

NATIONAL FAMILY VIOLENCE PREVENTION LEGAL SERVICES

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

National Family Violence Prevention Legal Services Forum

**SUBMISSION IN RESPONSE TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION:
EXAMINATION OF CHILDREN AFFECTED BY FAMILY AND DOMESTIC VIOLENCE**

JUNE 2015

Introduction

This document is intended as a brief supplement to the National Family Violence Prevention Legal Services Forum's (National FVPLS Forum) appearance in person at the National Roundtables.

Submissions were welcomed on any of the following questions about how children are affected by family and domestic violence:

1. *What are the definitional issues in relation to family and domestic violence affecting children?*
2. *What do we know about the prevalence and incidence of family and domestic violence affecting children, including who is involved in family and domestic violence events?*
3. *What are the impacts on children of family and domestic violence?*
4. *What are the outcomes for children engaging with services, programs and support?*
5. *What are the outcomes for children of public policy approaches and educational campaigns targeting family and domestic violence?*
6. *What are the surveillance and data gaps/needs in relation to children affected by family and domestic violence?*

The National FVPLS Forum has made multiple submissions relevant to these questions, including the:

- Senate Inquiry into Access to Legal Assistance Services¹
- Senate Inquiry into the Indigenous Advancement Strategy Tendering Processes²;
- Submission to the Family Law Council on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems³;
- Senate Inquiry into Out of Home Care⁴; and
- Senate Inquiry into Domestic Violence in Australia⁵.

Individual members have also made submissions to these and other inquiries, many of which are available on their respective websites. Representatives of the National FVPLS Forum participated in the Melbourne Roundtable on 19 May 2015 and are due to appear again at the Perth Roundtable on 14 August.

These submissions set out the positions and underpinning evidence that relate to this questions, including, in particular:

- the high rates and disproportionate impacts of family violence against Aboriginal and Torres Strait Islander women and children;
- family violence as a key driver of the escalating rates of Aboriginal and Torres Strait Islander children in out of home care;
- impacts on the cultural needs and rights of Aboriginal and Torres Strait Islander children through, in particular, the family law and child protection systems; and
- the intergenerational impacts on Aboriginal and Torres Strait Islander communities, including in particular women and children.

If there are further opportunities to give feedback through a public hearing, provide support in developing recommendations or speak to the issues already raised we would welcome further contact.

About Family Violence Prevention Legal Services

The primary function of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are victim/survivors of family violence. FVPLSs also provide an important community legal education and early intervention and prevention function. FVPLSs have developed holistic, wrap-around service models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face. FVPLSs are not gender exclusive. However, nationally 90% of our clients are Aboriginal and Torres Strait Islander women and children.

FVPLSs were established 16 years ago in recognition of:

- the gap in access to legal services for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault;
- the high number of legal conflicts within Aboriginal and Torres Strait Islander Legal Services (ATSILS) and;
- high rates of family violence in Aboriginal and Torres Strait Islander communities.

FVPLSs are one of the four national legal assistance providers, along with legal aid commissions (LACs), community legal centres (CLCs), Aboriginal and Torres Strait Islander legal services (ATSILS) and family violence prevention legal services (FVPLS), which all have different and specialised but complementary roles.”⁶ FVPLSs continue to service at least 31 identified locations around Australia pursuant to Commonwealth government funding, although these regional restrictions no longer apply. Some FVPLS units have also attracted additional funding from State government and other sources to service metropolitan and additional regional areas. FVPLSs also work across four main areas of law: family violence, family law, child protection and victims of crime assistance.

About the National FVPLS Forum

The National FVPLS Forum Members have been successfully working together since the Forum was established in May 2012. The Forum’s goal is to work in collaboration across FVPLS Services nationally and increase access to justice for Aboriginal and Torres Strait Islander victims/survivