properly by services. Need proper resourcing of existing services so as to cover geographic areas. **Non-ATSI lawyer**

... Even having four family violence offices ... other areas have asked ... when are we getting an office? ... can only give 1800 number ... so dedicated family violence services needed everywhere. **Aboriginal coordinator ATSI family violence service**

There are a number of rural areas in Victoria without an FVPLS service. The Shepparton, Echuca and, as mentioned, Swan Hill areas in particular require a local service. It is noted that the report commissioned by the Commonwealth AGD in 2004 to advise on the expansion of the FVPLS program at that time found Shepparton to be a high-priority area.³

It is important that local communities determine the nature of the FVPLS service located within them, and that local communities have ownership of these services. FVPLS Victoria has also found, however, that its satellite model of the Melbourne head office supporting rural offices is effective in Victoria, as it ensures holistic and broad-based approaches at both the local and statewide level.

Recommendations 1, 3 and 6 of the 2009 Senate Committee Access to Justice Report are also relevant:

³ Blagg, Harry, *Crisis Intervention in Aboriginal Family Violence Summary Report*, Crime Research Centre of Western Australia, Partnerships Against Domestic Violence, Commonwealth of Australia, 2000.

Recommendation 1

2.35 The committee recommends that the federal, state and territory governments jointly fund a comprehensive national survey of demand and unmet need for legal assistance services in Aboriginal and Torres Strait Islander communities, with particular identification of rural, regional and remote communities and Indigenous women's needs, to be jointly undertaken with state/territory legal aid commissions, community legal centres, Aboriginal legal services, National Legal Aid and the Law and Justice Foundation NSW.

Recommendation 3

The committee recommends that the federal, state and territory governments, in conjunction with relevant stakeholders, and using an evidence-based approach, review existing funding programs for legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services, and Family Violence Prevention Legal Services with a view to sufficiently resourcing the legal aid system to meet the legal needs of the Australian people, including appropriate loadings for high need areas such as remote, rural and regional areas.

Recommendation 6

2.123 The committee recommends that the federal, state and territory governments provide additional funding to legal aid commissions, community legal centres and Indigenous legal services with a view to expanding service delivery in rural, regional and remote areas. This funding must take into account the significant resources required by legal aid commissions, community legal centres and Indigenous legal services in undertaking resource-building initiatives in rural, regional and remote areas.

Proposal 3

That dedicated legal services for ATSI victims/survivors of family violence and sexual assault and ATSI women and children be extended within rural Victoria.

Action

That additional resources be provided to FVPLS Victoria to strengthen existing services in its rural locations.

That the Commonwealth AGD provide funding for an FVPLS office to be established in Shepparton to also service Echuca and for resources to service the Swan Hill area.

Responsibility

Department of Justice Victoria, Commonwealth Attorney-General's Department

3.3 Complexity and sensitivity of legal issues

The need for integrated legal service delivery and client support

The introduction to this section detailed the broad impact of family violence and sexual assault in other law and justice outcomes, including child protection interventions and imprisonment.

The experience of FVPLS Victoria in its legal service provision confirms that the legal work is generally complex, involves a number of areas of law, and that the clients experience layers of trauma. It is critical that the legal service accessed by an ATSI victim/survivor has the capacity and expertise to follow through with all the legal issues presenting. Fragmenting legal work depending on its type or litigation status is not efficient and not in the best interests of the client. One of FVPLS Victoria's strengths as it has grown has been the ability to see cases through to their conclusion, and to handle the range of legal problems involved. **This is another reason why FVPLS must be accepted as a primary rather than supplementary provider of legal services to ATSI victims/survivors.**

Further broadening of legal service assistance to ATSI women and children within the program must be considered. Assistance could then be given for other legal issues arising as a result of family violence including Centrelink, criminal matters, and financial/consumer problems. Several years ago the Commonwealth AGD funding of broader civil law services within the FVPLS program was under consideration; however, this did not eventuate.

One example of the nature of the work is a woman who accessed FVPLS Victoria for assistance with a family law case in which the father's contact with the children was in dispute. The case involved the following:

- extending of intervention orders and adding children to orders
 - advocating on behalf of the client with the police about prosecution of assault and an intervention order breach
 - acting on behalf of the client in contested family law proceedings in the Family Court
 - lodging and finalising victims assistance applications for the client and her children
 - arranging counselling for the client and the children (with separate counsellors)
- (This client did not have Department of Human Services [DHS] child protection involvement during her period of using the services of FVPLS Victoria but this is another common element to the situation. Frequently cases are referred between the family lawyer and child protection lawyer in line with DHS commencing and ending child protection intervention).

The Australian Law Reform Commission in its family violence consultation paper discusses the burden on families of having to move between different jurisdictions for family law, child protection law and family violence protection orders. A less fragmented or 'seamless' approach is proposed which will also require 'seamless' legal service provision.

Funding for family and civil law services

The level of complexity of the work is high and the work is also intensive. Family law and child protection cases can go on for years. The legal resources required for each client, as in the example in section 3.3 above, are often substantial. The current funding arrangements for FVPLS services do not acknowledge or reflect this, but ought to do so.

In the 2005 report of the Joint Committee of Public Accounts and Audit, in its inquiry into Indigenous law and justice, the National Association of Community Legal Centres submitted an estimate that:

2.26 ...the amount of time needed for civil and family matters is six or seven times greater than that needed for criminal matters.

The committee also noted that:

2.44 ...[the AGD] needs to put in place funding arrangements that acknowledge the costs of establishing civil law practices and the greater amount of time and resources required of a legal service to conduct family and civil matters.

Development of legal expertise

Given the unique and often complex nature of its legal work, involving cultural considerations, FVPLS Victoria has recognised the importance and broader benefit of ATSI services developing expertise in particular areas of law. This unique knowledge and experience informs and strengthens the ability of FVPLS Victoria to identify and advocate for necessary systemic change directed toward improved Aboriginal and Torres Strait Islander access to legal services. For example, the FVPLS Victoria family lawyer has significantly informed the position taken by the service in advocating for improved ATSI accessibility in the family law system, and this applies equally to other areas of law.

It is also important that lawyers at FVPLS Victoria are able to assist a client with their range of legal issues. Therefore, flexible funding arrangements for specific legal work are also required (for example, the family lawyer needs to be able to handle corresponding child protection and family violence intervention order cases for the one client).

Proposal 4

That FVPLS units or a national ATSI women's legal program be adequately resourced to provide comprehensive legal services for Aboriginal and Torres Strait Islander women and children and victims of family violence and sexual assault, and that legal casework guidelines within the program be expanded beyond family violence and sexual assault. That the greater resourcing required for family and civil law work be recognised in funding levels.

Action

That the state and Commonwealth governments ensure adequate resourcing of FVPLS Victoria to

develop and maintain the necessary legal capacity and expertise to provide comprehensive and integrated legal services in key legal areas—specifically family law, child protection, family violence and victims assistance.

That Victoria Legal Aid continue the family law secondment arrangement and family violence legal position with FVPLS Victoria, that the Victorian Government fund an ongoing child protection specialist legal position with FVPLS Victoria and ensure adequate resourcing for legal services to support new and emerging law and justice initiatives. Flexibility in funding to ensure that lawyers can holistically assist clients is also required.

Paper 3 proposes funding of a dedicated Victim of Crime legal position at FVPLS Victoria.

That the Commonwealth and state governments collaborate to ensure expanded dedicated legal service assistance areas for ATSI women and children in Victoria (e.g. civil law) either through the FVPLS program or as part of a broader overview of legal services for ATSI women and children nationally (see Proposal 1). Indigenous Women's Program funding must be made available to Victoria.

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria, Victoria Legal Aid

3.4 Women and children as the predominant client group

Provision of services

Women make up the predominant client group of FVPLS Victoria and are in the majority as victims/survivors of family violence and sexual assault more broadly. (The Victorian Family Violence Database 1999–2008 indicates that in 2007–2008 over 90% of Indigenous victims of family violence in Victoria were female.) This requires a dedicated service provision response.

Women victims of family violence and sexual assault *must* be able to access women lawyers and other women support staff for reasons of gender sensitivity and culture. Males are generally the perpetrators of violence against women and many women are not comfortable speaking with a male about these issues. All project consultation participants commented that having a female Tribunal member hear their case at VOCAT was extremely valuable.

... Trusted FVPLS because you are women. Aboriginal victim/survivor

*... It was woman [the counsellor] ... must be a woman we don't trust men because of the violence
... Look after women better. Aboriginal victim/survivor*

*... Mainstream lawyers are local men ... other local women would not use them for these issues
either. Aboriginal victim/survivor*

*... Women are more in touch with the issues ... women understand women. More understanding of emotional side of things. **Aboriginal victim/survivor***

Women who access legal services as victims must be certain that neither the perpetrator nor a person connected to the perpetrator will also be accessing that service. Concern about family or community backlash demands absolute confidentiality. In addition, women more generally do not want the broader community to know that they are experiencing family violence; they prefer to attend services where privacy is guaranteed.

*... I was worried about the community knowing where I was going ... needed to go somewhere I knew would be confidential ... Felt more secure after contacting FVPLS. **Aboriginal victim/survivor***

Women victims are often the carers of children who have also experienced violence. Attention must be paid to the situation of children to ensure that supports and legal rights for the children are also pursued.

Community education

In relation to community education about family violence and sexual assault, culturally safe women's gatherings such as the *Sisters Day Out* program are key to accessing women who might not otherwise seek legal assistance. Women who have attended *Sisters Day Out* workshops have also confidentially sought legal assistance, once they have seen that this is a safe environment. This would not be possible in a mixed-gender environment.

*... FVPLS Victoria came to the town to do an information session ... I got more information about what guys do [in situations of family violence]. There was an opportunity for an appointment with a lawyer after the education session ... that provided an opening for me to talk personally. **Aboriginal victim/survivor***

*... so much fun for Aboriginal women who have same experiences ... feeling of being loved and empowered ... loved the girly stuff. Did not feel alone. **Aboriginal victim/survivor***

*... women there had a whole new look on their faces that I had not seen for many years. Women who have gone to hell and back had a happy look on their face... **Aboriginal coordinator family violence service***

Aboriginal and Torres Strait Islander Women's Legal Services

Paper 1, Section 3 discusses the possible development of a national ATSI women's legal service. Examination of the most effective funding arrangements will be required to determine whether the

Commonwealth FVPLS program and Indigenous Women's Project funding could be rationalised. It is proposed that these services would also assist children (but not young males as offenders). This would provide a much stronger and more clearly defined base for law and justice services for ATSI women nationally. It would also broaden the type of legal work provided to increase the strength of the holistic response (see Paper 1, Recommendation 4).



Section 4: Holistic service delivery: Paralegal support

Many FVPLS Victoria clients who experience family violence and/or sexual assault have a multitude of issues to deal with, including: financial problems; homelessness; drug and alcohol issues; ill health; psychological trauma including that resulting from past violence; and lack of family support. Dealing with immediate legal problems whilst also coping with this range of life issues is extremely difficult; in fact, unless these issues are addressed legal processes are unlikely to be pursued. The importance of general case management support for these issues cannot be underestimated.

The model of having a paralegal support worker alongside a lawyer is proving highly successful in providing more holistic services and broader client support. Anecdotally, the level of engagement and follow-through action by clients in the legal process is vastly improved, and the critical support issues better dealt with and coordinated, if such support is provided. Paralegal support workers can also link clients to appropriate services. FVPLS Victoria has been funded through the DHS homelessness program for two paralegal support workers from 2010, which is a welcome development.

*... Need support people to assist, see legal and other processes through ... case management ... lot of support needed to process the legal system ... to do the practical things required. **Aboriginal support worker***

*... paralegal support role is important ... the support a service is able to provide to a client is important ... able to track how the client is going and to provide assistance to other crisis management ... housing, Centrelink ... these have major impact ... assists to have them hang in there with the legal process. **Non-ATSI lawyer***

*... You need to be well in the system ... our clients are often not well ... mentally not well ... or emotional stress/lack of education/drug and alcohol/generational trauma ... makes the system much more difficult. Not sure how women would cope where lawyer is just giving legal service ... leaving her to sort all other practical issues herself ... it's hard for me to organise ... think some women would not cope and that would then cause trouble with legal processes. **Aboriginal paralegal support worker***

The *Joint Committee of Public Accounts and Audit Report 403 Access of Indigenous Australians to Law and Justice Services* acknowledged the importance of paralegal support workers in Indigenous legal services and recommended ongoing funding:

... 6.64 The Committee recognises that an essential part of the services provided by ATSLs is the involvement of community-based paralegal staff who provide support for clients.

Court support is also a key issue. The availability of a dedicated court support person (other than the legal representative) for legal proceedings is extremely important. Due to issues of confidentiality and trust this role is best filled by a person attached to the legal service, if possible. ATSI Liaison

Officers at the courts, whilst providing an essential service, cannot take on an intensive support role for all ATSI people coming before the court. **Paralegal workers attached to legal services are in a unique position to provide intensive court support for clients of the service.** Women who have dedicated ATSI support workers in the court process feel very positively about this support. Often family support is not available for ATSI victims in situations of family violence and sexual assault for a range of reasons, which raises the importance of professional supports.

*... need support person throughout court process ... family may not support ... professional support also needed. **Aboriginal support worker***

*... At court will chat to them ... make sure children comfortable and that clients are comfortable and make sure they know where to get food and drink so they don't go hungry or thirsty. If need supporting evidence will organise that ... for example Court required proof of accommodation ... I had to organise that on the day ... Often it is a long or stressful time at the Children's Court ... clients not prepared for this ... the practical support from a trusted person makes a big difference. **Aboriginal paralegal support worker***

*... Had no support person in [the Family] Court ... would have been a lot better to have someone to support me through it ... to help decision making ... need that. **Aboriginal victim/survivor***

*... Court support a key and also someone who knows the process ... really helped a lot ... had Koori person I knew who came with me as friend ... she also knew about the legal process. **Aboriginal victim/survivor***

*... Having Koori support person is important ... female young people very shy ... need Koori support in court. **Aboriginal support worker***

*... using Koori liaison officer resources to support ... [additional] Koori person in victim support role would be good. **Aboriginal support worker***

*... police treat clients differently when there is no support person ... don't use plain language. **Aboriginal support worker***

*... women don't tend to bring their own support people along ... makes court support important ... good for our service [FVPLS] to have that ability because established relationship ... rather than someone from an outside service on the day ... not trying to tell their story all over again. **Non-ATSI lawyer***

Proposal 5

That the unique support and strengthening of legal service provision provided by paralegal support workers in the FVPLS program, and ATSI legal services more generally, be fully acknowledged and supported.

Action

That the Commonwealth Attorney-General's Department and Victorian Government continue to fund paralegal support positions in the FVPLS program and in ATSI legal services more generally.

Responsibility

Commonwealth Attorney-General's Department, Victorian Government

FVPLS Victoria is often also required to provide financial assistance for basic transport, child care and food so that clients can see a legal process through to its conclusion. For example, clients often have to travel to the Family Court Melbourne from country areas, so need support with public transport fares, child care, accommodation and food. There are also instances where women cannot meet child access arrangements because of financial hardship, particularly if they are required to travel. Government funding is not provided for this, so FVPLS Victoria currently relies on donated funds.

FVPLS Victoria lawyers are noticing increasing difficulties for ATSI women who experience family violence in accessing appropriate housing options.

Proposal 6

That the material aid requirements of clients engaging in legal processes (e.g. child care, petrol, food, accommodation) be acknowledged and appropriately funded.

That emergency housing options for ATSI women who experience family violence be enhanced.

Action

That funding for material support for ATSI victims/survivors be incorporated into FVPLS program funding and also attach to other state- and non-government-funded legal positions.

That the Victorian Government through relevant departments increase funding for emergency housing for ATSI women and children who experience family violence.

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria, Department of Human Services Victoria



Section 5: Legal services for children

5.1 Project feedback

The project consultations revealed a clear view that more support services are needed for ATSI children who have experienced family violence or sexual assault as either primary or secondary victims.

*... would have been good to have legal assistance earlier ... I didn't realise it would be good to have my own lawyer. **Young Aboriginal sexual assault victim***

*... issue of children in care needing victims assistance application done ... who is responsible to look after that ... to pursue VOCAT etc. **Non-ATSI lawyer***

*... Kids are falling through ... need to look after kids ... need case management ... plans to meet medical, emotional wellbeing ... kids are the next generation ... too hard for mums at times [who are experiencing violence etc.]. **Aboriginal support worker***

*... not enough supports available ... no easy availability for specialist children's counsellors or qualified specialist Aboriginal children's support workers. **Non-ATSI lawyer***

*... more dedicated services ... specialising in children only ... with mainstream/Indigenous options. **Aboriginal support worker***

5.2 FVPLS services for children

In recent times there has been growing recognition of the impact of family violence upon children as both primary victims and secondary victims (where they have heard or witnessed violence).

FVPLS Victoria legal assistance for children would normally involve:

- victims assistance claims in which a child has been a primary or secondary victim (witness) of family violence or sexual assault—children's counselling services would often follow
- attendance at the Children's Court (Family Division) where a protection notification is made (FVPLS Victoria would normally provide assistance to a parent/carer who is or has been a victim)
- family law—assistance to parents/carers where disputes arise about children. Victoria Legal Aid has recently included FVPLS Victoria on the Independent Children's Lawyer (ICL) panel
- family violence intervention orders—children are now often included on intervention orders.

It is generally parents who access the services of FVPLS Victoria with their children. It is unusual that children contact or are referred to the service discretely (see Section 7.1: After-Hours Crisis Support for Aboriginal victims of family violence). It must be acknowledged that support to parent/carer victims of violence is also key to improving the safety and wellbeing of their children.

5.3 Representing children in family law and child protection cases

It is important that ATSI children receive culturally appropriate representation in both jurisdictions, and that the option to assign these cases to an Aboriginal legal service such as FVPLS Victoria is open. ATSI children are significantly overrepresented in the child protection system in Victoria (see also Paper 3, Section 1: Family law, and Section 2: Child protection). The VLA referral process may need to be refined to best address these particular circumstances. FVPLS Victoria is aware of culturally inappropriate representation of children, particularly in the Family Court (see also Section 6: Victoria Legal Aid, below). One recent example is of a private Independent Children's Lawyer in family law proceedings marking 'not applicable' against ATSI issues for an ATSI child.

It is important to note that in family law and Children's Court disputes, for reasons of conflict of interest, all parties generally require separate legal representation, which increases the demand for culturally appropriate legal services. Government funding arrangements must also account for this issue.

The availability of independent, confidential legal services that are not connected or partnered with agencies involved in the child protection system, such as DHS or the Victorian Aboriginal Child Care Agency (VACCA), is important to ensure that ATSI adults and children can and will access confidential legal services. The FVPLS program can offer this assistance if provided with the necessary dedicated resources.

5.4 The legal rights of children in care

FVPLS Victoria is particularly focused on ensuring that the legal rights of children who are victims of crime and under care and protection orders are protected. FVPLS Victoria is aware of cases where this has not occurred. **There is an urgent need to establish a process for ensuring that legal rights and entitlements are accessed on behalf of children under care and protection orders—for example, through victims assistance or personal injury litigation.**

5.5 Community legal education

Improved community education for young people about safety and legal rights, and for key agencies about the services provided by FVPLS Victoria, could increase young people's access to legal services. It is critical, however, that provision of community legal education to ATSI young people about these sensitive issues is backed up by specialist services to support the work. In the

past, FVPLS Victoria had in-house psychologists establish a schools program. Their experience revealed that very significant and intense counselling and support services were required in conjunction with community education. FVPLS Victoria does not currently have the resources to provide this level of support and expertise. This is, however, an area that requires a great deal more attention, preferably through a dedicated program, and FVPLS Victoria is committed to this development.

Overall, a strategic approach to strengthening legal and associated support services for ATSI children who have experienced family violence or sexual assault is required. Funding to enable appropriate support services to complement legal services within a holistic service model is essential to the success of future initiatives (see also Section 9: Counselling).

Proposal 7

That strengthening of dedicated legal and support services, and prevention activity, for ATSI children experiencing family violence and/or sexual assault in Victoria is urgently required.

That the legal rights of ATSI children under care and protection orders in Victoria be protected and pursued.

Action

That the Victorian Government, in partnership with key ATSI stakeholders, conduct a review of the services and prevention activity required for ATSI children in relation to family violence and sexual assault in Victoria, with a view to improving services and implementing effective prevention/education.

That Victoria Legal Aid review its arrangements for the legal representation of ATSI children in the Children's Court and family law jurisdictions.

That a process to ensure the pursuit of the legal rights of ATSI children who are victims of crime, and under care and protection orders, be established.

Responsibility

Department of Justice Victoria, Indigenous Family Violence Partnership Forum, Aboriginal Justice Forum, Victoria Legal Aid, FVPLS Victoria, VALS, Department of Human Services Victoria, VACCA



Section 6: Victoria Legal Aid (VLA)

Feedback through the project consultation process indicated that Victoria Legal Aid could improve access to justice for ATSI victims/survivors in the area of family violence by adjusting some of its internal practices (see also Paper 3, which deals more broadly with the accessibility of the legal system).

Victoria Legal Aid is currently supporting two critical legal positions at FVPLS Victoria: one a family law secondment and the other a family violence legal position funded through the Department of Justice Victoria. These positions are providing services to metropolitan Melbourne and other regional areas, and it is essential to the viability of FVPLS Victoria that they continue. FVPLS Victoria is of the view that this model of VLA placing lawyers in ATSI organisations is highly successful in terms of improved access to justice and effective targeting of legal aid funds.

The relationship between Commonwealth Legal Aid guidelines and the Victorian Guidelines is acknowledged. The proposals made here simply document areas and ideas raised in project consultations about improved legal aid access.

6.1 Public Interest/Test Case Guidelines

Advancing specific ATSI cultural issues within the legal system and ensuring judicial compliance with legislative provisions and human rights obligations with respect to Aboriginals and Torres Strait Islanders must be included within the criteria for Public Interest and Test Cases.

6.2 Child protection

Broadening legal aid assistance in child protection matters for lawyers to be funded to attend DHS Best Interest Planning meetings and Aboriginal Family Decision Making (AFDM) meetings would strengthen legal services considerably. Lawyers argue that very important decisions that have long-term impacts and serious ramifications are made in those meetings, and that the absence of legal representatives at such meetings is a serious barrier to access to justice for ATSI people. Lawyers acting for children in the Children's Court should also be attending these meetings. FVPLS Victoria is advocating for significant strengthening of the AFDM process alongside family violence and safety screening.

... is important ... and VLA should fund ... this is where crucial decisions are made ... about reunification or permanent care ... it is where the case is tracking ... they are critical meetings ... lot of the time DHS already have a plan written up ... this why an advocate is needed ... children's lawyers should go to Case Plan meetings ... not being kept up with what's going on ... not funded to do stuff outside of the court hearing ... a lot happens outside court they should be involved in. Non-ATSI lawyer

Funding to seek review of DHS Case Plans at the Victorian Civil and Administrative Tribunal should also be strengthened as decisions with respect to tracking to permanent care are made in these plans. It is likely that funding for representatives to appear at Case Planning and other out-of-court meetings would most likely reduce the need for such review applications. (Paper 3, Section 2 proposes that the Children's Court should have jurisdiction to review Case Plans.)

Given the high numbers of ATSI children on care and protection orders in Victoria, and the significance of family violence in notifications, the funding of child protection legal services at FVPLS Victoria should be a priority. FVPLS Victoria is utilising a 12-month Legal Services Board grant to 30 June 2010 for child protection services. Short-term support from the state government for this position is anticipated. Ongoing funding is essential to ensure dedicated culturally appropriate service provision.

Finally, it is important that VLA support ATSI legal services to represent ATSI children and families at all stages of Children's Court (Family Division) proceedings, including dispute resolution processes.

6.3 Family law

In the area of family law, there is a critical need for Legal Aid assistance in a broader range of matters. Funding of cases where ATSI cultural issues and family violence have been inadequately dealt with by the court would better address legal equity issues. The following suggestions emerged from the project consultations:

- The transfer of cases between legal practitioners should take into account ATSI people preferring representation by an ATSI service or lawyer for cultural reasons.
- ATSI legal services/ATSI lawyers ought to be on the Independent Children's Lawyer panel to strengthen culturally appropriate options for legal representation. (Two FVPLS Victoria lawyers have recently been approved by VLA as ICLs.)
- VLA ought to ensure ongoing cultural awareness training of all ICLs and include ATSI cultural awareness as a criterion for panel admission.
- Given the often complex nature of litigated ATSI family law disputes and accompanying cultural issues, the reduction in the appointment of ICLs is of particular concern for ATSI children.
- Where family reports or the position of an ICL is not supporting the applicant's position (for example, for a relocation application), guidelines detailing 'recommendations for assistance' ought to specifically refer to the inadequacy of a family report or ICL analysis about ATSI cultural matters or the nature of the family violence. Relocation is a frequent issue for ATSI people seeking to reconnect with family or country, and where family violence is an issue. The failure of report writers or ICLs to deal appropriately with such cultural and family

violence issues essentially impedes access to further VLA assistance. FVPLS Victoria can cite numerous examples of the inadequate analysis of family violence by family report writers (see the recent Chisholm Report).⁴

... if the family report is not supporting the client ... very difficult to get VLA to support the case ... if family report writers have not addressed family violence or cultural issues ... because family report makes recommendation does not mean this is what the court will do at the end of the day ... VLA goes with family report ... might get funding to cross-examine report writer but that is it. Non-ATSI lawyer

- The ability to seek funding for private family reports ought to be ensured. The complexity of many ATSI family law disputes, and the layers of trauma and disadvantage experienced by many ATSI families, requires strong cultural understanding and the dedication of sufficient time to the issues. To improve access to justice for ATSI people in the family law system they must be able to readily identify and access culturally appropriate report writers.
- VLA assistance for ATSI parents wanting to travel to connect with family or for other cultural purposes, where this is opposed by the other party, should also be available.
- There ought to be reinstatement of assistance for contravention and enforcement applications, as parents may be denied contact with children for considerable periods. Again, ATSI cultural issues and/or family violence issues are likely to be relevant.
- FVPLS Victoria must regularly fund the cost of clients engaging with the legal process, such as the travel, accommodation and child care costs associated with attending court. Donations to the service are utilised for this purpose as no dedicated funding is received. Broader consideration of this issue is required by the government.

... more legal aid for areas of law affecting family violence victims ... not sufficient in areas of child protection ... family law ... travel and accommodation to courts for clients ... disbursements that need to be paid for. Non-ATSI lawyer

- VLA guidelines should allow for funding of ATSI cultural experts where a case requires that evidence. Travel costs may need to be covered by the grant—for example, when the expert is required to travel from interstate to give evidence about local cultural issues.
- Access to VLA assistance for small family law property disputes in which family violence is a factor must be reinstated. FVPLS Victoria has carried a number of these cases utilising brief-out funds which have extended for lengthy periods and been resource intensive. ATSI women (and children) experiencing family violence should be able to access assistance for these cases through a preferred ATSI service. Grants for advice and negotiation in cases where minimal assets exist must be made available.

⁴ Chisholm, Professor Richard (2009) *Family Courts Violence Review*, 27 November 2009.

... Legal Aid guidelines can be a bit restrictive ... for some clients ... for example, where there is property but not much equity ... can't afford private lawyer but VLA apply test strictly. Lawyer

- ATSI people requiring child support services should have the option to access an ATSI service (FVPLS Victoria or VALS), especially, but not only, in cases where they are accessing that service for other family matters.

6.4 Family violence intervention orders

Access to assistance for intervention order mentions should be reinstated. The complicated and overlapping nature of many family violence/family law/child protection legal matters requires consistent, integrated legal representation at all stages of the process.

6.5 Gathering evidence for Legal Aid applications

Lawyers commented on the problems they face in getting clients to gather necessary supporting material for the legal aid grant, particularly in cases where family violence and other trauma or difficulties are present. The importance of paralegal support workers who can provide additional client support is highlighted by this issue.

Proposal 8

Victoria Legal Aid guidelines are currently restricting optimum access to justice for ATSI victims/survivors of family violence and sexual assault, particularly in the family law and child protection (Family Division) areas.

Action

That Victoria Legal Aid review its guidelines for assistance in relation to family law, family violence, Children's Court (Family Division) proceedings and the public interest criteria to strengthen legal outcomes and improve access to justice for ATSI victims/survivors of family violence and ATSI women and children.

Responsibility

Victoria Legal Aid, Victorian Government

Proposal 9

The cultural awareness of lawyers either acting on behalf of or representing the interests of ATSI people including children in the family law and Children's Court jurisdictions is critical.

Action

That Victoria Legal Aid ensure ongoing ATSI cultural awareness training for all legal staff, and ensure

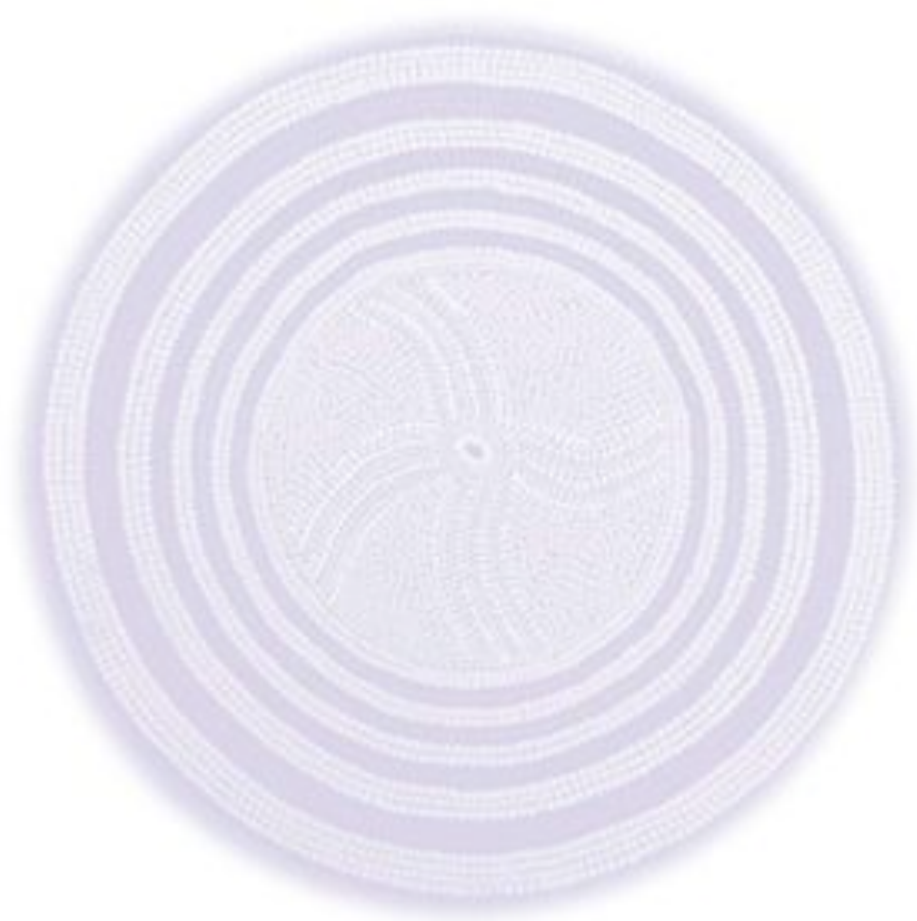
that Victoria Legal Aid in-house and panel solicitors representing ATSI young people in either the Family Court or Children's Court (Family Division) receive specific cultural awareness training for these roles. ATSI cultural awareness should be a criterion for admission to and remaining on relevant VLA panels.

That ATSI Legal Services be included on VLA panels to represent young people and to act as Independent Children's Lawyers in Family Court and Children's Court jurisdictions.

That Victoria Legal Aid support an ongoing child protection legal position at FVPLS Victoria, continued funding of the family violence legal position, and also continue the family law secondment (or direct family law funding arrangement) with FVPLS Victoria.

Responsibility

Victoria Legal Aid, Department of Justice Victoria



Section 7: After-hours and crisis supports

7.1 After-hours crisis supports for Aboriginal victims of family violence

There is a need for statewide strengthening of after-hours and crisis supports for ATSI victims/survivors of family violence and sexual assault.

At the present time, after-hours referrals are generally made to the Women's Domestic Violence Crisis Service, directly to local after-hours domestic violence services where they exist, or informally to local community members. Elizabeth Hoffman House Aboriginal Women's Refuge in Melbourne also receives some after-hours referrals. Most after-hours crisis support occurs by telephone, although some limited face-to-face models do operate.

*... Safety is the most important issue ... need support person at crisis point ... check if want to be driven somewhere ... someone to sit with her ... are the children OK? ... been injured? ... police are not good at this. **Aboriginal support worker***

*... crisis response for victim with police would help ... be there early to support the victim. **Key statewide Indigenous service***

*... Statement made on the same day as assault. I was left to go home on my own with my children after they witnessed assault. I sat at home crying thinking what does it all mean. **Aboriginal victim/survivor***

*... It would be good to have a support person in the legal system to help explain processes ... and to give guidance because when you are in crisis all is fuzzy and difficult to understand ... need support person to be there to help with explaining information at initial crisis and then follow-up. Need someone to listen ... be the person in between to help communication [with police]. **Aboriginal victim/survivor***

Police protocols require victim referrals to after-hours family violence crisis services but anecdotal feedback indicates that take-up of this option by women varies and in some areas is low.

Consultation feedback suggests that accessibility needs to be improved. The level of effort made by attending police to assist women to contact a crisis service is also unknown. Police fax-back arrangements generally involve family violence services making contact with women/victims the next business day, and in some cases faxes are not forwarded until three or four days after the family violence incident. Project feedback indicates that some Family Violence Safety Notices returnable within 72 hours are eventually lapsing as a result of ATSI women/victims not appearing at court return dates. Court responses to this situation seem to vary. Ensuring access to effective and culturally appropriate legal and support services within the 72-hour crisis period is a current difficulty.

After-hours crisis support available to children impacted by family violence is also lacking. Police are generally concerned with the adult primary victim; however, the wellbeing of children must also be considered. The option to refer children to a specialist after-hours service for crisis support, separate to any DHS notification where that is required, ought to be available.

The 10-year plan has identified the following action, which relates to crisis supports:

... Action 4.1

Improve access of Indigenous victims of family violence to a range of services including emergency accommodation and outreach services, 24-hour support and appropriate case management provided by Indigenous and mainstream service as part of crisis response.

It is also noted that the Victorian Law Reform Commission made the following recommendation in its Report on Family Violence laws in 2006:

... 26. The Indigenous Family Violence Partnerships Forum should consider the possibility of providing an Indigenous victim support scheme that is available to offer support when the police are called to a family violence incident.⁵

There is support for the view that dedicated ATSI-specific after-hours crisis services should be available to ATSI victims/survivors of family violence in Victoria. Giving ATSI women the option to access an after-hours crisis support service through which they can speak to a Koori woman is likely to strengthen police responses, ensure that women are aware of all their safety options and result in speedier links to key culturally appropriate legal and other supports. ATSI women would then be more likely to engage with follow-up supports for improved safety outcomes. (The issue of police responses to family violence is dealt with in Paper 3, Section 6.)

It is important that local ATSI communities determine what is most appropriate for their community in terms of after-hours crisis support, but in the area of family violence and for safety reasons options are critical. **Consideration should be given to piloting an after-hours crisis support arrangement whereby Koori women are on call to speak with Koori women and children victims of violence.** This project would require considerable consultation and planning, but given concerns about the need for culturally appropriate supports at the point of crisis and beyond for family violence victims this should be a priority. The proposed establishment of regional ATSI refuges may complement this proposal.

*... we have a local after-hours family violence service but statistics show access to that service to be low. There are limits to the level of assistance that can be provided over the phone but face-to-face after-hours support requires very significant resourcing and is particularly difficult in a rural region in which towns are quite spread out. Improving access to crisis telephone support after hours is a step forward. It would be worth piloting a Koori after-hours telephone service which women had the option to access. **Non-ATSI lawyer***

... the after-hours crisis support system is not working well for Koori women especially in some rural

⁵ Victorian Law Reform Commission (2006) *Review of Family Violence Laws Report*, February 2006.

*areas. There are different protocols in place between the regions. Some arrangement must be developed for Koori women statewide to have the option to speak to a Koori support person after hours. **Non-ATSI family violence project worker***

7.2 Crisis legal referrals

It is critical that victims of violence are also referred on for legal advice as soon as possible. Again, given the quick turnaround of Family Violence Safety Notices (FVSNs) into court (72 hours), feedback indicates that women are not receiving legal advice prior to the return of the FVSN to the Magistrates' Court other than the police intervention. In light of what has been said previously about the importance of supports for women who are engaging with the legal system, this is a critical issue that requires attention. Access to urgent legal advice that incorporates the full range of legal issues arising must be available, and court processes must accommodate the need for there to be adequate time for this. Improved cooperation and development of referral protocols between key services is also required.

*... fast turnaround of family violence safety notices means it is difficult for support services to access women before the return date. **Key statewide Indigenous service***

... Police take out a Family Violence Safety Notice ... if the woman does not turn up is struck out ... women need better support at the crisis point ...

*... We not being notified in the early FVSN stage ... MOU arrangement may help a bit ... something to keep an eye on ... If women go into refuge they will get crisis supports through that process ... where an FVSN is issued ... less likely that those supports will be put in place ... women then may not show up to court and progress made may be lost. **Aboriginal family violence service coordinator***

FVPLS Victoria is currently undertaking a Koori Family Violence Police Protocols Project funded through the Department of Justice Victoria. The role of the police in responding to family violence incidents in designated trial communities is being reviewed and local protocols developed. Police referral to crisis support services is a significant issue in the project.

The next stage of referral on to dedicated legal supports as early as possible also requires attention. Improved communication between and integration of key ATSI and mainstream services at the regional and local levels, combined with community education about the importance of legal referral, will assist this process.

Proposal 10

That culturally appropriate after-hours (and other) crisis support options for ATSI victims of family violence and sexual assault are critical and must be strengthened.

Action

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after-hours support) who experience family violence and sexual assault, and that this review looks at the role of Victoria Police. The review must incorporate statewide and local processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

Responsibility

Indigenous Family Violence Partnership Forum, Indigenous Family Violence Regional Action Groups, Integrated Family Violence Steering Groups, Aboriginal Justice Forum, Department of Justice, Department of Human Services, Victoria Police

Proposal 11

That crisis legal referrals for ATSI victims/survivors be made at the earliest possible time to ensure improved legal outcomes.

Action

That FVPLS Victoria initiate discussions with family violence crisis support services in Victoria who are supporting ATSI women, to strengthen legal referral processes.

That court processes with respect to return of Family Violence Safety Notices ensure that the victim has had reasonable opportunity to access culturally appropriate legal assistance prior to applications being struck out or final determinations made.

Responsibility

FVPLS Victoria, Elizabeth Hoffman House Aboriginal Women's Refuge, Women's Domestic Violence Crisis Service, Indigenous Family Violence Regional Action Groups (IFVRAGs), Rural and regional domestic violence crisis support services, Victoria Police, DHS-funded ATSI support services, Magistrates' Court Victoria

10-year plan

Action 4.1

Improve access of Indigenous victims of family violence to a range of services including emergency accommodation and outreach services, 24-hour support and appropriate case management provided by Indigenous and mainstream service as part of crisis response.

Section 8: Coordination of law and justice service providers and the integrated family violence strategy

Project consultation feedback indicated ongoing problems with access of ATSI women to some mainstream family violence services, with Victoria Police responses and with an ongoing lack of key agency collaboration. It is also evident that legal service providers are not sufficiently integrated into broader family violence strategy.

Law and justice and associated service providers in the area of ATSI family violence (including ATSI and mainstream organisations at the statewide and local levels) need to further strengthen information sharing. The key relevant agencies include FVPLS Victoria, Elizabeth Hoffman House (and other local ATSI refuges), domestic violence crisis services, the Victims Support Agency, Centres Against Sexual Assault (CASAs), Victoria Police, health services, hospitals (Aboriginal Liaison Officers in particular), VACCA, DHS and other children's services.

*... better integration of services. Needs to be flexibility in Indigenous service provision to account for small communities/confidentiality ... need clearer referral pathways. **Aboriginal support worker***

*... Stronger collaboration between services [needed] ... Need to do more collaborative community education ... knowledge to practitioners and community to empower them. **Key statewide Indigenous service***

*... where successful ... mainstream and Indigenous organisations would work together. Where successful would be because of linkages. More advocacy is needed from other Indigenous support services where clients are accessing mainstream services. **Aboriginal regional family violence coordinator***

*... Mainstream and Indigenous services must be made more accountable in working with Aboriginal people—agencies must be clear and transparent in day-to-day functions. Improvements should be made through the regional integrated family violence committees. After attending a big meeting in Melbourne last year about the integrated family violence strategy I have become more aware of the process and how it is supposed to be working. There is a need to target the disservice of the local mainstream agency and police to Aboriginal people. This can happen on a service-to-service level but also needs to be addressed more broadly and the regional integrated family violence committee is the place this should happen. **Aboriginal coordinator ATSI family violence service***

Due to the nature of the legal system with its overriding confidentiality and unique ethical requirements, together with the differing, sometimes conflicting roles and responsibilities of various organisations, partnership arrangements will not always be appropriate. However, clearer understanding of roles and developments within agencies in the family violence and sexual assault area would be of great assistance. This needs to happen at both the statewide and local levels.



Sisters Day Out, Melbourne May 2008.

The Victorian Government's family violence strategy emphasises integration in service development and delivery. Improved links between the ATSI and mainstream family violence initiatives in Victoria would be beneficial and could improve service delivery.

Consultation feedback and other sources indicate there is an inadequate connection between mainstream and Koori family violence initiatives in some regions.

Dedicated fixed-term regional projects directed toward this objective across Victoria could help. Strategies should be developed that acknowledge the already onerous meeting obligations under the integrated strategy.

The East Gippsland Family Violence Practitioners Network, led by FVPLS Victoria Gippsland, has gained funding for a project aimed at strengthening connections amongst ATSI workers and organisations in East Gippsland and increasing access to services for ATSI victims/survivors. This is an example of an initiative designed to improve coordination between ATSI and mainstream services. More such initiatives will be key to enhancing overall outcomes.

FVPLS Victoria held two cultural awareness and 'Working Better Together' workshops in the Gippsland and Barwon South West regions in 2009. The first day of the workshop involved cultural awareness training for non-ATSI workers and organisations, and the second day incorporated the knowledge of ATSI workers and organisations into a discussion of strategies aimed at working better together for the benefit of ATSI victims/survivors. The workshop involved workers (e.g. private lawyers and psychologists) who would not normally access community family violence networks. Feedback about the cultural awareness training was extremely positive and information sharing on the second day perceived as valuable. This provides another example of the type of initiative that might assist in improving connections.

Proposal 12

That improved information sharing and understanding amongst key ATSI and mainstream law and justice providers working in the area of ATSI family violence and sexual assault be prioritised. That linkages between ATSI-specific family violence initiatives and mainstream integrated family violence strategy be improved.

Action

That short-term regional projects be funded to develop strategy for improved linkages and information sharing between ATSI and mainstream family violence initiatives.

Responsibility

Victorian Government, Indigenous Family Violence Partnership Forum, Aboriginal Justice Forum, IFVRAGs

10-year plan

Action 6.2.2

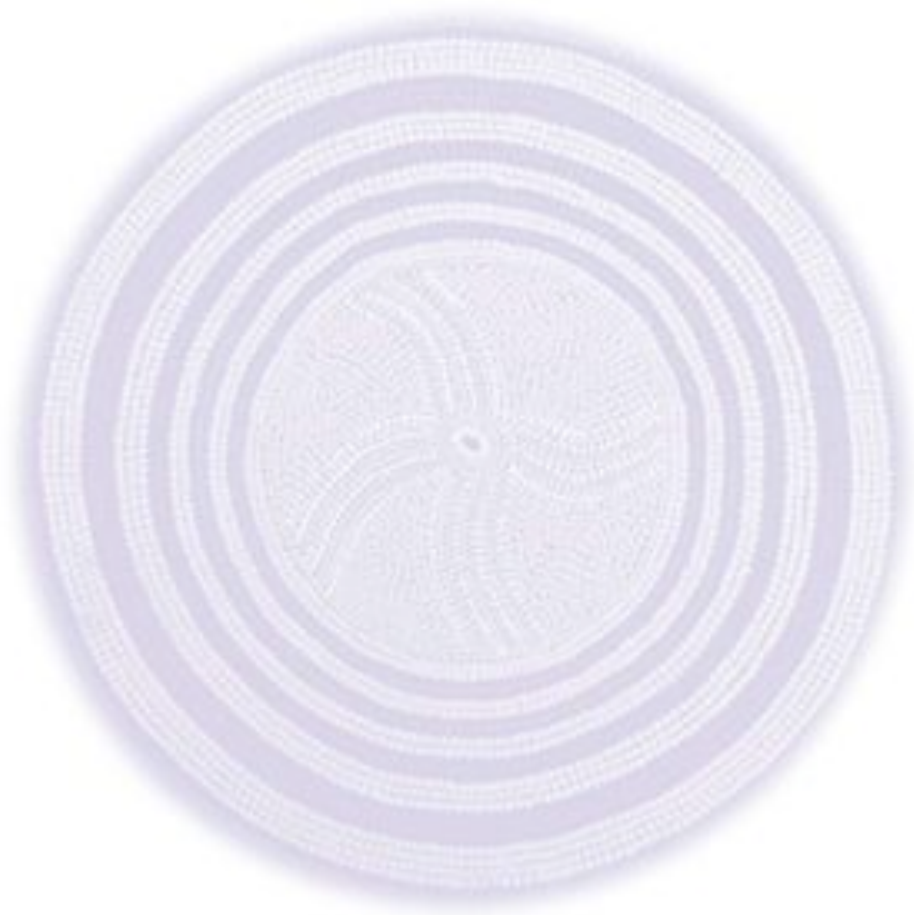
Develop partnerships between family violence services and alcohol and other drugs services, gambling services, mental health services and child and family services.

Objective 7 Increase the cultural competency and capacity of the service system to improve responses to Indigenous family violence.

Strategy 8.2 Develop mechanisms to share information and good practice actions and outcomes.

Action 8.2.1

Strengthen information and communication about initiatives and outcomes to reduce, prevent and eliminate family violence with the Indigenous community.



Section 9: Counselling/therapeutic services

9.1 The importance of counselling and other support during the legal process

Consultation participants were in strong agreement about the need for more culturally appropriate counselling options (both crisis and long-term) for ATSI victims/survivors of family violence and sexual assault, including young people. Many ATSI women are impacted by intergenerational trauma and significant disadvantage. Counselling and/or alternative practical support is critical to the ability of women to engage with and sustain the legal process. Support for children experiencing family violence is also critical, and is dealt with further below.

9.2 Counselling within the FVPLS program

No counselling funded to urban areas

The Commonwealth FVPLS program provides funding for some counselling services but only to rural areas. Again, the failure of the Commonwealth to fund FVPLS counselling services within holistic legal services for victims/survivors in urban areas is unacceptable, and the arguments for this mirror those already made in relation to legal services (see Paper 1, Section 2).

Commonwealth AGD support for holistic service delivery

The AGD, in primarily managing law and justice services, must ensure provision of the necessary expertise to develop and support counselling and healing services within the FVPLS program. If the holistic service model is to have maximum benefit for ATSI victims/survivors, it is critical that there be a process and structure within the AGD or linked to the AGD that is dedicated to the development of best practice and culturally responsive counselling/healing approaches.

Greater awareness is also needed of the professional ethical tensions that arise through seeking to incorporate counselling services into what are primarily legal practices. There are variations in ethical obligations amongst the states and territories (e.g. mandatory reporting). However, this is a central issue to the success of the holistic service delivery model which requires appropriate recognition, leadership and support within the Commonwealth FVPLS program. A formal collaborative relationship between the Commonwealth and states and territories in delivery of the FVPLS program and services for ATSI women and children more generally would also support this process.

Proposal 13

That funding for the holistic service delivery model (incorporating counselling/healing) of the FVPLS program be extended to urban communities.

That the Commonwealth Attorney-General's Department, through the national FVPLS program, strengthen its development and support of counselling and sexual assault services within FVPLS Units.

Action

That the Commonwealth FVPLS program which incorporates counselling services for ATSI victims/survivors of family violence and sexual assault be extended to urban areas.

That the Commonwealth Attorney-General's Department strengthen its support capacity for counselling and sexual assault services within the FVPLS program, incorporating expertise in compliance with various state, territory and national professional standards, and the development of culturally appropriate best practice service provision which incorporates innovation and responds to ATSI diversity. Collaborative funding arrangements with states and territories must be implemented.

Responsibility

Commonwealth Attorney-General's Department, Victorian Government

9.3 Experience and learning of FVPLS Victoria with respect to counselling services for ATSI victims/survivors

FVPLS Victoria of necessity currently outsources counselling services to private counsellors/psychologists. This model requires significant client support and follow-up from FVPLS Victoria paralegal staff. Funded through a Mental Health Council grant, cultural awareness workshops are provided by FVPLS Victoria in the Gippsland and Barwon South West regions, involving local counsellors and psychologists. Feedback on these workshops has been very positive—many participants commented that they wished they had been able to participate in this type of program many years earlier.

Barriers to ATSI victims/survivors accessing counselling/therapeutic support

The main barriers to accessing counselling assistance include:

- a critical lack of counselling options in rural areas in particular
- a lack of culturally appropriate counsellors/psychologists in all areas
- waiting lists
- a lack of options for culturally appropriate crisis counselling

- inadequate funding/support for alternative therapies such as art therapy, narrative therapy and cultural group work
- the need for completely separate services for victims of violence which perpetrators will not also attend (several people consulted mentioned the difficulty for victims of men/perpetrators being present at Healing Centres)
- the more practical issues of inadequate access to transport and child care.

*... Transport, waiting lists, venues, need option for places to go which are confidential. Safe place to go is important ... where people are a little ambivalent practical barriers have more impact. **Aboriginal support worker***

*... need discrete victim support services ... at the healing services ... a lot of men hang around. **Aboriginal support worker***

*... Barriers include transport, waiting lists, venues, confidential places. **Non-ATSI lawyer***

Culturally appropriate counselling/healing and the need for flexible approaches

The limited number of Aboriginal and Torres Strait Islander counsellors and psychologists in Victoria highlights the importance of the cultural awareness of non-ATSI counsellors and also of the need for alternative culturally appropriate healing services.

Given the complexity of issues faced by ATSI victims/survivors, culturally aware counsellors/psychologists and culturally appropriate counselling or healing are critical. **In the experience of FVPLS Victoria, ATSI people are more likely to engage with and sustain counselling processes where there is a demonstrated understanding of their culture and an approach that allows victims/survivors to choose the type of counselling with which they are most comfortable.** Flexibility in relation to time, counselling venue and inability to attend on a given day also emerged from the consultations as key issues around successful counselling/healing options.

*... Healing processes for ATSI women should be about strengthening identity, understanding your role as an Aboriginal woman, reflecting, understanding and drawing on cultural ways to inform the present. Such work should only be done by Aboriginal women. **Aboriginal educator***

*... Opens up a lot of wounds ... counselling can be as traumatic as some of the events. **Aboriginal support worker***

*... Counsellor was culturally aware and I found her way of working very good/supportive. Culture was big part of my recovery. Culture was central ... I drew on it to get me through. **Aboriginal victim/survivor***

*... I had counselling but it was not really helpful ... wanted to bring back my history ... I don't want to bring history up again ... it's too painful. **Aboriginal victim/survivor***

... Need scholarship to encourage more Aboriginal counsellors. Non-Aboriginal support worker

... is a problem with cultural awareness of counsellors women disengage reasonably quickly ... counsellors have difficulty in ensuring engagement ... cultural awareness important. Non-ATSI lawyer

... flexibility needed ... trans-generational trauma ... complicated counselling ... when can't go ... sets up a barrier [to returning to it]. Non-Aboriginal support worker

... Counsellors must let women know they can come back ... women think if they have mucked up they can't go back. Aboriginal support worker

Psychological assessment of ATSI people in court proceedings

Understanding of cultural contexts and cultural awareness are also critical where counselling or psychological assessment is mandated in court proceedings. In the Family Court, for example, psychological or family reports can impact significantly upon court outcomes, as the opinion of the family report writer is given much weight by both Legal Aid in determining funding for the case and by the court in informing its decisions.

FVPLS Victoria has experienced situations where a report writer's lack of cultural awareness, and failure to place the family dispute and family violence within a cultural context, has inappropriately disadvantaged clients. FVPLS Victoria proposes improved cultural awareness training for family report writers and for those preparing reports in other jurisdictions, to ensure that the cultural context and family violence issues are dealt with appropriately (see Paper 3, Section 1: Family law).

There are problems with cultural awareness of report writers ... one recently not picked up on child being Aboriginal ... not even mentioned. Non-ATSI lawyer

Proposal 14

Cultural awareness training for psychologists/counsellors working with ATSI victims/survivors of family violence and sexual assault both in the community and in the legal system is critical.

Action

That the state government lead an initiative to train more ATSI people in counselling/psychology/healing and coordinate the development of a cultural awareness training program for non-ATSI psychologists/counsellors.

That all counsellors/psychologists working with ATSI victims/survivors of family violence and sexual assault in the legal system in Victoria, including the Children's Court and Victims Assistance system, receive ongoing cultural awareness training.

That the Family Court and Federal Magistrates' Court strengthen cultural awareness training for

their internal and external family report writers.

Responsibility

Victorian Government, Department of Justice Victoria, Victims Support Agency, Family Court of Australia

The demand for conventional one-on-one counselling

In answer to the question over whether ATSI people find conventional one-on-one counselling helpful, FVPLS Victoria staff across all locations report that there is a demand for such counselling.

The difficulty lies in locating culturally appropriate counsellors/psychologists to ensure that clients engage and follow through with the process. One-on-one counselling does not suit everyone and alternative options must be available.

*... I am surprised at the level of demand ... have clients ringing and asking. **Non-ATSI lawyer***

*... Huge take-up in counselling services ... if endorsed by Aboriginal organisation will give it a go. **Aboriginal support worker***

*... Waiting lists for counselling are huge. **Non-ATSI lawyer***

Gender issues

Women victims/survivors of family violence and sexual assault prefer to work with women counsellors so it is important that this option is always available.

*... had counselling and it was helpful. It was a woman ... must be a woman ... we don't trust men because of the violence. Took a little while to trust her and to deal with things. Helped me get a lot of emotions out ... need counselling after it happens [the violence]. **Aboriginal victim/survivor***

Access to crisis and long-term counselling

At the time of a crisis requiring legal intervention, counselling support through the legal process can be essential. Many clients are too distressed to cope with legal proceedings. Counselling or other strong general supports to deal with practical issues, such as money and accommodation, can make all the difference. The project consultations revealed frustration with the lack of appropriate crisis counselling for ATSI victim/survivors, which is viewed as critical in supporting urgent legal and other decisions (see also Section 7: After-hours and crisis supports).

*... Nowhere near enough counselling options and lack of crisis counselling. **Aboriginal support worker***

... Need crisis counselling to manage anxiety at the time ... longer-term healing will come later ... very

*different skill sets for each type of counselling support. **Non-ATSI lawyer***

*... Crisis counselling needs to be on an outreach basis (e.g. to hospitals). **Aboriginal support worker***

*... option of phone counselling can be a good one at the crisis stage. **Aboriginal support worker***

Longer-term counselling generally follows legal proceedings. Given the layers of trauma many victims experience, culturally appropriate long-term healing/counselling must be available for extended periods to those ATSI victims/survivors of family violence and sexual assault who need this. Victims assistance processes are sometimes able to provide long-term counselling; however, other options must be made available.

*... complexity requires open-ended counselling ... keeping victims/survivors well and out of the [broader] health care system. **Non-ATSI lawyer***

Victims Support Agency and Victims Assistance and Counselling Program

It is noted that the Victims Support Agency (VSA), through its Helpline, may be a contact point for victims of crime in crisis. The introduction of the Indigenous Victims of Crime Support Strategy and a specific ATSI team within the VSA has been a very positive development. It is important that the VSA and the Victims Assistance and Counselling Programs (VACPs) ensure that ATSI people are referred to culturally appropriate support and counselling services as directly as possible. Multiple contact/referral points are a significant barrier. Implementation of proactive quality control processes would be beneficial, including compulsory cultural awareness training for all counsellors and support workers. The option of accessing VACP support services in ATSI organisations is likely to improve accessibility. The guidelines for accessing support services through the VACP generally require the crime to have occurred within the previous two years and for a police report to have been made. Often ATSI victims have not reported to police and do not want to, and crimes often predate the two years. Whilst the eligibility criteria can be waived in some circumstances, specific provisions within the VACP guidelines to account for these matters would likely be beneficial.

Location of counselling services for ATSI victims/survivors

Project consultations indicated that counselling within confidential and safe ATSI organisations is favoured so long as other culturally appropriate options are also available. **Several participants mentioned that ATSI Healing Centres are not always safe places for ATSI women as victims of family violence, given that men also access these services. Government funding of family violence counselling services must fully acknowledge this issue and provide safe, confidential options for women and children.**

*... more success with clients who have seen the counsellor here at FVPLS ... found it more difficult where tried to refer to mainstream ... follow through not consistent. **Non-ATSI lawyer***

*... If counsellor located within Aboriginal service it increases trust ... more likely to access ... not random ... It is good for people to feel that emotional and legal issues are being dealt with at the one time (as can happen through FVPLS) People would walk away relieved. **Aboriginal regional family violence coordinator***

*... Being attached to a Koori service means the counsellor has a better understanding of Koori community ... women can talk about broader issues ... is a gap in culturally appropriate counselling for women ... Outreach to services or 'in-house' works better. **Aboriginal support worker***

*... The Healing Centre in the northern suburbs of Melbourne has a primary focus on perpetrators of violence and therefore some women can't access the service. **Aboriginal lawyer***

Counselling/support for children

Dedicated culturally appropriate counselling/support for children who have experienced family violence is lacking in regional areas in particular. Sexual assault counselling for children is generally more readily available from sexual assault-specific services, although in regional areas travel distances are often prohibitive for those who do not have easy access to transport. Counselling for children who are impacted by other family violence appears to be less available, particularly in rural areas.

Consultation participants emphasised the importance of supporting children who have experienced family violence or sexual assault and the need for more ATSI and mainstream support options. The lack of case management services for ATSI children who have experienced family violence was raised by a number of project participants as a serious gap. If dedicated services are to be provided, they must be in locations where conflict of interest—for example, with child protection functions—does not arise.

*... with high stats of Aboriginal children in care ... [there] are greater support needs ... need clearer referral pathways ... few more options would be good ... Koori options in particular. **Aboriginal support worker***

*... Not enough counselling services ... need crisis response there and then ... Properly trained workers to work with children ... from perspective of healing ... so can move on ... looking at health, social, emotional and spiritual healing/wellbeing. **Aboriginal support worker***

*... no case management services for children ... needs to be ... support for children ... more than referral to counsellor ... lot of life support ... case management role critical. **Non-ATSI lawyer***

*... Children's counselling needed more ... children exposed to violence at home require some supportive intervention at the time. **Aboriginal regional family violence coordinator***

... could be doing things better for children ... people say doing things for their own good but not enough attention to the hurt going on inside ... especially given more children on intervention orders ...

*more attention to impact of violence upon children. **Aboriginal coordinator family violence service***

*... remote area lacks resources ... specialist children's service sits in Melbourne ... lacking in Aboriginal children's mental health services or mental health services per se. Are child and adolescent psychologists but not in the public domain. **Aboriginal support worker***

*... Not enough supports available ... no easy availability for specialist children's counsellors or qualified specialist Aboriginal children's support workers. **Non-ATSI lawyer***

Proposal 15

That high-demand counselling for ATSI women and children victims/survivors of family violence be provided in safe, confidential and culturally and gender appropriate environments.

That case management services for ATSI children who have experienced family violence are needed.

That funding for practical supports needed to facilitate counselling such as transport and child care be factored in to funding provision for services.

Action

That more dedicated counselling/healing options for ATSI women and children be provided separate to ATSI Healing Centres which ATSI men and perpetrators of violence often frequent. That the Victorian Government identify where departmental responsibility for this development lies.

That a strategic plan for the development of case management services for ATSI children who experience family violence be developed.

That services funded to offer counselling/healing for ATSI victims/survivors of family violence receive additional funding for practical supports to facilitate counselling.

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria, Department of Human Services Victoria, Victims Support Agency, Indigenous Family Violence Partnership Forum, Aboriginal Justice Forum

10-year plan

Action 4.1.2

Strengthen the service system to ensure that Indigenous women and children are linked to a range of longer term supports and services including counselling.

Action 4.1.3

Improve access to culturally competent and flexible sexual assault counselling.

Action 6.1.3

Improve referral pathways to therapeutic counselling for Indigenous victims of family violence through promotion of schemes to support access to clinical practitioners.

Counselling alternatives

Consultations pointed to the need for funded alternatives to conventional counselling for those who do not want to engage with the one-on-one counselling or to complement such counselling.

Group work, narrative therapy, art therapy, play therapy for children, yoga and massage were some of the options suggested which could be offered alongside more conventional approaches.

It is noted that some Victims Assistance and Counselling Programs are providing these alternative therapies. Given the reluctance of some ATSI people to access conventional counselling and the preference for these types of activities, FVPLS Victoria strongly supports this. The Commonwealth FVPLS funding program funds only conventional counselling approaches and this should urgently be reviewed.

*... Whether want one-on-one depends on the trauma experienced and over what period ... isolation can lead to trust issues ... group work often works well ... others will feel shamed by [their] experiences and only want one-on-one. **Regional family violence coordinator***

*... group sessions I've experienced are good ... not strictly counselling ... art work sessions ... women's group ... first part different topics then fun activity ... staff, clients and facilitator ... healing model. **Aboriginal support worker***

*... Group healing in prison worked well. **Regional family violence coordinator***

*... more resourcing needed for culturally appropriate counselling ... Different types of counselling needed ... e.g. crisis or long-term ... alternative options ... group work and play group with children ... peer support model ... conducive to needs ... like to yarn. **Key Indigenous service***

*... Women say counsellors don't understand where we're coming from need to look at options that are more appropriate e.g. narrative therapy and how to fund those. **Aboriginal coordinator family violence service***

Proposal 16

Alternative counselling and healing approaches—such as, narrative therapy, art therapy, group work and cultural identity workshops—are more suitable for some ATSI people and should be available as options or accessible alongside more conventional counselling.

Action

That culturally appropriate counselling and healing options for ATSI victims/survivors of family violence and sexual assault be developed through a state government initiative.

That the Victims Support Agency fund alternative therapies for victims/survivors as part of its crisis response counselling/support services. That the Victims of Crime Assistance Tribunal allow expenses for alternative and culturally appropriate therapies through its awards for assistance.

That the Commonwealth through its FVPLS program acknowledge the importance of alternative counselling/healing therapies with demonstrated benefit and fund these services accordingly.

Responsibility

Department of Justice with the Department of Human Services, Victims Support Agency, Victims of Crime Assistance Tribunal, Commonwealth Attorney-General's Department

10-year plan

Objective 6 : Healing

Increase opportunities for healing for victims and perpetrators.

9.4 Support for workers

It is essential that staff working in the area of family violence and sexual assault have access to debriefing and support services appropriate to their particular circumstances and needs. ATSI staff working within ATSI and mainstream community organisations experience unique pressures which must be acknowledged and addressed. It is incumbent upon government and other funders to build necessary resourcing for staff support into all service delivery funding agreements. Staff should be given the opportunity to input on the types of supports they would like made available to them and employers must commit to implementation and review of appropriate measures.

Section 10: Sexual assault

10.1 Introduction

The strengthening of legal and associated services for ATSI victims/survivors of sexual assault covers a broad range of issues from crisis support and counselling, through to legal services, community education and prevention activity. It is not within the scope of this paper to cover these issues in detail; however, **there is an urgent need to build upon and learn from previous initiatives in Victoria to move forward in a concrete way.**

A 2004 report, *From Shame to Pride: Access to Sexual Assault Services for Indigenous People: A Partnership Project between Elizabeth Hoffman House and CASA House*⁶ ('The Shame to Pride Report'), provides an in-depth analysis of sexual assault services for ATSI people in Victoria and contains recommendations that have ongoing relevance. Resourcing and commitment to continue this initiative alongside relevant actions identified within the 10-year plan are essential.

The Victorian Law Reform Commission published its *Sexual Offences: Final Report* in August 2004 and many of its recommendations have been implemented in Victoria with the aim of strengthening responses for victims. Evidence suggests, however, that ATSI women remain reluctant to report sexual offences.⁷ **The experience of FVPLS Victoria is that access to culturally and gender appropriate services that are trusted as confidential and safe is critical to ATSI women seeking assistance in relation to sexual assault.**

Family violence and sexual assault are generally referred to and responded to separately. However, it is important to keep in mind that much sexual assault happens within intimate and family relationships, and that it is one of the most serious family violence crimes. Leaving sexual assault crimes out of family violence discussions means there is a significant gap both in terms of the subject matter of the discussion and in terms of strategies and responses. Given that sexual assault is underreported, including within the family context, the separation of issues within the discussion may be further downplaying the issue. The Victoria Police website states: 'statistics show that the majority of sexual assault victims are women. In many cases, the victim will know the attacker, and a significant percentage of assaults occur in the victim's home.' The Australian Law Reform Commission Family Violence consultation paper states that 'intimate and familial sexual assaults remain the most hidden—and from the purview of the legal system in particular despite forming the largest category of sexual assaults'.

Police responses to family violence and sexual assault are dealt with in Paper 3, Section 6.

⁶ *From Shame to Pride: Access to Sexual Assault Services for Indigenous People—A Partnership Project between Elizabeth Hoffman House and CASA House*, Prepared by Lisa Thorpe, Rose Solomon, Maria Dimopoulos for Elizabeth Hoffman House, 2004.

⁷ Women's Health Goulburn North East (2008) *Raped by a partner: A research report*, Victoria.

10.2 Barriers to reporting sexual assault

The issue of sexual assault within all communities is an extremely sensitive one; and within ATSI communities cultural issues and barriers to accessing the legal system further compound the complexity. Staff at FVPLS Victoria anecdotally concur that past sexual abuse is prevalent amongst women experiencing family violence and that much of it goes unreported. **Some women have experienced family violence and sexual assault in the family context, subsequently in state care and later as adults. That many of these women go on to experience further harm through imprisonment is an appalling and unacceptable situation.**

In a 2003 Australian Institute of Criminology paper, Dr Denise Lovemore provides statistics indicating high rates of sexual assault against ATSI women (p. 56), and significant underreporting which she attributes to:

- mistrust of police and the legal system
- lack of awareness of the law and legal process⁸
- personal family and community factors.

The Shame to Pride Report confirms and expands upon discussion of these barriers, by also referring to: fear of reprisal from perpetrators and the community; the lack of ATSI-specific services; and the inappropriateness of mainstream models of service delivery.⁹

Project consultations revealed reports of some inappropriate police responses, with insensitive male officers still involved in the interviewing of female victims. Dissatisfaction with cases being transferred from Victoria Police's Sexual Offences and Child Abuse Unit (SOCAU) to police investigators and with the less supportive and compassionate approach displayed by criminal investigators was raised. (It is noted that SOCA Investigation Teams are being implemented in Victoria, whose role will be to follow through with the investigation and prosecution.) A lack of female forensic medical officers in rural areas also emerged as a concern. This issue, together with the proposed reform of victims assistance law and process, is discussed in Paper 3.

10.3 Dedicated culturally and gender appropriate legal and support services

With respect to sexual assault occurring within family and community, completely independent, confidential legal services for ATSI women and children are critical. **Any perception that a service is not confidential or not sensitive to women's issues and culture will result in the continuing failure of women to come forward.**

⁸ And see McGlade, Hannah (2006) 'Aboriginal Women, Girls and Sexual Assault: The long road to equality within the criminal justice system', ACCSA Newsletter No. 12, September.

⁹ *From Shame to Pride Access to Sexual Assault Services for Indigenous People A Partnership Project between Elizabeth Hoffman House and CASA House* Prepared by Lisa Thorpe, Rose Solomon, Maria Dimopoulos for Elizabeth Hoffman House 2004 Key Findings from p. 25.

The experience of FVPLS Victoria is that reluctance to report sexual assault continues, but that the independence of FVPLS Victoria as a stand-alone ATSI corporation staffed by ATSI and non-ATSI women has encouraged more women to seek support than would have occurred otherwise. The FVPLS Victoria *Sisters Day Out* wellbeing workshop program, accessed by over 2000 ATSI women in Victoria since 2007, provides another example of this. The culturally strong and trusted foundation of these workshops attracts women who would not normally access legal services.

In terms of dedicated sexual assault support services for ATSI people, the Centres Against Sexual Assault and the Gatehouse Centre at the Royal Children's Hospital are primary service providers. The Royal Children's Hospital has an ATSI Liaison Officer and other ATSI-specific programs. Good relationships between ATSI community organisations and these services are critical.

Parents or carers of children who disclose sexual assault also suffer extreme trauma and require considerable support. The trauma may be compounded by the parent having themselves been abused as a child and being re-traumatised by their child's experience. Most often the parent/carer has never disclosed or received assistance to deal with their own trauma.

10.4 Impacts of past sexual assault

The long-term and complex effects of child sexual assault are well documented, as is their varying impact on different individuals. In a research report recently published in the *Medical Journal of Australia* female child sexual assault victims were found to be at a 40 times higher risk of suicide and an 88 times higher risk of accidental fatal overdose than are the general population.¹⁰ Psychiatric disorders were also significantly higher amongst these women. The report acknowledges that the higher rates are unlikely to be entirely attributable to the childhood sexual assault experienced, but concludes that it is a very significant factor. In most cases people had died in their 30s—about 18 years after the abuse took place. **The importance of interventions aimed at reducing risks between the time of the childhood offences and adulthood is thus highlighted. The law and justice system through community services and victims assistance programs must also be equipped to provide effective intervention.**

The majority of ATSI women in prison indicate that they are survivors of family violence or sexual assault. In a survey of ATSI women prisoners in NSW, 70% of respondents revealed that they had been sexually assaulted or suffered other types of abuse as children; and 44% reported that they had been sexually assaulted as adults.¹¹ This is consistent with the experience of FVPLS Victoria.

The imprisonment rate of ATSI women is the fastest growing in the country. There is a very strong correlation between childhood sexual assault and entry into the criminal justice system, often also

¹⁰ Cutajar, Margaret C., Mullen, Paul E., Ogloff, James R.P., Thomas, Stuart D., Wells, David L. and Spataro, Josie, 'Suicide and fatal drug overdose in child sexual abuse victims: a cohort study', *The Medical Journal of Australia* 2010, vol. 192, no. 4, 184-187.

¹¹ Lawrie, Rowena (2003) 'Speak out speak strong: Researching the needs of Aboriginal women in custody', *Australian Indigenous Law Review*, 29.

associated with drug use. This reinforces the need for strengthened culturally appropriate services and prevention activity that addresses sexual assault. (Section 11 of this paper deals with imprisonment in more detail.)

10.5 Prevention and education

Community education and prevention activity must be developed and driven by the ATSI community with adequate resourcing. It is critical that women are provided with culturally appropriate supports and intervention, both at the time of the sexual assaults and at the time of disclosure, that young people are encouraged to come forward and report sexual assaults, and most importantly that victims/survivors have access to prevention programs.

In terms of educating ATSI young people in relation to family violence and sexual assault, we restate that it is essential to have resources for expert counselling and support services to accompany all education activity. Previous work by FVPLS Victoria in schools (run by psychologists as a dedicated program) required significant follow-up support. FVPLS Victoria at the present time is simply not funded to provide this intensive and specialist follow-up care. FVPLS Victoria Commonwealth-funded community education work is restricted to one full-time position shared between the Gippsland and Barwon South West regions, with offices approximately 700 kilometres apart.

It is noted that the Centres Against Sexual Assault are engaging in a schools education program. It is important that ATSI organisations have the capacity to also be involved in this work with ATSI young people, and a strategy to coordinate and develop this is urgently needed.

10.6 Key community initiatives in Victoria

Victorian Indigenous Forum on Sexual Assault 2003

In conjunction with research and development for the *From Shame to Pride* report, the first Victorian Indigenous Forum on sexual assault was held in 2003. FVPLS Victoria and Elizabeth Hoffman House hosted the forum which was funded through the Reichstein Foundation. Two Indigenous Sexual Assault Service Models were drafted during the workshop sessions to provide 'food for thought'. This forum, its discussions and recommendations were incorporated into the *From Shame to Pride* report. The recommendations are annexed to this paper.

From Shame to Pride: Access to Sexual Assault Services for Indigenous People 2004¹²

The *From Shame to Pride* report was published in 2004. The project:

¹² *From Shame to Pride: Access to Sexual Assault Services for Indigenous People—A Partnership Project between Elizabeth Hoffman House and CASA House*, Prepared by Lisa Thorpe, Rose Solomon, and Maria Dimopoulos for Elizabeth Hoffman House, 2004.

... sought to identify strategies that would assist the Centres Against Sexual Assault to better meet the needs of Indigenous victims/survivors of sexual assault, and identify effective training and education strategies for both mainstream and Indigenous workers in their efforts to respond appropriately to the Indigenous people who seek their assistance. (p. 7)

The report endorsed the recommendations of the Indigenous Forum on Sexual Assault and made a number of its own. The key proposals were the establishment of an Indigenous statewide sexual assault steering committee and the training of ATSI community workers in responding to sexual assault. (The full recommendations of this report are also annexed.)

The Indigenous statewide sexual assault steering committee was convened but no longer meets. To re-establish this committee will require dedicated ongoing resourcing. FVPLS Victoria was involved in developing and delivering 'Responding to Sexual Assault' training to ATSI community members/workers which also requires ongoing commitment.

Strong culture, strong peoples, strong families: towards a safer future for Indigenous families and communities: 10 year plan 2008¹³ ('the 10-year plan')

The 10-year plan written by the Indigenous Family Violence Partnership Forum in relation to sexual assault includes:

Action 6.1.2

*... develop options for culturally competent services for Indigenous victims of sexual assault.*¹⁴

It is noted that work is underway to improve the cultural competency of sexual assault services. However, broader responses that advance the work of the Shame to Pride Report are also required.

10.7 Draft National Indigenous Law and Justice Framework 2009: Sexual assault issues

It is also noted that the draft National Indigenous Law and Justice Framework 2009 includes a strategy to:

*... implement a comprehensive response to sexual abuse where it occurs in urban, regional and remote settings.*¹⁵

The actions include to:

... increase the number of and access to effective early intervention programs to protect at-risk children and youth from sexual abuse.

¹³ Aboriginal Affairs Victoria, Melbourne, 2008.

¹⁴ *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities 10 year plan*, Department of Planning and Community Development, June 2008, p. 45.

¹⁵ *National Indigenous Law and Justice Framework 2009–2015*, Prepared by the Standing Committee of Attorneys-General Working Group on Indigenous Justice.

... increase the number of and access to treatment services needed to assist in the process for healing for victims of sexual abuse.

... implement appropriate educational and attitudinal change processes and programs to reduce the normalisation of sexual abuse.

... develop and implement programs for victims of sexual abuse who are at risk of engaging in ongoing offending behaviour to break cycles of abuse.

Again, there is a need to reinforce government commitment to long-term projects which are adequately resourced and supported and which are driven by ATSI community organisations, including the FVPLS program.

10.8 Conclusion

Despite some progress having been made in the area of sexual assault in terms of response for ATSI victims in Victoria, significant problems continue and require initiatives based on long-term commitments. It is encouraging that recent reports at both the state and Commonwealth levels have recognised this need, but implementation of initiatives on the ground must be pursued.

Proposal 17

That dedicated long-term initiatives to strengthen services and education/prevention activity for ATSI victims/survivors of sexual assault and ATSI people generally, both as adults and children, be developed and implemented in Victoria as a matter of urgency.

Actions

That the Victorian Aboriginal Justice Forum and the Victorian Indigenous Family Violence Partnership Forum consider a specific initiative with respect to sexual assault similar to that of the Indigenous Family Violence Taskforce (which did not focus upon sexual assault).

That, in the interim or alternatively, consideration be given to reconvening an ATSI Sexual Assault Steering Committee to lead and advise upon Aboriginal and Torres Strait Islander sexual assault initiatives in Victoria, building upon previous work, including the *From Shame to Pride* report 2004.

That the Victorian Government consider funding to FVPLS Victoria to provide secretariat/project support to the Victorian ATSI sexual assault steering committee. That the steering committee consider development of an updated strategic plan for strengthening services and responding to sexual assault within the Aboriginal and Torres Strait Islander community in Victoria, incorporating previous and current recommendations and proposals. The plan may include strategy at local and statewide levels for:

- increased provision of dedicated and culturally accessible community education for adults and young people about sexual assault issues and legal supports available in culturally safe and appropriate environments

- improved resourcing to undertake community education work in schools and to provide the critical back-up counselling and support required to responsibly deliver such a program
- adequate resourcing for dedicated and innovative culturally appropriate legal services in Victoria to ensure greater uptake of ATSI victims/survivors of sexual assault for legal assistance
- improved integration and referrals between key service providers, particularly Victoria Police, the Centres Against Sexual Assault, and the Royal Children's Hospital
- further investigation and research into Indigenous-specific sexual assault crisis support models (e.g. the Nguru program at the Canberra Rape Crisis Centre)
- ongoing cultural awareness training for all key law and justice providers, including police, prosecutors, the Office of Public Prosecutions, Court staff and lawyers
- ongoing engagement with Victoria Police with respect to police responses
- ATSI victim/witness court support services
- a forum for feedback of on-the-ground experiences of ATSI victims of sexual assault within the law and justice system (the above committee could take this role)
- addressing the high numbers of ATSI women in prison who are survivors of sexual assault and the consequent action required, both in terms of early prevention in the community and best practice for healing/supports in the criminal justice system
- distinct approaches required for strengthening sexual assault services to men, women and children.

Responsibility

FVPLS Victoria, Department of Justice Victoria, Indigenous Family Violence Partnerships Forum, Aboriginal Justice Forum, Department of Human Services Victoria, Aboriginal Affairs Victoria

10-year plan

Action 4.1.3

Improve access to culturally competent and flexible sexual assault counselling.

Action 6.1.2

Develop options for culturally competent services for Indigenous victims of sexual assault.



Section 11: Aboriginal and Torres Strait Islander women in prison

Nationally, on 30 June 2008, Indigenous females were 21.7 times more likely than non-Indigenous females to be in prison. The imprisonment rate increased by 46% for Indigenous women and by 27% for Indigenous men between 2000 and 2008.¹⁶

At 30 June 2009 the imprisonment rate for Indigenous women in Victoria was 188.7% compared to 32% for all women. At 30 June 2009 approximately 25% of Indigenous women in prison were under 25 as compared to 9% of non-Indigenous women.¹⁷

The overrepresentation of ATSI women in prison nationally is well documented. FVPLS Victoria, as a service that primarily assists with family violence and sexual assault, is concerned with the underlying issues that lead to ATSI women, including young women, becoming involved in the criminal justice system and subsequently being imprisoned.

As detailed above, it is well established that many ATSI women who have been in youth or adult prisons have experienced family violence and/or sexual assault, including as children. Many women have also been in state care. Drug use and drug-related offending often ensues along with serious health implications. The impact of intergenerational trauma and entrenched racist and discriminatory treatment is ongoing. Prison compounds the trauma related to the underlying causes of imprisonment of ATSI women and is certainly no place to address the broad-ranging health and associated impacts of family violence and sexual assault. **FVPLS Victoria is of the view that strengthened culturally appropriate, accessible and broad-ranging community supports, services and early intervention prevention activity for ATSI women and children is fundamental to addressing overrepresentation.**

Access to culturally appropriate legal and associated services for women in prison nationally is also critical, including in the areas of child protection, family law and victims assistance; however, many women's (and men's) prisons are located in urban areas, where FVPLS units are not funded. In Victoria, because FVPLS Victoria has a Melbourne head office and alternate state government funding for urban services, the unit has been able to provide some services to the metropolitan women's prison. Yet the national FVPLS program is restricted to assisting women as victims of family violence and sexual assault. A broader ATSI women's legal service program would be positioned to provide a more holistic service for ATSI women in prison or at risk of imprisonment and to advocate on prison and criminal justice issues.

It is noted that the Victorian Government has identified the need to explore options to divert ATSI women from prison, which is extremely positive given rising prison numbers. Conversely, the Victorian Government proposal to abolish suspended sentences will place even greater pressure on

¹⁶ The Australian Government Productivity Commission report, *Overcoming Indigenous Disadvantage: Key Indicators 2009*.

¹⁷ Statistical Profile of Victorian Prison System 2004–05 to 2008–09 Corrections Victoria Tables 9 and 43.

prison numbers. **Strengthening of culturally and gender-appropriate community-based programs and intensive long-term support services is essential to ensuring community sentencing options are available and effective. Such initiatives, led by ATSI women, must be commenced without delay.** Lack of appropriate housing for women seeking bail and parole, or post release, is also a serious problem requiring urgent attention.

It is well established that providing therapeutic services to women in prison for past assaults and trauma they have experienced is problematic. The prison environment is not appropriate or conducive to healing. Strip searches, for example, reinforce the trauma of prior sexual abuse and should only be required on the basis of reasonable suspicion. Illicit drug use, which can lead to incarceration, is a health issue and should be responded to as such. Culturally appropriate alternatives to prison where women can access therapeutic intervention and healing in a supportive community environment are likely to be far more effective. That said, women and men in prison must also have access to culturally appropriate supports as the prison environment often compounds and adds layers to existing trauma. Cultural awareness of all staff in the prison and corrections system must be ensured through ongoing cultural awareness training.

*...Aboriginal women being sent to prison are already damaged and broken human beings ... prison doesn't help these women nor does it offer them any means of healing. Prison deconstructs, disempowers and deskills women, and then spits them back out in hastily patched together pieces—broken, defenceless and vulnerable. Women return to their communities even more damaged by their prison experiences. It is well established that Aboriginal people are at greater risk of dying in prison ... yet in recent years, we have been sending Aboriginal women to prison in greater numbers than ever before. We must develop alternatives to prison **now** ... to stop any more of our people dying. We must develop alternatives to prison that are culturally appropriate and that address underlying issues of family violence and sexual abuse. We must also develop programs that build women's confidence and grow self-esteem. These two simple attributes are so enabling and so empowering, that women would then be in a position to deal more capably with other issues in their lives. Society also needs to shoulder some of the responsibility for gubbamint policies that have perpetrated some of the worst human rights abuses in the world on Aboriginal communities and fractured the lives and psyches of countless Aboriginal women. Healing for these communities, and specifically for these women, is what's required—not further punishment. Programs and services for Aboriginal women also need to be delivered 'by the community, in the community'. Therapeutic programs in a prison context have little value and are doomed to failure. You can't live what you learn in prison. Prison is a complex, totally foreign culture where women must learn quickly how to navigate safely. You have to survive by a different set of rules in prison, a set of rules in which ordinary values have no place. Intensive, more comprehensive cultural awareness education of all prison officers is also desperately needed. This also needs to start from the top down—from corrections ministers, CV bureaucrats and the DOJ, to prison management, programs staff and most especially the rank-and-file officers. And none of this will do any good whatsoever if there is no housing for women when they're released. Housing remains the hugest problem. There needs to be much more housing made available and dedicated specifically to Aboriginal women leaving prison to try and lessen the impact of the mother's imprisonment on their children. Kids almost always go into care when Aboriginal women go to prison, effectively punishing them as well. Post release, the first thing most women have to do is begin the fight to get their children back ... and without housing it is impossible. Much of the accommodation made available to women post release is in boarding houses—accommodation that is unlikely to be approved by DHS as suitable housing for children. And thus turns the cycle of discrimination, disadvantage and poverty*

that fractures Aboriginal communities and destroys the lives of Aboriginal people. Prison appears to have become an option of first resort for Aboriginal women rather than last as it is legislatively intended. Keeping women out of prison in the first place must be a priority. Keeping Aboriginal women out of prison must be an imperative. Vickie Roach

Proposal 18

Given the high rates of ATSI women in prison who have experienced family violence and/or sexual assault, and the inappropriateness of the prison environment for healing past trauma:

- that resourcing be improved for FVPLS and/or ATSI women's legal and support services in the community to provide legal assistance, counselling and prevention activity to assist with easing the high imprisonment rates of ATSI women, including young women, that the FVPLS operational guidelines identify ATSI women in prison as a key client group for the FVPLS national program, and that FVPLS units be geographically accessible to ATSI women in prison
- that culturally appropriate community alternatives to prison that incorporate therapeutic /healing services, as well as dedicated intensive and long-term support services, for ATSI women and their children who are at risk of or who have experienced imprisonment be implemented as a matter of urgency.
- access to culturally appropriate community support services for ATSI women, including housing, health, mental health, and drug and alcohol programs, is critical.

Action

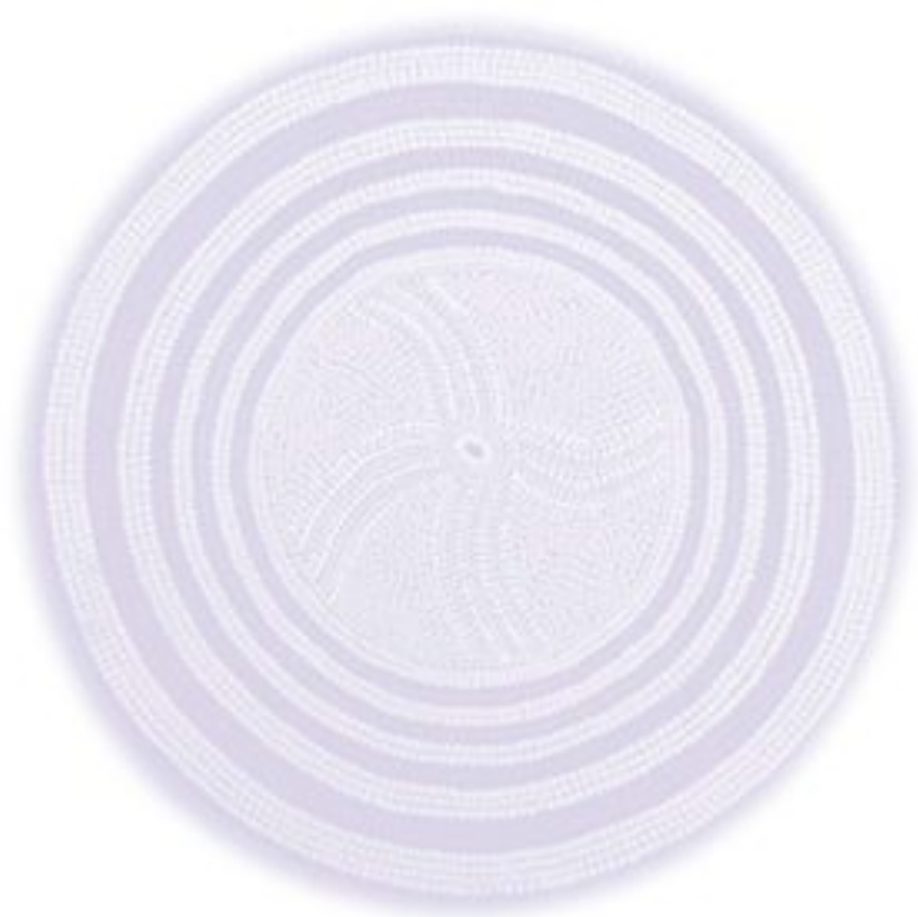
That FVPLS units and/or ATSI women's legal services be strengthened and funded to provide services in urban areas to ensure that services and advocacy are available to ATSI women who are in prison or at risk of imprisonment.

Community-based prison diversion initiatives along with access to intensive long-term support services, incorporating therapeutic services, for ATSI women and their children must be pursued as a matter of urgency.

That resourcing for culturally appropriate community support services for ATSI women be strengthened.

Responsibility

Commonwealth Attorney-General's Department, Victorian Government



Section 12: Services for Aboriginal and Torres Strait Islander men as victims/survivors

The FVPLS program provides assistance to men who are victims of family violence and sexual assault. In accessing legal assistance men sometimes prefer to see women lawyers; however, this can vary. Some of the men assisted by FVPLS Victoria have experienced crimes against them as children. This is an area of cultural and gender sensitivity for men as it is for women.

Prevention and community education for ATSI men must be culturally appropriate and is best developed and delivered by ATSI men. Most men's programs developing in Victoria at present are focused upon men as perpetrators. Dedicated community initiatives that are focused on men as victims are needed.

*It's important that there are programs and services for men as victims/survivors of sexual assault in particular. ATSI men need to lead and drive programs which deal with men's business. **Aboriginal lawyer***

*Koori men as victims of family violence are very much a forgotten group and there is a need for targeted and culturally friendly programs that meet their immediate and longer term needs. **Aboriginal male member, Aboriginal Justice Forum***

Proposal 19

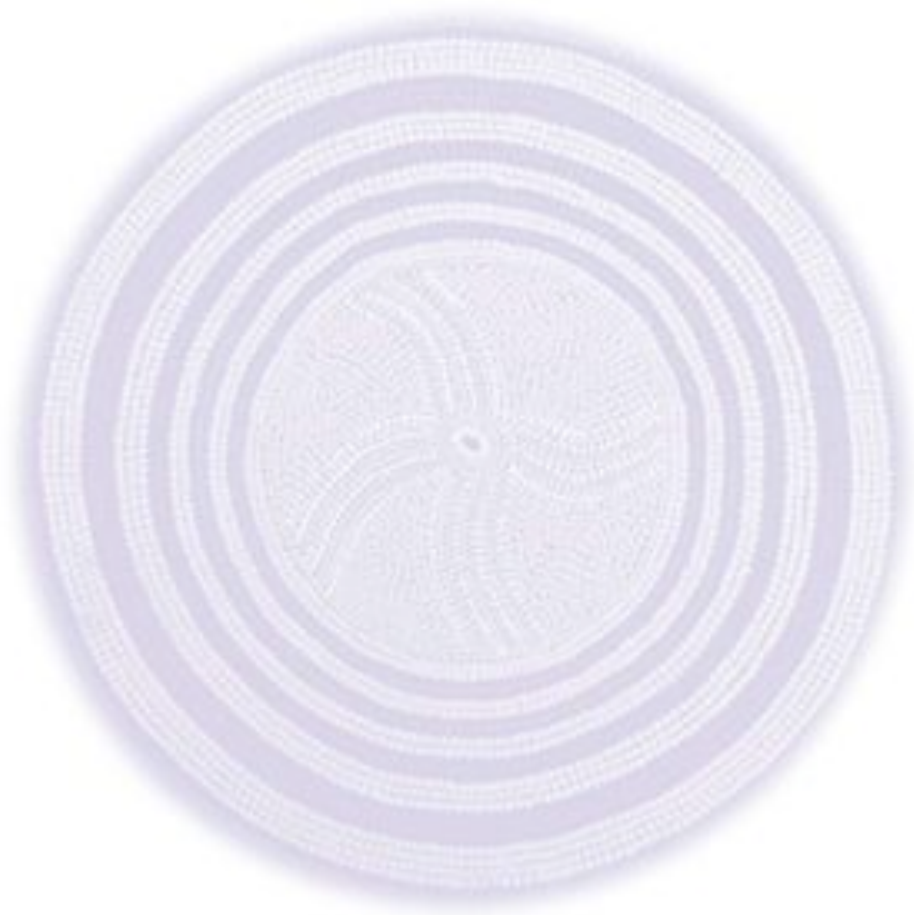
That prevention and education services for ATSI men as victims of sexual assault and/or family violence require dedicated attention.

Action

That dedicated culturally appropriate education/prevention programs for ATSI men as victims of sexual assault and family violence be developed.

Responsibility

Indigenous Family Violence Partnership Forum, Victorian Aboriginal Justice Forum, FVPLS Victoria, VALS



Section 13: Cultural awareness training

*Any cultural awareness program is critical to those working or seeking to work with Aboriginal families/communities. A knowledge of and understanding [from an Aboriginal viewpoint] of the history of this country and an understanding of the impact of successive government policies on Aboriginal life today is vital in ensuring a quality of life that is based on tolerance, acceptance and a recognition of the uniqueness of ATSI people in this country. **Aboriginal educator***

Focusing specifically on legal service providers, it is critical that non-ATSI lawyers and other service providers in the law and justice system receive ongoing Aboriginal and Torres Strait Islander cultural awareness training. Cultural awareness training should form part of lawyers' compulsory professional development. Other professionals and volunteers who work in the legal and court systems should also be receiving such training. **More entrenched knowledge of the manner in which the legal system has been used as a tool of oppression against ATSI people, and information about practical strategies at a personal and organisational level to address the consequent barriers, is essential.**

Barristers who are briefed to represent ATSI people need to undergo cultural awareness training—in fact this training should form a part of the bar reader's course for all entering the bar. The court experience can be extremely intimidating for ATSI clients, and barristers must be aware of cultural issues to fully understand their client's position, to put the client at ease and to convey critical relevant cultural issues to the court. Those prosecuting or acting for other parties in a dispute involving ATSI people must be similarly informed.

Ongoing cultural awareness training for Tribunal members, magistrates and judges must be pursued across all jurisdictions. In a recent example, a judge determined that an Aboriginal woman from another state could adequately maintain her cultural connection by accessing a Victorian ATSI community service.

*... judges and magistrates are not hearing the stories of Aboriginal people ... lawyers need to ask the right questions and to take the time to get to know the story of Aboriginal people so that it can be conveyed to the court ... this can have a big impact on the court. Cultural awareness training can assist in this understanding. **Aboriginal educator***

*... Private lawyers have a much less flexible approach to clients ... not addressing cultural issues. **Non-ATSI lawyer***

*... Children's lawyers [in the Family Court] need specialist [cultural] training. **Non-ATSI lawyer***

*... felt no one understood me or my position ... felt my barrister didn't understand me either ... both [barristers] I had not too good ... didn't meet before court ... didn't have background to my case or me personally ... he didn't attempt to get to know me ... I had no trust because I didn't know anything about him ... he didn't explain things. **Aboriginal victim/survivor***

*... a lack of cultural respect and understanding within the court or Tribunal context alienates ATSI people, confirms mistrust in the legal system and results in reluctance to engage again. On the other hand, positive experiences often have a very uplifting impact. **Non-ATSI lawyer***

Proposal 20

That Aboriginal and Torres Strait Islander cultural awareness of legal practitioners (both solicitors and barristers) is essential to culturally appropriate legal service provision.

That ongoing cultural awareness training of court and Tribunal staff is essential.

Action

That cultural awareness training with a focus upon law and justice issues be a requirement of professional development training for solicitors and barristers.

That ongoing cultural awareness training for court and Tribunal staff be ensured.

Responsibility

Legal Services Board, Law Institute of Victoria, Victorian Bar Association, Tarwirri Indigenous Lawyers Association, Department of Justice Victoria, Victoria Legal Aid

10-year plan

Action 7.2.3

Provide a targeted training program on Indigenous family violence for judicial officers and court workers to assist in the provision of culturally competent court responses and options to victims of family violence.

Section 14: Aboriginal and Torres Strait Islander staff in law and justice

Legal service provision to ATSI people will be strengthened through the availability of options to access ATSI lawyers and other ATSI legal staff. ATSI staff can provide cultural awareness and mentoring and make a significant contribution to improved ATSI accessibility within the justice system. A number of people consulted for this project indicated that having the option to see an ATSI lawyer would have been good in their case. Within ATSI organisations, having a mixture of both ATSI and non-ATSI staff is thought to be the best approach.

To build capacity within ATSI organisations, additional funding must be provided to facilitate training and/or mentoring of ATSI staff where required. Comment was made that the Victorian Government, with its range of ATSI law and justice initiatives, is more able to attract ATSI staff into those programs through more attractive salary and work conditions. It is critical, however, that community organisations working on the ground also attract and sustain ATSI people and greater support for community organisations to achieve this is required.

*... good to have Indigenous and non-Indigenous options for people ... if all Indigenous staff may not get the same community response. **Aboriginal support worker***

*... Aboriginal solicitor ... [could make people feel more comfortable]. **Victim/survivor***

*... It is difficult to attract ATSI staff into the community due to the relatively low salary range as compared to government. If there was better resourcing to train and mentor ATSI staff in community organisations, recruitment and retention of ATSI staff is likely to improve ... In addition, innovative arrangements which might include secondment of ATSI staff between government and the community sector and funding of clerkships in ATSI services would also assist. **Aboriginal lawyer***

As previously detailed, there was also a lot of support for basing ATSI Liaison Officers in most courts to provide culturally supportive information and support options to ATSI people. ATSI court staff can also contribute to cultural awareness and accessibility in the courts more broadly (see Paper 3).

*... all courts should have a Koori liaison officer... **Aboriginal support worker***

*... Koori liaison officer at the Children's Court would be helpful ... ensure Koori people are aware of their rights and are understanding the process. **Aboriginal regional family violence coordinator***

*... anything to make parents feel less intimidated in court is a good thing ... better engagement with court. **Lawyer***

*... I would have taken up the offer of support through an Indigenous liaison officer ... issue of trust and confidentiality with that worker may be an issue for some people but it's about choice ... of being able to access a worker. Could be a role which ... provides more practical assistance and information. You could feed back about cultural sensitivity to the liaison officer. **Aboriginal victim/survivor***

Proposal 21

That the employment of more ATSI people in the law and justice system, including in legal services, will strengthen responses for ATSI victims/survivors.

Action

That additional funding for training and mentoring of ATSI staff to build ATSI capacity and expertise within the law and justice system be made available to ATSI community organisations, including the FVPLS program.

That government or non-government funding support employment of dedicated ATSI Articled Clerk positions within ATSI Legal Services (including the FVPLS program).

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria

Proposal 22

That dedicated ATSI Liaison Officers be available in or to courts/tribunals to support ATSI victims/survivors of family violence and sexual assault.

Action

That the Family Court introduce ATSI Liaison Officers.

That ATSI Liaison Officers be introduced to support ATSI victims of family violence and sexual assault in the Magistrates' Court in family violence proceedings, VOCAT and as witnesses in criminal prosecutions.

That ATSI Liaison Officers be introduced into the Children's Court.

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria, Victorian Aboriginal Justice Forum

10-year plan

Action 7.1.1

Review existing Indigenous workforce strategies with a view to developing training, recruitment,

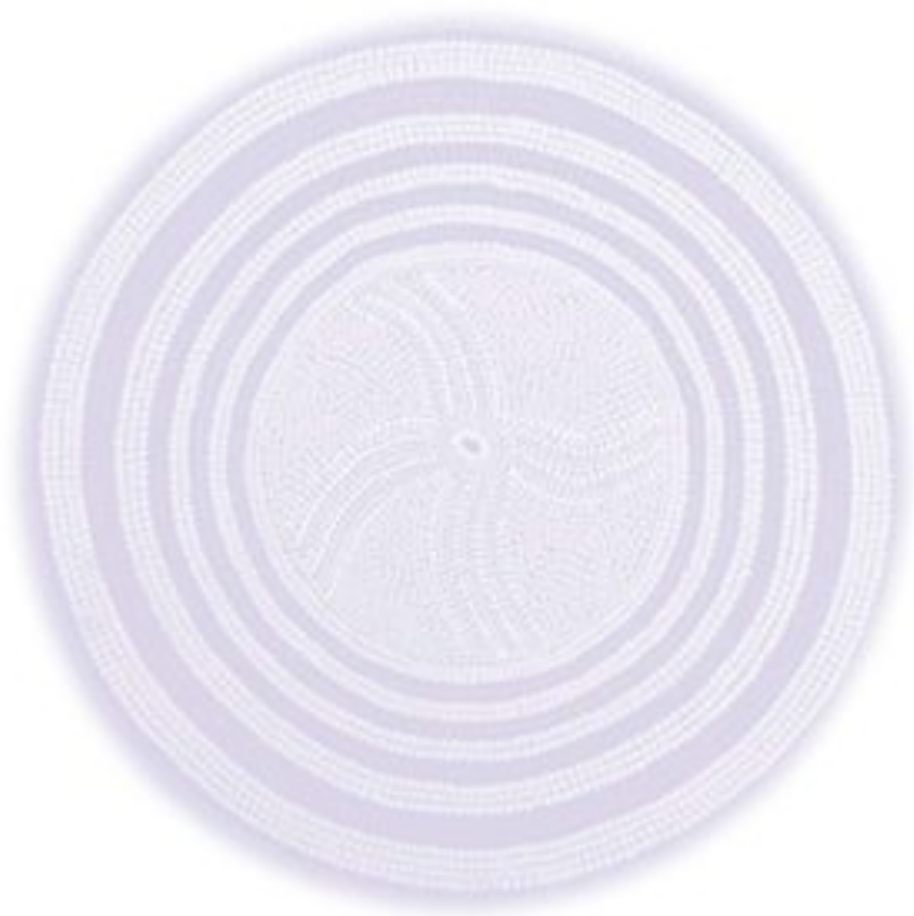
retention and career pathways for staff and scholarships at all levels.

Action 7.1.2

Increase access to education for Indigenous students in courses for professions related to reducing, responding to and eliminating family violence, including health, mental health, criminal justice, housing, relevant services (such as children's services and aged care) and legal professions.

Action 5.1.2

Enhance court capacity to provide culturally competent responses to Indigenous people affected by family violence.



Section 15: Community legal education/early intervention and prevention

Culturally accessible community legal education (CLE) and early intervention programs for ATSI victims/survivors of family violence and sexual assault, and ATSI women and children, is critical to improving access to legal services and law and justice outcomes. Community legal education must target both community workers and the community more generally. ATSI community organisations are best placed to deliver community legal education within culturally safe and trusted environments.

15.1 Sisters Day Out

As mentioned previously, the FVPLS Victoria *Sisters Day Out* program is an example of a highly successful early intervention/prevention initiative in which the pampering of women, and care for their wellbeing, is combined with the provision of legal information and legal advice as needed. Each program is developed and delivered by ATSI women in conjunction with local ATSI people. Mainstream service providers are also invited to participate. The following story recently provided by an FVPLS staff member reflects the impact of the program:

At court we were instructed by a mother who has been seriously abused over a number of years without having done anything about it with the police or court. At the end of the IVO case she threw her arms around me and said, "I was so inspired by you at Sisters Day Out, you made it sound so easy and clear that I nearly did something about it straight away".

A formal *Sisters Day Out* evaluation has been completed and is available from FVPLS Victoria. Commonwealth funding has supported the program in rural and regional locations, and state government funding has been secured to deliver the program in urban areas. Women who would not otherwise have accessed legal assistance have done so through a *Sisters Day Out* workshop. The following is provided by SDO facilitator Kelly Faldon:

- *The SDOs are run by an Aboriginal community-controlled service that is not aligned to any one faction of the community, therefore providing a sense of safety for women to attend.*
- *The SDOs are organised and facilitated by Aboriginal women who have knowledge of communities and cultural sensitivities and who are known to some degree in most communities where workshops have been held.*
- *Venues, pamperers and service providers are all carefully selected to ensure that a culturally safe environment can be achieved.*
- *The workshop is set up in such a way that it is inviting and non-threatening.*
- *The workshop is promoted as a fun, relaxing day where you can also receive some valuable*

information rather than being promoted as an info session on Family Violence or Sexual Assault.

We need to have all of the above in place so, firstly, women will actually attend and then for those who have attended, they will feel both culturally and physically safe to a point they are not shamed to ask questions and seek advice or fear that they will be identified as a victim. Once the women begin to feel welcomed, valued and safe, they will be much more open to the information that is being presented. Furthermore, the presentations are done in such a way that no one is singled out if they ask questions or seek further advice from the solicitor.

The yarnin circle is another important cultural element of the day as it gives the women an opportunity to reflect on the day, talk about how they felt and many women have commented that they have felt empowered by having participated in the circle.

Wanda and I have worked in the community for a long time and this has to be one of the most successful programs we have been involved in. The service has managed to reach women that normally wouldn't attend workshops or meetings in the past. These women are coming along because of all the dot points above and the interesting thing is, once they come along to the first one, they are encouraging other women to come to the next one. Our numbers have certainly increased since 2007 and we have a lot of new women attending the workshop the second time around.

In my view, if this program wasn't operating, we would not be able to reach women in the community that we have managed to reach.

Furthermore, the evaluations not only talk about the value and quality of the information they receive but also the importance of being able to connect as an Aboriginal woman with culture and feel strong in identity. Also, being able to connect with family and community.

15.2 FVPLS Victoria Community Legal Education

The *Sisters Day Out* workshop program does not replace the need for a community legal education program at FVPLS Victoria. The SDO wellbeing workshops provide a forum for basic CLE, requiring an overview of FVPLS services which must be developed and delivered to complement the SDO format. A targeted and comprehensive family violence/sexual assault CLE program across the state is also required. Through the FVPLS program the Commonwealth AGD currently funds FVPLS Victoria and some other FVPLS units for a community legal education position. The position within FVPLS Victoria is, however, restricted to the Barwon South West and Gippsland regions (the Warrnambool and Bairnsdale offices being about 700 kilometres apart). **Given the established importance of community legal education in raising awareness about legal rights, how to get legal assistance and the way the legal system works, FVPLS Victoria urgently requires funding for more flexible community legal education capacity to cover the state.**

Culturally appropriate CLE which engages local communities to discuss issues and develop responses at a local level is critical. For example, FVPLS Victoria has run small child protection workshops in the two CLE-funded locations which not only informed the community about their

rights in child protection cases but also provided a forum for broader discussion about local concerns. These concerns can then be taken up at the local and statewide level. This work needs to be occurring with communities across the state. The importance of funding for policy development capacity within FVPLS Victoria to ensure that on-the-ground learning translates into meaningful change is also demonstrated.

FVPLS Victoria is not adequately resourced for CLE materials. Innovative CLE formats must be developed to reach all community members, with a particular emphasis on young people. As a statewide service FVPLS Victoria requires capacity for coordination of a statewide CLE program. The gains that can be obtained through effective and culturally appropriate CLE and community development programs are significant.

Proposal 23

Community legal education about the legal system is essential to raise awareness about legal rights for ATSI victims/survivors of family violence and sexual assault and ATSI community/support workers in all communities, and must be delivered in culturally safe and trusted environments. Community legal education and community development also support local ATSI community initiatives and responses to local issues.

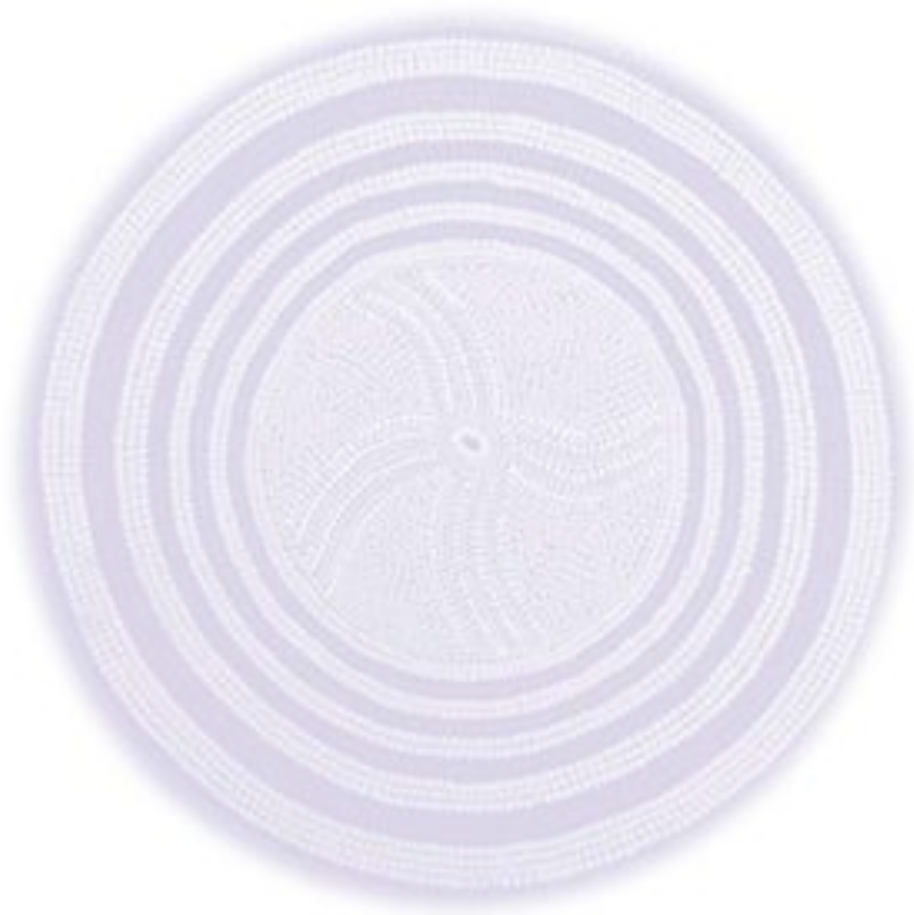
Action

That community legal education capacity within FVPLS Victoria be flexibly extended to all communities in Victoria and be adequately funded for worker hours as well as for the costs of delivering projects.

That the Commonwealth and state governments provide ongoing funding for the future development of the FVPLS Victoria *Sisters Day Out* program.

Responsibility

Commonwealth Attorney-General's Department, Department of Families, Housing, Community Services and Indigenous Affairs, Department of Human Services Victoria



Section 16: An Aboriginal and Torres Strait Islander women's cultural retreat for Victoria

All project consultation participants thought that the establishment of an ATSI women's cultural retreat or retreats in Victoria should be supported by government. The retreat would provide women and children who have experienced family violence or other trauma with the opportunity to have time out in a culturally safe environment. The retreat would not be intended as a women's refuge, but as more of a healing place, perhaps for women to visit after a period of crisis.

FVPLS Victoria has in the past been funded for *Sisters Serenity Retreats*. These retreats lasted three days and involved cultural activity, women's health and wellness activities and the opportunity for women to share their experiences in a culturally safe setting. The evaluation of the *Sisters Day Out* program includes the *Sisters Serenity Retreats*. An ATSI women's cultural retreat would be developed along similar lines but with established locations. The following comments were made by ATSI women who participated in the project:



FVPLS staff at a Sisters Day Out.

... A place of freedom, connectedness, bringing women together for good talk. Understanding our strengths, recognising our resilience from victim to survivor, to achiever, having the ability to make right the choices and seek opportunities without the fear. Drawing from cultural understandings to create a sense of belonging, a place of belonging, the importance of Aboriginal women's role in family and community and in today's society ... or in the 21st century.

... Indigenous women are often the ones with strength in the family ... this would give them a retreat to feel good ... why only have a chance to get away when you go to a safe house ... only chance to get away from home and environment ... women can be themselves ... calm down ... be able to talk about issues and share problems ... if I had gone to such a retreat I may have opened up much sooner.

... Women need time out on their own and with their children.

... Residential-style healing centre would be good.

... In each region would be good so that women can keep in touch with established supports.

... would build on Sisters Day Out ... needs to be more feel good stuff for survivors.

... it would be great for women.

... would be really good ... for time out ... give you something to take your mind off everything.

... would be a really good idea ... I would do this for sure.

... you are left to your own devices a lot ... that would be good.

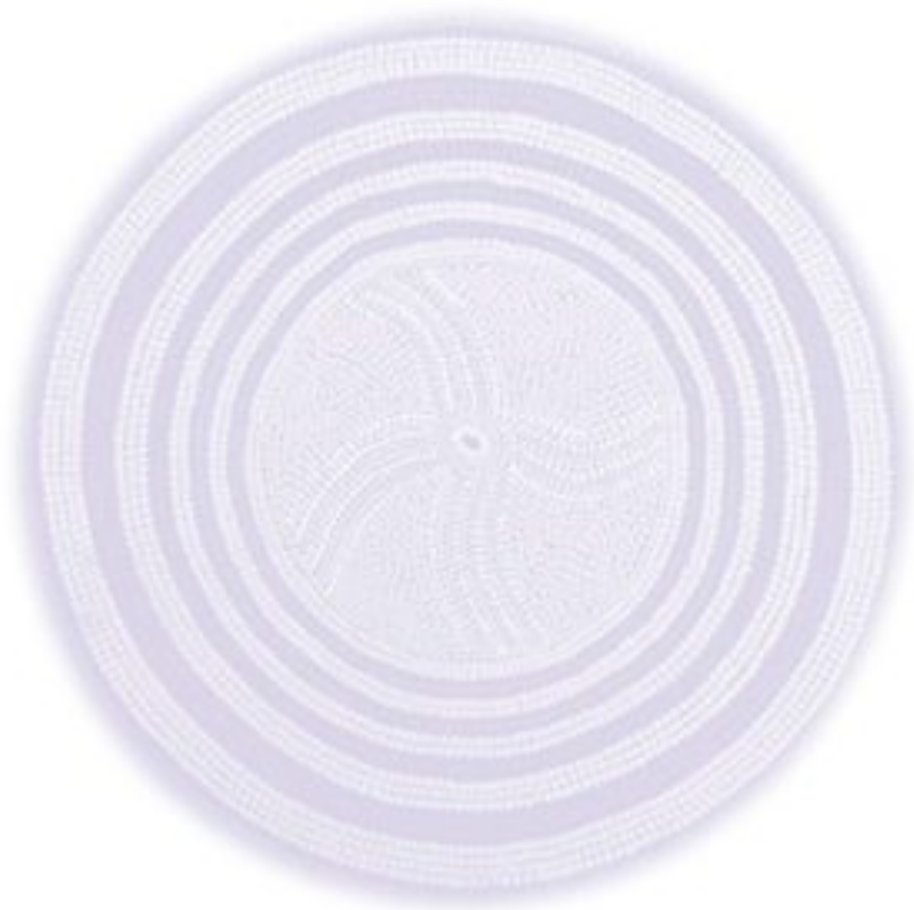
Proposal 24

That a cultural retreat or cultural retreats for Aboriginal and Torres Strait Islander women be established in Victoria.

Section 17: Conclusion

Whilst the FVPLS program in Victoria has significantly strengthened dedicated legal services to ATSI victims/survivors and ATSI women and children in Victoria, a great deal remains to be done. The proposals included in this paper are not intended to be exhaustive, but to reflect the major issues arising from FVPLS Victoria's experience to date and the feedback gathered from project consultations.

It should be no surprise that the proposals made require funding and government support. FVPLS Victoria acknowledges recent additional support from the state government and progress with the Commonwealth moving to a three-year funding arrangement. Commonwealth and state governments must work together to strengthen services and outcomes. An approach whereby each plays the other off is unfair not only for ATSI services but also in so far as it slows progress and perpetuates the poor law and justice outcomes we continue to see for ATSI women and children. FVPLS Victoria acknowledges critical support received through non-government and philanthropic funding sources. Commitment demonstrated by the Victorian Government in its initiatives to improve access to justice for Aboriginals and Torres Strait Islanders is also commended. FVPLS Victoria looks forward to further progress in this regard at all levels of government, the legal system and the broader community.



PROPOSALS

Section 1: Introduction

Law and justice policy for ATSI women in Victoria

Proposal 1

That there be greater dedicated emphasis on law and justice policy development for Aboriginal and Torres Strait Islander women and children in Victoria.

Action

That consideration be given to the Victorian Aboriginal Justice Agreement 3, incorporating a discrete section related to advancing law and justice outcomes for ATSI women in Victoria, supported by the establishment of an ATSI women's law and justice advisory body to advance its objectives.

That the voices and experiences of ATSI women and young people who have experienced family violence and sexual assault inform the development of services and legal reform through the provision of confidential and safe processes.

That a specific implementation plan for law and justice strategy and action identified within the 10-year Plan be developed that incorporates key ATSI agencies.

Responsibility

Victorian Government, Aboriginal Justice Forum, Indigenous Family Violence Partnership Forum, FVPLS Victoria, Victorian Aboriginal Legal Service

Section 3: Access to legal services for ATSI victims/survivors

FVPLS funded services in urban areas

Proposal 2 (Also see Proposal 3, Paper 1)

That dedicated ATSI legal services for ATSI victims/survivors of family violence and sexual assault and ATSI women and children be funded in urban and regional areas as well as in rural/remote locations.

Action

That a strategic review of the FVPLS program be conducted nationally to address overall disadvantage and to strengthen law and justice outcomes for ATSI women and children. That consideration be given to establishing an ATSI women's legal service in Victoria and a national ATSI women's legal program in consultation with ATSI women.

Funding to FVPLS Victoria for services to metropolitan Melbourne should be provided through a joint Commonwealth/state funding arrangement.

Responsibility

Commonwealth Attorney-General's Department and Department of Justice Victoria through COAG and SCAG, Victoria Legal Aid

Strengthened legal services in rural areas

Proposal 3

That dedicated legal services for ATSI victims/survivors of family violence and sexual assault and ATSI women and children be extended within rural Victoria.

Action

That additional resources be provided to FVPLS Victoria to strengthen existing services in its rural locations.

That the Commonwealth AGD provide funding for an FVPLS office to be established in Shepparton to also service Echuca and for resources to service the Swan Hill area.

Responsibility

Department of Justice Victoria, Commonwealth Attorney-General's Department

Funding for integrated but flexible legal services: extending types of legal assistance

Proposal 4

That FVPLS units or a national ATSI women's legal program be adequately resourced to provide comprehensive legal services for Aboriginal and Torres Strait Islander women and children and victims of family violence and sexual assault, and that legal casework guidelines within the program be expanded beyond family violence and sexual assault. That the greater resourcing required for family and civil law work be recognised in funding levels.

Action

That the state and Commonwealth governments ensure adequate resourcing of FVPLS Victoria to develop and maintain the necessary legal capacity and expertise to provide comprehensive legal services in key legal areas—specifically family law, child protection, family violence and victims assistance.

That Victoria Legal Aid continue the family law secondment arrangement and family violence legal position with FVPLS Victoria, that the Victorian Government fund an ongoing child protection specialist legal position with FVPLS Victoria and ensure adequate resourcing for legal services to support new and emerging law and justice initiatives. Flexibility in funding to ensure that lawyers can holistically assist clients is also required.

Paper 3 proposes funding of a dedicated Victim of Crime legal position at FVPLS Victoria.

That the Commonwealth and state governments collaborate to ensure expanded dedicated legal service assistance areas for ATSI women and children in Victoria (e.g. civil law) either through the FVPLS program or as part of a broader overview of legal services for ATSI women and children nationally (see Proposal 1). Indigenous Women's Program funding must be made available to Victoria.

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria, Victoria Legal Aid

Section 4: *Holistic service delivery: Paralegal support*

Proposal 5

That the unique support and strengthening of legal service provision provided by paralegal support workers in the FVPLS program, and ATSI legal services more generally, be fully acknowledged and supported.

Action

That the Commonwealth Attorney-General's Department and Victorian Government continue to fund paralegal support positions in the FVPLS program and in ATSI legal services more generally.

Responsibility

Commonwealth Attorney-General's Department, Victorian Government

Proposal 6

That the material aid requirements of clients engaging in legal processes (e.g. child care, petrol, food, accommodation) be acknowledged and appropriately funded.

That emergency housing options for ATSI women who experience family violence be enhanced.

Action

That funding for material support for ATSI victims/survivors be incorporated into FVPLS program funding and also attach to other state- and non-government-funded legal positions.

That the Victorian Government through relevant departments increase funding for emergency housing for ATSI women and children who experience family violence.

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria, Department of Human Services Victoria

Section 5: *Legal services for children*

Proposal 7

That strengthening of dedicated legal and support services, and prevention activity, for ATSI children experiencing family violence and/or sexual assault in Victoria is urgently required.

That the legal rights of ATSI children under care and protection orders in Victoria be protected and pursued.

Action

That the Victorian Government, in partnership with key ATSI stakeholders, conduct a review of the services and prevention activity required for ATSI children in relation to family violence and sexual assault in Victoria, with a view to improving services and implementing effective prevention/education.

That Victoria Legal Aid review its arrangements for the legal representation of ATSI children in the Children's Court and family law jurisdictions.

That a process to ensure the pursuit of the legal rights of ATSI children who are victims of crime, and under care and protection orders, be established.

Responsibility

Department of Justice Victoria, Indigenous Family Violence Partnership Forum, Aboriginal Justice Forum, Victoria Legal Aid, FVPLS Victoria, VALS, Department of Human Services Victoria, VACCA

Section 6: *Victoria Legal Aid (VLA)*

Proposal 8

Victoria Legal Aid guidelines are currently restricting optimum access to justice for ATSI victims/survivors of family violence and sexual assault, particularly in the family law and child protection (Family Division) areas.

Action

That Victoria Legal Aid review its guidelines for assistance in relation to family law, family violence, Children's Court (Family Division) proceedings and the public interest criteria to strengthen legal outcomes and improve access to justice for ATSI victims/survivors of family violence and ATSI women and children.

Responsibility

Victoria Legal Aid, Victorian Government

Proposal 9

The cultural awareness of lawyers either acting on behalf of or representing the interests of ATSI people including children in the family law and Children's Court jurisdictions is critical.

Action

That Victoria Legal Aid ensure ongoing ATSI cultural awareness training for all legal staff, and ensure that Victoria Legal Aid in-house and panel solicitors representing ATSI young people in either the Family Court or Children's Court (Family Division) receive specific cultural awareness training for these roles. ATSI cultural awareness should be a criterion for admission to and remaining on relevant VLA panels.

That ATSI Legal Services be included on VLA panels to represent young people and to act as Independent Children's Lawyers in Family Court and Children's Court jurisdictions.

That Victoria Legal Aid support an ongoing child protection legal position at FVPLS Victoria, continued funding of the family violence legal position, and also continue the family law secondment (or direct family law funding arrangement) with FVPLS Victoria.

Responsibility

Victoria Legal Aid, Department of Justice Victoria

Section 7: After-hours and crisis supports

Proposal 10

That culturally appropriate after-hours (and other) crisis support options for ATSI victims of family violence and sexual assault are critical and must be strengthened.

Action

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after-hours support) who experience family violence and sexual assault, and that this review looks at the role of Victoria Police. The review must incorporate statewide and local processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

Responsibility

Indigenous Family Violence Partnership Forum, Indigenous Family Violence Regional Action Groups, Integrated Family Violence Steering Groups, Aboriginal Justice Forum, Department of Justice, Department of Human Services, Victoria Police

Legal referrals from crisis intervention

Proposal 11

That crisis legal referrals for ATSI victims/survivors be made at the earliest possible time to ensure improved legal outcomes.

Action

That FVPLS Victoria initiate discussions with family violence crisis support services in Victoria who are supporting ATSI women, to strengthen legal referral processes.

That court processes with respect to return of Family Violence Safety Notices ensure that the victim has had reasonable opportunity to access culturally appropriate legal assistance prior to applications being struck out or final determinations made.

Responsibility

FVPLS Victoria, Elizabeth Hoffman House Aboriginal Women's Refuge, Women's Domestic Violence Crisis Service, Indigenous Family Violence Regional Action Groups (IFVRAGs), Rural and regional domestic violence crisis support services, Victoria Police, DHS-funded ATSI support services, Magistrates' Court Victoria

Section 8: Coordination of law and justice service providers and the integrated family violence strategy**Proposal 12**

That improved information sharing and understanding amongst key ATSI and mainstream law and justice providers working in the area of ATSI family violence and sexual assault be prioritised. That linkages between ATSI-specific family violence initiatives and mainstream integrated family violence strategy be improved.

Action

That short-term regional projects be funded to develop strategy for improved linkages and information sharing between ATSI and mainstream family violence initiatives.

Responsibility

Victorian Government, Indigenous Family Violence Partnership Forum, Aboriginal Justice Forum, IFVRAGs

Section 9: Counselling**Proposal 13**

That funding for the holistic service delivery model (incorporating counselling/healing) of the FVPLS program be extended to urban communities.

That the Commonwealth Attorney-General's Department, through the national FVPLS program, strengthen its development and support of counselling and sexual assault services within FVPLS Units.

Action

That the Commonwealth FVPLS program which incorporates counselling services for ATSI victims/survivors of family violence and sexual assault be extended to urban areas.

That the Commonwealth Attorney-General's Department strengthen its support capacity for counselling and sexual assault services within the FVPLS program, incorporating expertise in compliance with various state, territory and national professional standards, and the development of culturally appropriate best practice service provision which incorporates innovation and responds to ATSI diversity.

Responsibility

Commonwealth Attorney-General's Department, Victorian Government

Cultural awareness of counsellors

Proposal 14

Cultural awareness training for psychologists/counsellors working with ATSI victims/survivors of family violence and sexual assault both in the community and in the legal system is critical.

Action

That the state government lead an initiative to train more ATSI people in counselling/psychology/healing and coordinate the development of a cultural awareness training program for non-ATSI psychologists/counsellors.

That all counsellors/psychologists working with ATSI victims/survivors of family violence and sexual assault in the legal system in Victoria, including the Children's Court and Victims Assistance system, receive ongoing cultural awareness training.

That the Family Court and Federal Magistrates' Court strengthen cultural awareness training for their internal and external family report writers.

Responsibility

Victorian Government, Department of Justice Victoria, Victims Support Agency, Family Court of Australia

Provision of counselling services

Proposal 15

That high-demand counselling for ATSI women and children victims/survivors of family violence be provided in safe, confidential and culturally and gender appropriate environments.

That case management services for ATSI children who have experienced family violence are needed.

That funding for practical supports needed to facilitate counselling such as transport and child care

be factored in to funding provision for services.

Action

That more dedicated counselling/healing options for ATSI women and children be provided separate to ATSI Healing Centres which ATSI men and perpetrators of violence often frequent. That the Victorian Government identify where departmental responsibility for this development lies.

That a strategic plan for the development of case management services for ATSI children who experience family violence be developed.

That services funded to offer counselling/healing for ATSI victims/survivors of family violence receive additional funding for practical supports to facilitate counselling.

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria, Department of Human Services Victoria, Victims Support Agency, Indigenous Family Violence Partnership Forum, Aboriginal Justice Forum

Alternative approaches to counselling

Proposal 16

Alternative counselling and healing approaches—such as, narrative therapy, art therapy, group work and cultural identity workshops—are more suitable for some ATSI people and should be available as options or accessible alongside more conventional counselling.

Action

That culturally appropriate counselling and healing options for ATSI victims/survivors of family violence and sexual assault be developed through a state government initiative.

That the Victims Support Agency fund alternative therapies for victims/survivors as part of its crisis response counselling/support services. That the Victims of Crime Assistance Tribunal allow expenses for alternative and culturally appropriate therapies through its awards for assistance.

That the Commonwealth through its FVPLS program acknowledge the importance of alternative counselling/healing therapies with demonstrated benefit and fund these services accordingly.

Responsibility

Department of Justice with the Department of Human Services, Victims Support Agency, Victims of Crime Assistance Tribunal, Commonwealth Attorney-General's Department

Section 10: Sexual assault

Proposal 17

That dedicated long-term initiatives to strengthen services and education/prevention activity for ATSI victims/survivors of sexual assault and ATSI people generally, both as adults and children, be developed and implemented in Victoria as a matter of urgency.

Actions

That the Victorian Aboriginal Justice Forum and the Victorian Indigenous Family Violence Partnership Forum consider a specific initiative with respect to sexual assault similar to that of the Indigenous Family Violence Taskforce (which did not focus upon sexual assault).

That, in the interim or alternatively, consideration be given to reconvening an ATSI Sexual Assault Steering Committee to lead and advise upon Aboriginal and Torres Strait Islander sexual assault initiatives in Victoria, building upon previous work, including the *From Shame to Pride* report 2004.

That the Victorian Government consider funding to FVPLS Victoria to provide secretariat/project support to the Victorian ATSI sexual assault steering committee. That the steering committee consider development of an updated strategic plan for strengthening services and responding to sexual assault within the Aboriginal and Torres Strait Islander community in Victoria, incorporating previous and current recommendations and proposals. The plan may include strategy at local and statewide levels for:

- increased provision of dedicated and culturally accessible community education for adults and young people about sexual assault issues and legal supports available in culturally safe and appropriate environments
- improved resourcing to undertake community education work in schools and to provide the critical back-up counselling and support required to responsibly deliver such a program
- adequate resourcing for dedicated and innovative culturally appropriate legal services in Victoria to ensure greater uptake of ATSI victims/survivors of sexual assault for legal assistance
- improved integration and referrals between key service providers, particularly Victoria Police, the Centres Against Sexual Assault, and the Royal Children's Hospital
- further investigation and research into Indigenous-specific sexual assault crisis support models (e.g. the Nguru program at the Canberra Rape Crisis Centre)
- ongoing cultural awareness training for all key law and justice providers, including police, prosecutors, the Office of Public Prosecutions, Court staff and lawyers
- ongoing engagement with Victoria Police with respect to police responses
- ATSI victim/witness court support services
- a forum for feedback of on-the-ground experiences of ATSI victims of sexual assault within the law and justice system (the above committee could take this role)
- addressing the high numbers of ATSI women in prison who are survivors of sexual assault and the consequent action required, both in terms of early prevention in the community and best practice for healing/supports in the criminal justice system
- distinct approaches required for strengthening sexual assault services to men, women and

children.
Responsibility FVPLS Victoria, Department of Justice Victoria, Indigenous Family Violence Partnerships Forum, Aboriginal Justice Forum, Department of Human Services Victoria, Aboriginal Affairs Victoria

Section 11: *Aboriginal and Torres Strait islander women in prison*

Proposal 18 Given the high rates of ATSI women in prison who have experienced family violence and/or sexual assault, and the inappropriateness of the prison environment for healing past trauma: <ul style="list-style-type: none"> • that resourcing be improved for FVPLS and/or ATSI women's legal and support services in the community to provide legal assistance, counselling and prevention activity to assist with easing the high imprisonment rates of ATSI women, including young women, that the FVPLS operational guidelines identify ATSI women in prison as a key client group for the FVPLS national program, and that FVPLS units be geographically accessible to ATSI women in prison • that culturally appropriate community alternatives to prison that incorporate therapeutic /healing services, as well as dedicated intensive and long-term support services, for ATSI women and their children who are at risk of or who have experienced imprisonment be implemented as a matter of urgency. • access to culturally appropriate community support services for ATSI women, including housing, health, mental health, and drug and alcohol programs, is critical.
Action <p>That FVPLS units and/or ATSI women's legal services be strengthened and funded to provide services in urban areas to ensure that services and advocacy are available to ATSI women who are in prison or at risk of imprisonment.</p> <p>Community-based prison diversion initiatives along with access to intensive long-term support services, incorporating therapeutic services, for ATSI women and their children must be pursued as a matter of urgency.</p> <p>That resourcing for culturally appropriate community support services for ATSI women be strengthened.</p>
Responsibility Commonwealth Attorney-General's Department, Victorian Government

Section 12: Services to ATSI men

Proposal 19

That prevention and education services for ATSI men as victims of sexual assault and/or family violence require dedicated attention.

Action

That dedicated culturally appropriate education/prevention programs for ATSI men as victims of sexual assault and family violence be developed.

Responsibility

Indigenous Family Violence Partnership Forum, Victorian Aboriginal Justice Forum, FVPLS Victoria, VALS

Section 13: Cultural awareness training

Proposal 20

That Aboriginal and Torres Strait Islander cultural awareness of legal practitioners (both solicitors and barristers) is essential to culturally appropriate legal service provision.

That ongoing cultural awareness training of court and Tribunal staff is essential.

Action

That cultural awareness training with a focus upon law and justice issues be a requirement of professional development training for solicitors and barristers.

That ongoing cultural awareness training for court and Tribunal staff be ensured.

Responsibility

Legal Services Board, Law Institute of Victoria, Victorian Bar Association, Tarwirri Indigenous Lawyers Association, Department of Justice Victoria, Victoria Legal Aid

Section 14: Aboriginal and Torres Strait Islander staff in law and justice

Proposal 21

That the employment of more ATSI people in the law and justice system, including in legal services, will strengthen responses for ATSI victims/survivors.

Action

That additional funding for training and mentoring of ATSI staff to build ATSI capacity and expertise within the law and justice system be made available to ATSI community organisations, including the FVPLS program.

That government or non-government funding support employment of dedicated ATSI Articled Clerk positions within ATSI Legal Services (including the FVPLS program).

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria

Proposal 22

That dedicated ATSI Liaison Officers be available in or to courts/tribunals to support ATSI victims/survivors of family violence and sexual assault.

Action

That the Family Court introduce ATSI Liaison Officers.

That ATSI Liaison Officers be introduced to support ATSI victims of family violence and sexual assault in the Magistrates' Court in family violence proceedings, VOCAT and as witnesses in criminal prosecutions.

That ATSI Liaison Officers be introduced into the Children's Court.

Responsibility

Commonwealth Attorney-General's Department, Department of Justice Victoria, Victorian Aboriginal Justice Forum

Section 15: Community legal education

Proposal 23

Community legal education about the legal system is essential to raise awareness about legal rights for ATSI victims/survivors of family violence and sexual assault and ATSI community/support workers in all communities, and must be delivered in culturally safe and trusted environments. Community legal education and community development also support local ATSI community initiatives and responses to local issues.

Action

That community legal education capacity within FVPLS Victoria be flexibly extended to all communities in Victoria and be adequately funded for worker hours as well as for the costs of delivering projects.

That the Commonwealth and state governments provide ongoing funding for the future development of the FVPLS Victoria *Sisters Day Out* program.

Responsibility

Commonwealth Attorney-General's Department, Department of Families, Housing, Community

Section 16: *An Aboriginal and Torres Strait Islander women's cultural retreat for Victoria*

Proposal 24

- That a cultural retreat or cultural retreats for Aboriginal and Torres Strait Islander women be established in Victoria.

ANNEXURE 1

From Shame to Pride: Access to Sexual Assault Services for Indigenous People, A Partnership Project between Elizabeth Hoffman House and CASA House, prepared by Lisa Thorpe, Rose Solomon, and Maria Dimopoulos for Elizabeth Hoffman House, 2004, p. 63.

INDIGENOUS FORUM ON SEXUAL ASSAULT RECOMMENDATIONS:

1. To establish an Indigenous statewide sexual assault steering committee.
2. For the newly established steering committee to feed into broader statewide steering committees on sexual assault.
3. To develop and deliver 'Responding to Sexual Assault' training to Aboriginal community members/workers.
4. To develop and distribute a Community Family Violence/Sexual Assault Resource Guide.
5. To develop a Statewide Sexual Assault Policy and Procedures Manual to ensure both a coordinated approach and a set of practice standards throughout Victoria.
6. To facilitate a men's forum on sexual assault.
7. Undertake community-controlled research and data collection re. sexual assault to inform and support requests for funding the development/evaluation of appropriate services.
8. To establish an Indigenous 'Helpline' for information/referral relating to family violence/sexual assault.
9. To develop and deliver (through a broad range of mediums including community radio, newspapers, kits) a sexual assault statewide awareness/safety program.

ANNEXURE 2

From Shame to Pride: Access to Sexual Assault Services for Indigenous People, A Partnership Project between Elizabeth Hoffman House and CASA House, prepared by Lisa Thorpe, Rose Solomon, and Maria Dimopoulos for Elizabeth Hoffman House, 2004, p. 65.

FROM SHAME TO PRIDE REPORT RECOMMENDATIONS:

1. That the *From Shame to Pride* Project endorses the Recommendations made at the Indigenous Forum on Sexual Assault. These Recommendations portray the views and aims of the Victorian Indigenous communities.
2. The Indigenous Statewide Steering Committee on Sexual Assault be resourced to conduct its work over the next two years.
3. That governments recognise the immediate crisis faced by Aboriginal communities, families and workers in the field and provide funding to Aboriginal communities for long-term, sustainable programs. This should also include funds to debrief and supervise workers who deal with traumatic experiences.
4. The development of an Indigenous Statewide Data System that accurately measures the levels of sexual and family violence and captures the types of support and services required. It is suggested that the Data System be made available across all Aboriginal program areas and should include legal services.
5. Aboriginal agencies develop and implement in-house data collection that accurately records the number of clients they are unable to support and the types of issues they are facing. This would assist these agencies to present accurate information on the number of clients they turn away.
6. That Aboriginal communities be adequately resourced and supported in the ongoing development of strategies, to give them the opportunity to self-determine the manner in which they address family and sexual violence within their respective communities.
7. That Victoria Police and Aboriginal communities examine their relationships within their respective communities and explore mechanisms to improve their relationships, particularly in the areas of family and sexual violence.
8. That Victoria Police examine the issue of 'non-reporting of sexual and family violence crimes' as a component of the Victoria Police Steering Committees on Family Violence and Sexual Assault and develop strategies that increase the reporting of these crimes.
9. That Aboriginal agencies be supported and resourced in the development of partnerships, protocols and MOUs, to increase access to services and enhance the delivery of programs for victims/survivors of family and sexual violence.
10. That the Family Court of Australia undertake cross-cultural training, provide culturally appropriate information and examine the possibility of the employment of an Indigenous Liaison Officer whose primary role would be to establish/improve relationships between Aboriginal agencies and the Family Court of Australia.
11. Similarly, the Magistrates' Courts should also undertake Cross-Cultural Training particularly in the areas of family and sexual violence.

12. The establishment of an Aboriginal Children's Hand-over Supervision Centre as a priority, particularly to begin to address the issues associated with the number Aboriginal children who have come to the attention of child protection and the number of children involved in Family Court disputes involving family and sexual violence. This will require consultation with the Victorian Aboriginal Child Care Agency.
13. Funding bodies need to recognise that Aboriginal people do not have the same opportunities to disassociate themselves from the issues within their communities and hence funding bodies need to consider the provisions for supervision, debriefing and access to adequate cultural training opportunities.
14. That CASAs further examine the development of partnerships and joint initiatives with Aboriginal organisations to increase access to their services.
15. That all CASA counsellor/advocates develop their awareness around the barriers that prevent Aboriginal people from accessing their services and develop their cultural awareness skills to assist them in enhancing the services they provide.



Aboriginal Family Violence Prevention and Legal Service Victoria
(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 JUNE 2010
PAPER 3 of 3

ACKNOWLEDGEMENTS

These policy papers have been made possible through funding provided initially by the Legal Services Board Grants Program and then later also by a grant from The Felton Bequest managed by ANZ Trustees.

In 2008, following five years of legal and related service provision, FVPLS Victoria successfully sought funding from the Legal Services Board for a law reform and policy development project. The ever-growing demand placed on FVPLS Victoria for high-level policy input and identification of much needed reform to strengthen law and justice outcomes for Aboriginal and Torres Strait Islander (ATSI) women and children in particular prompted the application. No government funding was or is available to the FVPLS program for this work. Further, the 31 FVPLS units funded nationally for rural and remote services have no peak body to collaborate on systemic or operational issues.

In light of the significant gaps in legal policy development for ATSI women and children, the scope of the project was considerable. Three policy papers have been developed which focus on strengthening legal equity, accessibility and outcomes rather than on broader law reform. Generous funding through The Felton Bequest has enabled continuation of policy and program development activity at FVPLS Victoria into 2010 and has contributed to the completion of the papers.

There are many people who have guided and assisted in the development of these papers. Firstly, to all of those women who agreed to be interviewed about their experiences with the justice system, thank you for sharing your experiences and knowledge with such openness and for your enthusiasm and commitment to meaningful change. These papers could not have been produced without your input.

The Steering Committee, Board of Directors, Planning Reference Group and particularly the staff at FVPLS Victoria recognise that legal reform and policy development is fundamental to improved access to justice and better outcomes for Aboriginal and Torres Strait Islander women and children impacted by family violence and sexual assault. This was reflected in the high level of support provided from across the organisation in the development of the papers.

Special thanks to those who generously provided their support and expertise, including Dr Debbie Kirkwood, Julia Farrell, John Bourke and Freehills.

It is heartening that many law and policy developments have taken place throughout the preparation of these papers. These have been incorporated to the best of our knowledge—some at the very last minute. Nevertheless, further developments will no doubt occur subsequent to publication.

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FOREWORD

Antoinette Braybrook
Chief Executive Officer
FVPLS Victoria

As an Aboriginal woman, and one who has been working in the justice sector for many years, I have gained a full appreciation of the ongoing disadvantage and inequality that our women continue to experience. I am reminded daily of and forever inspired by the resilience and strength of Aboriginal women despite the systemic racism and inequitable access to justice that still exists. It is this that drives us at FVPLS Victoria to continually advocate for systemic change to ensure greater law and justice outcomes for all Aboriginal women in every community throughout Australia.

*I am an Aboriginal woman and I was told to go and listen to the Western law. This felt all wrong to me. They didn't know me, my culture, nor the way I protected my child or my family. I felt my dignity was lost through the court system. What can your department do to make the process a lot more comfortable for mothers, fathers and children where they too don't lose their spirits? **Aboriginal woman consulted for the project***

As the CEO of FVPLS Victoria I am very pleased to announce the release of these papers. The issues explored and discussed primarily focus on Aboriginal women and children as victims/survivors of family violence and sexual assault. This is undertaken from a Victorian perspective, but I am certain that the same issues and findings would apply to women and children in other states and territories throughout Australia.

The three key areas on which the papers focus are:

- *Paper 1: Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander victims of family violence and sexual assault and women and children: National policy issues—a Victorian perspective*
- *Paper 2: Strengthening on the ground service provision for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in Victoria*
- *Paper 3: Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault*

Since the establishment of FVPLS Victoria in 2002, the Board of Directors and management have been committed to ensuring capacity within the organisation for policy and research. Aboriginal women's organisations must be properly resourced to undertake policy and advocacy work. This is the key to real change.

After making several unsuccessful applications to the Commonwealth Government, FVPLS Victoria successfully secured grants from the Legal Services Board Victoria and The Felton Bequest to employ a policy development worker. These three policy papers are the product of those grants and of course the work of Shelley Burchfield, our policy development worker, informed by many contributors who generously shared their often difficult stories, precious time and ideas for change. I would like to acknowledge all, and thank them equally for making this work happen.

It is inexcusable that, in the year 2010, Aboriginal women and children are still chronically disadvantaged in Australian society. There is no need to investigate this fact further—it is well documented in numerous reports and commented on by many high-level committees including human rights forums. Despite this, successive governments have failed to focus their attention on a strategic approach or to listen to and act upon women's voices.

It is critical that there be greater resourcing of law and justice services for Aboriginal women at state and territory and national levels. This includes the urgent need for the Commonwealth to lift the rural/remote restriction on the National Family Violence Prevention Legal Service Program, and to work with state and territory governments so that all Aboriginal women, regardless of their geographic location, have access to such an important service.

I would like to take this opportunity to acknowledge recent significant developments by the Victorian Government in providing ongoing and additional funding to FVPLS Victoria and by the Commonwealth in progressing from 12-month to 3-year funding arrangements, albeit with a funding reduction. A formal collaborative funding arrangement between the state and the Commonwealth must be struck to support effective and sustainable statewide service development.

FVPLS Victoria's policy development capacity over the past 18 months has significantly contributed to the progress the service has made and illustrates the importance of this work in supporting and complementing direct service delivery.

These papers comprise a valuable tool for Aboriginal women as they provide a platform for us as leaders, workers and nurturers in our communities to demand change. They are also a valuable reference point for policy and law makers. I strongly urge governments (both Victorian and Commonwealth) to work collaboratively with the women upon which these issues most impact to move forward in an innovative and strategic way.

It is our hope that one day Victoria will have an Aboriginal women's legal service. Clearly more work is needed to explore this possibility, but if such a service were to make a positive difference to the lives of Aboriginal women and children it must happen.

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EXECUTIVE SUMMARY

This is the third of three FVPLS Victoria discussion papers addressing improved law and justice responses for Aboriginal and Torres Strait Islander (ATSI) victims/survivors of family violence and sexual assault and ATSI women and children. This paper and its proposals focus upon FVPLS Victoria's areas of legal practice. The other papers are entitled:

- *Paper 1: Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander victims of family violence and sexual assault and women and children: National policy issues—a Victorian perspective* (examines national policy and program issues within a human rights framework)
- *Paper 2: Strengthening on the ground service provision for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in Victoria* (looks at actions required in Victoria to strengthen legal and associated services to ATSI victims of family violence and sexual assault and women and children)

The legal system has been used as a tool of oppression against ATSI people; thus considerable mistrust and fear of the consequences of engaging with it justifiably continues. ATSI law and justice policy development has prioritised criminal justice, resulting in a greater focus on ATSI men. Improved cultural accessibility within areas of the legal system that impact upon victims/survivors of family violence and sexual assault, and upon women and children, is essential. Access to culturally appropriate legal and associated supports together with ATSI-driven initiatives to address systemic change will be key to such change.

The current Victorian Government has demonstrated significant commitment to ATSI-led law and justice developments. A range of reviews and projects are currently underway. It is critical that all relevant ATSI policy and law reform is driven by ATSI communities and that the voices of women are prominent. Dedicated core funding to enhance policy and law reform capacity within ATSI women's organisations working on the ground, including the FVPLS program, is urgently required. FVPLS Victoria's knowledge and experience are in high demand. In Paper 1, we argue for the need for funded policy/law reform activity and propose a strategy and framework for implementation of this at the national, state and territory levels.

For ATSI victims/survivors of family violence and sexual assault, the legal system can offer legal rights and protections including safety notices and intervention orders, family law orders setting out safe arrangements for children, and assistance/compensation as victims of crime. These are legal areas that ATSI people can choose to access for assistance. However, statistics indicate that low numbers of ATSI people have been utilising the current legal system in this way. (It is noted that an initiative by the Victims of Crime Assistance Tribunal in Victoria to increase ATSI accessibility has resulted in increased applications by Aboriginals and Torres Strait Islanders.)

In the area of child protection intervention, family violence is a significant factor and ATSI children are vastly overrepresented in the system. ATSI families are forced into the Children's Court in cases

where children are considered to be at unacceptable risk. Given the history of removal of ATSI children and the importance of family and cultural connection, the Children's Court and child protection system have unique obligations in relation to ATSI children.

Whilst some positive initiatives to improve cultural responses and Aboriginal and Torres Strait Islander accessibility are encouraging, there is still a long way to go. It is especially disappointing when initiatives are begun but not sustained (as witnessed in the Family Court of Australia). Long-term commitment is required.

Given the breadth and complexity of the issues under discussion, in-depth research and analysis were not within the scope of this project. Discussion in this paper is focused on ATSI accessibility rather than on broader legal and policy reform. It is hoped, however, that proposals made in each section will prompt and inform development within these law and justice areas and lead to improved on-the-ground outcomes for ATSI people.

Improved integration of the legal system for people impacted by family violence is currently being examined by the Australian Law Reform Commission. Interaction between family violence intervention orders, family court orders, child protection proceedings and the criminal law is complex, often clumsy, and stressful for victims/survivors. Development of ATSI-specific family violence responses across the legal system should also incorporate cross-jurisdictional cohesion. Paper 2, which looks at strengthening on-the-ground services, highlights the importance of FVPLS Victoria being appropriately resourced to provide seamless legal services to victims/survivors across jurisdictions.

Each section of this paper focuses on areas of primary concern to FVPLS Victoria and its clients, which are outlined below:

- Section 1 deals with family law—improved ATSI accessibility and cultural awareness, combined with expanded culturally appropriate family law service provision, is a key requirement. Law reform to strengthen family violence responses in the family law system is supported, and examinations of a more coordinated approach to cross-jurisdictional issues within family law are welcomed.
- Section 2 explores child protection—the vast overrepresentation of ATSI children in the legal system demands urgent system-wide attention to strengthen culturally appropriate responses, to advance their legal rights and to ensure greater accountability. Given the serious human rights issues at stake and significant power differentials within the system, greater priority must be given to the protection of the legal rights of ATSI children and families. Strengthening of culturally appropriate out-of-court dispute resolution processes will be effective only within a robust legal framework that has necessary safeguards including family violence/safety screening and culturally appropriate legal representation.
- Section 3 looks at family violence law—new family violence legislation in Victoria, together with a broader ATSI and mainstream family violence strategy, has marked a positive step.

Development of a more culturally appropriate court process and integrated crisis and support system will improve outcomes for ATSI victims/survivors. Dedicated after-hours ATSI crisis supports are also needed.

- Section 4 discusses victims assistance—the Koori list within the Victims of Crime Assistance Tribunal (VOCAT) has been very successful in improving ATSI accessibility. Still, particular legal provisions and processes that better assist victims of family violence and sexual assault crimes are required.
- Section 5 examines the impact of being a witness—feedback indicates that this remains a traumatising experience for ATSI women and young people. Additional supports are proposed.
- Section 6 discusses police responses—FVPLS Victoria is currently undertaking a Koori Family Violence Police Protocols Project within six Victorian communities. This section documents the consultation feedback about police responses to family violence and presents proposals related to improved communication with victims, access to female officers, enhanced cultural awareness training, strengthened crisis supports and better police complaint/feedback processes.
- Section 7 briefly considers restorative justice—FVPLS Victoria urges caution in proceeding with restorative justice approaches to crimes of family violence and sexual assault. The Victorian Parliament Law Reform Committee report, *Inquiry into Alternative Dispute Resolution and Restorative Justice May 2009*, is discussed.

The discussions in each section are informed by:

- FVPLS Victoria’s experience and learning in relation to service provision
- Relevant external developments in the law and justice area, both in Victoria and nationally
- Confidential consultations with ATSI victims/survivors of family violence and sexual assault who have experienced aspects of the legal system. The consultations included past clients of FVPLS Victoria, and ATSI and non-ATSI workers in support, policy and legal roles (29 in total, 22 ATSI and 7 non-ATSI, 16 from urban and 13 from rural areas). Twenty-four formal interviews were carried out face to face, and on average took about two hours each. The remaining five ATSI participants contributed through informal discussion with respect to particular areas of interest. A standard set of questions for workers and non-workers was prepared about key legal and associated issues encountered by victims/survivors under the following headings:
 - legal services
 - experiences with police

- experience as a victim of violence where the offender has been taken to court by the police (restorative justice is also raised here)
- intervention orders
- child protection
- family law
- VOCAT (Victims of Crime Assistance Tribunal)
- children
- general (*Sisters Day Out*, Women's Cultural Retreat, other issues).

Participants were able to choose which questions they wished to answer. The Guidelines for Ethical Research in Indigenous Studies of the Australian Institute of Aboriginal and Torres Strait Islander Studies guided the consultation process. The responses referred to in the paper reflect only the views of the individuals consulted, but in many cases also concur with the overall experience and understanding of FVPLS Victoria in its service provision. Informed consent was obtained from all participants, who generally appreciated the opportunity to contribute to the project. Listening and responding to concerns raised during the consultation interviews was an important part of the process, and reassurance was given that concerns would be documented and taken up appropriately.

FVPLS Victoria takes the view that it is essential that ATSI women and young people who have experienced family violence and sexual assault have the opportunity to inform service delivery and legal reform developments. FVPLS Victoria is extremely grateful to all participants who gave their time for this research.

- An advisory committee was established for the project. The contribution of the committee members is gratefully acknowledged.

Section 1: Aboriginal and Torres Strait Islander accessibility and the family law system

1.1 Introduction

Family law is one of the priority areas of legal assistance offered by FVPLS Victoria and is also defined as a key legal assistance area in the FVPLS program guidelines nationally. FVPLS Victoria assists Aboriginal and Torres Strait Islander victims of family violence and sexual assault and non-ATSI parents/carers of ATSI children. Family violence is prevalent in family disputes, often requiring court intervention in cases where alternative dispute resolution is inappropriate and when urgent response is required. **Family law disputes related to Aboriginal and Torres Strait Islander children where family violence is a factor are generally complex, lengthy, and always involve cultural considerations. Culturally appropriate, specialised legal assistance and support is therefore critical.**

Project consultations and FVPLS Victoria's experience to date indicate that there are three key issues needing to be addressed:

- improved Aboriginal and Torres Strait Islander accessibility and culturally appropriate processes within the Family Court and the broader family law system, led by ATSI people
- strengthened access to culturally appropriate, specialised family law legal services for Aboriginals and Torres Strait Islanders (recommended in the 2009 Commonwealth document *A Strategic Framework for Access to Justice in the Federal Civil Justice System*).
- improved responses to family violence within the family law jurisdiction and enhanced co-ordination between the various jurisdictions dealing with family violence issues.

Statistics from both the Family Court and the Federal Magistrates' Court indicate the numbers of ATSI people accessing the courts to be low (Family Court data indicates less than 1%). Given the established high levels of family violence and child protection interventions in ATSI families, one would expect these numbers to be higher. (It is noted that the reliability of the data is in question. The government and the courts have acknowledged this as an issue that requires attention.)

Through the project consultations, workers commented that it is generally only those ATSI family violence victims who receive intensive support who engage with the legal system at the point of crisis, adding weight to the importance of culturally appropriate service provision.

FVPLS Victoria has noted a marked increase in demand for family law services, particularly since commencement of the family law secondment arrangement with Victoria Legal Aid and the enhanced legal service capacity of the organisation overall. This confirms that the link between access to culturally appropriate, safe legal services and engagement with the legal process, including

family law, is strong. FVPLS Victoria is unique within the national program in that the organisation has secured alternative state government, Victoria Legal Aid and non-government funding to facilitate this enhanced capacity and to maintain a presence in metropolitan Melbourne. Most other FVPLS services restricted to rural/remote locations do not have this same capacity. In Paper 1, recommendations are made to significantly strengthen and broaden the program, including through consideration of subsuming it within a national ATSI women's legal program. This could provide a better structure for enhanced family law services at a national level.

Emphasis on Family Dispute Resolution (FDR) as the primary means to resolve family disputes is now entrenched in the Family Law Act. However, in cases where intractable disputes arise involving family violence and children, or where urgent action is needed, court intervention is required and exemptions to FDR apply. Escalation and continuation of family violence is often more likely without court intervention. **Given the disproportionately high levels of family violence experienced by ATSI women and children, it is essential to ensure that the family law system and the Family Court are accessible and culturally appropriate for ATSI children and families.**

In the experience of FVPLS Victoria, there is still some reluctance amongst ATSI victims/survivors of family violence, particularly in the less urgent cases, to initiate and follow through with family law proceedings in circumstances where positive outcomes could be achieved. The experience of FVPLS Victoria in legal service provision indicates, as do the project consultations, that where ATSI family disputes arise, many arrangements for children are made informally with extended family involvement. ATSI support workers and lawyers at FVPLS Victoria, however, acknowledge the need for and potential benefit of legal involvement in some cases, particularly in disputes involving violence and safety issues. **A more culturally appropriate family law system that is better equipped to respond to cultural and family violence issues is needed. Family Dispute Resolution processes in which ATSI people engage must also be culturally accessible, and the option of legal representation guaranteed throughout.**

Aboriginal and Torres Strait Islander law and justice policy has focused more on the criminal justice system and less upon issues of concern for ATSI women and children—family law issues being a prime example. Initiatives to improve ATSI accessibility within the Family Court commenced in the previous decade but have not been sustained. **There is an urgent need for a dedicated review of Aboriginal and Torres Strait Islander accessibility within the family law system that is informed by ATSI people.** The nature and prevalence of family violence must be a priority focus within this. Awareness raising with communities about family law would best occur either following or as part of an initiative to strengthen ATSI accessibility.

1.2 Proposed family law reforms and reviews

The *Family Law Act 1975* (Cth) has been significantly reformed over the past few years, incorporating an emphasis on shared parental care and out-of-court dispute resolution. Where family violence is a factor exemptions apply; however, the processes involved are complicated. Legal

assistance in family law proceedings, especially where family violence is a factor, is absolutely critical.

In 2009 the federal government announced several reviews of the family law system. The Australian Law Reform Commission and the New South Wales Law Reform Commission will look at the 'harmonisation of domestic violence and family law', and will 'address inconsistencies in the interaction and application of Commonwealth and state laws regarding domestic violence, child protection, sexual assault and family law'. 'It will also examine ways in which laws can better protect women and children from domestic violence when a case crosses state boundaries and involves multiple jurisdictions.'¹ An additional review by Professor Richard Chisholm has now been published recommending legal reform and improved Family Court processes in relation to family violence.

Whilst this section concentrates on ATSI accessibility rather than broader family law reform, FVPLS Victoria strongly supports measures that strengthen the way family violence is dealt with in the family law system. ATSI women and children impacted by family violence will benefit from such reform.

FVPLS Victoria also welcomes the review of family violence and multiple cross-jurisdictional issues including child protection, sexual assault and family law. These are very significant for ATSI victims/survivors and ATSI women, given the high levels of family violence and child protection intervention experienced and victims' movement between states and territories in seeking to connect with family and/or to escape violent partners.

The above reviews create an opportunity for input in relation to ATSI-specific issues. However, FVPLS Victoria urges that consideration also be given to undertaking a dedicated project that focuses on Aboriginal and Torres Strait Islander accessibility within the family law system more generally. The complexity of the issues involved demands a holistic approach.

1.3 A background to Aboriginal and Torres Strait Islander accessibility in the Family Court

It is unfortunate that previous initiatives within the Family Court aimed at improving Aboriginal and Torres Strait Islander accessibility have not been sustained. Yet it is useful to examine what has occurred in this regard.

In early 1993 the Family Court set up an Aboriginal and Torres Strait Islander awareness committee to consult with ATSI groups, to assist the court with cultural awareness training for staff, to encourage recruitment of ATSI staff, to develop identified positions within the courts and to ensure input on other cultural issues.

A number of reports have been produced relating to improved ATSI accessibility within the Family Court. One of these, from the Family Law Pathways Advisory Group entitled *Out of the Maze:*

¹ Joint McClelland & Firth media release, 'Review of laws to protect women and children', 24 July 2009.

Pathways to the Future for Families Experiencing Separation (2001), recommended that the Family Law Act be amended to give greater recognition to kinship issues and child-rearing issues for ATSI children. The report stated:

... The Advisory Group recognises the unique position of indigenous Australians in their interaction with the family law system.

... Historically, indigenous families have responded to the cultural inappropriateness of Australian family law by avoiding the court and dealing with family disputes informally, or under traditional lore.

The following recommendations were also made in this report:

...Recommendation 23

...23.1 That culturally appropriate service delivery be expanded through:

a *all professionals of the Family Court of Australia (including counsellors, registrars and judges) and service providers involved in indigenous parenting issues receiving ongoing bicultural education. This education should include the history and effects of forcible removal of children and indigenous cultural values, particularly those related to child-rearing. Competency standards also need to be developed;*

...b *development of an indigenous employment strategy in courts with family law jurisdiction. This would include retention and expansion of the Indigenous Consultant positions in the Family Court of Australia;*

c *provision of interpreters particularly, but not only, in courts; and*

d *sponsoring the establishment of local-level indigenous community networks, where local expertise and knowledge can be shared with non-indigenous service providers.*

23.2 *That new service types be developed and tested, in partnership with indigenous communities. Two interventions tailored specifically for indigenous families—narrative therapy and indigenous family law conferencing—need assessment for their applicability to family dispute resolution and as alternatives to litigation.*

23.3 *That a database be created to collect information about indigenous family law cases. This would require identification of indigenous cases and would facilitate research into the way customary lore is taken into account in determining the best interests of children.*

23.4 *That national standards for indigenous children be in accordance with the recommendations from the Bringing Them Home report.*

23.5 *That programs and initiatives be developed, owned and implemented by local indigenous communities, to help ensure best practice in working with indigenous people.*

Indigenous Family Liaison Officers were employed in the Family Court and six officers were located in Darwin, Alice Springs and Cairns. Some of these officers also became trained mediators. The intention was to extend this program within the Family Court, yet this failed to eventuate. The Family Court also initiated circuits in some remote communities, and seminars involving Family

Court judges and other staff were held in Aboriginal and Torres Strait Islander communities. In 2006 the Family Law Act was amended to strengthen the provisions relating to best interests of ATSI children:

Changes were made to Family Law Act Section 60CC in relation to how the court is to consider the best interests of Aboriginal and Torres Strait Islander children:

(h) if the child is an Aboriginal child or a Torres Strait Islander child:

- (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and*
- (ii) the likely impact any proposed parenting order under this Part will have on that right;*

and Section 61F:

In:

- (a) applying this Part to the circumstances of an Aboriginal or Torres Strait Islander child; or*
 - (b) identifying a person or persons who have exercised, or who may exercise, parental responsibility for such a child;*
- the court must have regard to any kinship obligations, and child-rearing practices, of the child's Aboriginal or Torres Strait Islander culture.*

The inclusion of these provisions within the law was a positive development; however, it is equally important that process and procedure are in place that support and inform implementation. The court must ensure that it is accessing expertise in relation to ATSI cultural issues and that culturally appropriate court procedure is in place.

1.4 Some current barriers to Aboriginal and Torres Strait Islander people accessing the family law system

*... across the board, legal processes are not understood ... taking court action means Gubba's telling us what to do ... historically the justice system has not been appropriate for our people ... this has gone down through the generations. **Aboriginal support worker***

In seeking to improve Aboriginal and Torres Strait Islander accessibility current barriers must be identified. It is those cases in which family violence is prevalent that are more likely to require court intervention, and in which FDR is often not appropriate. Given the established higher levels of family violence within the ATSI community greater use of the Family Courts would be expected but statistics indicate otherwise.

The experience of FVPLS Victoria and the project consultations indicate:

- A history of poor experiences with the justice system within the ATSI community generally, coupled with a lack of trust in the courts to be cultural understanding, continues to impact

significantly as an access barrier. The association between the family courts and 'welfare' raises fears that children will be removed as a result of engaging with the court process.

*... I felt like a criminal and on top of all this strangers were interviewing my child ... my child thought she was in trouble too. **Aboriginal victim/survivor***

*... Most would say it is an intimidating process ... alienating ... very formal. **Non-ATSI lawyer***

- The courts are intimidating places and the formality of the court does not work for ATSI people. The Family Court and Federal Magistrates' Court are seen as non-Koori-friendly environments and lacking respect for ATSI culture.

... the judge did not talk personably to me ... they didn't look at me ... very removed ... culturally this way of operating is very confronting ... very different to the Koori community ... struggled with the fact that the judge could not be personable to me about my family.

... It was not a good experience in the court ... did not sound like my case/my life because it sounded so bad ... it felt like my voice was not heard especially when the child rep was appointed. I felt then that I was no longer the mother of the children and that I did not have a say over my children's life. I felt so disconnected from my children through that process. I didn't understand the jargon, why decisions were made as they were.

*... didn't understand jargon ... very formal, cold ... more tiresome/time consuming ... other priorities take over. **Aboriginal victim/survivor***

*... I am an Aboriginal woman and I was told to go to court and listen to the Western law ... this felt all wrong to me ... they did not know me or my culture. **Aboriginal victim/survivor***

*... **Not aware of any support in there. No place within the building that there is any information about Aboriginal people who need support ... very clinical space. Aboriginal victim/survivor***

*... I felt I lost my dignity through the court system. **Aboriginal victim/survivor***

- The family law system does not deal well with extended family arrangements, which are so important in ATSI families.

*... Agreements are too inflexible from the Family Court ... doesn't fit dynamic of Aboriginal family ... needs to take extended family into account ... bigger than what family law makes provision for and more fluid. **Non-ATSI lawyer***

- Threats to and intimidation of women by their partners in the context of a history of domestic violence makes taking action difficult.
- There is a lack of knowledge within the ATSI community about the family law system, why you would use it and what can be achieved.

*... Community doesn't know about [family law] ... is long drawn out process ... barriers with authority. **Aboriginal support worker***

- There is confusion about the difference between the Children's Court (Family Division) and the Family Court.
- Comprehensive and culturally appropriate legal and general supports are needed for ATSI people in the family law legal system.

... Had no support person in court ... needed help with decision making. In court a long time ... when there are long processes it's hard to stay in them. Aboriginal victim/survivor

- The process is too long, drawn out and inflexible—it's too hard to make changes.

... Frustrating ... divorced from experience of living life with family ... long drawn out ... too legalistic to be useful. Non-ATSI lawyer

- There is a lack of willingness on the part of many ATSI women to disclose a history of domestic violence to non-ATSI people, including family report writers. (If documents subsequently prepared [e.g. by FVPLS] disclose extensive violence it may be seen as a recent invention.)
- There is well-founded concern that cultural sensitivities will not be taken into account.

... recently I received an Outline of Case from an Independent Children's Lawyer ... under the section best interests s60CC(3)(h) ATSI heritage they put N/A ... how bad is that. Non-ATSI lawyer

... don't recall cultural issues being talked about. Aboriginal victim/survivor

- Barristers do not really get to know people and their culture and talk as if people are not part of the process.

... was a slow process ... felt that no one understood me ... felt my barrister didn't understand me either. Aboriginal victim/survivor

- Urgent issues in rural areas have to go into the Magistrates' Court where the presiding magistrate may have limited family law experience—people cannot pay to travel and stay in Melbourne.

... Issue in Magistrates' Court because regional circuit too infrequent to respond ... if need to issue need to do so this week ... not in Melbourne or when the circuit is here ... only FMC comes here. Non-ATSI lawyer

1.5 Dispute resolution, Family Relationship Centres (FRCs) and Aboriginals' and Torres Strait Islanders' entrance point to the family law system

FVPLS Victoria, during its period of operation, has found that ATSI people and victims of violence in particular will access the legal system for assistance where appropriate dedicated ATSI legal supports are available. There is concern that the perception of having to go to a mainstream FRC may discourage ATSI people from seeking assistance or that prevalent family violence may not be dealt with appropriately.

FVPLS Victoria is of the view that Family Dispute Resolution, whether legally assisted or not, is inappropriate and contrary to the interests of victims and children in most cases involving family violence. However, it is acknowledged that some ATSI people may wish to participate in Family Dispute Resolution in circumstances involving family violence and that culturally appropriate and safe options need to be made available to cater for those situations.

Consistent with the above, FVPLS Victoria proposes that the entry point of ATSI people to family law assistance should be available through ATSI organisations that have appropriate resourcing for family law assistance, and that there be the option of accessing mainstream FRCs in the first instance if preferred. This view is based upon the following:

- established high levels of family violence in Aboriginal and Torres Strait Islander communities
- mistrust of mainstream organisations and unwillingness to access them, particularly in relation to family violence and sexual assault
- general mistrust of the legal system and of authority, particularly with respect to children's issues
- barriers to Aboriginal and Torres Strait Islander women disclosing family violence and sexual assault, including fear of shame and consequence
- lack of knowledge within the Aboriginal and Torres Strait Islander community about the family law system
- limited access to the family law system.

The experience of FVPLS Victoria and the information gained through the project consultations both highlight concerns about the current FDR process for ATSI people. In particular, FVPLS is concerned by the fact that FDR has been assessed as appropriate in situations involving high levels of long-term family violence, where FVPLS's own subsequent assessment has been that FDR was manifestly inappropriate. In most cases the family violence, including its severity and extent, was not disclosed, the client was not made aware of the family violence exemption and in none of these situations was the victim referred to an ALS or FVPLS (or mainstream legal service) before participating. Clients have also reported feeling pressured and/or intimidated into participating in FDR.

FVPLS Victoria examples of FDR proceeding inappropriately:

- A client disclosed a long history of physical and sexual abuse at intake, much of which had occurred in the presence of the children, yet the case was still assessed as appropriate for

FDR. It was considered that the family violence was appropriately addressed prior to FDR by the mother attending three counselling sessions and the father participating in three men's behaviour change sessions.

- A client disclosed family violence with past child protection involvement because of family violence and the FDR provider deemed it appropriate that FDR proceed. The father failed to attend the second session and FDR did not proceed; however, the client indicated that the FDR practitioner was suggesting that shared care would be appropriate. This was prior to FVPLS becoming involved.
- In another case where serious violence had occurred and a no contact order had previously been made with liberty to apply, FDR was considered appropriate and the proposal was to include the child. The client had received a letter saying they must proceed but which did not explain there were exemptions for family violence. Upon suggestion (by FVPLS) that the FDR practitioner contact the child psychologist, the FDR did not proceed at all.

In the experience of FVPLS Victoria most clients are exempt from Family Dispute Resolution processes where family violence is present. Provided that the required documentation is filed, direct court access is generally granted. There are, however, ATSI people attending FDR without prior legal advice who are likely to be unaware of these provisions or of the benefits of legal advice and assistance.



Sharing the Spirit 2009.

It is noted that a model of legally assisted FDR is to be piloted; however, a specific model for Indigenous people is not part of this. Despite this, it is likely that ATSI people will be involved in FDR, so a culturally appropriate process must be made available. Parties should be asked whether they identify as Aboriginal and/or Torres Strait Islander and in the view of FVPLS Victoria ought to be offered the option of direct referral to an ATSI or other legal service prior to intake screening commencing.² Appropriate referral sheets detailing ATSI and mainstream referral options should be provided by all FRCs.

Some ATSI people may elect to continue with FDR. It is therefore essential that culturally appropriate practices that also maximise safety are in place at all stages of the process. The FRCs must ensure appropriate Aboriginal and Torres Strait Islander cultural awareness of all staff in the context of both gender and family violence. Cultural awareness training should be ongoing.

FVPLS Victoria is of the view that *all* clients requesting legal assistance for FDR at the screening stage should be able to access it, as is the case for Victoria Legal Aid's round table dispute

² FVPLS Victoria, *Response to draft model of assisted FDR in family violence cases (Integrated Dispute Resolution Process (IDRP))*, Women's Legal Service QLD.

management process. At the very least, legal assistance should be available in all cases where violence is identified.

FVPLS Victoria is concerned that ATSI clients may not challenge an assessment that a lawyer is not required, and might slip through the lawyer screening process in the same way that ATSI clients slip through the screening process with family violence or the extent of the violence is not disclosed, as witnessed by FVPLS Victoria. With respect to ATSI clients FVPLS's observation is that cases are very often complex and always require specific advocacy involving cultural considerations. ATSI consultants could be engaged in screening and risk management processes to avoid these problems.

FVPLS Victoria also sees a need to ensure that legal practitioners who assist at the FDR stage can continue to assist their client should the matter go to court. Given the significant barriers to ATSI people engaging in and sustaining legal processes, the understandable lack of trust ATSI people have in the legal system, and the requirement for culturally appropriate service provision, the notion of a legal representative (including an ATSI legal service provider) having to agree not to act in the event that the matter is required to go to court is problematic, and creates another access to justice barrier.

The project consultations found that most people had not participated in primary dispute resolution and mediation due to family violence and it was widely recognised that such processes are inappropriate in these circumstances. There was positive feedback from a grandparent who had found the process helpful, but generally there was concern about dispute resolution processes being inappropriate where family violence is a factor.

*... got out of that because he was violent ... no way I would sit in the same room as him. **Aboriginal victim/survivor***

*... I never had to confront him ... wouldn't want to see him in mediation. **Aboriginal victim/survivor***

*... would have been good to have Aboriginal liaison person there at mediation. **Aboriginal victim/survivor***

*... mediator knew Aboriginal issues ... knew about family connection ... found her good. **Aboriginal victim/survivor***

*... Remains concern that Aboriginal women will not disclose family violence ... women have said that they haven't ... worried that DHS will be notified ... not wanting to deal with the family violence ... think violence not relevant to contact ... not wanting other people to know their business ... FRCs /DRCs not screening out for FV ... is screening in so they can address it ... most family lawyers are of the view that it should be screened out ... FRCs do not want to screen out because they think they are equipped to address it. **Non-ATSI lawyer***

*... Are some clients that would be OK with the RDM process if in separate rooms and they have a lawyer representing them and where they do not want to go to court ... But the lawyer with the client needs to decide in the first instance whether RDM is appropriate. **Non-ATSI lawyer***

*... More traumatised ... total waste of time ... didn't work. **Aboriginal support worker***

*... FRC ... non-Aboriginal staff not enough cultural awareness training ... not good understanding of how to do comprehensive risk assessment ... rely on self-disclosure ... Aboriginal people need proactive eliciting of information and assessment of risk. **Non-ATSI lawyer***

*... example of client who did not want to go to Family Court wanted to settle ... many do prefer to settle in extended family network regardless of family violence or sexual assault. Example of client who is personable and malleable disinclined to raise concerns or to disagree when things put to her ... said wanted mediation with partner in jail. IO taken out to stop his contact ... FRC said need to ring prison ... get him to participate in mediation ... mediation centre rang prison and gave out client's phone number ... horrified. **Non-ATSI lawyer***

*... Mediation with counsellor was horrible because I was just told to turn up on the day but not what to expect. He [the mediator] sat there and stared down at both of us. The session was uncomfortable. He was full of aggression. This happened at the Family Court ... only lasted half an hour and he walked out. I felt forced to participate ... like the court did not care about the family violence but more about the outcome of the children having access to both parents. Nothing about cultural identity was talked about. I felt like I was caught in a white world system ... with no one to understand where I was coming from as an Aboriginal mother ... that no one was there fighting for me. Felt like I think my mum would have felt when no one was there fighting for her as a little girl. I felt out of my league. **Aboriginal victim/survivor***

Proposal 1

That ATSI people be provided with the option to access family law assistance through an ATSI or mainstream legal organisation prior to FDR screening.

That introduction of ATSI consultants be considered to support intake and risk management screening.

That all ATSI people undertaking FDR have the option to access legal assistance from an ATSI or mainstream legal organisation throughout the FDR process.

That FDR processes be culturally appropriate and all FRC staff access cultural awareness training incorporating family violence and gender issues.

1.6 Strengthening ATSI accessibility in the Family Court

... Re. Koori families ... making sure Koori family at centre of decision making ... that everything going on around that family is not dictated by procedures and policies ... the family is the core of the issue ... cultural connections in community must be central to decisions, culturally sensitive people working in the area needed, culturally sensitive processes, and ensure that cultural implications are considered. Put this at front of decision making. That would be a more equitable legal system in place for Aboriginal people and families. Aboriginal victim/survivor

Family Court practices and Aboriginal and Torres Strait Islander cultural awareness

Neither the Federal Magistrates' Court nor the Family Court has measures in place to adequately address ATSI accessibility. Indigenous Family Liaison Officers are no longer employed in either court. No formal procedures are currently dedicated to ATSI children or families. External family report writers have not been receiving ATSI cultural awareness training. The Family Court does not have a circuit to rural locations. There are no Aboriginal or Torres Strait Islander consultants. No Aboriginal and Torres Strait Islander advisory committee has operated for some time, although it is understood that a new joint working group has recently been established with the following terms of reference:

- *The impact of the shift in the provision of services to Indigenous clients, previously provided by Indigenous Family Liaison Officers, to Family Relationship Centres.*
- *How to manage applications for parenting orders concerning residence, contact and specific issues as a result of traditional and customary adoption practices by Torres Strait Islanders.*
- *How to meet the needs of Indigenous clients at both Courts.*
- *The development of a joint Reconciliation Action Plan, as required by Government, which identifies the steps the two Courts will take to build relationships and enhance respect for Indigenous Australians in undertaking both Courts' work.³*

FVPLS Victoria is advised that an Indigenous Working Group has been established comprising a Federal Magistrate, the Executive Assistant to the CEO of the Family Court and a Family Court judge. It is not clear how this working group plans to move forward; however, **it is critical that ATSI people from diverse communities and representative of gender equity drive all ATSI accessibility changes within the Family Court and most importantly that commitment by both the government and the courts be sustained.**

The courts and the government refer to ATSI staff based in Family Relationship Centres as evidence of Aboriginal and Torres Strait Islander accessibility in the family law system. As we have stated above, many family violence cases and other complex cases require court intervention and it is imperative that the court itself be culturally responsive.

During 2009, FVPLS Victoria staff were invited to a meeting with federal magistrates in Melbourne, initiated by Federal Magistrate Hughes, to discuss ATSI accessibility issues within the court. Barriers

³ Response by the Chief Justice of the Family Court and the Chief Federal Magistrate on behalf of the Family Court of Australia and the Federal Magistrates Court of Australia to the Senate Legal and Constitutional Committee Inquiry: *Access to Justice*, 13 May 2009.

to access and possible strategies to address these were discussed, the latter of which were to be provided to the newly formed Courts Working Group. This initiative is welcomed.

Family law system conferences were held in Canberra in August 2008 and February 2009. Whilst a workshop was dedicated to ATSI accessibility at the February conference, we understand that only two ATSI people, both from Victoria, were invited to attend the conference.

The following comments were made in the project consultations:

*... A Koori-specific process could assist ... better understanding as to how a lot of Aboriginal families work ... for example leaving children with grandma and relatives for a few weeks at a time here and there ... understanding that not a bad thing ... if all assessed by white middle class standards ... too difficult to challenge lack of cultural understanding if don't have Koori-specific process. **Non-ATSI lawyer***

... Koori-specific process would assist in terms of perception and outcomes ... apparent that Independent Children's Lawyers and report writers don't have specialist knowledge which is affecting the recommendations they are making.

*... some clients struggle with having some aspects in an affidavit ... don't want to rehash the past perhaps initial process where first hearing date happens without affidavits? **Non-ATSI lawyer***

*... Meeting about court issues should be in office not courts and with elders, Aboriginal judges. **Aboriginal victim/survivor***

*... better taking into account extended family. **Non-ATSI lawyer***

*... If was a specific Koori process which was less formal ... and if understood how worked ... and education about it ... people may think a bit more about it and what can be gained from going through the process ... this needs to happen. ... Koori list ... same powers but not so long and drawn out ... things change ... kids love both parents ... need to be binding orders in some cases but make it easy to change when situation changes. **Aboriginal support worker***

*... Panel of Indigenous consultants from each state. **Non-ATSI lawyer***

Proposal 2

That a dedicated project examining Aboriginal and Torres Strait Islander accessibility within the family law system occur, informed by Aboriginal and Torres Strait Islander people. A process for this should be developed and implemented as soon as possible. Previous relevant initiatives should inform discussion. The project should include:

- Access to family law legal assistance through Aboriginal Legal Services as the primary initial entry point to family law assistance.

- The role of Family Relationship Centres and Family Dispute Resolution for ATSI people— cultural accessibility, family violence issues and access to legal representation.
- The impact of the prevalence of family violence as a factor in family disputes involving ATSI children and cross-jurisdictional issues, particularly child protection and state family violence laws.
- Development of processes and services within the Family Court which are more culturally appropriate to Aboriginal and Torres Strait Islander people, which may include:
 - the development of a dedicated Aboriginal and Torres Strait Islander list for cases involving ATSI children
 - Aboriginal and Torres Strait Islander family decision making/dispute resolution processes (with the prevalence of family violence informing such processes)
 - the introduction of ATSI consultants to advise the Family Court in decision making and to possibly conduct court ordered dispute resolution.
 - strengthening of cultural awareness of Family Court staff including external report writers
 - ATSI liaison or support roles within the court
 - improved community engagement between the ATSI community and the Family Court.

Proposal 3

That the Family Court develop processes at national, state and territory levels to receive ongoing advice in relation to Aboriginal and Torres Strait Islander accessibility generally (keeping in mind that Aboriginal and Torres Strait Islander communities are diverse, and that accessibility measures and requirements are likely to differ according to the location). Advisory committees at national and state/territory levels are likely to be required.

ATSI Liaison Officers

Project consultations indicated that there is strong support for Aboriginal and Torres Strait Islander Liaison Officers to be located within the Family Courts. It is not infrequent that ATSI women who experience family violence do not have family support when engaging with legal processes. At the same time, there are often multiple issues that must be dealt with—such as those related to housing, Centrelink, emotional/counselling support and health issues—requiring considerable coordination. These issues must be dealt with in a way that ensures that women can engage with and sustain the legal process.

FVPLS Victoria receives funding (from the Commonwealth AGD) and more recently from the Department of Human Services Victoria for paralegal workers. This has proven to be a successful model for providing a more holistic service and assisting women to better sustain their engagement with the legal process. FVPLS Victoria urges commitment to continue this funding.

In addition, ATSI Liaison Officers located at the Family Court could assist with practical supports, make necessary legal and other referrals, and most importantly offer culturally appropriate support and information. The parameters of these liaison roles would need to be clearly defined. More intensive supports must be provided through separate legal or other family violence support services. Several women consulted in this project expressed that it would be helpful to have ATSI Liaison Officers:

... Aboriginal liaison in the court would have been good to explain to me what was happening in the court process. Felt like the lawyers and court don't like to keep you in the loop. I was thinking ... what is going on? **Aboriginal victim/survivor**

... Aboriginal liaison at court would be helpful to help sort out supports and practical arrangements ... very scary alone ... intimidating when other half there with all of his supports and family. **Aboriginal victim/survivor**

... Could be a role for an Indigenous liaison worker which does not involve the private issues ... but which provides more practical assistance and information. You could feed back about cultural sensitivity to the liaison officer. **Aboriginal victim/survivor**

... I would have taken up the offer of support through an Indigenous liaison officer ... issue of trust and confidentiality with that worker may be an issue for some people but it's about choice ... of being able to access a worker. **Aboriginal victim/survivor**

... ALO ... works well ... mainstream seen as scary ... if have someone can relate and talk to like ALO ... are comfortable ... means people don't walk away. **Aboriginal support worker**

... paralegal support role is important ... the support a service is able to provide to a client is important ... able to track how the client is going and to provide assistance to other crisis management ... housing, Centrelink ... these have major impact ... assists to have them hang in there with the legal process. **Non-ATSI lawyer**

Proposal 4

That the Family Courts in states and territories employ ATSI Liaison Officers and other ATSI staff.

That the importance of paralegal support workers in the FVPLS program and Aboriginal Legal Services more generally be acknowledged through a commitment to ongoing funding.

Family reports

One of the areas of concern based on the experience of FVPLS Victoria is that family report writers external to the court often do not deal appropriately with cultural issues or family violence. It has been noted that whilst internal family report writers receive cultural awareness training, external psychologists do not.

Much family law work at FVPLS Victoria has proceeded through the Federal Magistrates' Court and involved external report writers. Given the critical importance of family reports and the opinions contained therein, this is seen as a key issue in the courts when dealing with family violence cases. Parties may be advised to consent to arrangements on the strength of an opinion presented in a family report and the court will accord the report significant weight in its decision making. If the family violence has not been fully disclosed and properly analysed, inappropriate outcomes are more likely to occur.

The interaction of Aboriginal and Torres Strait Islander cultural issues and family violence compounds the complexity of these issues. **The importance of family report writers and family consultants having high levels of cultural awareness in the context of broader family violence expertise is patently clear.**

FVPLS lawyers emphasise that:

- Many ATSI women will not disclose, or not disclose fully, details of family violence to report writers, resulting in a significant impact on court outcomes. The intersecting issues of culture and family violence require in-depth understanding on the part of report writers and the judiciary. FVPLS Victoria has experienced family report writers being critical of women for not disclosing family violence contained in affidavit material (despite not being explicitly questioned about it) and then drawing adverse credibility conclusions. Cultural awareness training and comprehensive family violence training are critical in this regard. Comments made to the FVPLS Victoria family lawyer about this include:

She didn't ask me about it so I didn't think it was right to just say it.

It would have been a shame job telling the white lady about my problems; I didn't want her looking down on me and thinking I'm a bad mum because he bashed me.

I didn't want him to think I was trashing their dad by bringing it up.

- Family report writers should have access to expert input from Aboriginal and Torres Strait Islander consultants in the preparation of reports. An FVPLS lawyer recently had the experience of the Family Court referring a case to an Indigenous consultant, despite the fact that no such positions currently exist in the court. The Family Consultant to whom the case was referred expressed the view that expert cultural input would have been of great assistance.
- There is inadequate analysis of the nature of family violence and the impact of the violence upon children by family report writers in some cases. In one instance, the family report writer minimised the mother's allegations of violence occurring over a seven-year period, much of which had taken place in the presence of the six-year-old child. Detailed analysis of the serious impact of violence upon the child by a psychologist engaged for victims of crime proceedings was quite different to the analysis of the family report writer.

- FVPLS Victoria has experience of family reports acknowledging mothers' allegations of violence and then either not further addressing the issue or leaving the finding as to the family violence to the court, but then making recommendations for shared or substantial and significant time without setting out how their recommendations would be affected were family violence found to have occurred.
- Family report writers often fail to give adequate weight to emotional and verbal abuse and its impact—clearly demonstrating a lack of understanding of family violence. (An expanded definition of family violence in the Family Law Act would assist.)
- In situations where the mother's parenting capacity may be in question due to depression or alcohol abuse, for example, there is often limited (if any) analysis of whether those difficulties have been situational and related to the family violence experienced. It is concerning that in the absence of such analysis recommendations are being made that children be placed in the care of the alleged perpetrator on the basis that the mother has experienced depression or alcohol abuse during the relationship.
- At times, inappropriate weight is given to strong attachments children appear to have with violent parents without adequate analysis of the child's situation.
- Family report writers at times do not appear to have read material thoroughly enough (or at all) prior to arranging appointments, and thus are not fully apprised of the circumstances to be considered. FVPLS Victoria is aware of cases where report writers have proceeded to interview only having received documents from one party.
- Practical arrangements made by external family report writers when preparing reports also require scrutiny and greater accountability. Where intervention orders are in place and/or family violence is a factor, ensuring the safety and wellbeing of the children and parents is critical. FVPLS Victoria has witnessed situations where great trauma was caused by meeting arrangements being poorly or carelessly handled. By way of example, one report writer advised that there was nothing she could do to avoid contact between the mother and father while waiting at court for an interview and suggested that the mother wear dark glasses.

The following observations emerged from the project consultations:

*... don't recall cultural issues being talked about. **Aboriginal victim/survivor***

*... second family report didn't talk about family violence at all. **Aboriginal victim/survivor***

... I could not believe I was expected to sit in a room with my ex-partner. There was an intervention order in place. The children had not seen him for a period of time. I could not believe that was happening. I felt unsafe about the whole arrangement. She set it up to see us in separate parts of the day; however, our sessions ran into each other. Little about cultural issues was asked ... I recall

offering that information up to her. Explaining that some of the past trauma associated with child removal and my mother's experience transformed to my generation. She treated it as nothing of significance. Would have been good to have a good discussion at the beginning about cultural issues ... cultural issues make us what we are ... the psychologist has to have a good understanding of that. The family report must be written up so that the court understands what we are as an Aboriginal family. Family report writers are needed with expertise in writing reports for Indigenous families.

Aboriginal victim/survivor

... She wrote about family violence in the report ... it was disclosed ... she did not have adequate understanding of the family violence issues. I don't think she captured the true impact of the violence.

Aboriginal victim/survivor

... Find it useful ... important to be given a lot of insight re. what will happen at the appointment for clients ... bad when you don't know what it all means ... what will happen ... psych must understand Indigenous importance of family. **Aboriginal victim/survivor**

... the report writer did have a good understanding of culture. **Aboriginal victim/survivor**

... In a recent family report, the ATSI mother was unable to talk to the report writer about the physical violence she had experienced ... but when she spoke about the verbal abuse the report writer was dismissive of it. **Non-ATSI lawyer**

... There are problems with cultural awareness of report writers ... now requesting it be someone with cultural awareness training ... and including family violence issues ... one recently not picked up on child being Aboriginal ... not even mentioned. **Non-ATSI lawyer**

... Relocation case ... psychologist said while mum talks about Aboriginality ... found that Vic Aboriginal Health Service will see people from all over Australia and otherwise could go back twice yearly for cultural festival ... mum criticised for not accessing Aboriginal community here in Victoria.

Non-ATSI lawyer

... also lack understanding of why women may not have reported violence to police/doctors etc. ... often have their credibility attacked if they haven't done so. **Non-ATSI lawyer**

... Women are saying not having family violence dealt with by psychologists ... specialised training on family violence and how relates to Indigenous community needed. **Non-ATSI lawyer**

Proposal 5

That ongoing cultural awareness and family violence training for all family consultants (internal and external) conducting family dispute resolution and preparing family reports be implemented. That a process within the court whereby specialist Aboriginal and Torres Strait Islander cultural advice is available also be established (possibly through the introduction of Aboriginal and Torres Strait Islander consultants).

Cultural awareness training

Ongoing ATSI cultural awareness training for all staff working within the Family Court is essential. This includes solicitors, counsel, Independent Children's Lawyers and external report writers as detailed above. ATSI communities must be provided with the opportunity to lead the development of such training programs to ensure that local cultural knowledge is drawn upon in each of the states and territories.

Cultural awareness training for judicial officers is also required to ensure appropriate responses to cases involving ATSI children. FVPLS Victoria understands that Family Court judges and other staff have in the past visited ATSI communities (in 1998) as part of the cultural awareness training provided. **This local community engagement is extremely important as an indication of commitment to learning and cultural respect. It also offers education to the ATSI community about the role of the court.**

*... Any cultural awareness program is critical to those working or seeking to work with Aboriginal families/communities. A knowledge of and understanding [from an Aboriginal viewpoint] of the history of this country and an understanding of the impact of successive government policies on Aboriginal life today is vital in ensuring a quality of life that is based on tolerance, acceptance and a recognition of the uniqueness of ATSI people in this country. **Aboriginal educator***

*... pot luck as to which federal magistrate you get ... whether any cultural awareness training. **Non-ATSI lawyer***

*...training for all report writers. **Non-ATSI lawyer***

Proposal 5 (continued)

That high-level ongoing ATSI cultural awareness training be provided for the judiciary which involves connection with local ATSI communities (as has previously occurred).

That ongoing ATSI cultural awareness training for all Family Court staff and stakeholders be implemented which is led and informed by local ATSI communities, thus reflecting diversity in each of the states and territories.

Child care in the Family Court

The lack of adequate child care support in the Family Law Courts is a frequently expressed concern.

FVPLS Victoria on a number of occasions has had to locate and pay for child care for clients who have Family Court hearings, despite the fact that the service receives no funding for this. It is a particularly pressing issue in cases where the mother has fled the state due to family violence and been forced

to return pursuant to a recovery order. In such situations the mother may not often have family or other support in Victoria to assist with care of her children. 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. Extending the availability of child care at the court or in the court precinct must occur.

*... Child care is a big problem ... women can't afford it. **Non-ATSI lawyer***

*... Child minding was an issue when attending court proceedings. **Aboriginal victim/survivor***

*... Child care is a problem ... support workers are not employed to mind children. **Aboriginal support worker***

Proposal 6

That available child care facilities at the Family Court be strengthened.

Family Court circuits

Lawyers in rural areas indicated that they were issuing family law proceedings in local rural Magistrates' Courts because of delays with Federal Magistrates' Court circuits and absence of Family Court circuits. There were concerns raised that the Magistrates' Courts are not best equipped to deal with family law disputes; however, this was preferred to having clients travel to Melbourne for urgent hearings.

*... Issue in Magistrates' Court because regional circuit too infrequent to respond ... if need to issue need to do so this week ... not in Melbourne or when the circuit is here ... only FMC comes here.
Lawyer*

Proposal 7

That there be improved accessibility to Family Court and Federal Magistrates' Court services in rural areas.

1.7 Family violence

FVPLS Victoria, as previously stated, supports legislative reform to strengthen responses to family violence in the Family Courts. This includes expanding the definition of family violence under the Family Law Act; amending the law relating to the presumption of equal shared parental responsibility and best interests provisions for children to ensure that the child's right to maintain a relationship with a parent is not taking precedence over family violence concerns; reviewing the costs provisions with regard to false allegations or statements which may inhibit full family violence disclosure; improving the Family Court forms with respect to detailing family violence and children's

safety; strengthening family violence risk assessment processes; and ensuring comprehensive and broad-ranging family violence training which also addresses cultural issues.

A particular issue faced by ATSI women is the reluctance to report family violence to police and the lack of independent evidence of the violence, particularly at the interim stage. Significant weight is placed upon whether there has been police or medical reporting, which for ATSI women is less common. In one particular case, extensive allegations of family violence had been made in affidavit material by the mother and the presiding judicial officer made comments along the lines that if things were really as bad as alleged, the mother would have gone to the police, she would have reported the incidents to doctors, or someone would have reported it. This is also an example where cultural awareness training would have likely provided greater insight into the barriers for ATSI women in reporting family violence.

Relocation and recovery cases also raise particular issues for ATSI women who seek to escape family violence. It is not uncommon for perpetrators to take women away from family supports resulting in them needing to relocate to seek out support for themselves and their children. FVPLS Victoria lawyers report a generally punitive approach to women in these situations. It is noted that access to family law services and Family Courts is restricted in rural areas, which further complicates these issues.

FVPLS lawyers comment that the current Notice of Risk form is not sufficient to deal with family violence in parenting cases and that a new family violence screening process is required in the Family Courts. Lawyers also say that little weight is given to intervention orders in the Family Courts' assessment of family violence.

Various concerns about the often clumsy interaction between the Family Courts and child protection intervention were raised. FVPLS Victoria lawyers support improved communication and understandings between the two jurisdictions. Lawyers also express concern about the often punitive rather than supportive approach taken by the Department of Human Services to parent victims of violence in the Children's Court. As previously mentioned, FVPLS Victoria generally supports enhanced integration among jurisdictions dealing with allegations of family violence, particularly intervention orders, child protection intervention and family law parenting arrangements. The Australian Law Reform Commission is comprehensively reviewing these issues in its family violence inquiry. In seeking improved ATSI accessibility across these jurisdictions opportunity for coordinated approaches to dedicated initiatives should also be explored. This may, for example, include culturally appropriate alternative dispute resolution processes, introduction of ATSI Liaison Officers or consultants and dedicated lists for cases involving ATSI children. Family violence considerations must be paramount.

*... With respect to court responses to family violence, it varies between federal magistrates. **Non-ATSI lawyer***

... Family violence is regularly dealt with inappropriately or not dealt with at all. Family violence is given little focus ... for example, family reports and reports by consultants often do not address family violence

*where it is raised as a significant allegation. As a consequence judicial officers rely on recommendations in reports which have ignored or not properly dealt with the family violence. **Non-ATSI lawyer***

*... In one FVPLS Victoria case police had applied for an intervention order for a client following violence in which the father had slammed her against the wall while holding the baby. DHS told the client to go to the Family Court. The family report writer in her report does not mention the incident but finds the father has greater insight into the needs of the child because she said the mother commented that she wished the father would drop off the face of the earth. This young mother was substantially younger than the father. The fact that the police had applied for the intervention order was ignored in the report. **Non-ATSI lawyer***

*The definition of family violence under the Family Violence Protection Act Victoria is better because it forces the court to focus not just on physical and sexual violence but also on broader forms of verbal, financial and controlling violence which form a pattern in the relationship. For example, control issues are particularly problematic with respect to contact orders. It is seen as 'parent friendly' by the mother to have changeover at the home regardless of the controlling and abusive conduct by a father. **Non-ATSI lawyer***

The Family Courts often draw conclusions about DHS conduct or lack of conduct which lead the court to conclusions that are not accurate reflections of DHS's position. Non-ATSI lawyer

Proposal 8

That reforms to family law legislation and procedure be implemented to ensure strengthened responses to family violence and to ensuring children's safety. That particular issues for ATSI children and families be specifically considered in all proposed reforms.

1.8 Contact/visiting arrangements

In the experience of FVPLS Victoria, the lack of appropriate contact centres at which to facilitate and supervise child contact visits is a critical issue.

Ensuring secure arrangements for handover or the supervision of visits is often required where family violence or other child safety concerns exist. Workers in rural areas in particular said that the one such centre in each of their rural towns had long waiting lists and was inaccessible to people unless there were family law orders in place.

FVPLS Victoria has witnessed situations in which women have conceded to unsupervised contact visits because the waiting lists (three to six months) at Child Contact Centres are too long. Women worry that the wait will overly upset the other party.

Resorting to changeover at police stations or DHS offices is considered inappropriate by consultation participants. Similarly, use of ATSI organisations not specifically set up for this function is considered problematic.

There is support from both ATSI women and ATSI support workers for the option of dedicated Aboriginal and Torres Strait Islander Child Contact Centres. Similarly, the availability of ATSI or mainstream supervisors, where required, is thought to be positive.

Below are some of the comments made during the consultations on this subject:

*... Lot have six-month waiting lists now ... women say can have unsupervised because the bloke will go crazy if he has to wait that long. ... Even three-month waiting list is too long. **Non-ATSI lawyer***

*... More clients use handover process ... still a month or so to wait ... and not enough of them that operate during the week (or seven days). **Non-ATSI lawyer***

*... Was discussion about child contact centres in my case but need culturally appropriate places to go. More choices. **Aboriginal victims/survivor***

*... After an hour kids are struggling because they are confined in small space. **Aboriginal victim/survivor***

... court should check out environment they are sending people to ... I think they need to understand the place they are sending people and children to.

*... always use police or DHS offices which is a traumatic place for drop off/collection ... should be more options. **Aboriginal regional family violence coordinator***

*... There is one in Mildura ... can only get in if have a court order to say safe handover at contact service ... hard because most of our clients don't go through Family Court. **Non-ATSI lawyer***

*... no huge problem in region ... one Contact Centre in Gippsland ... waiting list prioritises court orders. **Non-ATSI lawyer***

*... very difficult for Aboriginal organisations to supervise access ... not enough safe places or venues for supervision. **Aboriginal support worker***

*... purpose-built Contact Centre would be good ... where there could be no following of car etc. ... needs multi-purpose hall ... open spaces for kids ... Koori specific ... option to use Koori Centre would be good ... so as to not put back on to Aboriginal organisation for that ... that has been happening but that not appropriate ... does happen ... risk to others using service and everyone knows your business. **Aboriginal support worker***

*... Need Koori supervisors also to understand cultural issues ... or at least give option ... ask re. preference ... need to ensure no connection between families. Need to declare connection if that arises ... then people make choices. **Aboriginal support worker***

Proposal 9

In relation to Child Contact Centres:

That there be increased availability of and resourcing for child contact centres for both changeover and supervision of visits, including for non-court-ordered arrangements.

That, in consultation with ATSI communities, consideration be given to the establishment of dedicated ATSI child contact centres/services for contact changeover and supervisions as an option available where ATSI children are involved.

1.9 Family law legal services for Aboriginals and Torres Strait Islanders

Culturally safe and trusted legal services are key to improving access to justice for Aboriginal people in the complex family law area, both in direct service provision and in community legal education.

It is noted that the report of the Commonwealth Access to Justice Taskforce, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009), includes a recommendation that the Commonwealth should consider options for improving access to culturally appropriate legal assistance services for family and civil law matters for Indigenous Australians (Recommendation 11.4). It states that:

... the availability of culturally appropriate legal assistance services for Indigenous people with family and civil law problems is limited and this compromises the ability of Indigenous Australians to realise their full legal entitlements. (p. 143)

Until the FVPLS program was funded nationally, the Aboriginal Legal Services were the main ATSI legal service providers, and their services were concentrated on criminal law. ATSI victims of family violence lacked dedicated legal supports, often as a result of the legal conflicts that inevitably arise in family disputes. The FVPLS program is dedicated to the support of ATSI victims/survivors including in family law cases. **However, the FVPLS program is confined to rural and remote Australia and is limited in the breadth and depth of family law services it can provide. With necessary strategic development the program has the potential to significantly strengthen family law services for the ATSI community as demonstrated through the experience of FVPLS Victoria.**

FVPLS Victoria has secured support from outside of the FVPLS program to strengthen capacity for family law services, with the secondment of a family lawyer from Victoria Legal Aid since 2007 which has recently been extended for a further three years. This position ensures continued service delivery to metropolitan Melbourne but also services Victoria. Lawyers in the three FVPLS rural offices (Mildura, Bairnsdale and Warrnambool) also provide family law assistance. The family law secondment position has strengthened capacity considerably through service provision, mentoring and community education. It is a most effective means for Victoria Legal Aid to increase access to legal aid services for Aboriginals and Torres Strait Islanders in Victoria and is a recommended strategy for strengthening family law services for the ATSI community.

FVPLS Victoria urges the Commonwealth, in collaboration with the states and territories, to extend FVPLS funding to urban areas to ensure access to justice for all ATSI women, and in order to provide a stronger structural model for the FVPLS program overall. The FVPLS program must also be supported by joint Commonwealth and state initiatives to strengthen family law capacity, consistent with the recommendation contained in *the Access to Justice* report. Given the prevalence of family violence in ATSI communities, it is critical that the FVPLS services are funded and supported for family law work, including litigation where necessary. FVPLS Victoria is urging consideration of a national ATSI women's legal program to broaden and strengthen legal services for ATSI women and children.

The majority of FVPLS Victoria family law work involves arrangements for children. In the experience of FVPLS Victoria, cases in which ATSI children are engaged in family law proceedings usually involve crisis situations, including:

- location and recovery orders (given the dislocation of ATSI families across Australia, movement to connect with family interstate is not uncommon, particularly where violence is a factor)
- grandparents seeking orders in relation to grandchildren
- child contact arrangements—often where one parent is not Aboriginal
- DHS withdrawing from Children's Court proceedings based on Family Court orders being obtained.

Where women have intensive crisis supports in place (e.g. through a refuge) they are more likely to see a lawyer and engage with family law; without such support they often will not.

There is also demand for assistance in small property disputes where family violence is a factor; however, strict legal aid guidelines are prohibitive in this regard. Specific proposals are made in Paper 2, Section 6 with respect to necessary changes to Legal Aid funding guidelines in the family law area to improve access to justice for Aboriginals and Torres Strait Islanders. The need for greater attention to, and flexibility of, funding for particular cultural and family violence situations is addressed.

It is also proposed that culturally appropriate legal representation for ATSI children in family law proceedings be strengthened through the inclusion of Aboriginal legal service lawyers on Independent Children's Lawyer panels and ongoing cultural awareness training for other ICLs. FVPLS Victoria has seen instances where Independent Children's Lawyers have failed to acknowledge and respect ATSI cultural issues. In a recent FVPLS Victoria case, with respect to an Aboriginal child an ICL marked as 'not applicable' issues of ATSI heritage in an outline of the case documents. Improved cultural awareness training for all lawyers and barristers as part of their professional development requirements is proposed in Paper 2, Section 13.

It is also critical, as demonstrated by the recently announced family law multi-jurisdictional review, that ATSI victims of family violence are able to access holistic legal service delivery that integrates the overlapping areas of family violence law, child protection law, victims assistance and family law.

One of the strengths FVPLS Victoria has developed is the ability to assist and follow through in all of these legal areas. Fragmentation of services is not effective and whilst choice must be available, this holistic service delivery model provides best practice for ATSI victims of family violence.

Finally, in funding family law services, appropriate consideration must also be given to the more intensive resource requirements of this work.

In 2005, the Joint Committee of Public Accounts and Audit Report 403, *Access of Indigenous Australians to Law and Justice Services*, found that improved access to family and civil law services for Indigenous Australians was required, and acknowledged the higher levels of resources required for these types of cases:

...2.41 However, the accessibility of family and civil law services to Indigenous people is important in two respects:

to ensure that Indigenous Australians are aware of and can realise their full entitlement under the law; and

as a means of resolving issues that might otherwise escalate into future criminal law matters.

...2.44 If AGD considers that it is desirable that ATSILS provide family and civil law services, it needs to put in place funding arrangements that acknowledge the costs of establishing civil law practices and the greater amount of time and resources required of a legal service to conduct family and civil law matters.

Proposal 10

In relation to Legal Services:

- That family law services for Aboriginal and Torres Strait Islanders be strengthened Australia wide.
- That either the national FVPLS program be strengthened through increased resourcing to all communities (including urban) and further resourced to ensure family law expertise in the support of ATSI victims/survivors of family violence and sexual assault (mainly women and children), or this be implemented through the introduction of a national ATSI women's legal program (see Paper 1, Recommendations 4 and 8).
- That in funding ATSI family law legal services, the more resource-intensive and long-term nature of the work be factored in as well as the clear benefit of paralegal support roles.
- That high-level and ongoing cultural awareness training for Independent Children's Lawyers be implemented. That lawyers from Aboriginal Legal Services including the FVPLS program be included on ICL panels.
- That cultural awareness training be provided through continuing professional development

programs for other legal practitioners including counsel working in the family law jurisdiction.

- That Legal Aid family law guidelines be reviewed to strengthen access to justice for ATSI people, particularly women and children experiencing family violence. For more detail on this subject see Paper 2 Section 6 Victoria Legal Aid.

1.10 Community legal education

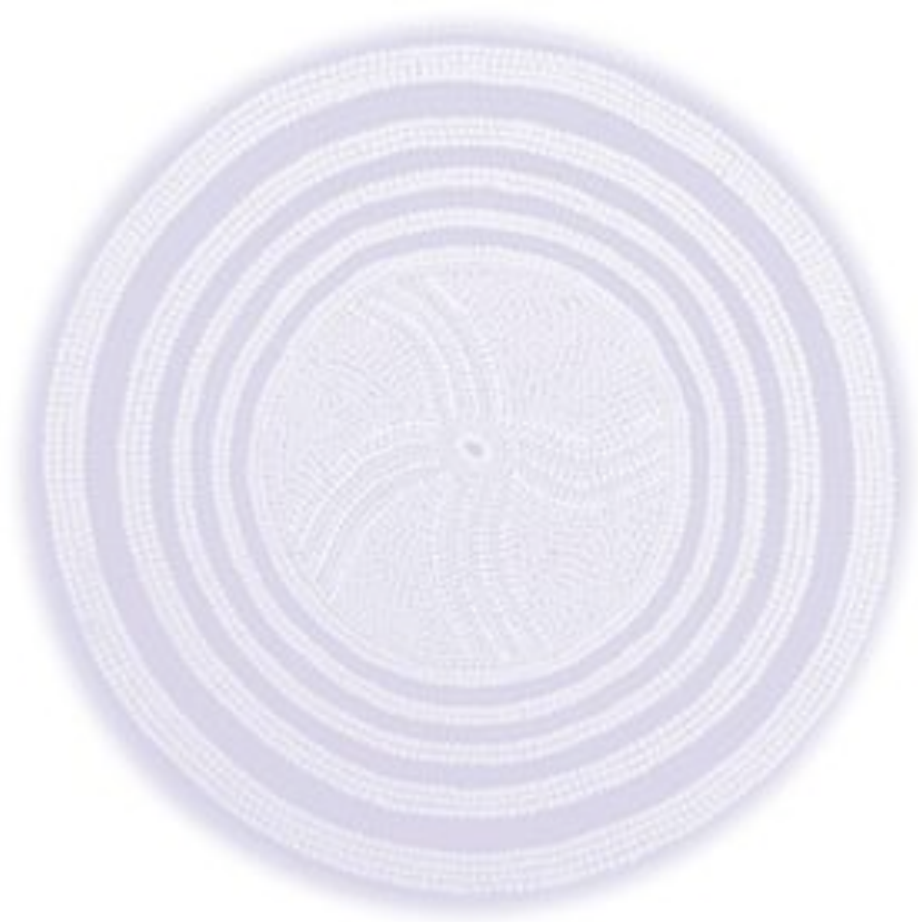
... Need to get more information out to the community about what the Family Court does. Different roles of different courts in family violence situations ... need to explain to women ... more information.

Aboriginal support worker

FVPLS Victoria's experience and the project consultations indicate there is very limited knowledge within the ATSI community about the Family Court and how it operates. Significant confusion surrounds the distinction between the role of the Children's Court and that of the Family Court/Federal Magistrates' Court. Culturally accessible community education and engagement with the ATSI community about the legal system and legal rights is essential to improving access to justice. FVPLS Victoria provides information about family law and other legal issues through its statewide *Sisters Day Out* workshop program and other information sessions. There is, however, a need for more comprehensive community education about the family law system, to which the courts, government and community organisations all must contribute. This would be assisted by a more ATSI-friendly family law system and culturally appropriate court process.

Proposal 11

- That a program to improve awareness within the ATSI community about the role of the Family Court be established. (It is noted that the implementation of more culturally appropriate family law and Family Court processes would dramatically assist this.)
- That pamphlets and other information be produced by the Family Court directed specifically at ATSI clients. This information would refer to the right of ATSI children to maintain their connection with their culture and to any ATSI-specific processes that the Family Court adopts.
- That a program of community education for Aboriginal and Torres Strait Islander communities about the Family Court and family law be carried out in conjunction with cultural awareness training for the judiciary and Family Court staff when visiting ATSI communities. (Within the Family Court this could be facilitated by Aboriginal and Torres Strait Islander Liaison Officers.)
- That legal service providers ensure improved community education for the ATSI community about family law, and funding for innovative education projects should be extended.



Section 2: Child protection

In any reform to the child protection system in Victoria, FVPLS Victoria is seeking enhanced protection of legal rights for ATSI children and families.

2.1 Introduction

Aboriginal and Torres Strait Islander children are vastly overrepresented in the child protection system in Victoria, being 12.9 times more likely to be on care and protection orders than non-ATSI children.⁴

Family violence is a significant factor in child protection interventions. The *Victorian Government Indigenous Affairs Report 2007–2008* indicates that:

- Family violence is present in 64% of child protection cases where Aboriginal and Torres Strait Islander children are involved.
- Family violence is the single biggest risk factor for substantiations of Aboriginal and Torres Strait Islander child abuse in Victoria.

FVPLS Victoria assists Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault and non-ATSI parents/carers of ATSI children where child protection intervention has occurred. Whilst women and children are in the majority as victims of violence in the home, other family members including grandparents may be legally assisted depending upon the circumstances.

It is the strong view of FVPLS Victoria lawyers that inadequate access amongst ATSI families (particularly family violence victims) to culturally appropriate legal representation at the early stage of DHS intervention and beyond, combined with inadequate enforcement of rights specific to ATSI children, has contributed to unsatisfactory outcomes. In any reform of the child protection system, FVPLS Victoria is seeking enhanced protection of the legal rights of ATSI children and their families.



*FVPLS Sisters Day Out
Coordinators Kelly Faldon
and Wanda Braybrook.*

Through FVPLS Victoria's community legal education work, it is evident that there is an urgent need to raise awareness in the ATSI community about child protection law, specific provisions that apply to ATSI children and the importance of seeking legal assistance early to ensure that rights are protected.

⁴ Australian Institute of Health and Welfare (2009) *Child Protection Australia 2007–2008*, Child Welfare series no. 45 Cat .no. CWS 33, Canberra: AIHW, p. 51.

The introduction of the unique Aboriginal Child Specialist Advice and Support Service in Victoria (ACSASS) through the Victorian Aboriginal Child Care Agency (VACCA) has been a progressive step forward. However, community education aimed at clarifying the role of ACSASS—including in relation to the broader role of VACCA and its relationship with DHS child protection—is also urgently needed.

There are generally multiple issues contributing to child protection intervention including drug and alcohol use, mental health concerns, financial hardship and family violence. Support services must be positioned to respond holistically and be capable of intensive long-term assistance to both adults and children where required.

There has been significant change to child protection laws in Victoria over the past few years, entailing a shift towards community-based child and family services taking a stronger preventive and support role. The success of these initiatives is directly related to levels of resourcing which clearly remain inadequate.

Broad-based early intervention and prevention support is critical to reducing the numbers of ATSI children in the child protection system. **Moreover, strengthening of culturally appropriate early resolution processes for ATSI children is imperative, and these must contain legal safeguards and appropriate screening for family violence and safety concerns. (Aboriginal Family Decision Making (AFDM) meetings are currently underutilised.)**

Given the ongoing high levels of legal intervention, however, culturally strong and accessible legal support is critical. The complicated nature of the system together with the significant powers exercised by the state with respect to ATSI children necessitate strengthened legal services for ATSI people in the area of child protection law. Processes to ensure earlier access to legal assistance and information about rights are critical to address significant knowledge and power differentials within the child protection system. The prevalence and complexity of family violence also demands dedicated legal and associated supports for adult victims and children.

Some legislative and procedural provisions specific to the best interests of ATSI children are in place, yet require strengthening. Moreover, implementation of existing measures is not occurring as it should. Culturally appropriate legal advocacy can contribute to increased system-wide accountability in this regard. Further legal reform to ensure more proactive judicial oversight could also assist with enforcement. A dedicated independent oversight function with respect to ATSI children in the child protection system that is driven by the Koori community might also strengthen outcomes and provide broader accountability beyond court processes.

The Victorian Ombudsman has recently released a report, *Own motion investigation into the Department of Human Services Child Protection Program*, containing a raft of recommendations.⁵ The Victorian Government responded to the report with a range of commitments including a Ministerial Taskforce and reference to the Victorian Law Reform Commission (VLRC). FVPLS Victoria

⁵ November 2009 www.ombudsman.vic.gov.au

notes that the government has taken up the Ombudsman's proposal for a less adversarial approach within the Children's Court. However, this must be balanced against the requirement for robust legal process and legal representation, which is fundamental to the protection of human rights and equitable access to justice. FVPLS Victoria supports a strengthened legal framework for child protection processes rather than the reverse. With the necessary safeguards, improved culturally focused out-of-court dispute resolution processes can be incorporated within this framework—the two approaches are not mutually exclusive. **New models of alternative dispute resolution to be introduced to the Children's Court Family Division in Victoria must be culturally appropriate for ATSI children and families.**

Whilst the Ombudsman's report, government response and VLRC reference do not have a specific focus on ATSI children, it is hoped that these initiatives will provide scope for the unique situation of ATSI children to be further addressed. It is a matter of serious concern to FVPLS Victoria that the Victorian Government's reference to the Victorian Law Reform Commission made no reference to the vast overrepresentation of ATSI children in the child protection system in Victoria or to the need to consider the impact of options under consideration upon ATSI children and families. Furthermore, the timeline of the reference has not allowed for adequate consultation with the ATSI community.

It is noted that the Department of Justice Victoria, Courts and Tribunals is undertaking a research project to look at strengthening processes for Koori children within the child protection legal process. Whilst in its early stages, this initiative is welcomed by FVPLS Victoria as an extremely positive response to the current situation, and one which will be informed by the Koori community. Reform to the child protection system for Koori children and families will be most appropriately driven by a dedicated Koori project. The following comments and proposals are made for consideration within this context.

2.2 The current situation for ATSI children

The Australian Government Productivity Commission's *Overcoming Indigenous Disadvantage: Key Indicators 2009* provides the most recent national statistics in relation to law and justice outcomes for Aboriginals and Torres Strait Islanders. The data shows that Aboriginal and Torres Strait Islander children remain vastly overrepresented in the child protection system. The following are reported as key indicators:

- The rate of substantiated notifications for child abuse or neglect increased for both Indigenous and non-Indigenous children from 1999–2000 to 2007–2008, with the rate for Indigenous children more than doubling over this period:
 - the rate for Indigenous children increased from 16.4 to 35.3 per 1000 children
 - the rate for non-Indigenous children increased from 4.8 to 5.5 per 1000 children.
- Indigenous children were more than six times as likely as non-Indigenous children to be the subject of a substantiation of abuse or neglect in 2007–2008.

- 41.0 out of every 1000 Indigenous children were on care and protection orders, compared to 5.3 per 1000 non-Indigenous children at 30 June 2008.

From 1999–2000 to 2007–2008:

- The substantiation rate for Indigenous children increased from 14.8 per 1000 children to 35.3 per 1000 children.
- The rate for non-Indigenous children increased from 4.2 per 1000 children to 5.5 per 1000 children.

As at 30 June 2008:

- The rate of children on care and protection orders was 41.0 per 1000 children for Indigenous children and 5.3 per 1000 children for non-Indigenous children.

From 1999–2000 to 2007–2008:

- The rate of Indigenous children on care and protection orders increased from 19.9 per 1000 children to 41.0 per 1000 children; for non-Indigenous children the rate increased from 3.3 per 1000 children to 5.3 per 1000 children.

The Australian Institute of Health and Welfare also published statistics in *Child Protection Australia 2007–2008*, recording that 977 Aboriginal and Torres Strait Islander children in Victoria were on care and protection orders as at 30 June 2008.⁶ This was an increase in 354 children from 2007.⁷ Over the same period there was an increase of 34 children in out-of-home care.⁸ (These figures are likely to be lower than the actual numbers due to data identification gaps.)

The relationship between the high rates of ATSI young people in the criminal justice system and in the child protection systems must also be acknowledged. A report cited in the Melbourne *Age* newspaper on 14 March 2010 indicates that 42% of children on youth justice orders are under child protection⁹ (this figure is for all children).

The Victorian Parliament Drugs and Crime Prevention Committee, in its July 2009 report *Inquiry into strategies to prevent high volume offending and recidivism by young people*, states the following:

Young people and out-of-home care

... In Victoria the Committee received evidence that there is a high percentage of young people in juvenile detention who have a history of family breakdown, disruption and/or removal from families into out-of-home care. (p. 87)

⁶ Australian Institute of Health and Welfare (2009) *Child Protection Australia 2007–2008*, Child Welfare Series 45 Cat. No. CWS 33, Canberra: AIHW, p. 51.

⁷ Australian Institute of Health and Welfare (2008) *Child Protection Australia 2006–2007*, Child Welfare series no. 43 Cat. no. CWS 31, Canberra: AIHW, p. 50.

⁸ See footnote 6 p. 63.

⁹ *The Sunday Age*, 'Foster kids face bleak future', 14 March 2010, p. 7.

In a submission to this Inquiry, Professor Julian Bondy and Dr Marg Liddell said:

... An analysis of the current client profile in the youth justice system suggests that those that enter the system via correctional orders are the victims of significant trauma. Many are dual order clients having transitioned through the Child Protection system. This transition has not been particularly positive (see Liddell 2004) with many being the victims of chaotic family life, significant abuse, unstable placements, insecure attachment to family or significant others, and few positive life choices.

... Workers in the youth justice system have some difficulty interrupting the cycle of offending for many of these young people as their behaviours have become entrenched and the young people more difficult to engage...

Given the research by Lynch et al. (2003) (cited in the Discussion Paper) suggests that 91% of young people on care and protection orders progressed into the adult justice system, more attention needs to be given to the problems that face many children and young people who enter the Family Division of the Children's Court and progress into the child protection system. (p. 88)
(Emphasis added)

2.3 What role can legal services play?

Early intervention/prevention and community education

The Australian Productivity Commission's report *Overcoming Indigenous Disadvantage: Key Indicators 2009* at 4.10 states:

... In many situations family support, primary prevention and early intervention programs are more successful and cost effective in supporting Indigenous families than statutory interventions. While it is appropriate for government departments to maintain a strong role in statutory intervention where child protection measures are required, there is wide recognition of the positive work of Indigenous community organisations which are more effective in providing early-prevention and out-of home care services (HREOC 2008).

FVPLS Victoria strongly supports early intervention programs as a strategy to reduce formal DHS intervention. It is important that early intervention services are accessible and culturally appropriate for ATSI children and families. Where ATSI families are encouraged to informally agree to place children in out-of-home care, it is the view of FVPLS Victoria that access to independent legal advice with respect to implications and rights remains essential, and that judicial oversight of such decisions should be implemented.

FVPLS Victoria is primarily funded to provide legal assistance and other supports in the area of family violence and sexual assault and the issues and proposals made below relate to these matters. As a legal service FVPLS Victoria cannot tackle or resolve all of the underlying causes which are resulting in the high rate of ATSI children on care and protection orders in Victoria. Given that family violence

is a significant factor, however, it is reasonable to conclude that the safety of children can be enhanced through family violence intervention and prevention.

Culturally safe early intervention programs such as the FVPLS Victoria *Sisters Day Out* program which reach women who would not otherwise access legal information and support are key preventive initiatives. Feedback from project consultations confirms family violence to be very isolating for ATSI women and this is compounded by all of the barriers that exist for ATSI people in accessing the justice system more generally.

Culturally appropriate community legal education about child protection issues directed to the community and to support workers, aimed at ensuring early access to legal assistance, is a key strategy in improving outcomes to which FVPLS Victoria is committed. Unfortunately, the Commonwealth-funded community legal education position within FVPLS Victoria is restricted to the Barwon South West and Gippsland regions, which is inhibiting the reach of the organisation's community legal education.

Legal services

It is essential that adequate legal resources are available to follow through with women who make contact through these early intervention and community education programs and FVPLS Victoria, as detailed in Papers 1 and 2, is keen to extend its legal capacity. Family violence legal options include: intervention orders; family law orders; victims assistance, including access to financial support; practical safety measures; recovery strategies; and healing/counselling. All of these legal responses may improve child safety and reduce the likelihood of child protection intervention.

There is a view, predominantly held within the Department of Human Services, but also more broadly, that lawyers impede dispute resolution processes due to their adversarial approach. **Given the grave human rights implications and power differentials at stake in this jurisdiction, together with evidence of a lack of procedural fairness and natural justice accorded to ATSI families in some out-of-court processes, legal representation must be guaranteed. Adult and child victims of family violence and sexual assault in particular must have the option to be represented at all stages of the child protection intervention process.** In this regard, the role of lawyers will include:

- negotiating with DHS to fully understand the reasons for the intervention and to seek an early resolution
- providing broader legal advice and assistance as appropriate—for example, for intervention orders, family law or victims assistance—thus ensuring a coordinated approach
- ensuring that ATSI people do not agree to arrangements with community child services or DHS which are unfair or out of proportion to the seriousness of the situation on the ground
- advocating for culturally appropriate out-of-court resolution processes such as AFDMs and providing legal representation at these to ensure that clients' voices are heard, that procedures are fair and that family violence and safety issues are appropriately dealt with
- ensuring ATSI people understand the child protection process and feel supported so as to reduce the stress and trauma of their involvement

- negotiating with ACSASS/VACCA in relation to their position in a given case and ensuring clients understand the role of ACSASS as advocating for the child's best interests
- ensuring ATSI people are adequately supported so they remain engaged in the court process, and do not feel it is all too hard and hopeless
- holding DHS to account in relation to laws and processes in place when intervening for ATSI children and more generally
- providing broader supports and referrals with respect to court conditions and requirements
- attending Case Plan meetings for ATSI children as advocates to ensure best outcomes for clients
- providing court representation to ensure the Children's Court is fully aware of all relevant cultural issues and compliance with specific ATSI legislative provisions, and to advocate on behalf of ATSI clients and children.

The child protection area is another where dedicated ATSI legal services are best equipped to deal appropriately with cultural issues and to advocate for necessary systemic change. **Past policies of removal of ATSI children continue to impact significantly on the ATSI community, especially where DHS child protection intervenes. In the end, the outcomes must be in the best interests of the children and it is the role of courts, lawyers, DHS and VACCA to ensure that ATSI cultural issues are central to those best outcomes.**

FVPLS Victoria has been utilising short-term Legal Services Board funding for dedicated child protection services to 30 June 2010. Support from the state government to continue this position in the short term is anticipated. Ongoing funding for this work through either the state or Commonwealth government must be secured. FVPLS Victoria solicitor Rebecca Boreham stated the following in an opinion piece published in the *Age* newspaper on 21 December 2009, which highlights the importance of legal representation within the process:

... Much of our experience shows that, whilst a high rate of protection orders are made once proceedings are initiated, the fact that our clients can be legally represented in the court process will usually result in higher levels of contact between children and their families that is guaranteed with greater certainty, more comprehensive clinical and medical assessments and treatments for the family, and more appropriate family and foster care placement decisions. For the many parents unable to access legal representation these matters are usually beyond their ability to negotiate.¹⁰

Further issues raised about legal assistance through the project consultations are detailed below.

2.4 Key issues raised through project consultations, FVPLS community forums and FVPLS service delivery

The project consultations raised many issues about the child protection legal process. For simplification we have divided the issues into a number of categories, outlined in the sections below.

¹⁰ <http://www.theage.com.au/opinion/society-and-culture/the-chance-to-be-heard-20091220-l7e1.html>

Family violence

Family violence is one of the most prevalent factors in child protection notifications. The project consultations indicated a widespread view that DHS needs to adopt a different approach to women who experience family violence in cases where child protection intervention results. There was a strong sense that women as victims are often being re-victimised by an unhelpful, blaming approach, rather than being supported to deal with and understand the broad-ranging impacts of the violence. In the view of project participants and FVPLS Victoria, the latter approach is far more likely to lead to positive outcomes that better support the best interests of children impacted by such violence.

A number of project participants expressed serious concern about the level of supportive intervention provided to children in care who had experienced family violence or other trauma. A lawyer related a case in which DHS had removed children following significant family violence, highlighted the trauma experienced by the children in reports, but then completely failed to provide any counselling or therapeutic intervention for those children. FVPLS Victoria can cite other examples of this.

The consultations also highlighted the fact that, as a result of the more integrated response to family violence, reporting to DHS Child Protection through family violence support services has become more frequent, thus also impeding therapeutic responses. **Effective, ongoing engagement with therapeutic support services for women experiencing family violence is critical to improved safety and outcomes, and ultimately to children remaining in home care.** The suggestion was made that court-mandated and DHS-monitored counselling may be best kept separate from other sources of therapeutic intervention accessed by victims/survivors. Participants also suggested that the development of protocols or guidelines with regard to these issues might assist in better identifying and preserving key therapeutic relationships.

The strengthening of broader family violence legal and support services and early intervention strategies is also critical, given the high level of family violence present in child protection notifications. Legal intervention with respect to family violence within ATSI families occurs in the Magistrates' Courts under the Family Violence Protection Act, the Children's Court (Family Division) and the Family Court. **It is important that legal and court responses are integrated and that family violence issues involving ATSI children and families are addressed with consistency and within a strong cultural context.**

Family violence and safety issues must also be considered in determining whether AFDMs or other forms of dispute resolution should proceed and if so in what format. The experience of ATSI women and children in the family law system with respect to Family Dispute Resolution and family violence must be heeded. FVPLS Victoria is concerned that ATSI women are not disclosing or fully disclosing family violence and safety issues, resulting in Alternative Dispute Resolution proceeding and sometimes concluding with inappropriate outcomes. Careful screening with respect to family violence and safety issues as well as access to legal representation (including specific referral options to Aboriginal Legal Services) at the earliest time and throughout the process is imperative.

... The victim of family violence is often the one held accountable. They say the woman hasn't provided a safe environment for the child. Do they understand the psychological impact of family violence ... its impact financially ... where she is going to go (accommodation problems), psychological factors ... perpetrator is not charged with neglect ... often DHS don't even contact him if can't find him ... tell her all she has done wrong ... put constraints on her life and re-victimise her.

... new approach needed so that mothers who have experienced family violence are not re-victimised ... but are supported ... Women's and children's services need to work more closely together ... so that woman not on her own in that situation ... i.e. better supported to support the children ... Policy makers in child protection need to become more aware of family violence and the impacts of it.

Aboriginal regional family violence support worker

*.... Good ones [DHS workers] knew I was a good mother ... treated me with respect ... others didn't. I often felt like I was doing the wrong thing. They were giving me ultimatums. Had to make a choice between father or children. This is not a good approach. They would have been better offering supports to me. **Aboriginal victim/survivor***

*.... Definite increase in involvement of DHS where family violence is a presenting issue ... because of new protection act and new risk assessment framework ... increasing information sharing between police and DHS services ... reflected in increased in DHS involvement with families we work with ... has been increase in child protection demand ... is a need to protect children ... and this reflects a better response ... if you think DHS will solve problems ... but involvement of DHS does not improve the situation as things stand ... net effect is that therapeutic support from DV counsellors is reduced because they become more a partner with DHS than with the client ... relationship between DHS and DV service is barrier to accessing support ... involvement does not make family stronger. **Non-ATSI Lawyer***

Proposal 12

That research be undertaken with respect to the impact of family violence upon child protection notifications and interventions, incorporating an analysis of the most effective and supportive intervention for victims within the process.

That consideration be given to development of best practice guidelines for DHS where family violence is identified as a factor in child protection notifications and interventions.

That as far as possible integrated and culturally appropriate processes inform developments within the Children's Court (Family Division), the Magistrates' Courts and the Family Court in responding to family violence involving ATSI children and families.

That, in introducing greater reliance on alternative dispute resolution into the Children's Court Family Division, stringent family violence and safety screening processes be introduced as well as guaranteed legal representation throughout.

(ATSI community consultation must be integral to all reviews relating to ATSI children and families.)

Also see Proposal 20 requiring DHS to ensure appropriate therapeutic intervention for children impacted by family violence.

Legal advice and assistance

Ensuring that ATSI people are aware of and have available to them legal advice and support as soon as contact is made by the Department of Human Services about a child protection investigation was considered critical amongst survey participants.

*... Initial contact re. support and legal information is imperative in the child protection area. **Aboriginal lawyer***

*... clients are making agreements to have children removed without having had legal advice ... DHS should be required to make legal referrals. **Aboriginal lawyer***

Project participants believe that the reasons why people are either not accessing lawyers early or not at all include:

- DHS informing clients that they do not need legal assistance
- DHS not formally acknowledging or forwarding correspondence to lawyers when they are involved
- people thinking that they have no choice but to do what DHS says and not being aware of their right to legal representation
- people being confused about processes and how to get a lawyer
- people lacking understanding of the role of lawyers—that people often have other supports involved and do not believe that they also need legal advice
- a lack of community education about the child protection system generally
- people being in denial about the child protection intervention process
- people thinking that because the ACSASS/Lakidjeka program is involved they have a Koori advocate and do not therefore separately need a lawyer
- extended family members not being aware that they have a right to be involved in a case, coupled with DHS not investigating possible extended family placements for ATSI children
- legal referrals not being made early, but rather at the first court date via the direction of the court or through the duty lawyer service.

Child protection legal work is resource intensive, particularly given the need for multiple family members, including children, to have separate legal representation. FVPLS Victoria is available to assist victims of family violence in Children's Court Family Division cases, the Victorian Aboriginal Legal Service provides representation more generally, and Victoria Legal Aid runs a duty lawyer service at the Children's Court and can assist people in-house or assign cases to private practitioners.

As mentioned previously, FVPLS Victoria is concerned that ATSI children and families, particularly family violence victims, have not been adequately pursuing their legal rights or accessing legal representation in child protection cases. Raising awareness about the need for and benefit of legal representation in child protection cases is vital.

... Many clients do not fully understand the meaning of legal language in child protection cases ... the meanings of words are different to what people are used to ... clients think one thing when DHS and/or the court actually means something else ... there is a lot of misunderstanding ... the client sometimes has a completely different version as to what is going on which can lead to unintended outcomes. Lawyers, particularly where there is cultural respect and understanding, can build trusting relationships with clients, which is fundamental in negotiating good outcomes with the Department [DHS]. **Aboriginal lawyer**

... Aboriginal families in our area have not been contesting child protection cases where it is warranted ... they appreciate that we [FVPLS] are assisting them to pursue their rights. **Non-ATSI lawyer (rural)**

FVPLS Victoria supports the extension of culturally appropriate dispute resolution processes, provided that the importance of both legal representation and a degree of judicial/court oversight is acknowledged within these processes. Much of the work of lawyers is in negotiation and out-of-court dispute resolution. The involvement of lawyers will not always result in litigation but should always ensure protection and advancement of a client's rights, with the 'best interests of the child' being the priority consideration. FVPLS Victoria lawyers express concern that many DHS case workers and ACSASS workers are not aware of or confident with legal principles, further highlighting the importance of the involvement of lawyers at all stages of the process.

... Many DHS workers are not clear on the law ... particularly for Aboriginal children ... some have only a low level knowledge of the legal requirements and this interferes with good process ... lawyers therefore play a big role ... Excluding lawyers from out-of-court processes will only make the system less accountable ... there are currently too many people with non-legal backgrounds involved.

Aboriginal lawyer

Lawyers consulted were of the opinion that Victoria Legal Aid should review its guidelines for child protection cases to ensure that lawyers, including children's lawyers, are funded to attend Aboriginal Family Decision Making meetings and Best Interest Case Plan meetings. Key decisions are made at these meetings which set the path for reunification or permanent care. Legal advocacy is also required to ensure accountability in relation to compliance with specific provisions in place for ATSI children and to address power differentials, particularly where family violence is a factor.

Administrative review of these decisions is available at VCAT; however, it is difficult to obtain a Legal Aid grant to make a review application. Legal Aid funding to challenge DHS and Court decisions more generally, in cases where ATSI cultural issues or specific ATSI legislative provisions have not been met, must also be assured.

Finally, it is imperative that lawyers representing Aboriginal children in Children's Court (Family Division) cases have a strong understanding of cultural issues. Aboriginal Legal Services including FVPLS Victoria ought to be properly resourced as accessible options for such representation and referral protocols for ATSI victims/survivors involved in child protection proceedings would also be beneficial.

Proposal 13

That the government review funding for the provision of Aboriginal and Torres Strait Islander legal services in the area of child protection in Victoria.

Given the prevalence of family violence as a factor in child protection interventions for ATSI children in Victoria, that ongoing dedicated child protection legal capacity at FVPLS Victoria be funded.

That provisions which require DHS to refer ATSI families for legal assistance at the earliest time be implemented.

Proposal 14

That Victoria Legal Aid review its grant guidelines and procedures with a view to strengthening access to justice for Aboriginals and Torres Strait Islanders in the Children's Court (Family Division) by:

- a) broadening assistance available in the area of child protection to Best Interest Case Plan meetings and Aboriginal Family Decision Making meetings which occur as part of, but outside of, the court process, including for lawyers representing children
- b) broadening assistance available for the review of DHS administrative decisions
- c) specifically including in the guidelines a provision for assistance to be granted to challenge orders made where there has been a failure to comply with the principles of decision making for ATSI children
- d) ensuring that Aboriginal Legal Services including FVPLS Victoria are available to ATSI children and families through adequate support and resourcing of those services together with refined referral protocols.

Proposal 15

That legal practitioners working in the Children's Court (Family Division), including Victoria Legal Aid, Department of Human Services and private practitioners, receive ongoing and targeted Aboriginal and Torres Strait Islander cultural awareness training.

Community knowledge of laws and procedures, particularly relating to ATSI children

Participants indicated that there is a lack of knowledge in the community about specific laws and procedures that should be followed in relation to ATSI children in the child protection process.

Examples of these are:

- the protocol between VACCA and DHS which determines what each organisation is supposed to do e.g. joint visits
- the right to object to ACSASS involvement
- decision-making principles for ATSI children
- the Aboriginal child placement principle—particularly the priority of placement with extended family or relatives where possible

- Aboriginal Family Decision Making meetings—the right to request one and when they can take place
- the involvement of ACSASS in court reports, placement in out-of-home care and Best Interest Plans and meetings
- Cultural Plans—when they must be prepared, and who is responsible for preparation and oversight of them
- obligations where permanent care orders are made
- the rights of parents who remain guardians of children.

Project consultation comments about community knowledge included:

*... No ... think support workers struggle to understand what is happening and the process. Not much information is provided about the rules for Aboriginal children. **Aboriginal support worker***

*... I didn't know about the special rules/laws for Aboriginal children in the Children's Court/child protection system ... a pamphlet in the court about it would assist ... one which sets out rights where Aboriginal children are involved. **Aboriginal victim/survivor***

*... Aboriginal principles not followed and clients not aware of them. **Aboriginal support worker***

*... Very complicated and laws change all the time. **Aboriginal support worker***

*... Not at all ... very complicated ... women get very frustrated ... it's a mine field ... constantly changing law and procedure. **Aboriginal support worker***

*... more community legal education needed. **Non-Aboriginal support worker***

*... clients don't know about rules that apply for Aboriginal children. **Non-ATSI lawyer***

*... No it is very complicated ... process that is changing all the time ... plain English explanation needed by lawyers and ACSASS workers ... ACSASS employed to be a link between child protection and Indigenous clients [children] ... role to explain things ... what the order ... and the words mean. **Aboriginal support worker***

*... Don't understand legalities of what is occurring ... more community legal education needed. **Lawyer***

*... No I don't think they do understand ... depends on DHS workers ... whether they have explained what is happening. I don't understand as a worker all the time. Definitely lack of knowledge of Aboriginal rules/principles. **Aboriginal support worker***

Proposal 16

That, either in conjunction with a community education program by VACCA about the ACSASS program or separately, further community education programs be delivered to the ATSI community and key workers about the child protection legal process in Victoria and the specific rights stipulated for cases involving ATSI children. Funding must be made available for this.

The role of VACCA/Lakidjeka/ACSASS

There is a protocol between the Victorian Aboriginal Child Care Agency and the Department of Human Services setting out the procedures to be followed when DHS receives a notification about an ATSI child. The DHS child protection manual states the following:

... The aims of the protocol are to:

- *include an Indigenous perspective in risk and safety assessments of Aboriginal children*
- *improve case planning and decision making concerning Aboriginal children*
- *improve the engagement of Aboriginal families with relevant support services and*
- *improve the involvement of family and community members in providing support to Aboriginal children.*

... In addition to consultation with Child Protection, a key role of regional ACSASS workers is to facilitate communication and understanding between Aboriginal children and families and Child Protection practitioners.¹¹

A strong view was expressed during the project consultations that ATSI families do not understand the role of Lakidjeka/ACSASS in the child protection process. Some support workers indicated that they were also unclear about the role. This is consistent with FVPLS Victoria's experience through its legal service provision.

There is a misapprehension in the community that the Lakidjeka/ACSASS workers are there to advocate for the family, so a great deal of anger and frustration can ensue when ACSASS workers take the position of DHS in determining the best interests of the child. This anger could be diminished if the community had a better understanding of their role.

Community education and awareness about the role of Lakidjeka/ACSASS, and VACCA more broadly, is thus urgently needed and must be prioritised. Clarification that it is not the role of ACSASS in child protection proceedings to advocate for parents or families is critical. The importance of family members having their own advocates throughout the DHS child protection intervention and legal process must also be communicated.

Tensions sometimes arise between the role VACCA has as a support agency and its role in advising DHS through the ACSASS program. Clients become frustrated with VACCA workers supporting them

¹¹ Department of Human Services Victoria, *Protecting Victoria's Children: Child Protection Practice Manual*, Responding to Aboriginal Children Advice No. 1059.

(for example, in access/visiting arrangements) and then later providing information or advice to DHS through the ACSASS role which may be adverse to their case and which they may dispute. This has implications for the future support relationship, and for some ATSI women it reinforces negative views of the system. There is further discussion about support arrangements for parents/carers below.

Feedback suggested that greater formality in the advisory process would assist in clarifying the role of ACSASS, perhaps through a requirement that advice to DHS be in writing and provided to the parties on a confidential basis.

There was also widespread recognition that the ACSASS program is underresourced relative to the high numbers of Aboriginal and Torres Strait Islander children on DHS books and that this is limiting the capacity of the program. FVPLS Victoria has been made aware of the excessive caseloads of individual ACSASS workers, which is unacceptable given the intensive nature of the work. Improved government resourcing for the ACSASS program appears necessary.

The following comments emerged from the consultations in relation to the ACSASS program:

*... Problem ... clients not clear about the role ... not enough resources ... not enough workers to cover huge demand. **Aboriginal support worker***

*... Important to explain role of ACSASS ... ACSASS workers are there to explain to families what is happening ... what DHS is seeking and what that means ... they are a specialist advice and support service ... resourcing of program is an issue ... needs adequate resourcing to meet demand. **Aboriginal support worker***

*... Most women seem to understand they can insist on having a Lakidjeka worker turn up but there is a misperception that VACCA are there to support them or advocate for them and then hostility against VACCA follows when this is found not to be the case ... ACSASS is not funded to work with the number of cases on DHS books ... so there are limits as to what they can do. **Non-ATSI lawyer***

*... DHS workers often don't understand the role of Lakidjeka and VACCA. **Aboriginal lawyer***

*... The Lakidjeka/ACSASS workers' caseload is huge. **Aboriginal lawyer***

*... Clients don't understand the role ... it's not clear and can be confusing. **Non-ATSI lawyer***

*... [As a worker] I don't understand Lakidjeka's role ... most clients think VACCA can step in and fix a situation and advocate on their behalf ... they don't realise that VACCA advocates on behalf of the children. **Aboriginal regional family violence coordinator***

*... Clients don't understand ... the parents think person is advocate for them ... don't understand that ACSASS worker puts the child first ... not the family. **Aboriginal support worker***

*... It's taxing for workers in this role ... taking an independent stand on issues. **Non-ATSI lawyer***

Proposal 17

That VACCA engage in broad community education about the role of its ACSASS program, in partnership with other ATSI community organisations in providing support and assistance in the child protection area.

That more detailed information be provided to ATSI family members at the commencement of child protection interventions to ensure clearer understanding of the ACSASS role.

Proposal 18

That, in conjunction with ACSASS providers, the state government increase its support of the ACSASS program with a view to strengthening its capacity across Victoria.

Proposal 19

That consideration be given as to whether ACSASS advice to DHS about an ATSI child should be formalised in writing and confidentially provided to the parties.

Department of Human Services

Given the role of DHS in intervening and often removing children from their families, criticism of and frustration with processes and workers in this area are to be expected. Consultation feedback indicated that attitudes and approaches differed amongst DHS workers, which directly impacts on communication and outcomes. A defensive and non-transparent approach on the part of DHS was seen to inhibit the positive outcomes for ATSI children and families.

There is significant concern about: the high turnover of staff in DHS child protection; the lack of resources and workers to meet the workload; the inadequate training and experience of staff, resulting in inconsistent outcomes; the lack of transparency and accountability of internal DHS processes; and the reluctance of DHS caseworkers to effectively communicate with legal representatives at every stage of the process (see Proposal 22). The failure by DHS workers to ensure procedural fairness and to implement current law and policy specific to ATSI children was also cause for significant concern during the consultations. The need for more cultural awareness training was highlighted.

*Until our office became involved, DHS claimed they were not aware "T" was Aboriginal and had failed to inform VACCA/Lakidjeka that "T" was in out-of-home placement. "T" has been in approximately 10 different placements over the three-year period. Since our involvement, "T" has been placed in a Kinship placement (family placement) with the maternal uncle, Lakidjeka became aware and involved, "T" is now attending support services e.g. counselling. **Aboriginal lawyer***

Some lawyers said that DHS sometimes advised clients that they did not need legal representation. FVPLS Victoria is aware of cases where people had no representation in pre-court processes and

consequently agreed to outcomes without being aware of their rights—particularly the parents or carers of ATSI children.

Lawyers consulted also expressed frustration that DHS workers often do not embrace a positive approach to the involvement of lawyers, and argued that open exchange of information and communication about the intervention and meetings must instead be encouraged. Reports and information only being provided to clients at the last minute was a common criticism. Concern was raised about pre-prepared Case Plans being distributed at the door of Best Interest Planning Meetings.

The failure by DHS to take all reasonable steps to locate extended family members according to the Aboriginal Child Placement Principle was raised as a concern, often resulting in those family members later seeking to be involved in proceedings.

*... Canvassing of family members re. concerns about child ... cases where no one in family knows they can step forward about wanting the child in their care ... then being joined as party in proceedings ... there are people being excluded who should have been included at the first instance. Onus on DHS to find out who is parent and grandparents and uncles and aunties ... tick off boxes ... find immediate family to meet Aboriginal placement principle. **Non-ATSI lawyer***

*...Grandma said she wanted access to the children. DHS said no. Children were later removed ... but grandma was not notified of this. Grandma now referred to FVPLS Victoria. Grandma is an eligible carer under the Aboriginal Child Placement Principle. DHS has not advised her of her rights or ensured compliance with legislated principles. **Non-ATSI lawyer***

The inability of DHS to adequately support and resource family members to meet the conditions of orders and Case Plans was another concern to emerge from the consultations. This role is falling to underresourced support services which are often not specifically funded for this role. A number of participants thought greater attention should be given to the support of parents in fulfilling conditions in relation to, for example, parenting programs, urine screening, family violence counselling and anger management.

Participants also commented that the orders themselves are often too onerous—in fact sometimes clearly impossible for the person to comply with, not tailored to their particular circumstances, and lacking a focus on the best interests of the child. It was observed that if orders could be made in more positive terms rather than as a form of punishment of the parents, and be linked more directly to the interests of the children, attitudes and outcomes could be improved.

Concern about DHS not providing therapeutic intervention for children under court orders who have experienced family violence has been detailed above.

The following is a summary of project consultation comments about DHS:

<i>... Not listening ... say one thing, do another. Aboriginal victim/survivor</i>

*... Not talking to extended Aboriginal family about possible placement of children. **Non-ATSI lawyer***

*... I did things [they asked] like move but then it didn't change anything. **Aboriginal victim/survivor***

*... Good and bad workers ... good ones treated me with respect ... others didn't. **Aboriginal victim/survivor***

*... Sometimes DHS do not even realise they have an Aboriginal child ... missing that people are Indigenous. **Non-ATSI lawyer***

*... Giving ultimatums ... choose between father or children ... not good approach ... would have been better offering supports to me ... workers like reading out of book ... no real understanding. **Aboriginal victim/survivor***

*... Attitude of workers made a big difference whether working against me or with me. **Aboriginal victim/survivor***

*... Need Aboriginal child protection workers and cultural training for non-Aboriginal workers. **Non-ATSI lawyer***

*... DHS workers need cultural awareness training ... same as police. **Aboriginal support worker***

*... Inconsistent approach by workers ... some very judgemental ... approaches by different caseworkers and offices inconsistent ... same set of circumstances ... but very different outcomes re. Reunification. **Non-ATSI lawyer***

*... [Conditions] make people climb Mount Everest. **Aboriginal support worker***

*... Not enough support for people in meeting conditions ... not clear how people are to meet conditions. **Aboriginal support worker***

*... DHS not following the legislative requirements. **Non-ATSI lawyer***

*... Aboriginal principles not followed and clients not aware of them. **Aboriginal support worker***

*... No legal acknowledgement by DHS when legal representatives involved ... need formal process for this. **Non-ATSI lawyer***

*... DHS regularly ignore lawyers acting for clients ... don't communicate through lawyers don't provide with notice of meeting details. **Non-ATSI lawyer***

*... Lack of resourcing. **Aboriginal support worker***

*... DHS has big staff turnover. **Aboriginal support worker***

*... DHS very defensive about it all. **Non-ATSI support worker***

... There is a lack of understanding of Aboriginal people – DHS do not understand cultural issues in

home and family. There is a need to do more in depth and varied cultural awareness training.
Aboriginal lawyer

Proposal 20

That the program of cultural awareness training for DHS child protection workers be reviewed and strengthened and that specific training about:

- Aboriginal decision making principles and other legislative provisions with respect to ATSI children and
- the impact of family violence upon ATSI victims/survivors in the child protection context be incorporated within this.

ATSI community organisations working in the area should be invited to present at this training.

That DHS workers also receive training with respect to the role of lawyers in Children's Court (Family Division) proceedings and the responsibility to actively include legal representatives in all communications with respect to the proceedings.

That processes to ensure early referrals for legal representation by DHS be implemented (see also Proposal 11).

With a view to greater transparency, understanding and effectiveness of its operations, that DHS conduct training for key legal and other stakeholders in the child protection system about its key internal processes.

That DHS provide reports and proposed Case Plans within reasonable timeframes (depending, of course, on the nature and urgency of the proceeding).

That DHS ensure that culturally appropriate supportive/therapeutic intervention is provided for ATSI children who are the subject of protection orders and who have experienced family violence or other trauma.

Aboriginal Family Decision Making meetings and dispute resolution processes

Aboriginal Family Decision Making meetings (AFDM) are convened by an ATSI community convenor from VACCA and a convenor from DHS child protection, and involve an ATSI elder, a child protection worker, an ACSASS worker, family members, extended family, and can involve other support people including lawyers. The principle behind the meetings is that ATSI family and community are central to determining the best outcomes for ATSI children.

Section 12(b) of the Children, Youth and Families Act says:

... (b) a decision in relation to the placement of an Aboriginal child or other significant decision in relation to an Aboriginal child, should involve a meeting convened by an Aboriginal convener who has

been approved by an Aboriginal agency or by an Aboriginal organisation approved by the Secretary and, wherever possible, attended by ...

Participants in the consultation expressed disappointment at the small number of AFDMs currently taking place, and were of the view that if there was a greater capacity to hold more of these meetings and at an earlier time, resolutions might be reached, thus removing the need for court action. The meetings also bring a strong cultural context to the family situation. The importance of children and family members having access to legal assistance in AFDMs was emphasised, given the far-reaching decisions made and the significant power differentials both between the family and DHS and also within some families (Victoria Legal Aid funding guidelines need to reflect this).

*... There is an AFDM to which I am not invited as the lawyer of my client who wants me to be there ... I have been told by DHS that I am not invited to attend. I seek to attend to ensure that my client is able to put her views forward, to see that the process is a fair one for my client and so that I can assist my client with any questions which come up about the child protection process or what the law says about her rights. I understand that my role is very much in the background. I have a trusted relationship with this client who is seeking my assistance. **Aboriginal lawyer***

There was also concern that AFDMs, where they are appropriate and sought, are taking place too late in the child protection process and that it would be beneficial to some cases if they could be convened earlier and more quickly. Lawyers were supportive of the AFDM process for appropriate cases, but felt there is a lack of clarity within DHS as to when an AFDM may be convened. Frustration was also expressed by lawyers over the fact that, whilst an AFDM can be requested of DHS, there is no legal requirement that the request be met.

Comment was made that AFDMs and other dispute resolution processes that bring family together will not be appropriate in all cases, particularly where there are family violence or safety concerns and that case-by-case assessment is therefore required. **Lawyers also expressed concern that in some situations women, particularly young women, feel they must agree with what family members propose despite it not being what they believe is best for their child. The following case study highlights this, as well as the critical importance of legal assistance:**

*... A family group meeting (not a formal AFDM) had happened, where extended family were all telling mum that she had to sign over her child into care. Mum signed a voluntary placement agreement to put her child into an out-of-home care foster placement with an agency carer, against her own wishes about where she wanted her child to live (i.e. with her). After the young mum became our client, and our request to DHS to return her child, bub is back with mum ... earlier advice probably would have meant she could have had her child in her care for the months the child was in foster care, whilst getting supports to address concerns. **Non-ATSI lawyer***

*... where family violence is a factor and safety concerns exist meetings which bring family together may not be appropriate and this must always be considered. **Non-ATSI lawyer***

With respect to alternative dispute resolution more generally, consideration should be given to the introduction of legislated safeguards to ensure that the process does not inappropriately occur where safety cannot be guaranteed, or where the wellbeing of a child or family member may be compromised because of family violence. The Family Law Act contains specific exemptions to

dispute resolution where family violence is a factor. FVPLS Victoria's experience with the family law system suggests that some ATSI women are reluctant to disclose or fully disclose family violence and that these exemptions are therefore extremely important.

In moving forward with respect to strengthening culturally appropriate process in child protection cases the relationship between AFDMs and other pre-court and court dispute resolution processes will need to be clarified. Some feedback was received that the dispute resolution conferences at the Children's Court convened by a Court Officer have limited effect. It is noted that a new model of ADR is soon to be introduced to the Children's Court along with judicial resolution conferences. The introduction of pre-court conferencing is also indicated. The development of culturally appropriate processes for all out-of-court conferences involving ATSI children must be ensured. Family violence screening and the option of legal representation is integral. Further development through the Koori Children's Court Family Division project is appropriate. Some elements of the Koori Court model may be considered.

*... Where there is a high level of family feuding the meeting process is difficult ... sometimes split meetings may be appropriate ... convenors independent of DHS would help. **Aboriginal lawyer***

*... Meetings need to happen early ... have an example of where AFDM could have stopped child protection proceedings ... where DHS withdrew from case anyway ... quick AFDM would have resolved issues ... if family had been given the opportunity to sort through AFDM ... could have been resolved. Going into court often entrenches problems. **Non-ATSI lawyer***

*... AFDMs are not happening as much as they should ... when they are being conducted it is too late in the proceeding. **Non-ATSI lawyer***

*... The only one [AFDM] we were involved in took two months from agreement to have it to schedule it and then it was scheduled for six weeks further along. Time taken to get AFDM to happen is approximately three months. Long period. **Non-ATSI lawyer***

*... When can they happen ... at what point? ... AFDM was convened ... and as a result of decisions in it discontinued action ... example of positive outcome from AFDM. **Non-ATSI lawyer***

*... Dispute resolution conference was not approached in a way which gave any opportunity for genuine resolution ... it is important that all convenors of conferences involving Aboriginal children are culturally aware and that the process itself is appropriate for the Aboriginal family. **Non-ATSI lawyer***

... During a dispute resolution conference, DHS did not invite the Lakidjeka ACSASS worker to provide her views about the children's placement and care, access with mother, and best interests or cultural issues. The legal representative for the mother requested the Lakidjeka ACSASS worker to outline her views regarding these matters. When information was provided as to the worker's ambivalence toward current care, placement and access arrangements, as well as the possibility of different views held by the children as to their care, DHS and the children's lawyer revealed they did not know this and stated that in light of this information they would follow it up.

Issues:

1. *DHS is required to consult with and take the advice of Lakidjeka ACSASS re. Aboriginal children. They did not on this occasion.*
2. *DHS did not invite the worker to express her views about the issues in dispute.*
3. *The children's lawyer had not met the Lakidjeka ACSASS worker and was not aware of her views, nor did he show any interest in inviting her to give her views. **Non-ATSI lawyer***

Proposal 21

That all child protection dispute resolution processes at the pre- and post-court stage involving ATSI children must:

- incorporate family violence and safety screening to ensure the process is appropriate
- guarantee the option of culturally appropriate legal representation throughout
- be culturally appropriate.

That, in consultation with the ATSI community, a review of the Aboriginal Family Decision Making process and legislative provisions occur. The relationship between AFDMs and other court dispute resolution processes for ATSI children must be clarified. Subject to the above safeguards, consideration ought to be given to ensuring Aboriginal Family Decision Making meetings are more readily available prior to court intervention.

That appropriate resourcing by government support the development of ATSI-specific child protection legal processes and services, including through training of more ATSI convenors.

Case Plan (Best Interest Planning) meetings

The main issue arising during the consultations about Case Plan meetings was the importance of having a legal advocate and support person present. It was pointed out that very significant decisions are made at Case Plan meetings in relation to reunification or otherwise.



FVPLS Vic. Board members Damien Goodall and Karen Bryant, 2004.

Case Plan meetings can be highly stressful for clients as a result of DHS workers going through the client's alleged failings in some detail. This can prompt anger and frustration on the part of clients, which can further entrench DHS's position. Workers consulted also said that DHS workers generally go into planning meetings with pre-prepared plans and that without advocacy it is therefore very difficult for clients to challenge this position. Ensuring compliance with ATSI principles and processes was considered the other important role of advocates at these meetings, and participants also mentioned that ACSASS workers are not always focused on this issue.

In one Case Plan meeting described by an FVPLS Victoria lawyer, DHS presented a plan for a Guardianship Order:

The Chairperson of the meeting gave out copies of the plan and went through it “telling” the mother how it was going to be. His demeanour was very intimidating. He tried to argue the law with the legal representative, even though we stated that a Case Planning meeting was not the place to discuss interpretation of the law. There was no interest from DHS about why the mother had delayed in taking the requisite action, no attempt to understand the mother’s current circumstances and certainly no offers of support or assistance with access.

The lawyer’s presence:

- 1. allowed the mother’s views to be expressed*
- 2. challenged some of the issues raised by DHS*
- 3. highlighted DHS’s disinterest and disregard for the views of clients, family members, and the professional role of Lakidjeka ACSASS and lack of skill in running a bona fide Case Planning discussion. **Non-ATSI lawyer***

Victoria Legal Aid came in for some criticism in that its guidelines generally do not fund lawyers to attend Case Plan meetings. In addition, lawyers appointed to act on behalf of children in the Children’s Court do not attend these meetings—again due to the limitations of Victoria Legal Aid’s guidelines (see Proposal 13). Case Plan meetings could more often take the form of an AFDM.

Applications for review of DHS Case Plans must currently be made to the Victorian Civil and Administrative Tribunal (VCAT). FVPLS Victoria is of the view that this is entirely inappropriate. It confuses families, VLA rarely funds these applications, and the jurisdiction is not equipped to appropriately deal with these cases. A VCAT review hearing can replicate a contested hearing in the Children’s Court, but without the specialist expertise of the Children’s Court. **Jurisdiction for Case Plan reviews must be transferred to the Children’s Court** (see Proposal 22).

Comments emerging from the project consultations regarding Case Plan meetings included:

*... Support at meetings very important ... women/parents often cannot advocate for themselves ... VACCA aligned with DHS. Women feel re-victimised. **Aboriginal regional family violence coordinator***

*... Support workers very important ... there for the parent ... terrified ... say what they think they should say. **Aboriginal support worker***

*... Important at Case Planning meetings ... I got better at advocating for myself. **Aboriginal victim/survivor***

*... Client support ... at BIP meeting DHS read out what is happening and what is to happen ... client may say they agree even though they don’t really agree ... no input ... DHS say minutes agreed but they not ... important to have advocate at those meetings. **Aboriginal paralegal worker***

*... DHS go in with the plan they already made. Advocacy important ... difficult to get DHS to change from plan they had already made ... plans not circulated prior to the meeting ... given to you when you sit down ... not a lot of time for analysis. **Non-ATSI lawyer***

*... Is important ... and VLA should fund ... this is where crucial decisions are made ... re. reunification or permanent care ... it is where the case is tracking ... they are critical meetings ... needs to be funded ... lot of time DHS already have plan written up ... this is why an advocate is needed. **Non-ATSI lawyer***

*... Children's lawyers not being kept up with what going on ... not funded to do stuff outside of court hearing ... lot happens outside of court they should be involved in. **Non-ATSI lawyer***

*... It is very important for the client to have legal representation at those meetings and an Indigenous advocate **Aboriginal support worker***

*... lawyer must be at Case Plan meetings ... to advocate client's wishes, views and opinions. **Non-ATSI lawyer***

*... Yes ... to address power imbalance ... client feels very disempowered ... under attack ... have examples put to her about the way she is deficient ... having advocate can help client not be angry ... help calm an inflammatory environment. **Non-ATSI lawyer***

*... Very important to have people there at Case Plan meetings ... support person has already gained trust of woman ... more open to explain process at meetings. Women will sit and say yes but don't know what has happened. **Aboriginal coordinator family violence service***

*... when we attend Case Plan meetings ... the person providing DHS with cultural information is often our Koori paralegal worker. **Non-ATSI lawyer***

Conditions on Children's Court Orders and in Best Interest Plans

The difficulties with conditions attached to orders and Case Plans were twofold: firstly, that the conditions are often overly onerous and not tailored to the parent's circumstances; and, secondly, that it is not clear who is responsible for assisting parents to meet these conditions. There was a common view amongst participants that DHS does not provide much support and that other services such as refuges and legal services are investing significant time and resources into this work. There was also mention of people meeting conditions but this not making any difference to the outcome of the intervention (despite DHS having said it would).

Concern about access/visiting arrangements between parents and children was also raised on the basis that without specific arrangements being detailed (often access is stipulated to occur as by agreement) access is not appropriately facilitated by DHS, which can adversely impact upon reunification.

Questions were also raised about the level of support provided to children who are the subject of care and protection orders, and consultations revealed a sense that DHS is not ensuring that the necessary supports are being provided (also see Section 4.5).

... who is responsible for taking women for urine screens? ... to pay for psychiatric support? ... to be assessed by psychologist/psychiatrist? ... DHS don't follow through with this at all well. Onus seems to be on support services to do it all ... Onus seems to be on woman to do things ... she is punished for not doing things. For example, order parenting course but don't tell women where to access one. What about people who don't have supports in place? **Aboriginal support worker**

... VACCA and DHS are about the child ... it is not their role to support adults. **Aboriginal support worker**

... Often lots of conditions on orders ... too onerous ... woman have no way to do it ... no idea where to go to. Need to fund support workers to do that ... problems with conditions ... period of time in which to do ... different types of conditions ... very onerous ... adult has to find a way to meet conditions themselves ... not enough support available to meet conditions ... supports are crucial to improved outcomes ... refuge workers get stuck with support to meet conditions ... needs to be better resourced. **Aboriginal support worker**

... DV worker helped me find parenting course and counsellor. **Aboriginal victim/survivor**

... DHS workers leave them to it ... we take this role ... we make sure it is all done [FVPLS] ... client given very little support when has child back. **Non-ATSI lawyer**

... No ... DHS do not provide any assistance ... actively saying up to the client to address ... mostly will not even provide referrals ... if we acting can link in with services but if we not doing it ... mostly will not happen ... sometimes many conditions attached and it's too difficult to meet all of the conditions on a practical level ... not doing enough to support families ... more time needed to link families in with services etc. ... less time on court process ... clients often confused about the conditions/what they are required to do and haven't had it explained to them [or the implications of non-compliance] if they haven't been represented. Most who have been unrepresented have thought DHS would arrange all of the counselling etc. **Non-ATSI lawyer**

... Don't think they are getting enough supports ... if come through our service ... yes but otherwise no. **Aboriginal coordinator family violence service**

... Are services available e.g. drug and alcohol ... men's programs ... is stuff there ... accessing them is the issue ... depends on who works in those jobs ... is a lot of worry about confidentiality. **Aboriginal support worker**

... DHS places a lot of demands on clients which are unrealistic for client's personal situation ... where has to seek housing for example ... but she barred from Department of Housing and has debt ... DHS not doing anything to assist her in this dilemma ... doing nothing ... lack of clarity re. who to provide supports for conditions ... where live five k away from service and no car ... all very difficult and needs to be factored in. More attention needed on these support issues. **Non-ATSI lawyer**

... Community organisations are providing this support re. fulfilling orders ... DHS may make referrals at the most ... co-ops, health centres ... NGOs require a lot of support given the issues in people's lives. **Non-ATSI lawyer**

...Needs to be solid arrangements with regard to times and dates for access because DHS will say they

*cannot guarantee transport of a child which is especially problematic when the child is at an undisclosed address – if left as ‘by agreement’ then access may not happen. **Aboriginal lawyer***

General supports for family members in the child protection process

Project participants generally agreed that good supports are essential for ATSI people in the child protection system. **We have previously detailed the need for legal representation, but given the multiple issues facing parents/carers where DHS has intervened, and also given the onerous conditions often included in court orders or Case Plans, general case management support is essential. Several participants mentioned the need for support services to be working more closely together. Support services independent to the ACSASS advisory role administered through the Lakidjeka program of VACCA and Mildura Aboriginal Corporation are required.**

ATSI victims of family violence or sexual assault who are involved in the child protection legal process clearly require high levels of support when engaging with the legal system. Dedicated, culturally appropriate support roles are required to increase access to justice and to improve outcomes for children and parents/carers impacted by violence. **FVPLS Victoria strongly supports the funding of paralegal support positions to work alongside lawyers in ATSI legal programs.**

In relation to support issues, project consultation comments included:

*... Right from the moment that DHS was involved I needed a support person to advocate for me. DV worker helped me understand it better ... had to do counselling ... DV worker found me the counsellor. **Aboriginal victim/survivor***

*Good to also have paralegal support ... taking different role to lawyer ... helping client cope with anger/emotional issues and again practical issues e.g. transport etc. Many clients not in a good place emotionally for various reasons ... general support more important for these reasons. **Aboriginal paralegal support worker***

*... Need to work together with services ... need all pieces together ... need extended family and support services linked in ... legal services working together [more] ... emotional and wellbeing ... clinical supports. **Aboriginal support worker***

*... more variety of family support and community support services available for Aboriginal families that are evaluated and successful. **Non-ATSI lawyer***

*... DHS say to get child need to do ‘a b c d e f g’ ... but where does person go to get supports for this? ... not enough support available to meet conditions ... need to fund support workers to do that ... supports are crucial to improved outcomes ... supports for carers needed. **Aboriginal support worker***

*... Follow-up support needs to be clearer ... meetings are useful to coordinate services ... What about people who don’t have supports in place? **Aboriginal support worker***

*... Need to work together with services ... not go off on their own ... need all pieces together ... have to do extended family stuff ... need extended family and support services linked in. **Support worker***

Proposal 22

That an ATSI-led review be conducted of the way in which support is provided to ATSI family members in child protection cases (including to meet conditions attached to court orders) with a view to better resourcing and coordinating this process. That the role of Aboriginal Family Decision Making meetings or Case Plan meetings be incorporated within this review.

Given the intensive support work required for ATSI victims/survivors involved in child protection legal proceedings, that dedicated culturally appropriate support positions be funded to complement child protection legal assistance.

Court process and the law

As mentioned already, a number of reviews related to child protection and legal process are currently underway. With respect to specific initiatives for ATSI children and the impact of broader changes upon ATSI children and families, it is important that the ATSI community is centrally involved through established law and justice community processes.

Project consultations indicated strong support for the introduction of ATSI Liaison Officers into the Children's Court. Participants also recommended for the court to produce a reader-friendly pamphlet about the principles it must apply which should be made available where ATSI children are involved in the child protection process.

*... An Aboriginal liaison person in the Children's Court would be helpful ... to provide support ... check that I understand what's going on and that I feel listened to ... I didn't know about special rules/laws for Aboriginal children in the Children's Court/child protection system. A Children's Court pamphlet would help. **Aboriginal victim/survivor***

*... Aboriginal liaison would be good at the Children's Court. Lot not being represented ... liaison officer may be able to sort this out. **Non-ATSI Lawyer***

*... Koori liaison officer at the Children's Court would be helpful ... ensure Koori people are aware of their rights/understanding of the process. **Aboriginal regional family violence coordinator***

*... More information about rules and procedures for Aboriginal children in the court. **Aboriginal support worker***

*... Information at court about Aboriginal principles in making decisions about Aboriginal children would be good. **Aboriginal support worker***

There was a suggestion that consideration should also be given to providing a basic Koori-accessible information pamphlet, including referral details, when notices are served relating to ATSI children.

*... Consider Koori-specific notice with service. **Non-ATSI lawyer***

*... should be referral for legal advice ... through notice or at time of apprehension ... list of referrals ... in NSW do get the referral from Department Of Community Services because they do provide the information ... wouldn't be too difficult but needed on a regional basis. Perhaps could include information about Lakidjeka also ... and Aboriginal principles. Information needs to look different to the application ... needs colour, logos etc. ... so that it does not look like a publication of DHS ... possibly trial it as a pilot? **Non-ATSI lawyer***

Participants viewed the court itself as intimidating to ATSI people and, as previously mentioned, support was expressed for greater options to access Aboriginal Family Decision Making meetings prior to or alongside court proceedings. Ensuring culturally appropriate court dispute resolution processes has also been discussed. A Koori Court model for dispute resolution/conferences may be appropriate in some circumstances. A more Koori-friendly process within the court itself, which may include a Koori List, and strengthened cultural awareness training for magistrates and staff were seen as positive developments. **Again, FVPLS Victoria is encouraged by the current Department of Justice research project aimed at strengthening Children's Court processes for Koori children and families, which is the appropriate forum for these developments.** It is noted that the Children's Court is represented on the project steering committee through the President of the Court, Judge Grant, who is keen to strengthen culturally appropriate processes within the Family Division of the court.

As stated above, given the very significant human rights at stake in this jurisdiction and the power differentials, it is imperative that robust legal process and provision of legal representation are guaranteed in any reform of the court. On this point, FVPLS Victoria Mildura Solicitor Rebecca Boreham has publicly expressed concern about the evidence relied upon in the Children's Court in its decision making in the context of the importance of strong legal advocacy and process:

... In child protection investigations which proceed to Court most of the evidence which is presented is in the form of allegations about what the worker believes and what others may have told them: rarely is their investigation supported by primary source evidence like medical reports, police investigations or reports from workers who have a history of working with the families. Assertions about the long-term effects of decisions like separating children from family, the importance of establishing routines and the effects of exposure or experiences of child trauma are presented to the Court without any sociological, scientific or medical supporting material. Important decisions with such huge consequences as these—taking children from their families, stopping or limiting contact with parents, siblings and extended family, relocating children to new suburbs, schools and towns—need to be made in the bright light of facts and a process which allows for the rule of law to be relied upon. Allegations need to be proved to be true, proposed courses of progress need to be shown to be in the best interests of the children, and support children's continued need to be able to (where possible) be a part of their families of origin.

... The Children's Court and the judicial process provides often the only opportunity that our clients have to test allegations and ensure fairness for them and their children. For many of our Koori clients it is the only way to ensure that the mandatory Aboriginal Child Placement Principles are given proper weight and in many instances even adhered to. In the Children's Court they are able to challenge decisions of the investigating child protection workers, often made arbitrarily and on the basis of incomplete investigations and inaccurate assumptions.¹²

FVPLS Victoria strenuously supports retention of the Children's Court Family Division and is opposed to any change to a tribunal model. The Criminal and Family Divisions of the Children's Court must remain integrated.

Improved or simplified processes for family members to be joined to proceedings were suggested.

*... where significant family members with significant interest in proceeding e.g. grandparents or other close family members ... needs special provision for Aboriginal family members ... more simplified process to be involved. **Non-ATSI lawyer***

*... cases where no one in the family knows can step forward about wanting the child in their care ... then being joined in proceedings ... are people being excluded who should have been included at the first instance. **Non-ATSI lawyer***

*... where parties do not have lawyers, extensions to orders often seem to be agreed to without much in-depth investigation as to how things are proceeding other than as detailed in the DHS report. **Non-ATSI lawyer***

Strong concern was expressed by lawyers about DHS not appropriately communicating with them as legal representatives about the progress of cases and meetings. The introduction of procedural regulation is required to address these matters.

*... there needs to be legislation which requires DHS to notify legal representatives of all key events including when a Best Interest Planning meeting is on. Recently I was notified by a midwife involved in my client's case that a key meeting was on that afternoon where DHS was intending to propose tracking to permanent care and cessation of contact. **Aboriginal lawyer***

*... there is no legal acknowledgement by DHS when a legal representative is involved ... there needs to be a formal process for this ... lawyers are cut out of the system. **Non-ATSI lawyer***

*... DHS regularly ignore lawyers acting for clients ... don't communicate through lawyers, don't provide with notice of meeting details. **Non-ATSI lawyer***

... on one occasion my client rang me in the morning and said, are you coming this afternoon? ... it

¹² <http://www.theage.com.au/opinion/society-and-culture/the-chance-to-be-heard-20091220-l7e1.html>

turned out a crucial BIP meeting had been scheduled and despite my having been involved in the case for some time DHS had not notified me that the meeting was on. My client presumed that I knew.

Non-ATSI lawyer

There was also a lot of criticism about DHS's late provision of reports and the impact of this upon Court time and Court process. The manner in which DHS is represented in the Children's Court requires review.

*... DHS give excuses for why they have not provided crucial material earlier ... it is very problematic ... the Department's Court Advocacy Unit do not get the report until the caseworker arrives at Court either ... the lawyer/counsel for DHS never seem to have info about the last court date. The Department's duty lawyers change regularly ... there is no consistency ... the duty lawyers lack knowledge about the background of cases ... unless a case is going to trial and then they try to keep the same lawyer/counsel involved. **Aboriginal lawyer***

As detailed in Section 4.7, review of DHS Case Plans must be heard in the Children's Court rather than at VCAT.

The law

Most criticism emerging from the consultations was about awareness and implementation of existing law for ATSI children; however, there were several areas for which reform was suggested. The requirement for a child to be in out-of-home care for a period of six months prior to a permanent care order becoming available was considered inappropriate. Given the multiple issues in people's lives and the longer time period needed to address such issues this timeframe is considered too short.

*... The new six-month law leading to permanent care is stupid ... previously two years ... very short time for parents to get themselves together ... takes a long time to work through issues ... DHS makes people climb Mount Everest to get kids back ... is a long struggle. **Aboriginal support worker***

There was a suggestion that cultural plans ought to be legislated as mandated in more out-of-home care placements of Aboriginal children, and that legislation to further clarify the Aboriginal Family Decision Making process would be of benefit.

*... Cultural plans ... only mandated to be prepared by the Department at the guardianship stage ... need to be written more and at an interim stage ... damage that can be done at interim stage is no less than at the later stage ... not properly planned response to the child at risk. **Non-ATSI lawyer***

Proposal 23

That, in consultation with the ATSI community, a review of Children's Court (Family Division) processes, legislation and procedure applicable to ATSI children in the child protection system in Victoria proceed (noting the current Koori-specific Children's Court (Family Division) project underway within the Department of Justice Victoria), incorporating consideration of:

- a review of court procedure with respect to ATSI children and families. Given the significant human rights at stake in Children's Court Family Division decisions, this review must acknowledge the requirement for a robust legal process that is culturally appropriate and addresses access to culturally appropriate legal and support services.
- culturally appropriate pre- and post-court dispute resolution processes for ATSI children, incorporating review of the Aboriginal Family Decision Making Meeting process (see proposal 21)
- the requirement of preparation of cultural plans in broader circumstances
- a review of the provision allowing a permanent care order to be made after a child has been in out-of-home care for at least six months or for periods that total at least six of the last 12 months
- jurisdiction for review of DHS Case Plans transferring from VCAT to the Children's Court
- regulation which improves the provision of information and reports by DHS and requires DHS to formally notify legal representatives of case events
- creation of an ATSI liaison position in the Children's Court (Family Division)
- the production of a Children's Court pamphlet setting out the specific law and procedure which applies to cases involving ATSI children in the Children's Court (Family Division)
- ongoing cultural awareness training for all Children's Court staff, magistrates (and lawyers/counsel providing assistance through VLA grants)
- trial of an ATSI-specific information/referral notice to be served with protection applications involving ATSI children.

Placements and visits

Some concerns expressed in the project consultations about placements and visits included:

- inadequate access arrangements between parents and children in out-of-home care
- placement of children in locations where visits by a parent was very difficult to arrange, thereby hindering reunification
- not fully investigating extended family placement options
- separation of children in placement which impacts on their bonding
- placements where children are not well cared for
- lack of follow-up by DHS of children in placements
- inadequate visiting times
- inadequate follow-up on permanent care orders
- inadequate checking of children in out-of-home placements.

*... Placed with both Indigenous and non-Indigenous family. Non-Indigenous foster carers were terrible ... I complained and DHS never followed up. DHS would say that the kids were lying. Separated the children for some reason ... better all together. Bond has been broken between children ... can still see the impact now. Children were apart for about eight months. **Aboriginal victim/survivor***

*... without legal advocacy, arrangements for visits between ATSI children in out-of-home care and parents is often completely inadequate. **Aboriginal lawyer***

*... Often if DHS do not have resources to facilitate access it doesn't go ahead ... there are examples of parents having to travel very long distances to see children ... where DHS have moved children to locations making access almost impossible. **Aboriginal lawyer***

*... More attention to kids' needs in care ... are their needs being met properly ... how are they going with carer ... instances of abuse by carers ... needs much more intensive follow-up and oversight. **Aboriginal support worker***

*... No follow-up happening on permanent care orders ... cultural planning is critical ... oversight and review on permanent care. **Aboriginal support worker***

Improved support for carers

A number of participants raised the issue of out-of-home carers receiving inadequate support, particularly where extended ATSI family or relatives assume that role.

Proposal 24

That the arrangements for ATSI children in out-of-home care be strengthened through an ATSI-led review of:

- adherence to the Aboriginal child placement principle and location of suitable extended family placements
- parental access/visiting arrangements with respect to ATSI children on out-of-home care orders
- the support (financial and practical) provided to extended family who become carers
- oversight of ATSI children in out-of-home care incorporating:
 - enhanced scrutiny by the court at the time of extension of applications/orders
 - improved resourcing to community agencies for this oversight function
- the oversight of ATSI children placed in permanent care arrangements, including of cultural issues and implementation of cultural plans where appropriate.

Complaints/oversight

Those participants who had been involved in making complaints against DHS's conduct were unhappy with the outcome, and thought there should be a dramatically improved process that ensures speedier responses and enhanced accountability.

There was also strong support for the introduction of accountability/audit processes to ensure that the required legal and procedural provisions applicable to ATSI children and families within the child protection system are being implemented. This suggestion was raised in the context of evidence of failings in this regard, and also in response to the vast overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system in Victoria.

*... Some kind of overseeing of individual client files to ensure being done properly. **Aboriginal support worker***

*... the independent complaint process to the Ombudsman is too slow. **Aboriginal lawyer***

*... There should be an efficient, independent complaints process for DHS child protection matters which is easily accessible. **Non-ATSI lawyer***

*... Oversight by Aboriginal Children's Commissioner? ... responsibility to report every year on compliance with key issues e.g. numbers of Aboriginal children in out-of-home care and on care and protection order, the numbers of Aboriginal children under voluntary out-of-home agreements, cultural plans prepared, compliance with placement principle, AFDMs held etc. **Non-ATSI lawyer***

*... Checking of what has been done for Aboriginal child ... who is doing what ... have principles been complied with. **Non-ATSI lawyer***

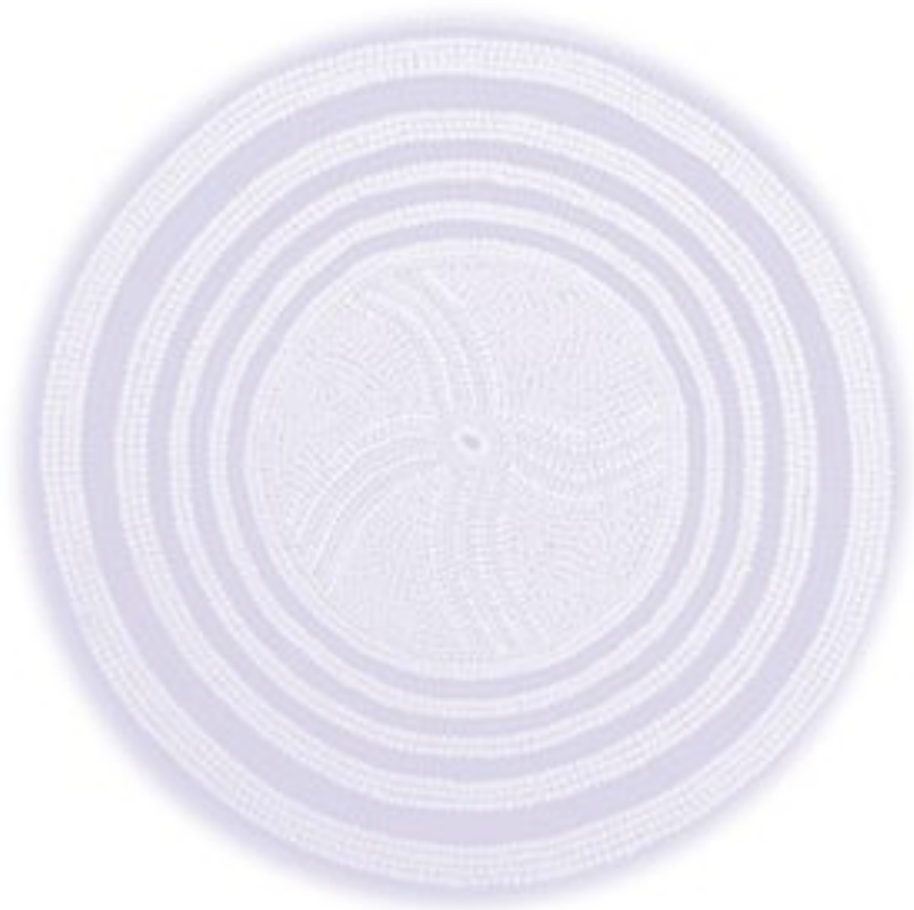
*... Needs some type of oversight system for child protection cases. **Non-ATSI lawyer***

*... Complaints mechanism needs to be better ... access easily and quick action. **Non-ATSI lawyer***

Proposal 25

That, in consultation with the ATSI community, consideration be given to the introduction of an independent oversight process to increase accountability in relation to the implementation of legislative and procedural provisions specified for Aboriginal and Torres Strait Islander children in Victoria. A systemic advocacy role may be incorporated within this role.

That a simplified and improved complaints process be implemented for ATSI families in relation to DHS Child Protection conduct to ensure speedier responses and enhanced accountability.



Section 3: Family violence/intervention orders

3.1 Introduction

It has been the experience of FVPLS Victoria that ATSI victims/survivors of family violence and sexual assault are more reluctant to report family violence and sexual assault and to take out intervention orders than are the broader population. This is anecdotal, but is consistent with the lower take-up of family law options by ATSI people.

Women and children are disproportionately impacted by family violence, and women make up about 90% of FVPLS Victoria's client group. The Australian Government Productivity Commission report, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, provides the most up-to-date relevant data indicating appalling outcomes for Aboriginal women and children nationally:

- Indigenous females were 35.1 times more likely to be hospitalised due to family violence than non-Indigenous females.
- Indigenous females sought Supported Accommodation Assistance Program (SAAP) assistance in 2006–2007 to escape family violence at the rate of 45.0 per 1000 population compared with 3.3 per 1000 population for non-Indigenous females.
- Indigenous children accompanying SAAP clients escaping family violence attended a SAAP agency at a rate of 569 per 10 000 Indigenous children, while for non-Indigenous children this rate was 66 per 10 000.
- Police data indicates that in Victoria, in 2007–2008: for Indigenous females, the rate of domestic violence–related assault was five times as high as the rate for non-Indigenous females (a warning about the unreliability of police data is given due to underreporting and the failure to identify Aboriginality).

The availability of dedicated legal services for ATSI victims/survivors through FVPLS Victoria has resulted in their growing engagement with the legal system and a greater willingness to seek protection through legal options. More proactive policing whereby police take out safety notices and intervention orders on behalf of victims is also resulting in more ATSI victims/survivors engaging with the legal process and having orders made in their favour. Department of Human Services intervention in the child protection area, where family violence is prevalent, is another prompt for ATSI victims/survivors to take out intervention orders on behalf of themselves and their children.

As a result of a Victorian Law Reform Commission inquiry and 2006 report, *Review of Family Violence Laws*, a new Family Violence Protection Act was introduced in Victoria in 2008. The Act specifically recognises Aboriginal and Torres Strait Islander family relationships within its definitions. The Act also broadens the definition of other family relationships, introduces police-initiated, after-hours

Family Violence Safety Notices (FVSNs), extends the definition of family violence, provides for associated persons to obtain orders, strengthens provisions for children's safety, and introduces a raft of measures to improve legal processes.

Despite these significant developments, FVPLS Victoria's experience and the project consultations confirm the need to improve ATSI accessibility in the family violence/intervention order process.

The Department of Justice Victoria is currently undertaking a Koori Family Violence Court Support pilot project. This initiative emanates from the '10-year plan' developed by the Victorian Indigenous Family Violence Partnership Forum.¹³

...Action 5.1.2 Enhance court capacity to provide culturally competent responses to Indigenous people affected by family violence.

The project will proceed not as a specific Koori court list model but rather as an approach to tracking intervention order (IVO) applications involving Koori applicants or respondents and to providing a culturally competent service. FVPLS Victoria seeks to ensure that culturally competent processes are in place in all Victorian courts.

The Commonwealth Government has also initiated an inquiry into the relationship between family law and family violence law which will look at cross-jurisdictional issues including in the child protection area.

FVPLS Victoria welcomes the changes that have occurred in Victoria and the recently announced Commonwealth review. The interaction amongst family law, family violence law and child protection is significant in the legal work of FVPLS Victoria in supporting ATSI victims/survivors—yet it is also complex. The opportunity to contribute to a process aimed at better integrating and strengthening culturally appropriate responses in these areas for the benefit of our client group is welcomed.

FVPLS Victoria is also proposing that a dedicated project be undertaken at the Commonwealth level to examine Aboriginal and Torres Strait Islander accessibility in the family law system.



FVPLS CEO Antoinette Braybrook, Minister for Housing, Local Government and Aboriginal Affairs Richard Wynne, Wurundjeri elder Aunty Joy Wandin Murphy and FVPLS Chairperson Marion Hansen.

This discussion will focus on the feedback received through the project consultations about the experience of ATSI victims/survivors with intervention orders, with the aim of informing what might improve ATSI accessibility. The experience of FVPLS Victoria in the delivery of services over the past five years also informs the discussion. Some of this information has already been fed into the Victorian Department of Justice Koori Family Violence Project consultation.

¹³ *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities*, Department of Planning and Community Development, May 2008.

3.2 Key consultation findings

Crisis response and legal referrals

Whilst the focus of the new family violence legislation in Victoria and the introduction of Family Violence Safety Notices support women and children remaining in the home, for many women this is not a safe option and refuge or emergency accommodation is necessary. Going to stay with other family members is not always safe and taking out an intervention order in isolation will not necessarily be the safest option for women and children either.

FVPLS Victoria welcomes recent funding by the Victorian Government through DHS for additional ATSI refuges for rural areas. This will provide more culturally appropriate crisis and safety options for ATSI women and children. It has also been pointed out that some women, particularly from smaller communities, will inevitably be safer in the metropolitan area, which must be factored into refuge, legal service and other support arrangements.

... Problems with Aboriginal women going to the refuge here ... women have breached refuge protocols ... refuge not appropriate for Aboriginal women ... is a problem where only one service available ... treatment at hotels is a problem ... Indigenous refuge ... funded through DHS ... in Mildura ... is a good development. Aboriginal coordinator family violence service

... because of best practice for safety ... women need to access urban areas for safety reasons ... it is easier to keep women safe in an urban areas ... small communities make it very hard to keep people safe. Key statewide Indigenous service

It is important that women are supported in making decisions about safety options at the time of police attendance. Family and friends will often not be available and, given poor interactions with police, the availability of an independent person to assume this role and advocate with police on the victim's behalf is critical. **Due to past and ongoing trust and communication difficulties between ATSI people and police, it is the experience of FVPLS Victoria that access to culturally appropriate legal and general support services is vital to ensuring women remain engaged with the legal process from the point of crisis.**

... It is my experience that being able to take time to talk through the legal options with a woman before her having to go to court and having the opportunity to advocate with the police on her behalf about the terms of an order or about the status of criminal charges reduces her stress and can change her attitude to the way she wants to proceed significantly. Often the police also appreciate receiving information that has been missed and things tend to get off to a much better start. Even where a woman decides not to proceed, being able to discuss her reasons with police assists in their understanding and hopefully with an improved response by them the next time. Non-ATSI lawyer

The introduction of after-hours Family Violence Safety Notices issued by police was a major reform contained in the *Family Violence Protection Act 2008*. FVSNs must be returned to the court within 72

hours of issue. Feedback indicates that in many instances women are not accessing independent support and advice prior to the return date for the Family Violence Safety Notice. **FVPLS Victoria is concerned about the high numbers of ATSI women/victims not appearing at return dates for Family Violence Safety Notices and the safety implications of this.**¹⁴ FVPLS Victoria's experience indicates that court procedures vary where the applicant fails to appear. It is important that court processes ensure that ATSI women have had the opportunity to obtain culturally appropriate support and legal assistance prior to striking an application out. Again, a stronger culturally responsive ATSI crisis support system would assist with addressing this problem. FVPLS Victoria has a 1800 105 303 number which operates between 9 and 5 pm only, and refers to mainstream crisis support services after hours.

We have previously recommended the review and strengthening of culturally appropriate crisis support services for ATSI victims/survivors—to assist in making safety decisions, to advocate with police and to make and follow up on necessary referrals. We have argued that this review needs to happen at the state and local levels (see Paper 2, Section 7: After-Hours and Crisis Supports).

*... We are not being notified in the early FVSN stage ... MOU arrangement may help a bit ... something to keep an eye on. **Aboriginal coordinator family violence service***

*... Still issue about people not turning up to court ... depends on the person ... victims need support at the initial phase ... on-call workers ... immediate support response ... to ensure they don't fall through the loops in terms of support and referrals. **Aboriginal support worker***

*... Quite a lot of women who are not turning up to court on return date ... gets struck out ... not sure how much attempt to contact the woman there is. **Key statewide Indigenous service***

Proposal 26 (See Paper 2, Section 7)

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after hours support) who experience family violence and sexual assault, and that this review incorporates the role of Victoria Police. The review must incorporate statewide and local processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

See the Victorian Law Reform Commission's Family Violence Report 2006:

...26. The Indigenous Family Violence Partnerships Forum should consider the possibility of providing an Indigenous victim support scheme that is available to offer support when the police are called to a family violence incident.

¹⁴ Reported by the Mildura FVPLS office, February 2010.

Family Violence Safety Notices (FVSNs)

In addition to the need for culturally appropriate support services after issuance of an FVSN, other concerns have arisen on the basis of the experience of FVPLS Victoria with respect to Family Violence Safety Notices around:

- the initial FVSN form not containing provision for ATSI identification
- concern that women may stay in the home with an FVSN when removal would be a safer option
- FVSNs being struck out where parties fail to appear
- children being inappropriately omitted from FVSNs by police
- court support services not being available on FVSN return dates
- legal services not being accessed or available following issue of an FVSN and prior to return date due to the short turnaround period
- police/prosecutors failing to adequately explain the details of the FVSN to a family violence victim or to tailor it appropriately to the protected person's situation
- inappropriate negotiation about arrangements for children at the FVSN return date where legal advice is not available or has not been obtained
- provisions in the legislation with respect to property return etc. not being adequately dealt with.

Proposal 27 (See Proposal 11, Paper 2)

That crisis legal referrals for ATSI victims/survivors be made at the earliest possible time to ensure improved legal outcomes.

That court processes with respect to the return of Family Violence Safety Notices ensure that the victim has had reasonable opportunity to access culturally appropriate legal assistance prior to applications being struck out or final determinations made.

Taking out intervention orders

Key issues and barriers to ATSI women accessing intervention orders

Whilst appropriate responses to family violence differ between individuals according to their generally complex circumstances, consultation feedback indicates that reluctance remains amongst ATSI women to take out intervention orders, although access to culturally appropriate services has a positive impact in this regard. The reasons for this reluctance include:

- don't want to add another person (family member) to the justice system
- dislike of police and unwillingness to engage or expectation of a lack of assistance from police
- the stigma within extended families and fear of backlash
- that it will add fuel to the fire and make the violence worse
- embarrassment/shame

- don't know what it is or what it means
- fear of an, unfriendly court process
- feeling isolated with the violence with nobody to talk to
- fearing police will involve DHS child protection
- concern that the order will mean the father can't see the children
- not knowing that you can have an intervention order and still live together.

*... I didn't want to be in court in the first place. I don't believe in intervention orders because it provokes the other person ... it's a piece of paper ... they still come. Restricts you in the community because you are seen to provoke a situation ... so I stayed away from my community. **Aboriginal victim/survivor***

*... Yes ... I knew about them and had to trust that the law would look after me ... without a paper I wouldn't feel protected ... I had to feel protected. I had not taken out an IO earlier because I thought it would make it much worse. It actually did get worse and charges and prosecution followed. **Aboriginal victim/survivor***

*... In the past I haven't ... because they were my family ... I didn't want to get them into trouble ... it's the Aboriginal way ... in the end I got sick of being stood over ... it also helps having someone to support you in making decisions about this. I had a DV support worker involved. **Aboriginal victim/survivor***

*... I reckon it provokes the other person ... agitates them. Have got orders because support services have encouraged me to. I just cooperated. **Aboriginal victim/survivor***

*... Still reluctant ... this is because the court process is confronting ... the set-up of court ... formal and unfriendly place. **Aboriginal support worker***

*... don't want to add another person to the criminal justice system ... hate justice system, hate police, stigma in extended families, don't believe will help ... add fuel to fire ... he will come back twice as hard ... too embarrassed ... don't know what it is ... how to access ... what it means. **Aboriginal support worker***

*... Problem with family violence is that you get isolated from everything ... you feel like you are on your own ... you can't talk about what is going on. **Aboriginal victim/survivor***

*... I didn't want my family involved with what was going on. I was scared for my family. I was embarrassed as well about what was happening. **Aboriginal victim/survivor***

*... Police made me get one. For safety ... I stayed in a shelter. **Aboriginal victim/survivor***

*... sometimes fear around upsetting their own family or other party's family if they take out IVO i.e. might lead to further violence/inter-family dispute or isolation within their own family. **Non-ATSI lawyer***

Reluctance to have police lay charges relates to similar issues as those listed above, and is compounded by the situation then becoming a criminal process.

... I would not lay assault charges against him. I didn't because I thought it would make things worse. That he would be locked up and then be let out again ... nowhere to go with domestic violence.

Aboriginal victim/survivor

Women appear more likely to have intervention orders where:

- police have acted as complainant
- the violence is more serious and women are more prepared to obtain an order for themselves and their children
- there is DHS involvement in relation to child protection concerns
- support services are involved early e.g. refuge or other family violence or legal services.

*... Case by case ... where people are reluctant is often because of how they thought others would see them ... depends how connected they are to family/community. Most are not reluctant to take out orders ... where incident serious are more prepared to take out. Support workers make a difference ... breaks down mistrust of the system. **Aboriginal regional family violence coordinator***

*... Better professional supports throughout process. Don't want family to worry. Breakthrough came when came to your service [FVPLS Victoria]. Matter of trust that I will be respected. **Aboriginal victim/survivor***

Lawyers and support workers emphasise that intervention orders must be viewed as part of a broader safety plan that incorporates practical support, counselling and other legal assistance.

*... Contribute to safety to some degree but also more effective within a holistic response i.e. counselling for respondent, safety plans for women and kids. **Non-ATSI lawyer***

*... is a tool in a safety plan. **Aboriginal regional family violence coordinator***

The role of legal and support services

- Culturally trusted legal supports can address barriers to seeking assistance/safety through the legal system. The experience of FVPLS Victoria indicates that the availability of culturally safe and trusted legal, crisis counselling and other supports, whereby all of these issues can be worked through, is absolutely critical. Without these supports the barriers remain, and consideration of legal options and potential benefits is unlikely. It is important to make clear that the barriers to access and the need for culturally safe and trusted legal assistance are equal for women in rural and urban areas (whereas the Commonwealth does not consider that FVPLS services are required in urban areas).

*... should be no different ... still Aboriginal women needing support. **Aboriginal victim/survivor***

... lack of legal services adds to the problems Aboriginal communities have to deal with ... everyone should have the right to legal assistance. It should not be about funding restrictions. I should know as an Indigenous woman that I can get access to culturally appropriate legal services when I need it.

Aboriginal victim/survivor

*...what are metropolitan families supposed to do? ... I disagree that we will access mainstream services ... we are the First Australians. **Aboriginal victim/survivor***

- Support services: The involvement of support services, including at court, was seen as essential by consultation participants. Access to an ATSI support worker means that women are more likely to follow through on the legal proceedings, and it lessens the stress of going through the process.

*... Need a support person there from start to finish. Women don't know how to speak in the courtroom ... don't understand that they have to say everything. **Aboriginal support worker***

*... Feel more confident when Indigenous worker at the court ... and support worker in tow. If left to own devices ... confidence is low. Feel re-victimised when questioned about what has happened. Have to retell story and justify themselves. **Aboriginal regional family violence coordinator***

*... Having an Aboriginal worker is a great support. **Key statewide Indigenous service***

*... Our women need to have support worker/counsellor. **Aboriginal support worker***

*... would have been great to have an Indigenous worker to support me. I was so nervous that the magistrate said ...- need to have a break ... I had no one to support me. Felt emotional with complete strangers, which was uncomfortable. **Aboriginal victim/survivor***

*... X supported me in her role at the court. She is also a friend ... this made a big difference for me. **Aboriginal victim/survivor***

- Child protection issues: With respect to the fear of child protection notification, FVPLS Victoria generally urges people to seek confidential legal assistance as soon as contact is made by DHS child protection in all situations. Legal advocacy with the Department can relieve the stress experienced by women and can often resolve matters early. The taking out of intervention orders is generally viewed by DHS as a protective action—obtaining independent legal advice about this to ensure the full exploration of options and tailoring of any order to the victim's particular circumstances are essential. With appropriate information and support, fears about the removal of children can be dissipated.

- Access to legal advice even where police prosecute: Accessing legal advice early was also seen as important. Even where police take out Family Violence Safety Notices or act as complainants on intervention orders, obtaining legal advice to ensure that the order is tailored to the applicant's needs and circumstances is deemed necessary. Examples were cited of police not paying sufficient attention to the victim's particular situation, not clearly explaining the order or the process, and not having the time to deal with children's or other issues arising as a consequence of the order.

*... legal representation really important ... especially when police take out the order ... they tick every box on the sheet ... don't tailor orders to the needs of the victim ... if no one to support them to get legal advice ... order is likely to be breached if not appropriate to the situation. **Aboriginal support worker***

*... legal representation is paramount for women ... to ensure understands full options and what it means ... so not to minimise safety issues ... tailoring of order needed ... more likely with legal assistance. **Aboriginal regional family violence support worker***

*... legal representation important at application time ... often is only available at first mention ... then often too late ... mistakes made in intervention order application. **Non-ATSI lawyer***

Comments were made that police training on the new Family Violence Protection Act needs to be strengthened to ensure that victims are accessing their rights under the legislation.

*... Need for more training on the new Act. Police had training but not detailed enough or practical enough. **Non-ATSI lawyer***

*... Police don't want to implement new things under the Act such as return of personal property clauses. **Non-ATSI lawyer***

*... not responding to the terms of individual people's orders in terms of breaches ... under the old Act police would charge for physical assault but not otherwise. **Non-ATSI lawyer***

- Early access to legal advice: There are still instances where women are applying for orders without police involvement (including by choice); again, legal assistance is very important at the application stage to ensure the complaint and the orders sought are appropriate. Reference was made to the application form process not being culturally friendly and to the fact that women with limited literacy will perceive the application process as another barrier.

Women's experience in seeking an interim intervention order is highly determinant of their willingness to return for the full hearing. The more supported women are, the more likely they will be to follow through.

- **Safety issues:** Lawyers provide additional safety for women in the court process. One lawyer said she had witnessed situations in which being able to explain to extended family members the intervention order process—that it was a civil and not a criminal process, and about the different types of orders that could be made—had helped the woman applicant deal with those tensions.
- **Tailoring orders:** There was a strong sense amongst lawyers and support workers that the community is not aware of the extended family violence definitions, of the various types of orders available under the new legislation and that it is possible to have an intervention order in place but to remain living together. Ensuring the community can access this information was considered important to breaking down some of the misinformation and mistrust surrounding intervention orders.

*... Knew a little about intervention orders but not about the different type of orders you can get. I thought order could only cover my street ... couldn't be got in other places ... police did not explain properly. **Aboriginal victim/survivor***

- **Arrangements for children:** Where children are included on intervention orders it is generally not appropriate that child visitation arrangements be made on the return date of the Family Violence Safety Notice or intervention order in that pressured environment (see similar comments in relation to return dates for Family Violence Safety Notices). This is another reason why obtaining legal advice prior to that date is beneficial. Feedback received also indicated that women are in some cases seeking to revoke or are not proceeding with orders because they believe the order will stop the father seeing the children. Again, legal advice in relation to these issues is essential.
- **Holistic legal response:** The new Family Violence Protection Act specifically sets out its interaction with Victorian child protection law (Children, Youth and Families Act) and federal family law (Family Law Act). It is more critical than ever before that all of these issues are dealt with holistically. There is substantial benefit to ATSI victims/survivors having one legal service that can assist them with all legal areas, particularly given the high rate of ATSI children on care and protection orders and substantial impact of family violence. As FVPLS Victoria has developed, one of its strengths has been the capacity to follow cases through to conclusion in all of the interconnected legal areas. Access to justice for ATSI women tends to break down with the introduction of referrals, particularly to mainstream services. Determinations on Commonwealth/state funding of legal services for ATSI women must take into account the required resourcing for this comprehensive service provision.

One woman who had previously been to private lawyers (prior to FVPLS Victoria commencing) said that she had struggled through the intervention order process on her own the first time around because her family lawyer said she did not need legal representation and that he did not get involved in intervention orders. As a result, her order did not include her children and she was significantly traumatised by the experience.

... No I did it myself the next day ... I didn't know what to expect ... I was in gaga land ... still in shock. I had the lawyers assisting with the family law but they did not assist with intervention order applications ... that was seen to be separate to the family law issues. I felt it was my responsibility to look after the intervention orders. I thought the family law was separate to the family violence issues.

Aboriginal victim/survivor

- Equitable access to legal assistance: It is important that perpetrators of violence responding to intervention orders also have access to legal assistance and general supports.

Proposal 28 (See Paper 1, Proposal 4 and Paper 2, Section 4)

That state and Commonwealth governments collaborate to ensure funding of FVPLS units or ATSI women's legal services for rural, regional and urban communities and that funding be adequate to ensure integrated legal service provision for family violence law, family law, child protection and victims assistance.

Proposal 29

That ATSI support workers be available to support ATSI victims/survivors of family violence and sexual assault in the court process. Appropriate models for this may vary according to local circumstances.

- ATSI victim support workers should be considered for some Magistrates' Courts to provide support with intervention orders, VOCAT, victim support in giving evidence in criminal prosecutions and family law cases where relevant.
- Paralegal positions must be attached to FVPLS Victoria and ATSI support workers funded for other key family violence services.
- Perpetrators responding to family violence intervention orders must have access to legal and support services.

Proposal 30

That Victoria Police ensure ongoing training of its members in relation to the *Family Violence Protection Act 2008*.

Child care

The issue of child care arrangements for women seeking intervention orders was raised by a number of survey participants. Support workers said they are often faced with having to mind children who are not permitted in the courtrooms (as stipulated in the legislation). They pointed this out as unsatisfactory given their role to support women in the court process. At short notice and without access to money, obtaining adequate child care is a significant problem for many women.

*... It did expire ... I forgot about it and had no time to renew. Have kids ... hard to take them to court ... don't want to do that. **Aboriginal victim/survivor***

*... Kids not allowed to be in court. Support worker can't support children and be in court. If support worker minds children, which happens a lot ... they cannot take on support role. **Aboriginal support worker***

*... have to mind children sometimes ... hard with short turnaround on FVSN ... we try to manage. **Key statewide Indigenous service***

Survey participants reported that children are regularly included on intervention orders. One or two participants observed that police are mistakenly leaving children off Family Violence Safety Notices but that in general magistrates are very proactive in ensuring that children's safety is protected.

Proposal 31

That consideration be given to the provision of assistance with child care arrangements for women applying for intervention orders who cannot make or cannot afford other arrangements—including where a court appearance is required at short notice.

See VLRC Report recommendation 64:

... Measures should be taken to provide facilities for children attending court in the context of family violence matters.

The court environment

In relation to the court process itself, the physical environment of the court was raised as a significant issue—particularly in rural courts. Small courts with small waiting areas are highly inappropriate for family violence matters in terms of creating problems around safety, intimidation of victims and lack of confidentiality. Often the older courts have a more traditional set-up and reference was made to a witness box being much higher than the bar table and thus being significantly intimidating, as well as to the lack of space in waiting areas. The physical environment can be a barrier to women seeking an intervention order, and in fact waiting in this environment can be an ordeal in itself.

*... I was really scared ... had to get into the witness box to speak ... I was very nervous ... the magistrate was very good. **Aboriginal victim/survivor***

*... was OK but stressful. Tiny little court ... one interview room. The waiting area was very small ... other people were in the courtroom. I wanted it over and to get out of there. The magistrate was OK ... straight down the line. **Aboriginal victim/survivor***

*... Physical environment is important ... smaller courtrooms are a problem in this way ... have to talk outside the court in park etc. ... in foyer of court all together ... no good. **Aboriginal support worker***

*... Intimidating to get up on stand because of old style [rural] court where you are up above the bar table when in the witness box ... very hierarchical layout ... not friendly. **Non-ATSI lawyer***

*... At smaller courts nowhere to wait away from each other. In those courts lots of intimidation ... physical and emotional ordeal for people ... The doors get opened to outside when it's hot ... makes it even more public. **Non-ATSI lawyer***

*... physical surroundings would be better, a bit more laid back. Would be a good idea to screen victims from perpetrator ... have a screen back behind the lawyer so victim cannot see perpetrator ... looks from perpetrator often make women want to back out. **Aboriginal support worker***

*... needs Koori-friendly environment ... maybe use Koori court room? **Aboriginal support worker***

*... Koori-friendly environment would help ... e.g. like Koori court ... nothing at some courts to make Koori-friendly environment. **Key statewide Indigenous service***

Koori-friendly courtrooms were favoured, with some suggesting that the Koori Courts be used. Other suggestions in relation to the physical court environment included:

- separate doors in and out of court to avoid confrontations between victims and perpetrators
- less formal and Koori-friendly surroundings
- a screen sitting just behind the bar table so that victims and perpetrators are not in each other's vision during the court hearing
- separate waiting rooms to keep victims safe and out of the view of respondents.

Proposal 32

That the Victorian Government conduct a review of Magistrates' Courts in Victoria where family violence applications are heard with a view to improving safety and privacy arrangements for victims/applicants. Particular attention should be paid to rural courts where facilities are poor.

The following recommendations of the Victorian Law Reform Commission, in its *Family Violence Report 2004*, remain relevant:

... 56. All courts dealing with family violence matters should have separate waiting areas in which it is possible to ensure the safety of an applicant waiting for a matter to be heard.

... 57. The availability of separate and safe waiting areas should be brought to the attention of applicants wherever possible before they attend the courtroom, and immediately on their arrival at the courtroom.

... 58. *Wherever possible, there should be at least one separate and safe entrance and exit from the courtroom for the use of applicants in fear of their safety.*

... 59. *Applications for intervention orders should not be required to be made at the inquiries desk or other public spaces in court buildings.*

... 60. *A private space should be made available for inquiries and applications for intervention orders.*

Court processes

In relation to the court process itself, many women said that having to talk about the violence they had experienced in the witness box in front of a busy court was a terrible and shaming experience. One woman who had to give evidence from the witness box with a black eye also had her case reported in the local newspaper the next day.

*... Had to talk about personal stuff to a full court ... had to hear others' family violence stories ... that made it much more traumatic. I felt that if I could have run I would have but my legs were too heavy to move from fear. **Aboriginal victim/survivor***

*... magistrate was good but ... but was the fact I was in the witness box ... all eyes on me with people writing things down. **Aboriginal victim/survivor***

*... didn't like the witness box ... my face was bashed up ... everyone was looking at me ... it was a shame job ... like I'm the one who has done the wrong thing. There were lots of other people in the court. That should be a closed court ... should be personal. It's like the whole town is watching you. I'm well known in the community ... that makes it even harder. **Aboriginal victim/survivor***

*... Looking at emptying court beforehand is good ... where Koori community at court ... Extended family of perpetrator sitting in on IVO very hard for victims ... be better if court could be closed. **Support worker***

*... Manage courtroom better ... so that not a lot of people in the courtroom. **Aboriginal support worker***

*... Young Aboriginal client had to get into witness box in front of packed court at Melbourne ... she had to face everybody and talk about private things she had found it hard to talk to me about ... luckily the magistrate picked up the inappropriateness of the situation quickly and allowed more informal evidence but it was still harrowing and stands out in my mind as an example of the justice system failing Aboriginal women. **Non-ATSI lawyer***

Preference was expressed by participants for the court to be closed to the public for intervention order hearings and for there to be the option of providing sworn evidence from the bar table. Feedback revealed that women often feel victimised when giving evidence for intervention orders, as if they have in fact committed a crime. It was observed that different magistrates approach

intervention order hearings with varying degrees of formality; and there is no doubt that the less formal approach is less intimidating.

There is a recognised need for increased awareness of availability of remote witness facilities and that this should be actively presented as an option to victims. The preparation of victims for the court hearing by taking them into the courtroom to go through what will happen was also encouraged (the possibility of the court producing an online DVD for victims who must attend the Magistrates' Court for various types of hearings is discussed in Section 4: Victims assistance).

The difficulty of court security only extending a certain distance from the court, and the resultant potential for women to be unsafe in getting to their vehicles, was raised.

*... security at court ... but security can only walk so far ... need to park within range of security staff because beyond that is no protection. **Aboriginal support worker***

In small towns the ability to have the application heard in another town, where there is more confidentiality and less chance of intimidation for the victim, was considered important. This would also apply to other types of cases including VOCAT hearings.

*... went through local court first to make the application ... had to have the application shifted to another court because of confidentiality reasons within the community ... there was no confidentiality for me there. **Aboriginal victim/survivor***

Court listing processes for intervention orders were also seen as a concern.

*... Listing family violence orders on the same day as criminal mentions is inappropriate ... [it results in] victims hanging around with offenders. **Non-ATSI lawyer***

Proposal 33

That the pilot Koori Family Violence Court Support initiative within the Department of Justice Victoria address culturally appropriate court process and procedure with a view to improving ATSI accessibility of those arrangements in all relevant Magistrates' Courts in Victoria.

The other issue raised in connection to small, part-time rural courts was the difficulty in accessing interim intervention orders and having to either wait until the court house is next open or travel to the next town where a court is open. It was suggested that police should be able to obtain interim orders by telephone in these situations.

*... inappropriate court venues ... small, part-time courts ... can't get interim order ... have to wait for next day at court. **Non-ATSI lawyer***

... problem with women who want court protection but don't have good relationship with police and don't have own car ... court registry in small town only open once per week ... FVSN from police only

available after hours ... may be told to drive to Mildura. Non-ATSI lawyer

Proposal 34

In small towns where court registries are open only on a part-time basis, that police have the ability to obtain interim intervention orders by telephone during business hours to avoid the victim having to travel to another town to obtain the interim order.

Police responses to repeat calls and breaches (also see Section 6, Proposal 54)

Concern was expressed by workers that in cases where women fail to attend an intervention order hearing it is much harder to get police to respond where subsequent violence occurs. A common point was put forward that it often takes many incidents or attempts to leave before a woman will **undertake the final act of leaving**. One woman said she had tried to leave about 17 times, that she supported her partner after police took out an intervention order on her behalf and that it was not until violence occurred again that she finally left.

... With repeat attendances police get cynical ... 'not again' ... level of frustration with women who decide not to proceed ... they often decide this because of attitude of police attending. History of abuse by partner ... she made a number of contacts over time ... no sense of urgency in serving warrants ... she remains unprotected when tried to take action ... everyone knows she will take him back ... this is education again ... on average women go back seven times before they take any action ... police need better understanding about this. Non-ATSI lawyer

... police apply initially then woman doesn't turn up for hearing ... then go back to police and police say you must do it yourself because you didn't turn up to court last time. Non-ATSI lawyer

FVPLS Victoria can work with women and negotiate with police in these situations to produce better overall outcomes.

... Police are referring to our service [FVPLS] where the woman does not want the order ... we negotiate with police and the client ... police will get a limited order where women do not want to proceed. Our negotiations with police are important. Non-ATSI lawyer

Problems with the follow-up of intervention order breaches were mentioned by almost all of the project participants. It was reported that breaches viewed as serious and for which there was accompanying supporting evidence are followed up by police more often. **However, participants also described the difficulty in getting follow-up by police on many breaches, thereby undermining the intervention process as a whole.** Some feedback indicated good levels of follow-up, but overall the responses were varied. In cases where police had taken action on breaches women reported that the problems had settled down. A common view shared by participants was that police response and follow-up diminished with repeated call outs.

*... They came out ... he nicked off ... police did take him to court. He backed off after this. Took the police a while to take action. **Aboriginal victim/survivor***

*... Eventually did report ... phone calls. Police went and spoke to him ... no charges ... but it did cause him to stop. **Aboriginal victim/survivor***

*... Yes there were breaches ... coming within distance of workplace. Phoning continually, spontaneously ... small breaches which police would not take seriously. Felt not a police issue until a big breach, as is what happened. The smaller breaches were not acted on. Police would say, don't worry ... ring back if more problems ... you have to expect that. It's the little breaches that can make a big impact on victims, especially when raising children ... in getting on with your life the little breaches really get in the way and tire you out. It actually did get worse and charges and prosecution followed. **Aboriginal victim/survivor***

*... breached and he was charged with that breach. So was good to have the order ... police followed up [a serious breach]. **Aboriginal victim/survivor***

*... Yes, breaches by coming to my house, assaults, in the street etc. ... At first I reported ... no action, so I stopped reporting because didn't seem to achieve anything. Then in the last two or three years I have been on to reporting because I know there is an officer there who will deal with the problem. ... Sometimes police say there is no proof ... other times would blame me for letting him in and I would be charged for allowing him to breach ... I didn't willingly let him ... he barged in and wouldn't get out. After a while you think it is useless. **Aboriginal victim/survivor***

*... Police drop off with large number of call-outs... probably rural area is worse ... response slows down. **Aboriginal support worker***

*... I don't think police respond well to breaches ... have experience where police not acted on breaches where repeat calls ... breaches not taken seriously so women think why get an intervention order. **Aboriginal support worker***

*... Further criminalisation of Aboriginal perpetrators is not a positive outcome but there needs to be some outcome so women have faith that the system is there to protect them. **Non-ATSI lawyer***

*... No police action so women stop calling ... helps to get advocates involved when police won't take action. **Aboriginal support worker***

*... Responding to breaches of IOs ... need to have very serious breach and witnessed etc. ... seems never enough evidence to secure police response. ... one client said police kept sending her away ... had witnessed him in the street but they had not taken action. **Non-ATSI lawyer***

Participants commented that the new family violence law extends the definition of family violence but that police are still not acting on the full range of breaches under the new orders:

*... police not responding to the terms of individual people's orders in terms of breaches. **Non-ATSI lawyer***

*... you don't have to have bruises and cuts to be a family violence victim ... may look OK but been through family violence ... police too focused on physical assaults. **Aboriginal support worker***

Participants also viewed the process enacted by police following the report of a breach as inefficient and not conducive to best safety practice for victims:

*... Reporting the breach can be time consuming for the victim. It's not as simple as ringing to come to the house. They are told to go to the station. Once crisis is past ... need to get on with urgent business of safety. Three hours at the station for a statement is a disincentive. Then police get frustrated ... next time they do nothing. **Non-ATSI lawyer***

*... example where police say have to come back in two weeks to see the initial officer ... hard to follow through. **Non-ATSI lawyer***

Proposal 35 (Also see Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault)

That there be a comprehensive review of ATSI cultural awareness training within Victoria Police (including police prosecutors) at the statewide and local levels which is informed by ATSI expertise to strengthen and broaden its scope.

Police training in responding to ATSI victims of family violence/sexual assault must combine ATSI cultural awareness within the family violence context. Barriers to ATSI victims/survivors seeking assistance from police in situations of family violence and sexual assault must be dealt with in detail, and strategies developed to address issues specific to breaches.

Follow-up / varying orders

Participants also raised the importance of the process of following up with women after an intervention order has been taken out—regardless of the ultimate outcome.

*... There is no follow-up after reconciliation e.g. family counsellor. Have a support person available to be called. After the dust settled ... woman needs person to talk to. **Aboriginal victim/survivor***

*... police don't follow up with victims. **Aboriginal support worker***

Feedback confirmed that women generally do not vary their intervention orders if there is a change in circumstance and that women will simply ignore the order if reconciliation occurs. Workers emphasised that they are trying to increase awareness about the option of the limited order whereby the parties can remain living together with an intervention order in place, and argued that greater awareness of this option is needed. The value of legal assistance for victims in these situations was emphasised. The example of magistrates imposing more limited orders where revocation applications are made by victims was seen as a positive outcome.

*... Example of woman who wanted to change order but court wouldn't let her change it. Court did the right thing for the kids in not changing the order. **Aboriginal support worker***

*... Don't change the IO if reconcile ... let it go ... and then is a problem if it is breached. **Aboriginal regional family violence coordinator***

*... Not a lot of awareness that live with order available ... limited order needs to be publicised. **Support worker***

Men's behaviour change

A degree of support was expressed for a greater number of options for the use of men's behaviour change programs—alongside the reservation that it is not clear whether the programs result in any real changes to the behaviour of perpetrators. FVPLS Victoria understands that an ATSI-specific men's behaviour change program will be introduced in the near future, and welcomes this development. It is also understood that dedicated supports for ATSI women who have experienced violence will be incorporated within the model. The importance of a strong cultural base for such programs which are developed and delivered within the ATSI community cannot be underestimated.

*... One of the prosecutors locally has said that without powers to direct perpetrators to behaviour change programs ... will not be lasting change ... very strongly wants magistrate to direct perpetrators to behaviour change as an effective preventive measure ... similar to the family violence pilot courts ... not sure whether these programs do change behaviour ... need to determine through research etc. ... Option is important, however. **Non-ATSI lawyer***

*...If ATSI women victims of violence are to be involved in men's programs in any way it is critical that women's organisations are consulted with respect to processes and that women are referred for appropriate advice and support. **Non-ATSI lawyer***

Supports for children experiencing family violence

The significant impact of family violence upon children, whether as primary victims or as witnesses of violence, is discussed in detail in Paper 2. Current family violence legislation in Victoria has strengthened the protection of children and it is important that dedicated supports are in place for children impacted by violence. **Participants expressed high levels of concern during the project consultations about the gaps in dedicated services and supports for children impacted by family violence.** In Paper 2, proposals for strengthening services as well as prevention and education initiatives for children are presented (and detailed again below). It is vital that legal and support services are well linked to the court system at the time intervention orders are made.

... It has been difficult to locate support and counselling services for children who have experienced family violence ... sexual assault services are more readily accessible. All services funded for family violence work must develop dedicated responses for children. This includes family violence services, legal services, health services, the Victims Support Agency and Victims Assistance and Counselling Programs and the Victims of Crime Assistance Tribunal. Culturally appropriate services and supports

must be readily available. Culturally appropriate education for children about family violence, backed up by available support and counselling services, is also needed. Non-ATSI lawyer

Proposal 7 (from Paper 2)

That strengthening of dedicated legal and support services, and prevention activity, for ATSI children experiencing family violence and/or sexual assault in Victoria is urgently required.

That the legal rights of ATSI children under care and protection orders in Victoria be protected and pursued.

Action

That the Victorian Government in conjunction with key ATSI stakeholders conduct a review of services and prevention activity required for ATSI children in relation to family violence and sexual assault in Victoria, with a view to improving services and implementing effective prevention/education.

That Victoria Legal Aid review its arrangements for the legal representation of ATSI children in the Children's Court and family law jurisdictions.

That a process to ensure the pursuit of the legal rights of ATSI children who are victims of crime, and under care and protection orders, must be established.

Responsibility

Department of Justice Victoria, Indigenous Family Violence Partnership Forum, Aboriginal Justice Forum, Victoria Legal Aid, FVPLS Victoria, Department of Human Services Victoria, VACCA

More integrated victims assistance

Project participants suggested that magistrates/courts should have the capacity to make Victims of Crime Assistance Tribunal orders on the same day as intervention order hearings, to ensure the availability of assistance for urgent expenses for victims of family violence including children. Processes to facilitate this should be actively pursued (see Section 4, Proposal 43).

Conclusion: Koori family violence project Department of Justice

All those consulted for the project were keen to see changes in the intervention order process to make it more Koori friendly. Key issues raised included:

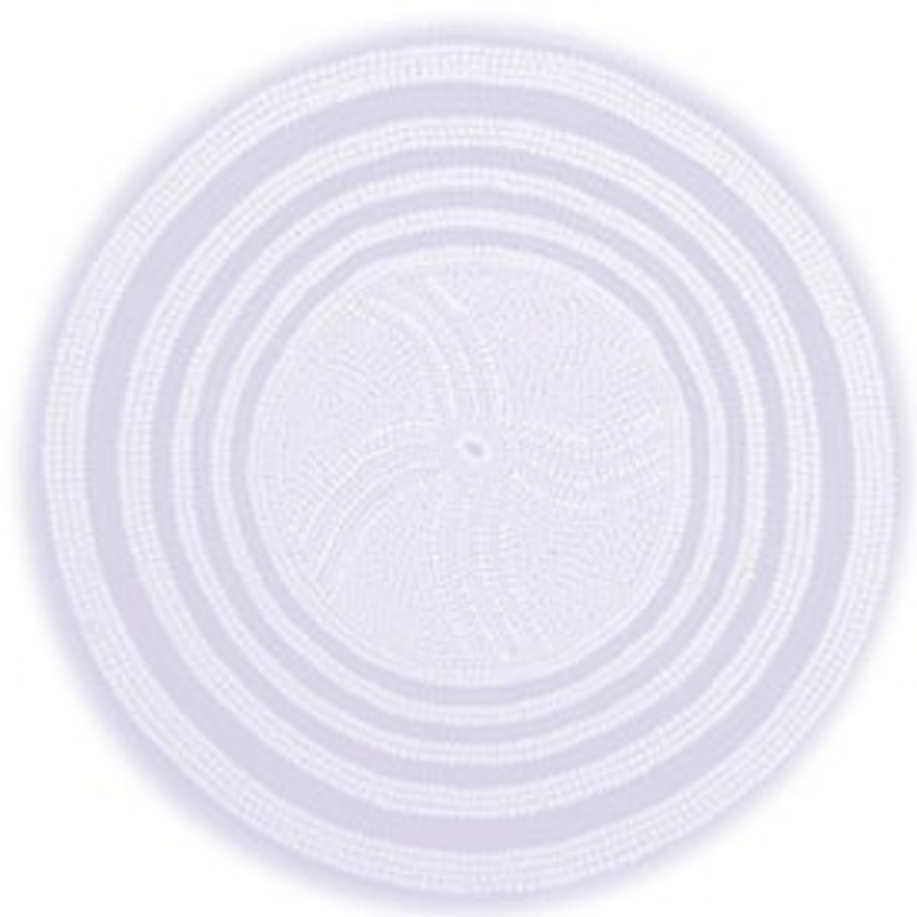
- access to culturally appropriate legal assistance and crisis support in all communities
- improved police responses
- earlier legal referrals, particularly at crisis
- a Koori-friendly physical environment in the courts
- a physically safe environment (with particular attention to rural courts)

- greater attention to the support of children
- dedicated Koori support workers
- a more Koori-friendly court process
- cultural awareness of magistrates and staff.

The Koori family violence project currently underway within the Department of Justice provides a welcome opportunity for these matters to be addressed. The project consultations indicated the importance of measures to improve statewide ATSI accessibility to strengthen overall outcomes in Victoria. The situation in some rural areas was viewed as particularly concerning. Due to the diversity of communities, including in relation to local court facilities and arrangements, there is a need to adapt ATSI appropriate court processes and systems to local circumstances.

Proposal 36

That the Koori family violence pilot project within the Department of Justice Victoria aim in the long term to strengthen family violence court and associated arrangements across Victoria, taking into account and adapting to local diversity. Attention to current arrangements within rural Magistrates' Courts must be incorporated as a priority.



Section 4: Victims assistance

The Tribunal acknowledges that the historically fractured relationship Indigenous Australians have experienced with all aspects of the justice system has an impact on their inclination, and indeed capacity, to participate in a scheme that is intended to acknowledge and provide financial assistance to all victims of crime committed in Victoria. VOCAT Magistrate Susan Wakeling

4.1 Introduction

Victims Assistance constitutes a considerable part of the caseload at FVPLS Victoria. Indeed, most people who contact the service are eligible to make an application in relation to recent and/or past crimes of family violence or sexual assault against them. FVPLS Victoria is of the view that dedicated responses are required to effectively assist victims who have experienced crimes of family violence and sexual assault.

Legal assistance or compensation for victims of crime in Victoria may be accessed through the Victims of Crime Assistance Tribunal (VOCAT, or the Tribunal) process, through Sentencing Act orders where an offender is convicted or through civil legal action. Given the impecunious status of most perpetrators, the complexity of many family violence and sexual assault crimes, and the FVPLS program guidelines, VOCAT is the predominant form of assistance accessed by clients of FVPLS Victoria and is therefore the major focus of this section. The Victims Support Agency is the primary general support service for victims of crime in Victoria and is referred to in this paper where appropriate.

It is noted that the Department of Justice Victoria has recently released a discussion paper *Reviewing Victims of Crime Compensation: Sentencing Orders and State-funded Awards*.¹⁵ FVPLS welcomes this review and the opportunity it provides to strengthen law and process, particularly with respect to crimes of family violence and sexual assault. FVPLS Victoria strongly supports the retention of a judicial model for VOCAT that incorporates both the hearing and 'decision on the papers' option.

Initiatives within Victoria to improve accessibility for ATSI victims of crime provide a positive leadership example to other courts and tribunals. In July 2006 a Koori List was established within VOCAT, resulting in the implementation of a more Koori-friendly process and increased numbers of Aboriginal and Torres Strait Islander applications to the Tribunal for assistance. Feedback from applicants, lawyers and support workers indicates that the experience of the Koori List has been very good and emphasises its importance and value in ensuring ATSI people have positive experiences with the justice system.

This discussion looks at the background to improving ATSI accessibility within VOCAT with the aim of providing important insight for other jurisdictions. Feedback received from project consultations is

¹⁵ Department of Justice Victoria, *Reviewing Victims of Crime Compensation: Sentencing Orders and State-funded Awards*, Melbourne, December 2009.

also analysed with a view to formulating recommendations for strengthening of laws and processes for ATSI victims, particularly in relation to crimes of family violence and sexual assault. **Current Victims of Crime Assistance legislation and VOCAT procedures do not adequately acknowledge the unique nature and impact of family violence and sexual assault crimes. FVPLS Victoria proposes reform to strengthen victims support and assistance in these areas.**

4.2 Background to the VOCAT Koori List

In a paper delivered at the first National Indigenous Courts Conference organised by the Australasian Institute of Judicial Administration in Mildura in September 2007, Magistrate Susan Wakeling provided an overview of the development of the VOCAT Koori List and of broader initiatives to increase the numbers of ATSI victims of crime who apply to the Tribunal. The following are excerpts from that paper:



Magistrate Susan Wakeling, FVPLS CEO Antoinette Braybrook and FVPLS Chairperson Marion Hansen.

... In 2004, in response both to the very positive outcomes being reported from the Koori Court and community discussion with regard to the high incidence of family and sexual violence in the Aboriginal community, the VOCAT Coordinating Committee of the Magistrates' Court considered the adequacy of the Tribunal's response to Aboriginal applicants.

... On the anecdotal evidence available in consultation with regional registrars and magistrates, it appeared that the number of Aboriginal applicants to the Tribunal was very low. Certainly the numbers did not reflect the incidence of victimisation understood to be occurring in the community.

In August 2004 the Tribunal hosted a consultation forum about access of ATSI people to Victims Assistance, which included the ATSI community and a range of key stakeholders. Susan Wakeling observed:

... It was apparent that there was very little awareness of the Tribunal or entitlement to awards of assistance in the Aboriginal community. One of the comments made was that the focus of both the criminal justice system and the aboriginal community had for many years been on criminal offenders and on issues with regard to the incarceration of offenders. Discussion at the forum focused on reluctance within the community to engage with 'court processes' and on the disincentives to participation created by the legislation.

Following this consultation the Indigenous Issues Unit, Department of Justice Victoria, convened a working group to improve Koori access to VOCAT under the Victorian Aboriginal Justice Agreement. FVPLS Victoria was represented on this working group, and went on to host a project position that produced an information pamphlet about VOCAT for the Koori community.

The Victims Support Agency, in partnership with VOCAT, convened 30 community information sessions across Victoria to provide information to Koori communities about victims assistance. VOCAT magistrates and registrars attended these forums alongside key ATSI service providers including FVPLS Victoria. Participant feedback indicated that the attendance by magistrates was significant in breaking down barriers to ATSI people accessing the justice system.

In July 2006 the Koori List was implemented as a two-year pilot. Magistrate Wakeling summarised its objectives as follows:

... This List enables the Tribunal to respond with maximum flexibility to the particular circumstances of an indigenous applicant. The Tribunal can determine applications without a hearing where the issues to be determined are not controversial, but where hearings are conducted, seeks to do so in a manner conducive to the best evidence becoming available. Tribunal members have received cross cultural training and are cognisant of the history and experience of indigenous Victorians when determining applications.

Under new procedures implemented:

- Applicants are asked to identify as Aboriginal and/or Torres Strait Islander on the application form.
- All identified applications are processed through the Koori List in the Melbourne VOCAT registry and managed by a dedicated VOCAT Koori List registrar.
- Applicants can elect to have their application heard locally or in Melbourne, and the Tribunal can be informed by ATSI community members and elders at the applicant's request.
- A flexible and less formal approach is adopted in the hearing—all magistrates in the list receive ongoing cultural awareness training which is reflected in the hearing process.
- Particular attention is paid to the complexity of applications and to culturally appropriate approaches to various legislative provisions.

It was announced during 2009 that the position of the VOCAT Koori List registrar to support the Koori VOCAT List will receive ongoing funding. FVPLS Victoria welcomes this development.

It is noted that the Department of Justice discussion paper questions whether a centralised or a decentralised structure for VOCAT generally would be more effective. It is the view of FVPLS that achieving some balance between the two might be preferable. Based on people's experiences of the Koori List, a degree of centralisation has considerable benefit in ensuring consistency of culturally appropriate responses. Legal representatives can more confidently inform prospective applicants of processes they can expect, which assists in dismantling mistrust of the legal system. The option available to Koori List applicants to have their application determined either at regional courts or in Melbourne is also of great benefit. The local knowledge of registrars in rural areas in particular is also an asset and must be incorporated into these considerations.

4.3 Feedback from project consultations

Learning about victims assistance rights

As FVPLS Victoria provides assistance only to victims/survivors of family violence and sexual assault or to parents/carers of ATSI children, comments and suggestions offered through the project consultations are from people who have experienced these crimes or who are working to support victims/survivors.

The consultations indicated that most people assisted by FVPLS Victoria with victims assistance claims became aware of their eligibility for victims assistance through the statewide FVPLS Victoria *Sisters Day Out* program, through seeking assistance from FVPLS Victoria for other legal matters, or through local family violence support workers.

Several participants said they had some prior knowledge of the scheme but either were too stressed by the crime and the police process to pursue the legal process earlier, or were afraid that the offender would find out, resulting in further retaliation.

One person recalled getting a piece of paper in the mail from police about the Victims Support Agency but said it did not mean anything to her so she did not follow it up. It is noted that few referrals for legal assistance seem to be coming from crisis contacts through police or the Victims Support Agency. A family violence worker in a regional area has been providing good information about victims assistance rights to clients, resulting in numerous referrals to the FVPLS office there.

Lawyers at FVPLS concur that many clients who contact the service in relation to current family violence legal issues have experienced crimes against them as young people, including sexual assault. **Advice is therefore regularly given about victims assistance rights with respect to past crimes and some clients choose to pursue applications in relation to these also. In some cases clients have not previously disclosed these crimes, in which case ensuring that appropriate supports are in place is critical.** Numerous women interviewed for this project were also either not made aware of their right to pursue legal action earlier or were unable to access appropriate assistance.

In many instances the impact of crimes experienced in childhood upon people's lives has been very significant. (*The Medical Journal of Australia* has recently published research detailing disproportionately high rates of suicide and drug overdose amongst people who had been sexually abused as children.)¹⁶ In Paper 2, Section 11 the implication of this for women's imprisonment is also discussed, and later in this paper the pursuit of rights for children in out-of-home care is also raised. **As a matter of public policy, greater attention must urgently be paid to this issue, including within victims assistance legislative provisions and broader victims support mechanisms.**

¹⁶ ABC News 14 February 2010 'Abuse children face greater suicide risk' www.abc.net/au/news/stories/2010/02/14/2818989.htm.

Participants felt that community education about victims assistance rights in all of its forms needs to be ongoing, both for workers and more broadly, although it was also noted that awareness has generally increased through word-of-mouth. Knowledge about VOCAT interim orders, particularly in relation to family violence crimes, remains limited—clearly there is a need for more information dissemination and education.

*... Through FVPLS for current and past issues. It was the current incident that increased my awareness about the past. **Aboriginal victim/survivor***

*... wish I had known my rights when I was younger ... I wish I had spoken up more when I was younger. **Aboriginal victim/survivor***

In answer to a question about how people become aware of their eligibility to make a claim, participants' responses included:

*... Is still a lack of understanding of how it [VOCAT] works ... still more awareness is needed about how it works ... More knowledge about urgent interim orders needed ... Centrelink takes time for urgent orders ... \$600 so limited. Kids in particular need financial supports post crisis ... Uptake has increased ... convincing community about not being ashamed to access VOCAT ... is entitlement ... accepting that they are victims ... sometimes want to move away from it. **Aboriginal regional family violence coordinator***

*... Found out through FVPLS Victoria. Brochure from police about Victims Support Agency ... but didn't mean anything without other advice/information. **Aboriginal victim/survivor***

*... too much going on to follow up straight away ... felt like had enough stress ... didn't want more. **Aboriginal victim/survivor***

*... Through DV worker ... she referred to FVPLS. **Aboriginal victim/survivor***

*... Through local workers and FVPLS. **Aboriginal victim/survivor***

*... Most not aware ... learnt from either community education SDO day or through coming to us about another legal matter. **Non-ATSI lawyer***

*... it is still the case that many support workers are not aware of a victim's right to seek assistance from VOCAT for urgent expenses where family violence has occurred. **Non-ATSI lawyer***

Proposal 37

That community education about victims assistance rights continue in an ongoing way in the ATSI community in Victoria and that key stakeholders who provide services to victims/survivors of family violence and sexual assault collaborate in community legal education activities. That information targeted to support workers and the community about urgent interim assistance available through VOCAT be particularly highlighted.

Proposal 38

That key agencies that provide services to ATSI victims/survivors of family violence and sexual assault review respective roles and referral procedures in the provision of advice and support to strengthen access to the victims assistance system.

Proposal 39

That appropriate assistance be ensured for people who have experienced crimes against them as children but who, either through late disclosure, or lack of knowledge or means, have not had the opportunity to pursue legal remedies.

The role of legal assistance

The importance of legal assistance for ATSI applicants to VOCAT is in part revealed by the fact that most applicants assisted by FVPLS Victoria learn about their rights as a victim of crime through accessing FVPLS Victoria for other legal issues or at a community forum.

The majority of applications to the Koori VOCAT List are complicated and attract difficult provisions in the legislation. **In conducting community education sessions with the ATSI community about victims of crime assistance, it is clear that most people believe they are ineligible for assistance because there has been no prosecution or no police report, or because the crime took place a long time ago.** Sometimes these issues may impede a successful application; but without legal advice and assistance, rights are unlikely to be pursued. Applicants are best served by culturally appropriate legal assistance that is also able to coordinate all other required supports.

There are not a lot of legal practitioners currently handling VOCAT cases. In the case of ATSI applicants it is critical that issues of culture and gender are appropriately addressed, particularly in applications relating to family violence and sexual assault. This applies equally to applicants in urban and metropolitan locations, although Commonwealth funding for the FVPLS program is restricted to rural/remote locations. Limited-term positions resourced through Victoria Legal Aid are currently enabling FVPLS Victoria to service metropolitan Melbourne, one of which is handling all VOCAT work in the urban area and other Victorian regions not funded by the Commonwealth. **There is an urgent need for dedicated ongoing VOCAT legal services at FVPLS Victoria to ensure that ATSI victims of crime across Victoria have legal representation. Consideration could be given to a funded VOCAT legal position.**

Proposal 40

Given the complex nature of Koori List VOCAT applications, and the requirement for culturally and gender appropriate legal assistance for ATSI victims of family violence and sexual assault, that the state government ensure ongoing funding for VOCAT legal services at FVPLS Victoria, including for the Melbourne metropolitan area.

Koori victims support services

Magistrates' Courts/VOCAT

Whilst Magistrates' Courts currently have an Aboriginal Liaison program, these workers mainly assist defendants in the criminal process. In Paper 2, Section 14 a proposal is made to introduce Koori victim support officers to Magistrates' Courts, who have the dual role of assisting and supporting Koori people with VOCAT, intervention order and family law hearings and providing support to Koori people required as witnesses in the criminal jurisdiction (also see Paper 2, Section 5: The experience of ATSI victims/survivors as witnesses).

Proposal 41 (See Proposal 20 in Paper 2, Section 14, and Paper 3, Section 3, Proposal 29)

That ATSI Liaison Officers be introduced to support ATSI victims of crime in the Magistrates' Courts in crimes of family violence, VOCAT, and family law proceedings and as witnesses in criminal prosecutions.

Victoria Police

In Section 6 of this paper, an improved Victoria Police process for engaging and communicating with victims is proposed. Substantial project consultation feedback was received indicating that victims are unhappy with the way in which police communicate with them about the progress of prosecution.

As part of this review, the relationship between police and the VOCAT process should be clarified including with respect to referrals and the provision of police information. (Reference is made later in this paper to the significant delay faced by those seeking to obtain the necessary documentation to support an application pursuant to Freedom of Information [FOI] processes.)

The hearing process

The hearing

Feedback regarding the VOCAT hearing process was very positive. **Project consultation participants who had attended Koori List hearings had good things to say about the informality and attitude of the Tribunal members.** All described feeling extremely nervous prior to the hearing and being worried that it would be similar to their previous bad experiences in Court.

... was easy ... not stressful ... good experience. In a back room at court rather than in courtroom itself [rural hearing]. **Aboriginal victim/survivor**

... Very nervous in the lead-up ... took me back to that time when I was going to court which wasn't good. Didn't feel like there for court ... felt supported ... felt there to be assisted not because I'd done the wrong thing. **Aboriginal victim/survivor**

... Very nervous ... but was like I'd been believed ... good that it was a woman who heard the case. Best part that was female judge ... she explained had own kids ... knew what it would feel like to have this happen to a child. Sitting down at the table was great ... I felt privileged ... felt immediately like she was on my side. **Aboriginal victim/survivor**

... Hearing at Tribunal ... magistrate was female, I was happy with her ... she made me feel comfortable. Didn't feel intimidated. Comfortable to answer her questions ... felt better about myself ... she lovely. OK going to court ... being met out front made a difference for me. **Aboriginal victim/survivor**

... Magistrate sitting at same table was good ... she not looking down at me. This one of most important parts of being made to feel comfortable ... her sitting down at the table ... talking ... and listening. **Aboriginal victim/survivor**

... All I been involved in have been really happy about someone listening/understanding and giving recognition for what they have been through ... very culturally competent/respectful and understanding ... Good ... less formal ... casual but professional ... judge focused on acknowledging ... that behaviour wasn't appropriate ... money can't fix what happened but help to move in new direction ... that was brilliant. **Aboriginal support worker**

... Positive court experience mostly. Easier than anticipated ... lot had to do with privacy of courtroom at VOCAT. **Aboriginal support worker**

... Koori Court magistrates hear Koori VOCAT matters because have had cultural awareness training ... and experience sitting within Koori Court ... more attuned to the needs of Koori victims of crime ... more compassionate ... understand cultural barriers etc. **Aboriginal support worker**

Some people indicated a strong preference not to attend a hearing and asked that this choice be respected wherever possible.

... Prefer not to go at all ... no faith in the system ... Respect people's wish not to attend court where possible. **Aboriginal victim/survivor**

... Didn't want to go and explain things that happened to people that I didn't know ... statement much preferred. **Aboriginal victim/survivor**

... No hearing ... decided on papers. Happy not to go to hearing ... been in court too many times. **Aboriginal victim/survivor**

Participants expressed their appreciation for being able to choose where to have the hearing, and the value of this is reinforced by FVPLS's experience. For some, getting away from the local community in which the crime or the prosecution case occurred is very positive. Generally in these circumstances FVPLS Victoria pays for such costs and seeks reimbursement from VOCAT. Other participants were happier with local hearings. Confidentiality remains a key concern.

... Was a good decision to have the hearing away from the local community where the crime happened. Trip to Melbourne was good ... got out of the house for the day. I was quite happy once we got there. Aboriginal victim/survivor

... Koori List staff need to have cultural awareness training, and also some knowledge of the community in regions where they are listing matters, and should be prepared to take advice from those who do have that knowledge if they do not [comment made in relation to location of video links]. Non-ATSI lawyer

It was suggested in the consultations that pre-hearing nerves might be eased by the provision of a visual presentation about what it will be like at the Tribunal.

... Online or DVD for watching what it will be like at the Tribunal. Even though you are told what it will be like e.g. more relaxed hearing, you don't believe it till you get there. You are worried court will be bad like it was before. Aboriginal victim/survivor, young person

Participants also highlighted the need for having the option to be supported by a Koori liaison officer, particularly for applicants who have no other supports.

... Another support person is a good idea ... Aboriginal support person ... giving the option of having a worker ... liked to have support person there. Aboriginal victim/survivor

A young person made the suggestion that it would be good to be able to access even a small part of the award right after the hearing—that is, on the day. This is thus seen as a positive ending to a stressful experience, and providing symbolic closure.

It is noted that the Department of Justice review is looking at the merits of a judicial versus administrative victims assistance process. Several of the advantages of an administrative process listed by the Department, including doing away with legal representation and hearings, do not seem to be beneficial to ATSI victims. Given the feedback received through the project consultations, a refined judicial process appears to be the preferable option.

Video links

None of the consultation participants who had made applications to VOCAT had experienced video links. **In the experience of FVPLS Victoria, however, video links are extremely unsatisfactory as a means of conducting a VOCAT hearing and all possible alternatives should be explored.**

In the event that a video hearing must occur due to the applicant's location (most likely interstate) and/or inability to travel, the location of the link must be carefully selected, a support person for the applicant must be on hand, and the Tribunal must facilitate a private discussion via video link between the applicant and legal representative following the conclusion of the hearing.

... the applicant who was in another state became extremely upset during the hearing. She had travelled to another town to attend the video conference venue and was without any support person at her end. Support provided by myself and the Tribunal member via video from Melbourne was quite inadequate. Non-ATSI lawyer

Considering that applicants are generally extremely nervous prior to and during hearings, and that cases are complex and give rise to the recall of traumatic events, the inability to provide on-the-spot support in a video link is extremely problematic.

Proposal 42

That VOCAT's use of video links for hearings be avoided. Where a video link is utilised, an appropriate location and provision for applicant support must be ensured.

Thoughts on alternative hearing venues

The March 2009 VOCAT forum in relation to the Koori List raised the issue of whether Koori applicants would prefer to have their hearing outside of the court environment. The project consultations revealed mixed views on this. Some participants felt very strongly that there was a greater sense of justice in having a hearing in court. Others indicated that a hearing outside of court would have been preferable in their case, but also said that it is vital that alternative locations be completely confidential and that some ATSI community organisations would not be suitable in this regard (e.g. Aboriginal Cooperatives may not be able to ensure confidentiality due to their broad range of services). Participants were of the opinion that applicants should be given a choice in this regard. Consultation comments on this issue included:

... Part of why I found the hearing easy was because it was heard in a back room at the court. If the hearing was away from the court it would need to be somewhere confidential to the community. Give options to people. Aboriginal victim/survivor

... Community place would be better for me ... less intimidating. Aboriginal victim/survivor

... I think it's better that it happens in the court environment ... seems more real ... properly acknowledged ... someone in authority is listening ... I can have closure ... I have been heard ... a person in law has acknowledged me. The place makes you feel safe/secure and is of significance. Aboriginal victim/survivor

... I think I would prefer to be at the court ... that is where he got away with it ... I was believed and got something out of it in that same place. If it was away from the court I might not feel that the acknowledgement was coming from so high up. Aboriginal victim/survivor

*... If hearing had not been in courtroom would not feel like a legal process. Only other place to take would be down the river ... away from everywhere ... into more natural environment. But away from court would not put that seal of justice being served on the outcome. **Aboriginal victim/survivor***

*... Better to have hearing stay at court because gives official thing to it ... I would feel had been taken more seriously if judge sitting there as the judge acknowledging that what has happened is wrong ... may help to move along. **Aboriginal support worker***

*... That would be a good option for some people ... statement sworn in ... already traumatised. Takes a long time to get over. **Non-ATSI lawyer***

*... Case by case as to where hearing should be ... i.e. in court or other venue ... different for different cases and people. **Non-ATSI lawyer***

*... All clients I am aware of who went to hearing felt great benefit by being acknowledged by the bench. Feeling of vindication/affirmation. **Non-ATSI lawyer***

Proposal 43

That VOCAT consider providing options to applicants in the Koori List to have applications heard in locations in the community, ensuring that confidentiality is respected. Consideration must be given to the importance many VOCAT applicants attach to receiving acknowledgement within the formal court environment.

Gender of the Tribunal member

There was strong feedback that ATSI women applicants to VOCAT for crimes relating to family violence and sexual assault preferred their applications to be heard by female Tribunal members.

Cultural and gender issues are interrelated and must be considered by the Tribunal. In this regard, international human rights instruments and the obligations they entail are relevant.¹⁷

Article 4(f) of the Universal Declaration of the Elimination of Violence against Women

... develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

Consultation feedback on this issue included:

*... Female ... and that was important ... made it easier. She made things comfortable. **Aboriginal victim/survivor***

*... Magistrate was female, I was happy with her ... she made me feel comfortable. **Aboriginal***

¹⁷ The CEDAW Committee in 2006 urged special measures to improve the human rights of ATSI women in Australia.

victim/survivor

... Female ... yes it was good ... made it easier. Aboriginal victim/survivor

...Hearing was good. Had woman magistrate ... that was good. Aboriginal victim/survivor

... Male ... he was OK. With my next case which is more sensitive family violence I would prefer a woman ... would find it more relaxing. Easier to talk. Aboriginal victim/survivor

Proposal 44

That VOCAT ask applicants in the Koori List whether they have a preference for a male or female Tribunal member.

Greater integration within court hearings

Feedback from the project consultations indicated that it would be of benefit to applicants, and likely to increase the number of ATSI family violence victims accessing assistance (particularly urgent interim orders), if VOCAT interim orders were more readily made at the conclusion of or on the same day as intervention order hearings. Court processes to facilitate this, together with practitioner and support worker education about the process, are required.

Proposal 45

That VOCAT interim awards be more regularly made available at the conclusion of or on the same day as an intervention order made in favour of a family violence victim. Refinement of court procedure and education of practitioners and support workers are required.

Counselling

- Conventional one-on-one counselling: Paper 2, Section 8 discusses counselling for ATSI victims/survivors at length. Most consultation participants see one-on-one counselling for victims as important and lawyers at FVPLS Victoria indicated high and growing demand for counselling.

... Counselling was helpful ... needed someone to record what was happening for me ... did help me. Aboriginal victim/survivor

... At the time, the one-on-one counselling helped ... wrote report. Let me get everything out ... made things a bit clearer ... sorted thoughts. I got what needed ... didn't need to continue. Aboriginal victim/survivor

... Had counselling and did find it helpful. Found the counsellor good to talk to. It was woman ... must be a woman. We don't trust men because of the violence. Took a little while to trust her and to deal with things. Helped me get a lot of emotions out ... need counselling after happens. Aboriginal

Given the limited resources for counselling in the community, access to counselling funds through VOCAT for both adults and children was considered an important aspect of assistance by participants as it broadens the options available. Counselling support for children was mentioned as helpful by several mothers, although difficult to locate—particularly in relation to family violence issues (sexual assault counselling is available mostly through the Royal Children’s Hospital and regional Centres Against Sexual Assault).

- Counselling options for children: Many workers felt that much more attention should be paid to the provision of support and healing services for ATSI children, and made mention that it would be great if VOCAT could support that process. It is noted that the Western Metropolitan VACP program has a child counsellor.

... Kids are falling through ... need to look after kids ... case manage ... plans to meet emotional wellbeing ... Home and Community Care Program ... some service like that is needed for children ... create package after assessed ... could be connected to VOCAT ... Properly trained workers to work with children from perspective of healing/wellbeing.

Aboriginal support worker

... Needs to be more options for Koori kids. **Aboriginal support worker**

... through Children’s Hospital ... they were great ... Aboriginal liaison at hospital was helpful ... child techniques good. **Aboriginal victim/survivor**

- Lack of culturally appropriate counselling options: The limited number of culturally and gender appropriate counsellors is a significant problem, especially in rural areas.

... mental health services needed ... culturally appropriate services ... likely to be several different problems at the one time ... many incidents as victim causing counselling to be needed ... opens up a lot of wounds ... counselling can be as traumatic as some of the events ... lacking in psychologists/counsellors very badly in the area. **Rural Aboriginal support worker**

... is a problem with cultural awareness of counsellors ... disengage reasonably quickly ... counsellors have difficulty ensuring engagement, cultural awareness important. **Non-ATSI lawyer**

... Women say counsellors don’t understand where we coming from need to look at options that are more appropriate e.g. narrative therapy and how to fund those. **Aboriginal coordinator family violence service**

... styles of counselling must be culturally appropriate ... user friendliness and environment of trusted organisation. **Key statewide Indigenous service**

Ensuring that psychologists who work with ATSI victims/survivors undergo ongoing cultural awareness training is important, and this extends to counsellors utilised by the various Victims Assistance and Counselling Programs. Quality control is essential with respect to culturally appropriate services. Resourcing for ongoing cultural awareness training and quality control must be ensured (again, see Paper 2, Section 8). Specific referral information for Koori victims in the various regions must be available. It is also important that, once a Koori client engages with a counsellor, access to that counsellor is maintained in the longer term through a VOCAT order.

*Yes and found helpful ... one-on-one has worked for me. If counsellor not Aboriginal ... feel they do not understand cultural things. I feel comfortable with the counsellor I have. I'm happy with the way this counsellor comes across. **Aboriginal victim/survivor***

One woman I assisted had asked the Victims Support Agency for a list of counsellors for herself and her children. She was disappointed the list contained no information about specific Koori services.

Non-ATSI lawyer

... Culture was a big part of my recovery. The counsellor included culture in the sessions.

... In finding a counsellor for the children went through VSA list but that was unsuccessful ... Children finished up with private psychologist ... limited options for the children in terms of counselling/support ... No Indigenous agencies were on the VSA list I was given ... those options should be listed.

Aboriginal victim/survivor

- Associated costs to access counselling: Participants highlighted the critical need for clients to be assisted with travel costs and child care fees associated with accessing counsellors.
- Funding for alternative healing/therapeutic/cultural programs: Support is essential for the development of options for conventional culturally appropriate counselling for ATSI victims, as well as for culturally based healing models, women's cultural programs and alternative therapy. Consultation participants argued strongly for victims to be given options to access alternative forms of healing including culturally based group work, narrative therapy, massage and yoga. FVPLS Victoria is submitting for funding in 2010 for an intensive women's cultural program, building on the *Sisters Day Out* program and focusing on women's cultural strength and identity.

*Healing processes for ATSI women should be about strengthening identity, understanding your role as an Aboriginal woman, reflecting, understanding and drawing on cultural ways to inform the present. Such work should only be done by Aboriginal women. **Aboriginal educator***

*... depends on the trauma that has been experienced and the individual ... what people have been exposed to, and over what period of time. Group work often works well. People can talk about issues and they are not alone/isolated. Others would feel shamed by experiences and will only be able to work one on one. **Aboriginal victim/survivor***

*... Need healing/counselling choices ... counsellors must be flexible with time/place etc. **Aboriginal support worker***

*... and counselling and massage was great ... recommend put in as option the massage. **Aboriginal victim/survivor***

*... Group sessions I've experienced are good ... art work sessions ... women's group have worked well as option ... good healing model. **Aboriginal support worker***

It was noted that the Victims Assistance and Counselling Program in Gippsland is funding alternative therapies under the five session guidelines and there was strong support amongst participants for this to be adopted across the state. Greater flexibility is critical.

*... consideration to be given to traditional forms of counselling ... narrative therapy and alternative types of therapy as well ... yoga ... victims program in Gippsland is doing that. **Non-ATSI lawyer***

- Victims assistance and counselling programs increasing ATSI accessibility: In addition to strengthening culturally appropriate counselling/healing options it is important for VACP programs to link with and be informed by ATSI organisations in improving accessibility for ATSI people (for example, VACP workers outreaching to ATSI agencies, or facilitating services in ATSI agencies or at locations of the victim's choice).

*... Being attached to a Koori service means the counsellor has a better understanding of Koori community ... women can talk about broader issues. **Aboriginal victim/survivor***

*... We are reluctant to refer clients to the Victims Support Agency because there will be referrals to other agencies and because we are not certain that services will be culturally appropriate for the clients. Accessing mainstream services generally is a problem, particularly where family violence or sexual assault is a factor. **Non-ATSI lawyer***

- Strengthened coordination between VACP services and VOCAT orders: In cases where victims access VACP services, and there is a need for continued services to be funded through VOCAT, it is essential that the continuation of service provision is seamless. Consideration must be given to whether the VACP arranged service is available on a long-term basis if VOCAT funded, and, if not, whether it is appropriate for a victim to commence that particular service. In addition, administrative delay should not impede the continuation of services (counselling in particular).
- Accessing psychological assessments where VACP and VOCAT guidelines are not met: Lawyers in the project consultations raised the concern that where psychological/psychiatric assessment reports are required to commence an application and where there is no VSA counselling eligibility, applications cannot proceed unless the legal representatives or the applicant can pay for the initial report. Lawyers also highlighted the need for applicants to

have the option of accessing counselling throughout the VOCAT application process (which often brings back trauma), including where the application relates to crimes long past.

- Option to not have to prove psychological injury where crime established: Some victims wish to proceed with an application but do not want to access conventional counselling, even for the purposes of an assessment and report. Where the crime is proven on the required onus, the client ought to be able to choose not to attend for psychological assessment and report. The proposal put forward in the Department of Justice discussion paper whereby applicants would not have to prove injury in cases in which, for example, a sexual assault had occurred, would assist in this situation. The option to accept a particular award without proving injury ought to be available.

*... I don't want to bring history up again ... it's too painful. **Aboriginal victim/survivor***

*... Bringing past back has been hard. I've thought a lot more about it than previously. I was trying to put past behind. Having to bring it up again has been hard. Was sent to psychiatrist I was not happy with. Am going to follow up with another psychologist. So I can get it all out once in assessment ... may not need to go back after that ... but I know will be available if I want it. **Aboriginal victim/survivor***

Proposal 46

That VOCAT acknowledge individual preferences for counselling/healing assistance and ensure that access to alternative therapies and culturally based healing processes are available and supported at both the interim and final order stages.

That VOCAT ensure that expenses are covered which facilitate an applicant's access to counsellors/psychologists, including child care and travel expenses.

That the Victims Support Agency and Victims Assistance and Counselling Programs implement processes to ensure strengthening of culturally appropriate counselling/healing options and continue to build links with ATSI organisations with a view to ensuring culturally accessible support options for ATSI victims/survivors.

(See proposals made in Paper 2, Section 9: Counselling services)

The benefits of the VOCAT application/award

The project consultations revealed a range of responses as to what was most beneficial in terms of victims assistance.

In the experience of FVPLS Victoria, in crisis situations following recent family violence, interim orders that provide assistance for the items listed below are of substantial benefit:

- removal expenses
- security
- storage
- food/household expenses when relocating
- rent and bond for new premises
- counselling.

Cash payments via special financial assistance were considered most beneficial by a number of consultation participants, both because they had been financially disadvantaged by the violence and its impact and because it provided greater autonomy and flexibility as they progressed through the various stages of recovery. Further discussion about special financial assistance and its limitations is detailed below.

Awards for expenses and the benefits of these differ from person to person. It was observed in the consultations that the process of applicants thinking about what expenses might assist their recovery can be beneficial. The types of expenses that assist recovery for family violence/sexual assault crimes are likely to be unique to those crimes, particularly in light of the often severe and broad-ranging impact of family dislocation. The potential difficulties of being required to demonstrate 'exceptional circumstances' to be eligible for such expenses are discussed further below.

Some of the more commonly referred to items for which expenses were required include: vehicles to access services and safely get about in the community (particularly in rural areas); counselling (where appropriate counsellors are located); specialist medical services to avoid long public waiting lists; holidays to encourage positive bonding for families; new clothing to increase self-esteem; educational items for children including computers; and furniture and household goods (the benefit of being able to purchase new items, often for the first time, was emphasised). Other applicants assisted have benefited from travel expenses that allowed them to reconnect with travel and family.

*... Women get new things for the first time ever ... not second-hand stuff ... brand new uniforms/school books ... this very important. **Aboriginal support worker***

*... Holiday was good ... not able to provide that for a long time ... in fact that is the last holiday we did have ... fun ... bonding ... good to get away as a family and make stronger cultural connection. Gave the chance to see what the family looks like without stressful issues around us ... healthy, happy family. **Aboriginal victim/survivor***

*... Outcome for me affected my child in a good way because I was able to get through it and be my own person and be strong for her ... whole VOCAT process helped me be strong for her. We have become closer as a result of this. Actually brought us together. Having the holiday is about repairing the bond with my daughter ... Giving women back the power to have a say in their future. **Aboriginal victim/survivor***

... Happy that got security through the Tribunal ... made me feel safer at home ... I slept ... not waking at every sound after got security ... Interim award for safety from Tribunal very important ... sooner

*can happen the better. **Aboriginal victim/survivor***

*... Yes am glad went through it ... initially not going to because going through another court process was too much. Cash was most beneficial. Going to hearing gave closure. **Aboriginal victim/survivor***

*... relocation costs paid for ... that was great because I was able to move without worry of cost. Meant I was not in a worse situation because of the crime. Felt continually paying out because of the violence. **Aboriginal victim/survivor***

*... Received cash ... that was good for me. Had been financially disadvantaged by the family violence and for me this was the best outcome. **Aboriginal victim/survivor***

*... With the money ... have saved for a holiday ... It's to forget about everything ... time out ... closure. **Aboriginal victim/survivor***

*... All VOCAT assistance useful and able to get back on feet ... practical assistance ... new atmosphere ... and counselling and massage was great ... recommend put in as option the massage. **Aboriginal victim/survivor***

*... Computer ... learning about computers ... done Business 2 Cert., can now look for jobs ... instead of telly can get on computer and access information. Cuts boredom. **Aboriginal victim/survivor***

*... Clothes made me feel better about myself. **Aboriginal victim/survivor***

*... Cash because gives autonomy for spending. **Non-ATSI lawyer***

*... Satisfied ... at the time I was a bit upset about not getting all of the award ... now I am happy that it was broken up ... now years later I have different needs ... now older it is good to have. **Aboriginal victim/survivor***

*... Awards themselves important ... life changing where car etc. awarded. Also good for closure. **Non-ATSI lawyer***

*... Expenses for assisting in recovery ... requires involvement of client re. what will help ... what they want to do ... is more personal and positive spin re. what going on. Encourages clients to think about their recovery. **Non-ATSI lawyer***

*... Kids' counselling important ... VOCAT good if creates more options. **Aboriginal regional family violence coordinator***

*... Main issues ... lack of self-esteem or confidence ... lost transportation and public transport is a problem ... having a course and equipment for course ... gives goal/objective ... when have a lump sum is more empowering ... not being micro-managed ... buying stuff for house ... building up self-esteem and confidence ... opportunity to have a fresh start. **Aboriginal support worker***

... Money is important ... and things like refurbishing old houses or furniture for people who never had anything ... either as relocation or to assist recovery ... furniture gives a real boost ... where nice things destroyed by perpetrator ... or where homeless because of the violence ... New items really important

*... Holidays are hard to get ... family holidays are restorative to family ... particularly where children are involved ... Cars are excellent ... can completely change situations ... particularly where distances to travel ... Caravan to retreat to where things too hard in town ... go back to country to regroup ... Art supplies ... where applicant does art ... Teeth fixed ... often very expensive ... private medical treatment. **Non-ATSI lawyer***

*... Cars in regional areas ... very helpful to access services. **Non-ATSI lawyer***

Comments about the experience generally

Participants were positive about the VOCAT experience particularly with respect to the acknowledgement they received and for some the closure it provided. Comments included:

Aboriginal victims/survivors:

... Yes am glad ... people listened, something was done and the compensation bonus made me feel good ... debt, holiday ... so it acknowledged ... something happened.

... Yes was good thing to do ... to have my case listened to ... heard what I had been through and acknowledged what happened to me.

... Yes glad I did it ... helped me start fresh ... being believed was very important ... allowed me to move on.

... More cash would have been good. With someone so young ... need to be able to come back when older to get things.

... Yes do feel it is the right thing to do ... haven't got anything else to do ... it's about building up trust ... all gets knocked out of you ... you don't trust anybody.

... Doesn't equate but good to get something for what I've been through.

... Closure ... that can get on with things even knowing he not charged etc. ... that whole VOCAT process has given me closure ... he knows he done something wrong and I stood up and faced it.

... Had very good conversations with the VOCAT registrars ... they were very compassionate and that was important for me. They knew about my case.

... Yes glad went through it ... best that I was able to be assisted financially ... recognised that was a crime that had been committed. No amount of money would change circumstances but something right happened [through VOCAT] because didn't feel still at court fighting.

... Is a positive experience ... gives something would not have had before ... people are traumatised ... doesn't mean pain and suffering goes away ... but leaves them with a positive experience ... happy in short term ... not healed by the process though ... good for counselling ... long term.

Aboriginal support worker:

... Acknowledgement from the Tribunal ... get strength from ... learn a lot about themselves along the way ... that they can do things ... and get good outcomes.

Difficulties with the VOCAT process: how things might be improved

Length of time to finalise

An overwhelming response, by participants who had been through a VOCAT application as well as amongst lawyers and workers, was that the VOCAT process is too drawn out and needs to be quicker.

VOCAT applicants are looking for closure and in this regard a slow process does not constitute a therapeutic response. It is important that change is implemented to bring about speedier resolution of applications. At the same time, the complexity of some applications and the deep significance of the process to the victim must be respected.

Some comments about this included:

... Took a long time to finalise ... would have been better if could have been over much quicker.

Aboriginal victim/survivor

... Long drawn out process was hard. **Aboriginal victim/survivor**

... Clients gets very anxious ... once disclosed ... poured their hearts out ... opens up a lot of stress and emotion to work through ... VOCAT becomes part of working through that ... rings every week to see what is happening ... more about getting through the process with the time it takes ... disclosure required to pursue ... opens up a lot. **Support worker**

... One of the main negatives is how slow it is. **Aboriginal support worker**

... Time taken ... getting things listed for in-person hearings. **Non-ATSI lawyer**

... It takes a very long time to obtain police records through the Freedom of Information process ... as a legal representative it is often important to have access to police documents in preparing an application ... particularly where the application is more complicated. Some FOI requests were taking up to five and six months. **Non-ATSI lawyer**

... In some cases it does take longer to access evidence ... particularly for crimes which occurred some time ago. It is inevitable that some applications will take longer to finalise and in the end it is likely to produce a better outcome for the victim. **Non-ATSI lawyer**

... Telephone mentions/directions hearings may assist to move applications on a little quicker. **Non-ATSI lawyer**

Suggestions included:

- Earlier directions hearings to sort out the nature of an application, any potential difficulties and perhaps set a timeline for processing the claim.
- Clarification about obtaining documents in support of applications. Who will access what as between the Tribunal and applicant/lawyer. (Police Freedom of Information requests have at least a four-month waiting period for access by lawyers.) See also the proposal made for an improved Victoria Police victims support/communication process.
- Where the Tribunal is in possession of documentation adverse to the applicant's application there must be a formal process by which VOCAT is required to notify an applicant or their legal representative of this at an early stage so that the applicant can respond appropriately.
- If obtaining other key documentation is critical but is going to be slow (e.g. in cases where there is no police report, or assaults took place many years ago), this should be discussed with the Tribunal with a view to the Tribunal providing whatever assistance it can. In some but not all instances subpoenas may be more appropriate.
- More Tribunal members allocated to the Koori List to facilitate more directions hearings and speedier listing of hearings once final documentation is filed.
- Clarification as to the interaction (in relation to timing) between the criminal prosecution process and finalisation of the VOCAT process.
- The possible introduction of an administrative victims assistance process has been raised within the context of the Victorian review. It is the view of FVPLS Victoria that the hearing option and judicial process must remain, and in fact is critical in many applications. A strengthened and more interactive procedure for applications determined on the papers may result in greater uptake of this option. (It is also noted that consideration is being given to the introduction of judicial registrars to assist in the VOCAT determination process. FVPLS Victoria supports this move, provided the hearing option with a Tribunal member is preserved.)

Proposal 47

That processes be implemented to ensure a generally speedier resolution of VOCAT applications which may include:

- additional Koori List Tribunal members/decision makers
- clarification with respect to obtaining necessary evidence as between the applicant/representative and VOCAT, noting in particular that obtaining police material through FOI is causing significant delay
- early disclosure by VOCAT of evidence adverse to the applicant
- additional directions hearings or mentions including by telephone to monitor issues that

cause delay

- clarifying the interaction between the criminal prosecution and VOCAT process
- strengthening of the S33 determination without hearing process.

S54 Victims of Crime Assistance Act 1996: prior criminal history

In determining whether or not to make an award of assistance or the amount of that assistance, the Tribunal must have regard to the following:

(a) the character, behaviour (including past criminal activity and the number and nature of any findings of guilt or convictions) or attitude of the applicant at any time, whether before, during or after the commission of the act of violence;

It is common for ATSI victims/survivors of family violence and sexual assault to also have a criminal history. **Often the impact of having been a victim of childhood crimes in particular has contributed to drug use and criminal offending. Poor contact between ATSI people and the justice system more generally has impacted on this situation.**

Project participants indicated that raising this issue with prospective applicants is often a disincentive to their proceeding, that the connection between prior offending of the victim and their experience as a victim of family violence or sexual assault is unfair, and that discussion of these issues at the final hearing detracts from the hearing and from the overall benefit of the process for the applicant.

*... S52 and S54 ... problems for many clients ... often want to back out when advised of this ... when they hear will have to go to court and answer questions ... commitment to process is significantly reduced. Goes back to deserving and undeserving victims ... should be as of right. **Non-ATSI lawyer***

*... where legal issues to be addressed ... prior convictions ... discussions need to be had but detract from hearing being about the victim ... perhaps deal with more in directions hearings. **Non-ATSI lawyer***

*... Not positive when questioned about the past criminal history which may have nothing to do with the current set of circumstances of women as a victim and may not even have anything to do with violence against others. Past criminal history may also be repercussions of violence in own life and consequent substance abuse etc. Basically it is irrelevant and other jurisdictions consider it so. ... Criminal history ... thefts re. substance abuse issues ... is part of experience re. what happened [as a victim] ... feel have to justify but have moved on ... in most cases have moved on. In one case a criminal matter was focused upon [drug use] she had moved beyond that ... for her was not worth it ... not worth justifying that not going to happen ... felt so sorry that happened. Day needs to be dedicated to victim's hearing ... other matters should be dealt with before as directions. **Non-ATSI lawyer***

It is acknowledged that Koori List Tribunal members are aware of and sensitive to this issue. However, improvements are still required, particularly to ensure that applicants and legal

representatives are aware of the manner in which the issue will be addressed and are clear about the sort of information the Tribunal will consider in determining whether an award should be reduced. Often evidence or letters from community elders or workers are important in providing the full individual and cultural context of the past offending.

Clarifying Tribunal guidelines on this and other matters would be helpful.

If prior offending is considered to be a reason to reduce or refuse an award, this should only be in exceptional circumstances. Often offenders have been victims of crimes as young people which has led to drug use, mental health issues and criminal offending; however, those matters may not be disclosed by the applicant or form part of the current VOCAT claim. The Tribunal must consider the background to the offending and determine its relevance.



FVPLS CEO Antoinette Braybrook, FVPLS Lawyer Simone Elias and Sisters Day Out Project Co-ordinator Kelly Faldon.

If prior offending continues as a matter to be considered, processes are needed to ensure that the practitioner is made aware of the applicant's criminal history so that it can be dealt with at an early stage rather than at the final hearing. The guidelines should set out factors that the Tribunal is to consider when dealing with prior offending, such as counterbalancing community contribution, factors that led to the offending or whether the penalty has been completed, as well as the manner in which evidence may be presented.

Section 52 Victims of Crime Assistance Act 1996

52. Mandatory refusal of application:

The Tribunal must refuse to make an award of assistance if:

(a) it is satisfied that-

(i) the act of violence was not reported to the police within a reasonable time; or

(ii) the applicant failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed—unless the Tribunal considers that special circumstances brought about that result;

Failure to report to the police or asking the police not to proceed to prosecution is also a common feature in applications for assistance by ATSI victims/survivors of family violence and sexual assault. This is contributed to by the applicant's poor experiences with police through the criminal justice system, ongoing mistrust of legal and court processes, and concern about the impact that taking further legal action might have upon family relationships. Low rates of the reporting of sexual

assault by ATSI women are well established. In addition, the nature of family violence and sexual assault often results in these crimes remaining hidden.

The legislation makes it clear that the Tribunal must refuse applications not reported to police within a reasonable time or where an applicant failed to provide reasonable assistance *unless special circumstances exist*. It is the experience of FVPLS Victoria that there is limited knowledge in the community of the special circumstances provision or what information the Tribunal will consider to be 'special circumstances'. A belief that claims cannot proceed without police prosecution or reports is a barrier to applications being made.

Exceptional circumstances for failure to report, delayed reports or failure to assist with an investigation should be clarified in Tribunal guidelines. So long as there is other supporting evidence to prove that the crime occurred on the required onus, and that reasons for the failure to report are provided, the lack of a police report should not bar an application for assistance. Often it will not be appropriate for a prospective applicant to be forced to make a police report so that the VOCAT application can proceed. ATSI cultural issues and harmful experiences with the justice system and police remain highly relevant in this regard. **At a policy level, the requirement that victims of family violence and sexual assault mandatorily take responsibility for pursuit of legal action against offenders in order to access support and assistance must be reviewed.**

Offender notification

It is those cases of a serious nature, and where there has either been no police report within a reasonable time or police have not proceeded to prosecution, that offender notification is considered. Offender notification is therefore more likely for applications in the Koori List and particularly in family violence and sexual assault cases where crimes are hidden and barriers to reporting and prosecution have been compounded by the nature of the crimes. Prospective offender notification can be a significant barrier to these applications proceeding.

It was mentioned during the project consultations that in some interstate jurisdictions (NSW being the example provided), offender notification does not happen—a decision is made on the balance of probabilities as to whether a crime has occurred. Participants emphasised that this significantly lessens the anxiety of prospective victims assistance applicants, and therefore would be a preferable procedure for Victoria to adopt.

A refinement to the position of the Tribunal on notification where no police charges are laid should be considered, particularly in cases of historical family violence and childhood sexual abuse which is supported by secondary evidence like medical records, DHS material or contemporary disclosures.

Under the current system, where the Tribunal after receiving an objection to notification intends to proceed with the notification, a Directions Hearing with the applicant present should occur. This would provide the best forum in which to communicate about the Tribunal's concerns and to perhaps come up with alternative ways forward. It might also clarify matters for an applicant who is considering withdrawing.

The safety of the applicant is paramount. Notification may in many cases seriously compromise the safety of the applicant. The Tribunal needs to be aware that notification of an offender in many cases will equate with notification of the broader community if that information goes farther than the offender. In such circumstances, applicants feel that their right to privacy has been invaded.

A brief fact sheet, or pamphlet or acknowledgement letter, which explains why offender notification may sometimes be raised and that the Tribunal will *never* notify an offender without the applicant first having the right to object or the right to decide whether to proceed, could be of assistance.

Where the Tribunal can make a decision early that an offender will *not* be notified, standard procedural orders to this effect would be helpful.

The Department of Justice discussion paper raises questions about the recovery of VOCAT awards from offenders. In addition to the impecunious situation of many offenders, this issue also gives rise to confidentiality concerns in that offenders become aware that victims have made applications and of what awards they received. Again, in family violence and sexual assault cases in particular, this would be especially confronting for prospective applicants and may engender a risk to safety. Unlike other violent crimes, ongoing direct and indirect contact with offenders often occurs following family violence.

Where an offender has been convicted of a crime it would be appropriate for the state to pursue an offender on behalf of the victim. Safety and confidentiality issues would be less of an issue given that a public trial/hearing would have occurred, and if an independent state body was responsible for the legal action to pursue less responsibility would be perceived to fall upon the victim.

Applications on behalf of children

Dedicated processes within the Koori List are required to ensure that the rights of ATSI children as victims, and their equality before the law, are progressed. The need for improved access to legal and support services is detailed in Paper 2. The impact of family violence upon children as both primary and secondary victims is significant, and greater awareness of this is evident within the *Family Violence Protection Act 2008*. **The need for enhanced and integrated support services and assistance for children impacted by family violence is widely acknowledged. The role of VOCAT with respect to assistance available for children must also be considered.**

Issues related to children attending hearings; psychological evidence and counselling; forms of evidence; and appropriate awards require attention. VOCAT guidelines on these areas would assist. Community education is also required to ensure that children's rights are pursued.

ATSI children are vastly overrepresented in the child protection system in Victoria. Many are victims of crime. FVPLS Victoria is concerned that ATSI children under care and protection orders may not be accessing victims assistance/compensation rights.

*... issue of children in care needing VOCAT done ... who responsible to look after ... to pursue VOCAT ... issue of who should apply ... carer not guardian etc. ... case worker is to follow up VOCAT ... process needs clarification and oversight. **Non-ATSI lawyer***

*... I have seen many clients who have been in state care as children and where their rights as victims of crime have not been pursued ... the implications in attempting to pursue these claims many years down the track are multifaceted ... not to mention the trauma to the victim of essentially reliving the past. There needs to be improved processes for dealing with claims for crimes which happened years before, and also mechanisms to ensure that the rights of children in out-of-home care now are appropriately pursued to ensure this serious problem is not perpetuated. **Non-ATSI lawyer***

*... some of the issues which arise when assisting children is how much to involve them in the legal process, particularly where the child has been traumatised, referrals for psychiatric/psychological assessment, the appropriateness of counselling and locating specialist culturally appropriate counsellors, the attendance of children at hearings, the nature of expenses claims. **Non-ATSI lawyer***

Proposal 48

That VOCAT consider developing guidelines for the Koori List to provide direction to applicants and legal practitioners and to assist the Tribunal in its decision making. Issues covered under S52 and S54 of the Act, offender notification, culturally appropriate counselling healing/options, VOCAT hearing options, provision of culturally informative support material and children's applications should be included in the guidelines.

Proposal 49

A dedicated review of victims assistance processes and VOCAT applications on behalf of children should occur. Specific guidelines may be required.

This review must urgently examine the situation of children who are under care and protection orders to ensure that their rights as victims are being pursued in a timely manner.

Sexual assault and family violence offences

FVPLS Victoria is of the view that family violence and sexual assault offending impacts uniquely upon victims and requires a dedicated response. The Victims of Crime Assistance Act and Tribunal procedures do not adequately deal with these crimes. A review of victims assistance provisions for crimes of family violence and sexual assault needs to occur.

Issues to be considered in such a review include the following:

- The Department of Justice discussion paper has raised the possibility of removing the need to prove injury in some cases. As previously mentioned, FVPLS Victoria supports this proposal, which would be of particular benefit in sexual offence cases and where applicants are reluctant to access psychological intervention.

- Sexual assault victims are often victims of multiple assaults over an extended period of time. Where the assaults are perpetrated by the same offender the Tribunal will often determine the acts of violence to be related so that one award of financial assistance is given for one act of violence. Legal advocates, however, are in the position of arguing that such criminal acts should not be treated as related, so as to increase awards commensurate with the gravity and extended nature of the crimes. The same issue arises with family violence, which is rarely limited to a single act of violence.
- Interstate jurisdictions have developed categories of assistance for domestic violence applications to better reflect the nature of these crimes. Similar provisions could be considered for family violence and sexual assault offences in Victoria.
- A review of the levels of awards available for these crimes is required. (It is noted that the Department of Justice discussion paper looks both at alternative models for determining awards and whether the amounts of awards should be increased.) An overall review of award caps for all crimes is required.
- There is established low reporting of sexual assault by ATSI women, and failure to report to the police within a reasonable time or to assist with prosecution is a feature of Koori List and family violence/sexual assault cases. Provision in the Victims of Crime Assistance Act S52 currently makes it difficult for these applicants to make a successful application.
- For adult victims of childhood sexual assault the transitional provisions in the Victims of Crime Assistance Act are complex and necessitate legal assistance. Generally, for crimes that occurred before 1 July 1997, unless a prosecution occurs after that date, victims will not be eligible for special financial assistance despite disclosure of these crimes, yet onset of or connection of psychological injury with the crimes is regularly delayed. (*The Australian Medical Journal* has recently published a research paper indicating that people who were sexually abused are 18 times more likely to commit suicide and 49 times more likely to die from an accidental overdose than are the general population.)¹⁸
- **In cases of childhood sexual assault where the applicant is not entitled to special financial assistance (SFA), the applicant still must make out 'exceptional circumstances' to be eligible for expenses to assist with recovery. FVPLS views this as highly inappropriate.**
- Tribunal members often take the view that expenses claims are excessive. However, given that many sexual assault applications have no SFA attached to them, and also given the low amounts of compensation for multiple acts of violence and otherwise, expenses to assist with recovery can provide a more appropriate outcome relative to the crime and an improved sense of justice for the applicant.

¹⁸ ABC News, 14 February 2010 'Abused children face greater suicide risk', www.abc.net.au/news/stories/2010/02/14/2818989.htm.

- Psychological injury is predominant in cases of family violence and sexual assault. The lack of definition of 'serious' injury in the Act, particularly in relation to psychological injury, gives rise to much uncertainty.
- In relation to past childhood sexual assault offences, psychological reports are often key evidential elements to an application and are required before lodging. At the present time, unless the applicant or their representative can pay for a report or a professional is prepared to be invoiced (almost unheard of) an application cannot proceed.
- Where childhood offences occurred when children were in state care, DHS files will be required which often contain extremely sensitive information that is difficult for applicants to confront. Undertakings are often required for information to be provided only with appropriate professional supports in place. This professional support may be required at a point where the Tribunal is not in a position to make interim orders to cover costs.
- The nature of expenses required to assist with recovery are unique in family violence and sexual assault crimes given the impact of dislocated family and physical relocations for safety reasons.
- **Counselling required for victims of child sexual assault and family violence is often long term; and ongoing connection with family often causes long-term post-traumatic stress disorder (PTSD) triggers.**
- **The gender of Tribunal members hearing family violence or sexual assault applications is critical, and cultural factors must also be considered in applications made by ATSI women.**
- Children will figure in applications relating to family violence and sexual assault as either primary or secondary victims. Appropriate processing of children's applications in terms of assessment of psychological injury and involvement in the VOCAT process needs to be clarified. Links to culturally appropriate supports and services for young people are discussed in Paper 2.
- The time limit for applications by children in the Victims Assistance Act is two years (subject to extension of time provisions), which is restrictive compared to personal injury law time limits for children.
- **Children on care and protection orders are often eligible for victim's assistance; however, it is not clear whether those rights are being pursued. Processes within VOCAT aimed at clarifying the appropriate persons to make these applications are required.**
- **For children who are involved in the VOCAT hearing process dedicated information pamphlets should be available that target young people.**

Proposal 50

That a review of victims assistance legislation and VOCAT procedure occur with respect to crimes of family violence and sexual assault. This review should incorporate analysis of victims assistance schemes in other states and territories with respect to legislation and procedure as well as levels of financial assistance.

Within the review, particular attention should be given to the assistance available to adults who disclose crimes of sexual assault and family violence committed against them as children with a view to extending special financial assistance to these cases and to ensuring that the rights of children under state care orders are pursued in a timely manner.

VOCAT guidelines should be developed for applications relating to crimes of family violence and sexual assault and which incorporate or separately provide guidance on applications for young people.

Consideration of the particular issues raised in this discussion paper should inform both legislative and procedural reform and the introduction of any guidelines.

Amounts of cash available

Most applicants in the consultations commented that cash amounts of assistance should be more generous and reference was made to financial compensation previously available in Victoria under earlier victims assistance legislation. Reference was also made to the fact that interstate clients receive more generous compensation. The staff at FVPLS Victoria who work in both the Victorian and NSW jurisdictions have experienced vastly different outcomes dependent upon which side of the border the criminal act occurred.

Feedback from the project consultations indicated that increased cash compensation through VOCAT would allow for a less paternalistic approach to assistance and give greater autonomy to victims. The view was also expressed that the benefit of a large sum of cash to a victim (as opposed to expenses) is dependent upon their particular circumstances at the time, and that some people have greater difficulty effecting positive change in their lives through cash payments due to ongoing life difficulties such as drug and alcohol issues or gambling. There was, however, resounding support for access to greater assistance through VOCAT—and the most effective means of providing that award is likely to require case-specific flexibility.

The Department of Justice discussion paper notes that the average amount of financial assistance for VOCAT applicants in 2008–2009 was \$7,960. It questions whether there should be additional support available for the unemployed given they cannot access lost wages, whether greater financial assistance should be available for victims who can never recover and whether award caps should be generally increased. FVPLS Victoria supports all of these options. The need for special financial assistance to also be extended to childhood sexual assault/family violence victims disclosing or seeking assistance as adults has been discussed above.

Proposal 51

That the state government again review the levels and availability of special financial assistance under the Victims of Crime Assistance Act with a view to strengthening the assistance available. Flexible options for payment should be incorporated.

‘Exceptional circumstances’: expenses to assist with recovery

Some of the lawyer participants expressed the view that given the small amounts available for special financial assistance under the legislation, the requirement to show exceptional circumstances to obtain expenses to assist with recovery is inappropriate and should be removed from the legislation. At the very least, applicants who are eligible for assistance other than financial assistance (such as childhood sexual assault victims) should be exempted from the ‘exceptional circumstances’ requirement.

Proposal 52

That consideration be given to removing, or at least limiting, the requirement to show ‘exceptional circumstances’ to obtain expenses to assist with recovery.

Other procedural issues

Directions hearings

Lawyers consulted thought that claims would proceed more quickly and final hearings would be less onerous for applicants if more directions hearings or pre-hearing conferences were listed to resolve procedural and legislative complications in an application. VOCAT is likely to require additional resources for this to occur, although some of these hearings could take place by telephone. The Tribunal will often have access to information, particularly police information, to which the applicant or their practitioner will not. If this information is to be relied upon by the Tribunal in its decision making it ought to draw this to the applicant’s attention at the earliest possible time. It is inappropriate and unfair to applicants that these issues are raised at a late stage of an application.

Client support issues (also see separate proposal for ATSI victims support officers in Magistrates’ Courts)

With respect to organising quotes and other documents for claims for expenses to assist with recovery, intensive client support is needed, which is not a good or appropriate use of a lawyer’s time. The time and resource demands of this work are substantial and need to be acknowledged and funded as an integral part of the VOCAT application process. FVPLS Victoria urges funding of paralegal support workers to work alongside all lawyers in Aboriginal Legal Services to meet the levels of client support required to engage in and sustain the legal process—victims assistance cases being no exception. If there is a decision to fund dedicated VOCAT legal positions, additional paralegal support funding should also be allocated.

VOCAT letters to applicants

All VOCAT proforma letters should be reviewed so as to contain more useful information and to be more reader friendly for applicants.

... Many clients do not understand the formality of the language used in Tribunal correspondence sent to them, particularly about awards. An easy solution would be to redraft the client letters in plain English as the standard form. Non-ATSI lawyer

Related victim applications

Related victim applications are complicated in terms of privacy. Processes need to be improved and more clearly defined for cases where related victims do not want to be at court with other family members or raise their issues in front of other family members. More information about these processes is required for potential related victim applicants.

Medical assessments/reports

Lawyers commented that organising specialist medical assessments and reports for clients often poses a barrier. Medicare arrangements further complicate this process. Guidelines or practice directions would assist.

... Few specialists are prepared to let clients take an invoice, mostly they require payment up front on the day ... we can't give the client the cash for the appointment, the specialists won't send the account to us and the Tribunal only pays on reimbursement. Non-ATSI lawyer

Involvement of Koori elders

A suggestion emerged from the consultations that where the criminal matter that is the subject of the VOCAT claim is dealt with in the Koori Court, victims should have the option of Koori Court elders providing them with information at or to the VOCAT hearing about what was said to an offender in the Koori Court hearing.

... As a very far-away goal, I also wonder if there may in the future be the ability for the elders from the Koori Court [who have sentenced the offender] to also sit with the Koori VOCAT member at the final hearing [with the victim's consent]. My clients do not usually attend at Koori Court hearings [or even mainstream sentencing hearings] and [so] it is meaningful for them to hear what was said to the offender about their behaviour. This means a lot to them. Non-ATSI lawyer

The Department of Justice discussion paper also raises the possibility of introducing therapeutic or restorative justice principles to victims compensation processes. FVPLS Victoria urges extreme caution with respect to the introduction of restorative justice where crimes of family violence and/or sexual assault have occurred. Many women who have experienced family violence or sexual assault often do not wish to communicate with the offender and the confidentiality of the victim's application is critical to many (also see Section 7: Restorative justice). Community consultation that ensures that the voices of Aboriginal and Torres Strait Islander victims/survivors and women and children are heard must precede any progress in this regard.

Proposal 53

That a review of VOCAT Koori List procedure be undertaken, which includes the following matters:

- directions hearings
- client support issues
- VOCAT letters to applicants
- related victim applications
- medical assessments/reports
- involvement of Koori elders where the applicant consents.

4.4 Sentencing Act orders/civil action

At the start of this section it was mentioned that due to the limited numbers of convictions for family violence and sexual assault crimes to which the FVPLS Victoria client group are victims, combined with the impecunious situation of most offenders, the scope for these compensation options is generally limited. FVPLS Victoria is not funded to conduct personal injury litigation and clients with prospective claims are generally referred privately.

With respect to Sentencing Act orders it is the experience of FVPLS Victoria that victims are either not made aware of this option by the police or prosecutors, or are not sufficiently supported to pursue the option where it is available. Even where an order is made it is still up to the victim to pursue the debt. In some cases victims decide they are not psychologically able to pursue an offender personally for compensation/damages. In other cases ongoing safety fears cause victims to elect not to personally pursue the offender.

FVPLS Victoria supports a process whereby a state body pursues convicted offenders for damages on behalf of victims. Where a victim is particularly concerned about this causing ongoing security issues an exceptional circumstances provision to exempt recovery should apply (which is likely to include other criteria). FVPLS Victoria does not support seeking any levy from impecunious offenders.

Section 5: The experience of ATSI victims/survivors as witnesses

The project consultations included a discussion of experiences of having to give evidence in court about family violence or sexual assault crimes. A number of the issues raised have been dealt with in Section 3: Family violence/intervention orders and in Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault.

Consultation responses confirmed that giving evidence remains an extremely intimidating experience for women and that effective support during this process is essential. It was reinforced that the police or prosecutors cannot fulfil this support role. The option to have an ATSI support person was recommended whilst the need for alternative mainstream options is also acknowledged. Again, with crimes of family violence and sexual assault, it was emphasised that family supports are not always available to victims and that availability of professional supports is therefore critical. Below is a summary of additional issues raised together with a selection of comments from the project consultations.

- **Court support** for ATSI victims/survivors of family violence and sexual assault will include criminal prosecutions, intervention orders, family law, VOCAT and child protection. **FVPLS Victoria is proposing that Aboriginal liaison positions be introduced to the Children's Court and the Family Court. Consideration should also be given to dedicated ATSI victims court support positions at Magistrates' Courts and for specialist support in County/Supreme Court trials.** Ensuring victim safety and wellbeing would be a key aspect of the role.
- **Paralegal support positions** attached to Aboriginal Legal Services including FVPLS Victoria would facilitate broader support including at court. FVPLS Victoria's experience confirms that this role would ensure that women sustain their engagement with the legal system.
- **Remote witness evidence** was favoured amongst project participants and there was a mixed response as to whether this option is being offered to victims in family violence cases to an adequate degree. (It is noted that provision for remote witness evidence is stipulated in sex offence cases.)¹⁹ One lawyer commented that prosecutors are not pursuing this option robustly enough. Comment was made that remote witness facilities are being pursued only for very violent crimes and that there needs to be greater awareness of the right to apply to give evidence remotely (these comments were made mainly in connection to the Magistrates' Court).
- **Police communication with potential witnesses** was raised as problematic, in so far as the police are not keeping potential witnesses updated as to the status of the criminal prosecution and whether evidence would be required, which women find very stressful.

¹⁹ S37CAA Evidence Act 1958.

FVPLS Victoria has separately proposed that Victoria Police urgently review its processes around communication with victims of crime.

- **Expenses to support court attendance:** FVPLS Victoria has been in the position of funding clients to attend court including for travel, accommodation and food. However, the service receives no dedicated funding for these costs (a donation fund has been used). Therefore, funding arrangements should factor this in.
- **Debriefing:** Access to debriefing directly after giving evidence, in addition to longer-term counselling, was also raised as important in supporting ATSI victims/survivors involved in the court process. For those people already linked in with counselling support this is not such an issue, but for those without such supports in place options should be made available—and this is likely to be the role of a court liaison or support officer.

Comments included:

*... I had to give evidence in front of him ... that was awful ... he was giving me looks etc. ... I felt scared by him being there listening to what I said ... I was worried he would come out of jail and kill me. **Aboriginal victim/survivor***

*... Scary ... confronting ... to have the perpetrator in the same room was scary. **Aboriginal victim/survivor***

... I haven't been asked to give evidence yet. I wouldn't want to give evidence in court against family ... I don't like court ... would feel worried about doing it ... scared. Also because I would be giving evidence against family. Having support people around would help. Remote witness might help ... not sure. I didn't even want to be in same building as offender. It was good to be in a separate room at the court when waiting.

Aboriginal victim/survivor

... I had to go through two or three times [giving evidence]. Very stressful and awful ... had a big impact on me ... Gave evidence on video ... video was better ... remote witness would have been better each time. Giving evidence in court in presence of offender was terrible.

*Debrief after court each day would have helped ... Option of having a talk at the end of each day would have been good. **Aboriginal victim/survivor***

*... use of remote witness facility is good ... feel at ease ... not in room with alleged perpetrator ... gets widely used. Children and adults ... also for security reasons too ... Koori person in victim support role for region would be good to complement the other victims workers ... Having Koori support person is important. **Aboriginal support worker***

*... Very traumatic ... women will be scared to give evidence in front of violent male ... Good when perpetrator is not present ... when perpetrator is present is difficult to get up in front of person and be asked questions about what is in the application ... Court should avoid this as much as possible ... better to have Koori supports for women ... Better out of witness box. **Aboriginal support worker***

*... Better exploration of alternatives to give evidence. Yes have to make application for this. People said did not want to have to give evidence in same room but prosecutors do not try hard enough to pursue those alternatives. **Non-ATSI lawyer***

*... Had some support from local DV worker ... felt safe because she was there. Helped me along a lot. If the support was not there I would not have been able to go through with it. My answer to everything had been to run away and disappear. **Aboriginal victim/survivor***

*... Supports at court is important ... not just professional ... also family support and police support and VSA or DV support services. Needs to be a person there for the victim not because they are the prosecutor and want the case to get up ... they are separate roles. Support person ought to be someone the victim has met before and trusts ... not just meeting on the day. **Non-ATSI lawyer***

*... Having an Aboriginal worker is a great support. **Key statewide Indigenous organisation***

*... Need support person throughout court process ... family may not support ... professional support also needed ... use of remote room is important ... Should have option for debriefing ... every day after court hearing ... remote witness should be an option ... too much humiliation in the courtroom. **Aboriginal support worker***

*... Having a support worker is very important to make sure woman is clear on what is happening ... Sympathetic police officer also makes a big difference. **Aboriginal support worker***

*... He taken to court for breach of order. I wouldn't have gone to give evidence ... wouldn't have done it ... I would have known it would have triggered him off. I would have been less safe. It would have been good to have more support throughout. I couldn't talk to friends but could have talked to professional person. **Aboriginal victim/survivor***

*... No court evidence required but my statement used. I didn't know what was happening during the police process. I didn't know what my coping mechanisms would be if I had to give evidence. **Aboriginal victim/survivor***

*... No information/support offered by police. No preparation for court in the event that I would be called. I was scared of repercussions and of standing in court. I didn't want to physically be in the same room as someone who had instigated violence against us. I had no one to talk to about what I was going through ... I was fearful for family's safety ... family is so important to Indigenous people but I couldn't involve them because I was fearful for their safety. I was not being told my family would be safe. **Aboriginal victim/survivor***

*... Didn't have to give evidence. I needed to know what was happening with the offender. I wanted to know something was being done ... that police were pursuing. I needed to know this for closure ... to be able to move on. Police never explained what my role may be as a victim. I didn't understand the criminal process or what was involved. **Aboriginal victim/survivor***

... lead-up is harrowing ... has to deal with families and own emotions and self-esteem ... after been victim of crime ... then to deal with prosecutions and attitudes ... seen prosecutors harassing victims to give evidence ... where don't want to is judgement call ... you have let us down ...

clients have felt bullied by prosecutors. Non-ATSI lawyer

... funding for travel and other costs incurred by victims in attending court is often needed but the service is not funded for this. Non-ATSI policy worker

... things like petrol, food, child care must be taken care of. Non-ATSI lawyer

Proposal 54

That Victoria Police/prosecutors inform victims of their right to seek remote witness options and actively pursue this option if it is the victim's preference.

That ATSI victims/survivors who are required to give court evidence about a crime of family violence or sexual assault have the option to access specialist ATSI victim/witness support workers and culturally appropriate debriefing.

In summary, other proposals made throughout the FVPLS Victoria papers include:

- commitment to ongoing funding of paralegal support workers in the FVPLS program and Aboriginal legal services more generally
- introduction of ATSI Liaison Officers in the Children's Court, Family Court and to support victims in the Magistrates' Courts
- ongoing cultural awareness training of legal practitioners, court and tribunal staff
- enhanced Victoria Police communication with victims of crime including with respect to prosecution process and enhanced ongoing cultural awareness training
- funding for material aid for victims engaged in the legal process e.g. child care, transport, accommodation and food.

Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault

6.1 Introduction

In improving access to the law and justice system for ATSI victims/survivors of family violence and sexual assault, culturally appropriate police responses are critical. The police are often present in crisis situations and police responses can determine the path subsequently taken by a family violence victim. Previous experiences with the police also determine the willingness of family violence victims to seek protection.

Police responses to crimes of sexual assault are dealt with discretely, with initial investigations generally occurring through the Sexual Offence and Child Abuse Unit (SOCAU) or the Sexual Offences and Child Abuse Unit Investigation Team (SOCIT).²⁰ The perpetrator of sexual violence against women and children is likely to be someone well known to them, often a partner or family member.²¹ In some cases, sexual assault is clearly part of an ongoing situation of family violence, where sexual assault is used as a tool of violence, a means of control and oppression, and to create fear. See also Paper 2, Section 10 Sexual Assault.

Underreporting of both family violence and sexual assault (particularly by intimate partners or family members) continues amongst ATSI victims/survivors.²² This has been documented in numerous reports and is confirmed by the experience of FVPLS Victoria²³ It is critical that police responses to family violence recognise sexual assault as a significant aspect of family violence and ensure integrated culturally appropriate responses. Strengthening culturally appropriate police responses along with other strategies is likely to improve women's access to the justice system to ensure their safety, protection and pursuit of legal rights.

Given the high levels of underreporting and difficulties with police data collection in relation to identification of Aboriginals and Torres Strait Islanders, available data is likely to significantly underestimate the levels of family violence and sexual assault crimes against ATSI people in Victoria. Nevertheless, the 2009 Productivity Commission report, *Overcoming Indigenous Disadvantage: Key Indicators*, includes Victoria Police data showing the rate of domestic violence-related assault for ATSI females in Victoria to be five times the rate for non-ATSI females (4.137). Sexual assault figures are also higher (about twice as high for adult ATSI women and three times as high for female ATSI children).

²⁰ SOCITs are gradually replacing SOCA Units within Victoria Police and will see prosecutions through to conclusion.

²¹ Australian Law Reform Commission (2010) *Family Violence: Improving Legal Frameworks Consultation Paper*, April, p. 699.

²² Ibid, p. 699.

²³ *Raped by a partner: A research report*, Women's Health Goulburn North East, 2008 p. 154 (referring to statistical information ACSSA 2003).

6.2 Koori Family Violence Police Protocols Project

FVPLS Victoria is currently undertaking a Koori Family Violence Police Protocols Project (KFVPP) funded by the Department of Justice Victoria through Victoria Police.

The overall objective of the project is to strengthen the police response to incidents of family violence in ATSI communities, with the longer-term aim of reducing both the number of family violence incidents and the rates of families experiencing repeated incidents of family violence. The protocols are aiming at a holistic, improved response for all parties including victims, children and perpetrators. The need for improvements to the police response has been identified in a number of forums and prioritised in several key government documents including the Victorian Indigenous Affairs Framework, the Victorian Aboriginal Justice Agreement and *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities 10 year plan*.

The project has been working with reference groups in the three areas of Bairnsdale, Darebin and Mildura. The reference groups comprise stakeholders from Victoria Police, the local Aboriginal community and regional Aboriginal and mainstream family violence networks. Community development principles have been used to build on existing networks and relationships and to strengthen partnerships amongst local stakeholders including the ATSI community, the police, mainstream integrated family violence networks and ATSI family violence and justice networks.

Community consultations have been held in the three trial areas, to identify concerns with the local police responses to family violence incidents. Currently, protocols are being finalised to support police in their work, to ensure a culturally competent response to ATSI people and to provide the contact details for key support/referral agencies. The next phase of the project will be to trial the protocols after which Victoria Police will be required to report on their success directly to the regional Aboriginal Justice Forum.

The project work to date indicates evidence of ongoing conflicting perceptions about the police response to family violence within the ATSI community. **There is still evidence of fear amongst ATSI communities about asking for police assistance for numerous reasons, yet police members show limited understanding of this.** In all three areas, the project has identified the need for ongoing local cultural awareness training for police.

6.3 Project consultations

Project consultations provided much feedback about the experiences and perceptions of police responses. Given the dedicated work already taking place through the KFVPP project, this discussion will provide an overview of feedback and draw some conclusions and proposals.

Overall there is a sense that police responses have improved over time and support was indicated for the protocols project. It is also clear, however, that significant work remains to be done. Given

that this project is about improving barriers to access to justice for ATSI victims/survivors, it is natural that the participant focus has been on areas that require attention. At the time of consultation the Family Violence Safety Notice procedure was in its early stages and feedback in relation to this was limited.

It is clear that significant barriers to ATSI people seeking to access the legal system for assistance continue, and are directly related to ongoing mistrust arising from longstanding racist and discriminatory treatment and abuse perpetuated through the law and justice system itself. The barriers apply broadly to institutions of authority, but perhaps more acutely to the police because of the more direct, widely experienced and visible nature of police work.

The defensive attitudes of some institutions and individuals constitute the most significant barrier to making progress. The ATSI community must be heard, and issues raised by the community appropriately responded to, in any genuine commitment to further progress. In the end, it is the ATSI community, with cooperation from the police, who must drive necessary change.

The project feedback is divided into a number of areas, out of which proposals have been developed.

6.4 Key issues in ATSI victims/survivors reporting family violence to police

To strengthen law and justice responses, it is important to understand the factors that determine whether police reports are made, and the experiences and perceptions about these determinations. In the experience of FVPLS Victoria reporting of sexual assault within family violence is limited and requires dedicated attention. The following is a summary of significant factors that emerged from the consultations:

- Prior experiences with the police and with reporting as a victim of violence, together with perceptions of what the police response will be, are key factors. Women who have had a positive experience say they would report again.
- Where police have failed to act on previous breach reports, have taken their time, been disrespectful, culturally insensitive or perceived to lay blame on the victim, the victim is less likely to make another report.
- Women worry that in making a police report they will get into trouble themselves or that DHS will become involved in relation to their children.



FVPLS Sexual Assault Forum presenters, Warrnambool 2009.

- Shame, worry about getting an offender into trouble, fears of retaliation from an offender and the impact of long-term trauma are all prominent for women who report or confront police attending a family violence incident. This stress can translate into anger with attending police, and poor outcomes become more likely where police do not respond well.
- Concern about what will happen within the extended family, and whether a report will heighten the risk of violence or cause more problems within the community.
- Concern about lack of confidentiality when going to police in small towns.
- The shame of having to tell the story about the violence in a public forum—the stigma of feeling re-victimised by the process is a barrier to reporting.
- Fear of the legal system, and of government departments and authority; uncertainty about the justice system; not feeling safe in accessing assistance.
- Acceptance of family violence as a norm—downplaying the seriousness of the violence.
- Lack of access to culturally appropriate crisis supports at the crisis intervention stage. (Women who have support workers in place when reports are made and/or soon thereafter have better experiences with the police and are more likely to follow through.)
- Women prefer reporting to and talking to women police officers.

Comments by ATSI victims/survivors about reporting to the police included the following:

... I have reported ... but only after a long time and after the abuse had been going on for some time. I kept hoping everything was going to be OK and that he would stop. It went on for some time before I reported. Reporting was as a last resort and I felt guilty for getting him into trouble. It took courage for me to report.

... Have reported. Was reluctant to report because of fear of retaliation. Also had a fear of local people finding out about what had happened. My position in the community meant I didn't want the information to get out ... it would affect my job and my family.

... In small communities the cycle is hard ... women don't want to get their men into trouble ... what will the women do if the men go to jail. I also held back because I saw other women with injuries. I thought my problem was not as bad as theirs. I worried that he would get more violent as a result of a report. After one police report I could feel his anger ... fear of worse and more violent response.

... Police sent police woman to town to assist me ... at the time I was happy with the police response. When I reported it gave me a bit of power to get him to back away. That I could get help gave me power.

... I didn't want the charges to proceed because of feeling guilty ... I had got back with him ... felt sorry

for him. I signed to say I didn't want the police to go ahead ... The police going ahead with charges took it out of my hands. I went to court and supported him. The police were not happy that I asked them not to proceed ... they were looking at me thinking you have rights but are not using them. I stayed for a few months and then left when he continued to be violent.

... In the past I haven't [reported] ... because they were my family ... I didn't want to get them into trouble ... it's the Aboriginal way. In the end I got sick of being stood over ... it also helps having someone to support you in making decisions about this. I had a DV support worker involved.

... Children got taken away because I contacted the police. I rang for help and everything turned against me.

... Didn't used to [report] ... because police would not intervene ... wouldn't follow up with breaches of IOs. Now I've changed my mind ... have met a good female officer ... after last incident ... she said some male police are not so sympathetic to family violence situations ... not so willing to follow through. She said if I had any more issues to contact her and she would make sure all in her power was done. This built my trust in police ... realised some police are there to help. This is what has kept me how I am today [very together].

... Not necessarily [make a report] ... waste of time ... family history in town and because Koori ... they turn a blind eye ... don't want to take any action.

Reported breaches ... police said can't do anything about it ... like two different laws ... one for Aboriginal and one for non-Aboriginal. ALOs not helping.

... I have reported to police ... I needed their help for protection. I was at risk in a public place ... Other women don't go to police because they are frightened ... can't get out of the house ... or worried he will find out and it will become much worse ... perpetrators don't like witnesses ... this is why violence happens behind closed doors.

... Have reported and would not hesitate to do it again and I would encourage others to do the same. Being a survivor of family violence is dear to me and I would ask for the same assistance again and for others.

Comments by workers about reporting to the police included:

*... hate justice system, hate police, stigma in extended families, don't believe will help ... add fuel to fire ... too embarrassed. **Aboriginal support worker***

*... issues about police are constantly raised at the Aboriginal Justice Forum community forums and RAJACs and the Victorian Aboriginal Justice Forum play a key role in building strong relationships between local police and ATSI communities. **Aboriginal Justice Forum member***

*... Police have been seen as the enemy ... hardest decision is whether to involve police ... goes against the grain of what instilled for generations. **Non-ATSI support worker***

... Women will generally get to a support service before police are involved. Contact with police might

happen through support service. Often police attended but person does not pursue police for further assistance. Aboriginal regional family violence coordinator

6.5 Processes following report

- A sense persists that the police do not adequately respond to incidents where there is no or limited evidence of physical injury.
- Women's stress as a result of the violence and of police involvement often translates into anger—police response needs to reflect better understanding of this.
- That where an FVSN is contemplated by the police it is important that women victims have the opportunity to talk through options with the police in private, away from the scene of the crisis and after the immediate trauma has subsided; however, this is not always occurring.
- Interviewing processes require improvement—in terms of gender, cultural sensitivity and confidentiality for ATSI victims, in small-town police stations in particular.
- That having a culturally appropriate advocate to assist in dealing with police is critical.
- Feedback reveals that women victims are often made to feel like they are the ones who have done the wrong thing when reporting, because the perpetrator has been in the house or because the police notify DHS.
- Police attending family violence incidents sometimes identify the female victim as the perpetrator where the male perpetrator alleges that to be the case.
- Responses to breaches are not always adequate.
- Police sometimes do not respond well to repeat calls by victims, and become frustrated and less prepared to intervene.
- There remains a concern that the police response to ATSI people experiencing family violence is at times inferior, particularly where repeat call-outs occur.
- Police response to victims who also have a criminal history or drug/alcohol issues is not always appropriate and made more difficult by a lack of appropriate services.

Comments on these issues included:

... Police response not always good ... they seem to take their time to get there. I think they treat me

*and my family differently to other people. **Aboriginal victim/survivor***

*... I was happy ... they took action quickly ... took statement from me and then took action. **Aboriginal victim/survivor***

*... Some police make you feel like the criminal. This happened to me. Suggest that I've done something to provoke the violence and that it's my fault that I'm still in that situation. **Aboriginal victim/survivor***

*... Police didn't follow up and let me know what was happening after I made a statement at the station. Police didn't explain the process or what would happen next ... It was up to my support worker or lawyer to find out what was happening. **Aboriginal victim/survivor***

*... treatment at first point of contact critical ... police response at first attendance very important. **Aboriginal coordinator family violence service***

*... Police do respond ... is inconsistent ... some good police ... New Age police particularly females are often good ... Recent example of male police laughing with the perpetrator out the front of the house after attending violent incident ... lead to poor perception by victim. **Aboriginal support worker***

*... You don't have to have bruises and cuts to be a family violence victim ... may look OK but been through family violence ... police are too focused on physical assaults. **Aboriginal support worker***

*... police often too quick to not pursue matter when woman says was just verbal dispute. **Non-ATSI lawyer***

*... Re. family violence attendance ... not happy with the way the police dealt with. The police talked to him outside and then to me. Police didn't handle well in terms of the fact that I didn't show physical injury ... was shaken up ... police made me feel it wasn't worth charging him with assault. Options were not presented ... police seemed to rather I forget about ... all will be better tomorrow. **Aboriginal victim/survivor***

*... Have had few situations where bloke alleges woman is perpetrator and he is believed over the woman [even if she has contacted police] ... family violence incident reports then indicate that client is the defendant when that hasn't necessarily been the case. **Non-ATSI lawyer***

*... Since FV protocols in place police are more proactive in applying for IOs but police not good at communicating with women when they turn up to court ... the police have not told clients about bail, whether IO served and where, whether coming to court for hearing, whether to be there for evidence or to advise of sentence. **Non-ATSI lawyer***

*... [Police response improving] ... depends on the area and on the police. In areas where bigger Indigenous populations and more criminal justice 'problems' e.g. substance abuse ... more exposure to community and the family violence response not as good. **Aboriginal regional family violence coordinator***

... The police station physical environment when giving the statement was not good. It was a closed in little place. Behind me police were in and out coming on and off duty. Could hear their voices.

*Indigenous women often quiet and shy ... would withdraw even more in this environment ... having other people coming and going and hearing the sound of men's voices ... stern and abrupt. **Aboriginal victim/survivor***

*... Police attend hospital to question ... woman very upset traumatised ... can't think straight ... too hard to make decisions at that time ... rang later ... ALO was a point of call ... Aboriginal Community Liaison Office ACLO and ALO followed up at hospital ... this helped ... Safety is most important issue ... need support person at crisis point ... check if want to be driven somewhere ... someone to sit with her ... are the children OK? ... been injured? ... police not good at this ... Police not responding well with same sex couples. **Aboriginal support worker***

*... Don't think is cultural competency or sensitivity or that processes are followed up correctly. Still an arrogance. **Aboriginal support worker***

*... General complaint by clients that they have been spoken to disrespectfully ... inappropriately ... inexperienced, person responding to someone in crisis ... lack of understanding and compassion mixed with some racism. **Non-ATSI lawyer***

*... In smaller towns police know the offenders and victims and is approach by police to sweep under carpet ... try to calm the waters and walk away. **Non-ATSI lawyer***

*... When the non-Indigenous community is going to know your business most Indigenous women would bolt out the door. I was extra strong to be there. This is a problem in a small community. **Aboriginal victim/survivor***

*... It concerns me that some police on the ground have not got their head around the code of practice for family violence. **Member Indigenous Family Violence Partnership Forum***

*... The police officer did not seem experienced in taking statements ... he was shocked by the information I was giving. I think he had been a policeman for a longish time but not experienced in this type of statement/information. Would have been better doing the statement with a woman. I thought I would be dealing with a woman. Was handed to a man because he was more experienced. **Aboriginal victim/survivor of sexual assault***

*... police not letting women know they can have support person present when attending to give statements etc. **Non-ATSI lawyer***

Some suggestions by project consultation participants, in addition to the preference to deal with female police officers, included:

... In small towns in particular it would be good to give the option for statement to be given at another station to avoid confidentiality problems ... may be a barrier to reporting ... at least give option for that.

... Need to make sure is private and quiet interview room which feels safe and confidential. Don't want to see or hear others in the building. Hard enough to pull up out the front of a police

*station ... in small community all can see ... privacy is key to making contact with police. **Aboriginal victim/survivor***

*... To really improve the situation we need to move forward on more resources for police in responding to family violence ... for example, there is a family violence officer but no dedicated vehicles to respond to family violence calls ... must not be a bandaid solution ... [for family violence] ... At times police responses to Aboriginal women are poor ... greater accountability is needed in police recording and reporting responses for individual cases ... showing compliance with actions they need to tick off on in family violence situations. **Aboriginal coordinator family violence service***

*... see Sexual Offences and Child Abuse Unit [SOCAU] as specialised unit from start to finish ... passing brief to police investigators is not good ... this is where clients get exposed. Be better to have SOCA Unit following through with investigations in sexual assault cases to ensure more consistent and compassionate responses for victims. **Non-ATSI lawyer***

6.6 Police response to multiple/repeat calls

There was a strong view that the police response deteriorates for victims where multiple or repeat family violence calls are made, potentially placing victims at increased risk.

Comments included:

*... Police drop off with large number of call-outs ... probably rural area is worse ... slow down. **Aboriginal support worker***

*... Have experience where police not acted on breaches where repeat calls. **Aboriginal support worker***

*... Women get disheartened with police lack of response. **Key state-wide Indigenous service***

*... I been screaming for someone to attend and police say ... "whenever we can get a car" ... often because they have been at this place before. We know if same black women ... they will take their time. **Aboriginal coordinator family violence service***

*... Fell down strongly where repeated calls ... judgemental toward victims ... frustrated that victim did not leave violent relationship ... became over time less and less responsive. Police develop disinterest in victim ... would not follow up even where clear evidence of breach etc. **Non-ATSI lawyer***

*... Repeat attendances ... police get cynical ... not again ... level of frustration with women who decide not to proceed ... they often decide this because of attitude of police attending. **Non-ATSI lawyer***

*... Did training with group of police re. changes in family law ... one said women just calling police to get perpetrator into trouble where repeated attendances ... if 5 out of 10 police have that attitude cannot expect respect. **Aboriginal support worker***

6.7 Responses to breaches of intervention orders

(Also see Section 3, Proposal 34.) Police inaction on breaches of intervention orders was raised as a significant problem by many people consulted, and their comments included:

*... Common theme on file is lack of response to breaches and minimisation of incident. **Non-ATSI lawyer***

*... not enough effort in following up on breaches. Aboriginal support worker ... area of most frustration is in intervention orders ... because police not responding to breaches. **Non-ATSI lawyer***

*... breaches not taken seriously so women think why get an intervention order ... only a piece of paper. **Aboriginal support worker***

*... Generally still difficult to get action on breaches ... Police will be obstructive where woman wants to make statement ... police will often say no go away ... police won't take record of it. **Non-ATSI lawyer***

*... one or two times have made women feel she is responsible for the breach. **Non-ATSI support worker***

*... Police wait for something major to happen before they will do anything. **Aboriginal victim/survivor***

*... Would have preferred if police stopped bailing him out. Recently had problem again ... took them two hours to get to house ... could have been bad outcome in that time ... no apology or explanation as to why they took so long ... took them ages to arrive and they told me to get IO ... didn't offer to take out for me. **Aboriginal victim/survivor***

6.8 Cultural awareness of police

- Overwhelming support was expressed by participants for strengthened ongoing police cultural awareness training—both at the statewide academy level and at the local community level—which incorporates diverse knowledge and experience. Police attending FVPLS Victoria events have also made this comment.
- There were many questions about what police cultural awareness training currently entails and a presumption about its inadequacy.
- Comments were made that police working with ACLOs had benefited from the cultural awareness and support that this role brings.

- The need for all police who respond to family violence incidents to be connected with the local Aboriginal community (not just the ACLOs and Police Aboriginal Liaison Officers (PALOs)), including through forums and events, was reinforced.

Comments about cultural awareness of police included:

... Cultural awareness amongst police is limited ... more Aboriginal-specific training needed ... who does the training ... what does it entail? **Aboriginal support worker**

... she/police needed to be more culturally sensitive ... know how to deal with vulnerability ... otherwise Indigenous women will say no ... don't tell me what to do. They wonder why women back out sometimes. **Aboriginal victim/survivor**

... cultural awareness and sensitivity ... training probably needs to be better. Police need to reconnect with community. Need to have ongoing cultural awareness training. Police need understanding of issues in local community ... aware of programs ... connected with community. **Aboriginal regional family violence coordinator**

... More cultural awareness training needed ... not one session and expect to be culturally competent ... needs to be done every three months ... different facilitators every three months ... local training as well as at academy ... need new facilitators to take different perspectives ... need to understand diversity from a diverse range of Aboriginal people ... female perspective, male, elder, young person. **Aboriginal support worker**

... Police not aware of services for Indigenous people. ... Police treat clients differently when there is no support person. Don't use plain language ... need to have support workers there for this reason. **Aboriginal support worker**

... Question about how much training police get in family violence ... also cultural awareness and all of the issues that go with family violence. More training needed. **Aboriginal support worker**

... ACLO broken down barriers. **Non-ATSI support worker**

... Police who have worked with PLO and ACLO have better method of response to Aboriginal women rather than police who have not had cultural awareness training or specialised ACLO to work with. **Non-ATSI lawyer**

... Attended a meeting with police where police justified not developing a specific program for Koori people because a range of other ethnically diverse groups would also want the program and this was not practical. **Non-ATSI lawyer**

...we are the first people of this nation ... stop putting us in with multicultural groups. **Aboriginal support worker**

... One police officer was too overbearing in her tactics ... e.g. you have to get that bastard to stop him getting someone else. I felt I had to do what she was saying. Other Indigenous women not as strong as me or stubborn as me would probably back away from it and not follow through. They likely to think ...

*I won't do it because this white policewoman wants me to follow through. On the other hand, it might have been the edge I needed to keep me following through ... but the police need to be more culturally sensitive ... know how to deal with vulnerability. **Aboriginal victim/survivor***

*... Cultural awareness training ... ongoing cultural engagement at local level very important ... Ongoing and local training ... cultural awareness training will include formal training as well as local community engagement to build understanding and relationships ... Needs to be respect for background to Aboriginal community ... their land ... history of treatment ... no acknowledgement to what happened ... Keep on building relationships between community and local police in local areas. ... Police need to work harder at recruiting more Indigenous people into police department ... Repeat attendance ... cultural awareness training hand in hand with family violence ... nature and cultural aspects of family violence/patterns ... in a process with a victim/survivor. **Non-ATSI policy worker***

Proposal 55

That all police SOCA Units be resourced to carry through with prosecutions in relation to sexual assault offences as soon as possible, and that the significance of sexual assault within family violence be recognised within Victoria Police Koori-specific and general policy and procedure.

That funding be continued for the Koori Family Violence Police Protocols Project.

Also see Proposal 35, Section 3, repeated below:

That there be a comprehensive review of ATSI cultural awareness training within Victoria Police (including police prosecutors) at the statewide and local levels which is informed by ATSI expertise to strengthen and broaden its scope.

Police training in responding to ATSI victims of family violence/sexual assault must combine ATSI cultural awareness within the family violence context. Barriers to ATSI victims/survivors seeking assistance from police in situations of family violence and sexual assault must be dealt with in detail, and strategies developed to address issues specific to breaches.

6.9 Feedback about women police officers

There is a clear preference amongst women victims of family violence/sexual assault for dealing with women police officers at the time of crisis, reporting and follow-up, as this enhances comfort in communication, support and trust. Comments in this regard included:

*... Dealt with mainly women police ... women are easier to talk to ... prefer women police for these things. **Aboriginal victim/survivor***

... Lady police officer was good ... easier to talk to a lady. Some of the blokes didn't treat me well ...

*treated me as if I had done the wrong thing ... could have been more compassionate. **Aboriginal victim/survivor of sexual assault***

*... Communication with female officer would have been better. And someone in the force who had more time to talk, explain and listen. When photos taken at station ... was me and a couple of blokes. I thought ... what do I say to them. With women would have talked more ... got more off my chest. Gave my statement to a male officer. **Aboriginal victim/survivor***

*... Police woman was supportive to me and committed to following through. Let me know she was understanding of family violence herself. Felt like being understood. **Aboriginal victim/survivor***

*... No ... not enough female officers go out to incidents; the rogue officers are **really** bad and there seems to be no recourse for correcting their behaviour i.e. complaints systems are weak. **Non-ATSI lawyer***

*... have met a good female officer ... after last incident ... she said some male police are not so sympathetic to family violence situations ... not so willing to follow through. She said if I had any more issues to contact her. **Aboriginal victim/survivor***

*... Police do respond ... is inconsistent ... some good police ... New Age police particularly females are often good. **Aboriginal support worker***

*... Would have been better doing statement with a woman. I thought I would be dealing with a woman. Was handed to man because more experienced. **Aboriginal victim/survivor***

Proposal 56

That Victoria Police ensure that women police officers are available to attend to women victims of family violence and sexual assault, including in the taking of statements and in the follow-up liaison with women victims about prosecution matters.

6.10 Crisis support: Referrals

Victoria Police protocols detail a comprehensive system for crisis referrals to be followed by Victorian police in response to a family violence incident. **Project consultations indicated that a number of women did not feel well supported at the time of their family violence crisis. Insufficient information was obtained through the consultations to examine this issue in detail. However, it does lead to the conclusion that the crisis support system for ATSI victims/survivors requires further dedicated attention. The barriers to reporting and seeking support for sexual assault within the family violence context may also be addressed at least in part by improved crisis support and referral.**

- Feedback was received that culturally appropriate support for ATSI women and children victims at the point of crisis is critical—a support worker to advocate with police and to

assist with whatever follow-up action is required. Culturally appropriate crisis and post-crisis supports need to be strengthened for ATSI victims/survivors statewide.

- Continued support for victims throughout the police prosecution process is also needed.
- In light of the quick turnaround of Family Violence Safety Notices the problem of women not accessing supports and advice prior to the return date was raised. The need for women to discuss safety options in terms of whether it is safe to stay in the home pending the court return date for the FVSN was another issue highlighted.

Participant suggestions about crisis support included:

*... It would be good to have a support person in the legal system to help explain processes ... and to give guidance because when you are in crisis all is fuzzy and difficult to understand ... need support person to be there to help with explaining information at initial crisis and then follow up. Need someone to listen ... be the person in between to help communication. **Aboriginal victim/survivor***

*... I dealt with about eight different police throughout my case. Need support person to pull process together ... very overwhelming for frightened Aboriginal woman. Need to think carefully about where support person is best based. Maybe not with police because of problems with women going to police. **Aboriginal victim/survivor***

*... victims need support at initial phase ... on-call workers ... immediate support response ... to ensure they don't fall through the loops in terms of support and referrals. **Aboriginal support worker***

*... Crisis response for victim with police would help ... be there early to support victim ... options are important ... offer Indigenous interventions and mainstream options ... informed choice re. type of intervention ... without options you are forcing people into accessing one or the other which is not appropriate. **Key statewide Indigenous service***

*... Safety is the most important issue ... need support person at crisis point. **Aboriginal support worker***

Proposal 57 (Also see Paper 2, Section 7)

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after-hours support) who experience family violence and sexual assault, and that this review incorporates Victoria Police. The review must incorporate statewide and local processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

Also noteworthy here is the recommendation of the Victorian Law Reform Commission in its 2006 *Review of Family Violence Laws: Report*:

...26. *The Indigenous Family Violence Partnerships Forum should consider the possibility of providing an Indigenous victim support scheme that is available to offer support when the police are called to a family violence incident*

6.11 Police communication about prosecution following report

There was overwhelming feedback from participants that police do not follow up adequately with victims, and that it is very difficult to get information from police about the progress of a prosecution against an offender even though this is of critical importance to victims. (Detectives were reported as being better at fulfilling this role.) Project participants felt that police are dismissive of the need for women to be informed about prosecution processes and fail to understand the stress and trauma caused by not knowing or understanding what is happening with one's case.

Comments on this issue included:

*... The police were very difficult to contact and communicate with ... police officer always on leave. He spoke to me in a very patronising way. Didn't speak to me with respect. He didn't talk in a way that I really understood what was going on. **Aboriginal victim/survivor***

*... It was more me ringing them. I had to keep chasing the particular police officer because nobody else could tell me what was going on ... it was his case. Found that very stressful. **Aboriginal victim/survivor***

*... The reason I want to know what is happening is that it is a step forward for closure ... to see that they have paid for what they have done. Thinking and wondering what is going on is unsettling ... knowing makes it easier to deal with and relieves the stress. **Aboriginal victim/survivor***

*... I was happy with the end result ... not happy that it was hard to make contact with police for follow up ... to find out what was going on. There was no one at the station to support me and keep me up to date with progress. I was proactive about finding what was going on myself. I didn't feel I was taken seriously by police. It's like something drastic has to happen to be taken seriously by the police. **Aboriginal victim/survivor***

*... Police don't follow up with victims ... some victims want to know police are concerned for them. **Aboriginal support worker***

*... Police have not followed up since incident ... don't know what they are doing. **Aboriginal victim/survivor***

*... is a big problem with communication. **Aboriginal victim/survivor***

Participant suggestions about improving communication with police included:

*... They should have explained better what was going to happen. **Aboriginal victim/survivor***

*... They should have kept in contact with me about what was going on. **Aboriginal victim/survivor***

*... Language is an issue generally ... explaining what is happening in a way which is understood. **Aboriginal support worker***

*... It's important to know that the system is working and that I can feel safe. Knowing what is going on through the police is about safety and reassurance. It eases the threat of family violence happening again. When the police officer for my case was not there ... no one else was there at the station to help me. I rang to find out about the conviction. They should have contacted me. **Aboriginal victim/survivor***

*... It's important to let women know the police process right from the start ... what the steps are and who everyone is. Different police sections involved once statement made. I thought that once I saw SOCA unit that would be it. Then the detective came and saw me. Need information about this right from the start. **Aboriginal victim/survivor***

*... Women want to know about the case where the offender is prosecuted ... what is happening at a point in time ... women are afraid of what is happening ... e.g. if offender is caught women fear repercussions that day/night ... creates stress not knowing. **Key statewide Indigenous service***

Proposal 58

That Victoria Police carry out a comprehensive review of its communication with victims of crime with the aim of implementing a system which is effective and supportive of victims. The current system in which information is only available from police informants or sergeants where a matter is urgent—particularly given the varying shifts and roles of officers—is completely inadequate and seriously undermines the confidence of victims in the police process. A victims liaison process should be implemented across the state.

6.12 Police complaint and feedback processes

Police complaint and feedback procedures need to be strengthened and made more accessible for ATSI people. At a recent Aboriginal Justice Forum, police from the Ethical Standards Department reported that they received very few complaints with respect to police services, including responses to family violence. They also reported that, at a forum in rural Victoria, once they opened the topic for discussion there were many complaints from ATSI community members present about Victoria Police responses to family violence. Ethical Standards is currently engaging with the Koori community with respect to the complaints process, which is a welcome development. More work is needed to develop processes that encourage ATSI people who are impacted by family violence and

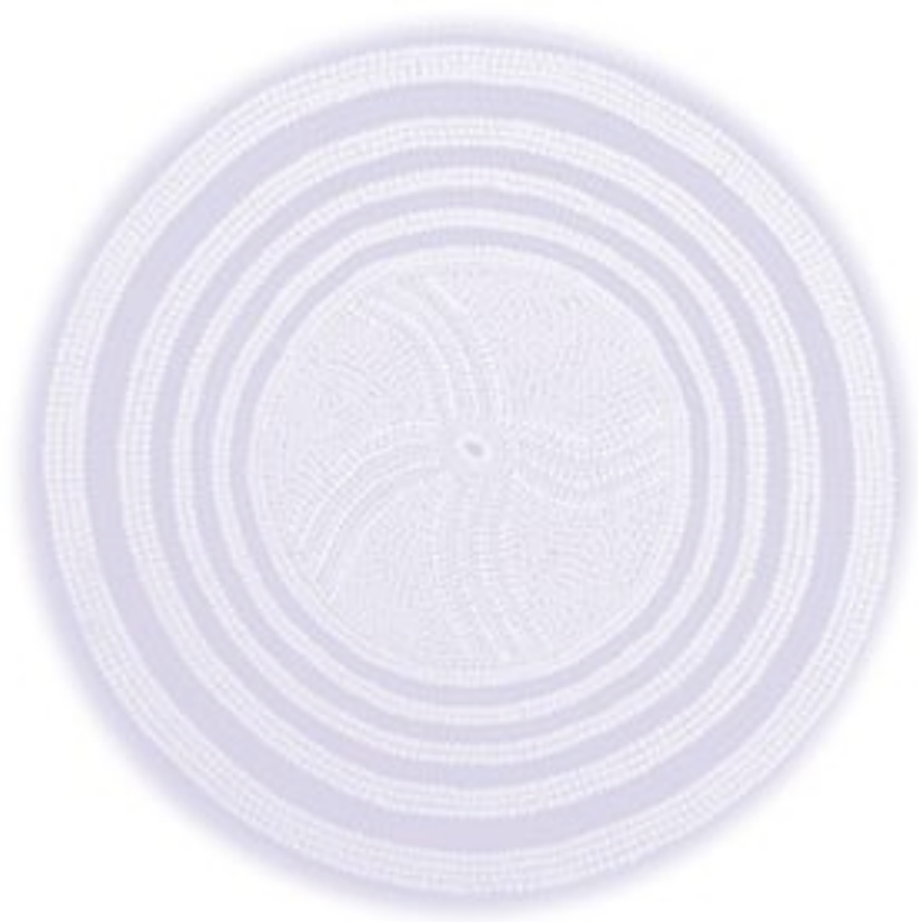
sexual assault in particular to have the confidence to complain about police responses where appropriate.

*... where ATSI victims/survivors have poor contact with police they are unlikely to do anything about it ... i.e. make a formal complaint themselves. Often the crisis happening takes priority and people are too exhausted to follow up. People are also cynical about giving feedback or making a complaint ... that it won't be taken seriously or won't make any difference ... A dedicated and simple process for ATSI people to provide feedback about police responses which was encouraged and supported would be a positive step. **Non-ATSI lawyer***

*... because there are so many concerns raised at Aboriginal Justice Forum community meetings this initiative is welcomed, but it is essential that more work be done in communities to promote the complaints process. **Aboriginal Justice Forum member***

Proposal 59

That police complaint processes for ATSI people be strengthened and made more accessible, and that community awareness raising about these procedures occur.



Section 7: Restorative justice

7.1 Introduction

Limited restorative justice approaches have been incorporated within the criminal justice system in Victoria, mainly in relation to youth offending. Discussion and research is underway with respect to the possible extension of restorative justice into other areas of the justice system.

Improving Aboriginal and Torres Strait Islander accessibility and culturally appropriate approaches within the law and justice system for victims/survivors and ATSI women and children is critical. However, FVPLS Victoria urges caution in extending restorative justice processes to family violence and sexual assault offences. Implementation of other systemic measures to address barriers should be prioritised.

7.2 Victorian Parliament Law Reform Committee Inquiry into Alternative Dispute Resolution and Restorative Justice May 2009

The Victorian Parliament Law Reform Committee in May 2009 published the report *Inquiry into Alternative Dispute Resolution and Restorative Justice*.

The report explains that there is no universally accepted definition of restorative justice. It refers to a United Nations document which details the basic principles as:

... Restorative process means any process in which the victim and offender, and, where appropriate any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator... (p. 190)

The report dedicates a section to the appropriateness of extending restorative justice principles into the areas of family violence and sexual assault and specifically for the Aboriginal and Torres Strait Islander community (p. 331). It notes that most restorative justice approaches are used alongside more traditional criminal justice processes (p. 331).

In discussing the appropriateness of restorative justice for sexual and family violence offences generally, concerns raised include:

- the danger of re-victimising the victim
- the risk that it will be seen as a soft option by both the offender and the general community
- that restorative justice will reprivatise gendered violence
- the risk of second-rate justice which offers little protection for women experiencing family violence (p. 328).

Positive aspects to extending restorative justice to family violence in the ATSI community are detailed as:

- empowerment of local communities
- addressing underlying causes of family violence
- recognising that family violence affects all members of the family
- displaying community disapproval of violence
- repairing relationships between the victim and offender and the offender and the community
- addressing issues with traditional criminal justice responses to family violence (p. 331).

The Committee draws the following conclusions:

...The Committee notes the sensitivities and conflicting evidence about using restorative justice processes for family violence and sexual offences.

...The Committee also notes that there is evidence that restorative justice responses have the potential to provide significant benefits as one part of a broader strategy to respond to family violence in the Indigenous community. However, again the Committee does not feel that there is sufficient evidence to make concrete recommendations about this issue. The Committee believes that there is a need for further research in relation to the use of restorative justice responses to family violence in the Indigenous community. The Committee emphasises that any restorative justice approaches would only be one part of a comprehensive strategy to respond to these issues. (p. 333)

It is important to recognise that sexual assault is a significant family violence crime which is also highly underreported. Any discussions about extending restorative justice approaches to family violence must acknowledge and address the unique and complex nature of sexual assault crimes, particularly with respect to victim impact.

The Committee's discrete recommendations (below) with respect to sexual offences and family violence offences give recognition to the unique nature of sexual assault. The high levels of underreporting of sexual offences in the ATSI community should be kept in mind in developing all family violence approaches.

... Recommendation 72: Restorative justice to sexual offences

The Victorian Government should undertake further research into whether, and if so, how restorative justice processes might be effectively and appropriately applied to sexual offences in Victoria.

...Recommendation 73: Restorative justice responses to family violence

The Victorian Government should undertake further research into whether, and if so, how, restorative justice processes might be effectively and appropriately applied to family violence offences in Victoria, including in relation to family violence in the Indigenous community. (p. 333)

7.3 Feedback from project consultations

The Victorian Parliament Law Reform Committee report includes reference to a view submitted to its inquiry that ATSI women generally support restorative justice approaches to family violence.²⁴ However, discussions with Aboriginal and Torres Strait Islander women through the project consultations conducted for this report have not supported that general contention—indeed, the comments presented below indicate far more complexity. The project consultations specifically included discussions with a small group of ATSI women to ensure that the voices and experiences of ATSI women, alongside FVPLS Victoria’s on-the-ground experience, inform this discussion.

Some limited discussion was had with project participants about the concept of restorative justice—either as an alternative to traditional sentencing processes or alongside it—involving community elders, which would potentially bring the victim and offender together. It is acknowledged that there are many models of restorative justice and the discussion was based on a loose concept as described above.

Most participants felt they would not want to face the perpetrator of the crimes undertaken against them, although several said they would like to have the option. Workers were concerned about the impact on victims of such meetings. Most were of the opinion that restorative justice approaches might be appropriate for youth offending or less serious crimes but not for family violence/sexual assault offences. Non-ATSI workers reinforced the importance of this being a matter for the ATSI community, but emphasised the importance of the views of victims and women being intensively sought out in a safe environment.

Comments on these matters included:

*... Would depend on the case ... I would not want to face the offender in either of my cases. ... Petty crimes etc. different ... OK ... Which elders sat in would be important too. Koori Court very good for youth ... because stops youth from more offending. **Aboriginal victim/survivor***

*... I wouldn't like to face the offender in a process like that. In our own community there is a lot of violence ... I think there is a need to step outside of that. **Aboriginal victim/survivor***

*... No wouldn't like that ... would feel uncomfortable about it ... about facing him. Having elders/respected people there would be good though ... to see them rip shreds off him. **Aboriginal victim/survivor***

*... No way I would want to do that. Details not wanting to get out ... private ... too hard. **Aboriginal victim/survivor***

... Might be good for youth ... car theft, burgs etc. ... to get embarrassment from community but in terms of my case ... no because of power of family ... problem ... he would not have taken account of what elders said. Don't think it would be taken seriously enough ... are power issues to be looked at.

²⁴ P. 332.

*Conflicts with elders. Normal criminal justice process safer and more confident in having it dealt with through that. Everyone is connected/related. **Aboriginal victim/survivor***

*... No ... I would prefer to go through mainstream ... don't like other people knowing my business. Small community makes it hard to keep private ... wouldn't want it to be out in community. **Aboriginal victim/survivor***

*... I disagree being separated in the family situation ... it's family violence in all communities and should be treated in the same way. Should stay as it is ... mainstream model. **Aboriginal victim/survivor***

*... Would like to be able to consider this as an option ... need to explore further. I would like to have a say about the process ... might be closure for victim to have a say in sentencing ... I would want to ensure counselling/programs for him ... want him to know I'm involved in the process ... may be some closure ... No woman would want to face offender. Option is the key ... to be given the opportunity to be involved. If can't face offender make alternatives e.g. remote facility. Key will be support person for women involved in that sort of process. **Aboriginal victim/survivor***

... Worry about re-victimising women and putting victim and offender together in the same room. ... She would need a lot of support throughout the process. ... Motives of the victim would need to be clear ... the purpose in them taking that avenue ... important who decides whether women and men in right frame of mind for that ... My initial reaction is no. This is why remote witness facilities are made available. In some cases could be useful ... case-by-case scenario. Worry that it could bring emotion back to the surface for the victims that they may not even have considered. Having seen the emotional impacts of family violence upon women I worry about this ... If you haven't worked closely with victims of family violence ... you can't understand the psychological trauma and the way it affects people ... it has taken me a long time as a worker to understand how victims feel and the process of healing.

Aboriginal regional family violence worker

*... Need to be careful about it ... not sure if workable ... depends on every situation ... lot of perpetrators are perpetrators for life ... some might want to participate ... but not sure ...
... Rape and sexual assault ... absolutely not ... not appropriate for these offences at all. **Aboriginal support worker***

*... In this context the suggestion that the focus should be on bringing families back together is misguided. Need to have worked in service delivery with victims/survivors to understand. People need to deal with individual/personal trauma before can be ready to consider other issues. **Aboriginal regional family violence support worker***

*... Very firm believer in restorative justice ... ownership ... offender giving power back to victim ... perpetrator and victim have common ground ... power shifts back to victim. ... Should be choice of victim ... perpetrator must own up to actions ... brings closure to part of his life too. Need to look at closer. **Aboriginal coordinator family violence service***

... Restorative justice ... would be intimidating on a victim ... I don't think community circle would be appropriate to sentence ... Who are the elders in the circle? ... there are conflicts in rural areas ... we are all related ... bad enough having open court for these matters let alone having people in the community knowing your business ... especially with sexual assaults ... Elders who are strong and empowered may push for this but for less empowered community members not in same place of

*strength, the process would be intimidating ... Are we putting women at risk of homicide? ... women who leave violent relationships much more likely to be killed. Better for her if police take responsibility for him being jailed ... not that victim has participated in the punishment or shaming process ... shaming him in the community may make him very angry and fuel retaliation on woman. **Aboriginal support worker***

*Men who beat up women are power trippers ... they don't want people to know about it ... they are gutless people ... if the community knows that degrades them ... mix that with alcohol and drugs and that makes women more at risk ... particularly if that person is respected in the community ... if it all comes out in community ... then the woman will cop it in retaliation. Better that police/prosecutors/courts take responsibility for punishment process. **Aboriginal support worker***

*... Many women would not want to face perpetrator ... needs to be her choice ... needs to be well supported in making that choice. ... Shame factor ... if elders there then perpetrator would be shamed which is a positive ... but woman may not want community to know the details. **Aboriginal support worker***

*... as long as it is not mandatory there are some good models. **Key statewide Indigenous service***

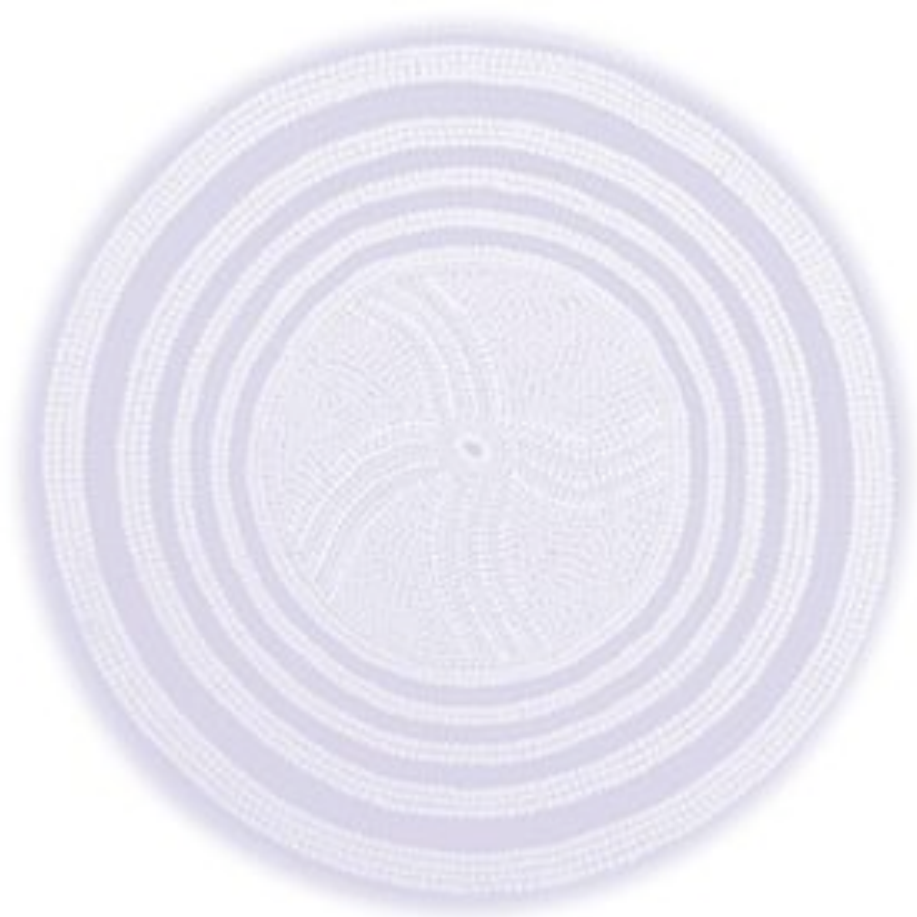
*... Aboriginal women need to be consulted about this ... Would not want to see any duress on victims to participate. **Non-ATSI lawyer***

*... Are very different models ... needs to be community decision ... must be locally, community based within which victims have a voice ... community must be informed of models proposed ... have input and be consulted every step of the way. **Non-ATSI lawyer***

Proposal 60

Primarily concerned with the human rights, wellbeing and safety of Aboriginal and Torres Strait Islander victims of family violence and sexual assault, FVPLS Victoria urges extreme caution in any move to investigate the extension of restorative justice principles to crimes of family violence and sexual assault.

Any further research in relation to restorative justice approaches to family violence and sexual assault as proposed by the Victorian Parliament Law Reform Committee 2009 must involve in-depth consultation with ATSI victims/survivors of family violence and sexual assault and ATSI women as the majority of victims/survivors of these crimes. Any such consultations must be conducted in safe and confidential settings to ensure open and candid discussion.



PROPOSALS

Section 1: Aboriginal and Torres Strait Islander accessibility and the family law system

Family dispute resolution

Proposal 1

That ATSI people be provided with the option to access family law assistance through an ATSI or mainstream legal organisation prior to FDR screening.

That introduction of ATSI consultants be considered to support intake and risk management screening.

That all ATSI people undertaking FDR have the option to access legal assistance from an ATSI or mainstream legal organisation throughout the FDR process.

That FDR processes be culturally appropriate and all FRC staff access cultural awareness training incorporating family violence and gender issues.

A dedicated ATSI accessibility/family law project

Proposal 2

That a dedicated project examining Aboriginal and Torres Strait Islander accessibility within the family law system occur, informed by Aboriginal and Torres Strait Islander people. A process for this should be developed and implemented as soon as possible. Previous relevant initiatives should inform discussion. The project should include:

- Access to family law legal assistance through Aboriginal Legal Services as the primary initial entry point to family law assistance.
- The role of Family Relationship Centres and Family Dispute Resolution for ATSI people—cultural accessibility, family violence issues and access to legal representation.
- The impact of the prevalence of family violence as a factor in family disputes involving ATSI children and cross-jurisdictional issues, particularly child protection and state family violence laws.
- Development of processes and services within the Family Court which are more culturally appropriate to Aboriginal and Torres Strait Islander people, which may include:
 - the development of a dedicated Aboriginal and Torres Strait Islander list for cases involving ATSI children

- Aboriginal and Torres Strait Islander family decision making/dispute resolution processes (with the prevalence of family violence informing such processes)
- the introduction of ATSI consultants to advise the Family Court in decision making and to possibly conduct court ordered dispute resolution.
- strengthening of cultural awareness of Family Court staff including external report writers
- ATSI liaison or support roles within the court
- improved community engagement between the ATSI community and the Family Court.

ATSI Family Court Advisory Committees

Proposal 3

That the Family Court develop processes at national, state and territory levels to receive ongoing advice in relation to Aboriginal and Torres Strait Islander accessibility generally (keeping in mind that Aboriginal and Torres Strait Islander communities are diverse, and that accessibility measures and requirements are likely to differ according to the location). Advisory committees at national and state/territory levels are likely to be required.

ATSI support roles

Proposal 4

That the Family Courts in states and territories employ ATSI Liaison Officers and other ATSI staff.

That the importance of paralegal support workers in the FVPLS program and Aboriginal Legal Services more generally be acknowledged through a commitment to ongoing funding.

Cultural awareness training

Proposal 5

That ongoing cultural awareness and family violence training for all family consultants (internal and external) conducting family dispute resolution and preparing family reports be implemented. That a process within the court whereby specialist Aboriginal and Torres Strait Islander cultural advice is available also be established (possibly through the introduction of Aboriginal and Torres Strait Islander consultants).

That high-level ongoing ATSI cultural awareness training be provided for the judiciary which involves connection with local ATSI communities (as has previously occurred).

That ongoing ATSI cultural awareness training for all Family Court staff and stakeholders be implemented which is led and informed by local ATSI communities, thus reflecting diversity in each of the states and territories.

Family Court child care arrangements

Proposal 6

That available child care facilities at the Family Court be strengthened.

Court accessibility for rural/regional areas

Proposal 7

That there be improved accessibility to Family Court and Federal Magistrates' Court services in rural areas.

Family violence

Proposal 8

That reforms to family law legislation and procedure be implemented to ensure strengthened responses to family violence and to ensuring children's safety. That particular issues for ATSI children and families be specifically considered in all proposed reforms.

Child contact centres

Proposal 9

In relation to Child Contact Centres:

- That there be increased availability of and resourcing for child contact centres for both changeover and supervision of visits, including for non-court-ordered arrangements.
- That, in consultation with ATSI communities, consideration be given to the establishment of dedicated ATSI child contact centres/services for contact changeover and supervisions as an option available where ATSI children are involved.

Family law legal services

Proposal 10

In relation to Legal Services:

- That family law services for Aboriginal and Torres Strait Islanders be strengthened Australia wide.
- That either the national FVPLS program be strengthened through increased resourcing to all communities (including urban) and further resourced to ensure family law expertise in the

support of ATSI victims/survivors of family violence and sexual assault (mainly women and children), or this be implemented through the introduction of a national ATSI women's legal program (see Paper 1, Recommendations 4 and 8).

- That in funding ATSI family law legal services, the more resource-intensive and long-term nature of the work be factored in as well as the clear benefit of paralegal support roles.
- That high-level and ongoing cultural awareness training for Independent Children's Lawyers be implemented. That lawyers from Aboriginal Legal Services including the FVPLS program be included on ICL panels.
- That cultural awareness training be provided through continuing professional development programs for other legal practitioners including counsel working in the family law jurisdiction.
- That Legal Aid family law guidelines be reviewed to strengthen access to justice for ATSI people, particularly women and children experiencing family violence. For more detail on this subject see Paper 2 Section 6 Victoria Legal Aid.

Community education

Proposal 11

- That a program to improve awareness within the ATSI community about the role of the Family Court be established. (It is noted that the implementation of more culturally appropriate family law and Family Court processes would dramatically assist this.)
- That pamphlets and other information be produced by the Family Court directed specifically at ATSI clients. This information would refer to the right of ATSI children to maintain their connection with their culture and to any ATSI-specific processes that the Family Court adopts.
- That a program of community education for Aboriginal and Torres Strait Islander communities about the Family Court and family law be carried out in conjunction with cultural awareness training for the judiciary and Family Court staff when visiting ATSI communities. (Within the Family Court this could be facilitated by Aboriginal and Torres Strait Islander Liaison Officers.)
- That legal service providers ensure improved community education for the ATSI community about family law, and funding for innovative education projects should be extended.

Section 2: Child protection

Family violence

Proposal 12

That research be undertaken with respect to the impact of family violence upon child protection notifications and interventions, incorporating an analysis of the most effective and supportive intervention for victims within the process.

That consideration be given to development of best practice guidelines for DHS where family violence is identified as a factor in child protection notifications and interventions.

That as far as possible integrated and culturally appropriate processes inform developments within the Children's Court (Family Division), the Magistrates' Courts and the Family Court in responding to family violence involving ATSI children and families.

That, in introducing greater reliance on alternative dispute resolution into the Children's Court Family Division, stringent family violence and safety screening processes be introduced as well as guaranteed legal representation throughout.

(ATSI community consultation must be integral to all reviews relating to ATSI children and families.)

Legal services

Proposal 13

That the government review funding for the provision of Aboriginal and Torres Strait Islander legal services in the area of child protection in Victoria.

Given the prevalence of family violence as a factor in child protection interventions for ATSI children in Victoria, that ongoing dedicated child protection legal capacity at FVPLS Victoria be funded.

That provisions which require DHS to refer ATSI families for legal assistance at the earliest time be implemented.

Proposal 14

That Victoria Legal Aid review its grant guidelines and procedures with a view to strengthening access to justice for Aboriginals and Torres Strait Islanders in the Children's Court (Family Division) by:

- a) broadening assistance available in the area of child protection to Best Interest Case Plan meetings and Aboriginal Family Decision Making meetings which occur as part of, but outside of, the court process, including for lawyers representing children
- b) broadening assistance available for the review of DHS administrative decisions

- c) specifically including in the guidelines a provision for assistance to be granted to challenge orders made where there has been a failure to comply with the principles of decision making for ATSI children
- d) ensuring that Aboriginal Legal Services including FVPLS Victoria are available to ATSI children and families through adequate support and resourcing of those services together with refined referral protocols.

Proposal 15

That legal practitioners working in the Children's Court (Family Division), including Victoria Legal Aid, Department of Human Services and private practitioners, receive ongoing and targeted Aboriginal and Torres Strait Islander cultural awareness training.

Community knowledge/awareness about the child protection legal system

Proposal 16

That, either in conjunction with a community education program by VACCA about the ACSASS program or separately, further community education programs be delivered to the ATSI community and key workers about the child protection legal process in Victoria and the specific rights stipulated for cases involving ATSI children. Funding must be made available for this.

The role of VACCA/LAKIDJEKA/ACSASS s.4.4

Proposal 17

That VACCA engage in broad community education about the role of its ACSASS program, in partnership with other ATSI community organisations in providing support and assistance in the child protection area.

That more detailed information be provided to ATSI family members at the commencement of child protection interventions to ensure clearer understanding of the ACSASS role.

Proposal 18

That, in conjunction with ACSASS providers, the state government increase its support of the ACSASS program with a view to strengthening its capacity across Victoria.

Proposal 19

That consideration be given as to whether ACSASS advice to DHS about an ATSI child should be formalised in writing and confidentially provided to the parties.

Proposal 20

That the program of cultural awareness training for DHS child protection workers be reviewed and strengthened and that specific training about:

- Aboriginal decision making principles and other legislative provisions with respect to ATSI children and
- the impact of family violence upon ATSI victims/survivors in the child protection context be incorporated within this.

ATSI community organisations working in the area should be invited to present at this training.

That DHS workers also receive training with respect to the role of lawyers in Children's Court (Family Division) proceedings and the responsibility to actively include legal representatives in all communications with respect to the proceedings.

That processes to ensure early referrals for legal representation by DHS be implemented (see also Proposal 11).

With a view to greater transparency, understanding and effectiveness of its operations, that DHS conduct training for key legal and other stakeholders in the child protection system about its key internal processes.

That DHS provide reports and proposed Case Plans within reasonable timeframes (depending, of course, on the nature and urgency of the proceeding).

That DHS ensure that culturally appropriate supportive/therapeutic intervention is provided for ATSI children who are the subject of protection orders and who have experienced family violence or other trauma.

Aboriginal Family Decision Making meetings/dispute resolution processes

Proposal 21

That all child protection dispute resolution processes at the pre- and post-court stage involving ATSI children must:

- incorporate family violence and safety screening to ensure the process is appropriate
- guarantee the option of culturally appropriate legal representation throughout
- be culturally appropriate.

That, in consultation with the ATSI community, a review of the Aboriginal Family Decision Making process and legislative provisions occur. The relationship between AFDMs and other court dispute resolution processes for ATSI children must be clarified. Subject to the above safeguards,

consideration ought to be given to ensuring Aboriginal Family Decision Making meetings are more readily available prior to court intervention.

That appropriate resourcing by government support the development of ATSI-specific child protection legal processes and services, including through training of more ATSI convenors.

Conditions on Children's Court Orders and in Best Interest plans

Proposal 22

That an ATSI-led review be conducted of the way in which support is provided to ATSI family members in child protection cases (including to meet conditions attached to court orders) with a view to better resourcing and coordinating this process. That the role of Aboriginal Family Decision Making meetings or Case Plan meetings be incorporated within this review.

Given the intensive support work required for ATSI victims/survivors involved in child protection legal proceedings, that dedicated culturally appropriate support positions be funded to complement child protection legal assistance.

Court process and the law

Proposal 23

That, in consultation with the ATSI community, a review of Children's Court (Family Division) processes, legislation and procedure applicable to ATSI children in the child protection system in Victoria proceed (noting the current Koori-specific Children's Court (Family Division) project underway within the Department of Justice Victoria), incorporating consideration of:

- a review of court procedure with respect to ATSI children and families. Given the significant human rights at stake in Children's Court Family Division decisions, this review must acknowledge the requirement for a robust legal process that is culturally appropriate and addresses access to culturally appropriate legal and support services.
- culturally appropriate pre- and post-court dispute resolution processes for ATSI children, incorporating review of the Aboriginal Family Decision Making Meeting process (see proposal 21)
- the requirement of preparation of cultural plans in broader circumstances
- a review of the provision allowing a permanent care order to be made after a child has been in out-of-home care for at least six months or for periods that total at least six of the last 12 months
- jurisdiction for review of DHS Case Plans transferring from VCAT to the Children's Court
- regulation which improves the provision of information and reports by DHS and requires DHS to formally notify legal representatives of case events
- creation of an ATSI liaison position in the Children's Court (Family Division)
- the production of a Children's Court pamphlet setting out the specific law and procedure which applies to cases involving ATSI children in the Children's Court (Family Division)

- ongoing cultural awareness training for all Children’s Court staff, magistrates (and lawyers/counsel providing assistance through VLA grants)

trial of an ATSI-specific information/referral notice to be served with protection applications involving ATSI children.

Placements and visits/improved supports for carers

Proposal 24

That the arrangements for ATSI children in out-of-home care be strengthened through an ATSI-led review of:

- adherence to the Aboriginal child placement principle and location of suitable extended family placements
- parental access/visiting arrangements with respect to ATSI children on out-of-home care orders
- the support (financial and practical) provided to extended family who become carers
- oversight of ATSI children in out-of-home care incorporating:
 - enhanced scrutiny by the court at the time of extension of applications/orders
 - improved resourcing to community agencies for this oversight function
- the oversight of ATSI children placed in permanent care arrangements, including of cultural issues and implementation of cultural plans where appropriate.

Complaints/oversight

Proposal 25

That, in consultation with the ATSI community, consideration be given to the introduction of an independent oversight process to increase accountability in relation to the implementation of legislative and procedural provisions specified for Aboriginal and Torres Strait Islander children in Victoria. A systemic advocacy role may be incorporated within this role.

That a simplified and improved complaints process be implemented for ATSI families in relation to DHS Child Protection conduct to ensure speedier responses and enhanced accountability.

Section 3: Family violence/intervention orders

After-hours and crisis supports

Proposal 26 (See Paper 2, Section 7)

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after hours support) who experience family violence and sexual assault, and that this review incorporates the role of Victoria Police. The review must incorporate statewide and local

processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

Proposal 27 (See Paper 2, Section 7)

That crisis legal referrals for ATSI victims/survivors be made at the earliest possible time to ensure improved legal outcomes.

That court processes with respect to the return of Family Violence Safety Notices ensure that the victim has had reasonable opportunity to access culturally appropriate legal assistance prior to applications being struck out or final determinations made.

Legal services

Proposal 28 (See Paper 1, Proposal 4 and Paper 2, Section 4)

That state and Commonwealth governments collaborate to ensure funding of FVPLS units or ATSI women's legal services for rural, regional and urban communities and that funding be adequate to ensure integrated legal service provision for family violence law, family law, child protection and victims assistance.

Support services

Proposal 29

That ATSI support workers be available to support ATSI victims/survivors of family violence and sexual assault in the court process. Appropriate models for this may vary according to local circumstances.

- ATSI victim support workers should be considered for some Magistrates' Courts to provide support with intervention orders, VOCAT, victim support in giving evidence in criminal prosecutions and family law cases where relevant.
- Paralegal positions must be attached to FVPLS Victoria and ATSI support workers funded for other key family violence services.
- Perpetrators responding to family violence intervention orders must have access to legal and support services.

Victoria Police training

Proposal 30

That Victoria Police ensure ongoing training of its members in relation to the *Family Violence Protection Act 2008*.

Child care

Proposal 31

That consideration be given to the provision of assistance with child care arrangements for women applying for intervention orders who cannot make or cannot afford other arrangements—including where a court appearance is required at short notice.

Magistrates' Courts physical environment

Proposal 32

That the Victorian Government conduct a review of Magistrates' Courts in Victoria where family violence applications are heard with a view to improving safety and privacy arrangements for victims/applicants. Particular attention should be paid to rural courts where facilities are poor.

Culturally appropriate court process and procedure

Proposal 33

That the pilot Koori Family Violence list initiative within the Department of Justice Victoria address culturally appropriate court process and procedure with a view to improving ATSI accessibility of those arrangements in all relevant Magistrates' Courts in Victoria.

Interim intervention orders in small towns

Proposal 34

In small towns where court registries are open only on a part-time basis, that police have the ability to obtain interim intervention orders by telephone during business hours to avoid the victim having to travel to another town to obtain the interim order.

Police cultural awareness training

Proposal 35 (Also see Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault)

That there be a comprehensive review of ATSI cultural awareness training within Victoria Police (including police prosecutors) at the statewide and local levels which is informed by ATSI expertise to strengthen and broaden its scope.

Police training in responding to ATSI victims of family violence/sexual assault must combine ATSI cultural awareness within the family violence context. Barriers to ATSI victims/survivors seeking assistance from police in situations of family violence and sexual assault must be dealt with in detail, and strategies developed to address issues specific to breaches.

Koori family violence pilot project

Proposal 36

That the Koori family violence pilot project within the Department of Justice Victoria aim in the long term to strengthen family violence court and associated arrangements across Victoria, taking into account and adapting to local diversity. Attention to current arrangements within rural Magistrates' Courts must be incorporated as a priority.

Section 4: Victims assistance

Community awareness

Proposal 37

That community education about victims assistance rights continue in an ongoing way in the ATSI community in Victoria and that key stakeholders who provide services to victims/survivors of family violence and sexual assault collaborate in community legal education activities. That information targeted to support workers and the community about urgent interim assistance available through VOCAT be particularly highlighted.

Access to victims assistance

Proposal 38

That key agencies that provide services to ATSI victims/survivors of family violence and sexual assault review respective roles and referral procedures in the provision of advice and support to strengthen access to the victims assistance system.

Rights of adults to pursue crimes experienced in childhood

Proposal 39

That appropriate assistance be ensured for people who have experienced crimes against them as children but who, either through late disclosure, or lack of knowledge or means, have not had the opportunity to pursue legal remedies.

VOCAT legal services

Proposal 40

Given the complex nature of Koori List VOCAT applications, and the requirement for culturally and gender appropriate legal assistance for ATSI victims of family violence and sexual assault, that the state government ensure ongoing funding for VOCAT legal services at FVPLS Victoria, including for the Melbourne metropolitan area.

ATSI victim support role in Magistrates' Courts

Proposal 41 (See Proposal 20 in Paper 2, Section 14, and Paper 3, Section 3, Proposal 29)

That ATSI Liaison Officers be introduced to support ATSI victims of crime in the Magistrates' Courts in crimes of family violence, VOCAT, and family law proceedings and as witnesses in criminal prosecutions.

Video links

Proposal 42

That VOCAT's use of video links for hearings be avoided. Where a video link is utilised, an appropriate location and provision for applicant support must be ensured.

Thoughts on alternative hearing venues

Proposal 43

That VOCAT consider providing options to applicants in the Koori List to have applications heard in locations in the community, ensuring that confidentiality is respected. Consideration must be given to the importance many VOCAT applicants attach to receiving acknowledgement within the formal court environment.

Gender of Tribunal member

Proposal 44

That VOCAT ask applicants in the Koori List whether they have a preference for a male or female Tribunal member.

Interim awards following intervention order hearing

Proposal 45

That VOCAT interim awards be more regularly made available at the conclusion of or on the same day as an intervention order made in favour of a family violence victim. Refinement of court procedure and education of practitioners and support workers are required.

Counselling/healing

Proposal 46 (Also see proposals made in Paper 2, Section 9: Counselling services)

That VOCAT acknowledge individual preferences for counselling/healing assistance and ensure that access to alternative therapies and culturally based healing processes are available and supported at both the interim and final order stages.

That VOCAT ensure that expenses are covered which facilitate an applicant's access to counsellors/psychologists, including child care and travel expenses.

That the Victims Support Agency and Victims Assistance and Counselling Programs implement processes to ensure strengthening of culturally appropriate counselling/healing options and continue to build links with ATSI organisations with a view to ensuring culturally accessible support options for ATSI victims/survivors.

Speedier VOCAT process

Proposal 47

That processes be implemented to ensure a generally speedier resolution of VOCAT applications which may include:

- additional Koori List Tribunal members/decision makers
- clarification with respect to obtaining necessary evidence as between the applicant/representative and VOCAT, noting in particular that obtaining police material through FOI is causing significant delay
- early disclosure by VOCAT of evidence adverse to the applicant
- additional directions hearings or mentions including by telephone to monitor issues that cause delay
- clarifying the interaction between the criminal prosecution and VOCAT process
- strengthening of the S33 determination without hearing process.

Koori List guidelines

Proposal 48

That VOCAT consider developing guidelines for the Koori List to provide direction to applicants and legal practitioners and to assist the Tribunal in its decision making. Issues covered under S52 and S54 of the Act, offender notification, culturally appropriate counselling healing/options, VOCAT hearing options, provision of culturally informative support material and children's applications should be included in the guidelines.

Children's applications including children under care and protection orders

Proposal 49

A dedicated review of victims assistance processes and VOCAT applications on behalf of children should occur. Specific guidelines may be required.

This review must urgently examine the situation of children who are under care and protection orders to ensure that their rights as victims are being pursued in a timely manner.

Review of assistance and procedure for crimes of family violence and sexual assault

Proposal 50

That a review of victims assistance legislation and VOCAT procedure occur with respect to crimes of family violence and sexual assault. This review should incorporate analysis of victims assistance schemes in other states and territories with respect to legislation and procedure as well as levels of financial assistance.

Within the review, particular attention should be given to the assistance available to adults who disclose crimes of sexual assault and family violence committed against them as children with a view to extending special financial assistance to these cases and to ensuring that the rights of children under state care orders are pursued in a timely manner.

VOCAT guidelines should be developed for applications relating to crimes of family violence and sexual assault and which incorporate or separately provide guidance on applications for young people.

Consideration of the particular issues raised in this discussion paper should inform both legislative and procedural reform and the introduction of any guidelines.

Review of Special Financial Assistance

Proposal 51

That the state government again review the levels and availability of special financial assistance under the Victims of Crime Assistance Act with a view to strengthening the assistance available. Flexible options for payment should be incorporated.

The 'exceptional circumstances' requirement for expenses to assist with recovery

Proposal 52

That consideration be given to removing, or at least limiting, the requirement to show 'exceptional circumstances' to obtain expenses to assist with recovery.

Strengthening procedure

Proposal 53

That a review of VOCAT Koori List procedure be undertaken which includes the following matters:

- directions hearings
- client support issues
- VOCAT letters to applicants
- related victim applications

- medical assessments/reports
- involvement of Koori elders where the applicant consents.

Section 5: The experience of ATSI victims/survivors as witnesses

Proposal 54

That Victoria Police/prosecutors inform victims of their right to seek remote witness options and actively pursue this option if it is the victim's preference.

That ATSI victims/survivors who are required to give court evidence about a crime of family violence or sexual assault have the option to access specialist ATSI victim/witness support workers and culturally appropriate debriefing.

Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault

SOCAU

Proposal 55

That all police SOCA Units be resourced to carry through with prosecutions in relation to sexual assault offences as soon as possible, and that the significance of sexual assault within family violence be recognised within Victoria Police Koori-specific and general policy and procedure.

That funding be continued for the Koori Family Violence Police Protocols Project.

Also see Proposal 35, Section 3, repeated below:

That there be a comprehensive review of ATSI cultural awareness training within Victoria Police (including police prosecutors) at the statewide and local levels which is informed by ATSI expertise to strengthen and broaden its scope.

Police training in responding to ATSI victims of family violence/sexual assault must combine ATSI cultural awareness within the family violence context. Barriers to ATSI victims/survivors seeking assistance from police in situations of family violence and sexual assault must be dealt with in detail, and strategies developed to address issues specific to breaches.

Women officers

Proposal 56

That Victoria Police ensure that women police officers are available to attend to women victims of family violence and sexual assault, including in the taking of statements and in the follow-up liaison with women victims about prosecution matters.

After-hours and crisis supports

Proposal 57 (Also see Paper 2, Section 7)

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after-hours support) who experience family violence and sexual assault, and that this review incorporates Victoria Police. The review must incorporate statewide and local processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

Communication with victims

Proposal 58

That Victoria Police carry out a comprehensive review of its communication with victims of crime with the aim of implementing a system which is effective and supportive of victims. The current system in which information is only available from police informants or sergeants where a matter is urgent—particularly given the varying shifts and roles of officers—is completely inadequate and seriously undermines the confidence of victims in the police process. A victims liaison process should be implemented across the state.

Complaint/feedback processes

Proposal 59

That police complaint processes for ATSI people be strengthened and made more accessible, and that community awareness raising about these procedures occur.

Section 7: Restorative justice

Proposal 60

Primarily concerned with the human rights, wellbeing and safety of Aboriginal and Torres Strait Islander victims of family violence and sexual assault, FVPLS Victoria urges extreme caution in any move to investigate the extension of restorative justice principles to crimes of family violence and sexual assault.

Any further research in relation to restorative justice approaches to family violence and sexual assault as proposed by the Victorian Parliament Law Reform Committee 2009 must involve in-depth consultation with ATSI victims/survivors of family violence and sexual assault and ATSI women as the majority of victims/survivors of these crimes. Any such consultations must be conducted in safe and confidential settings to ensure open and candid discussion.

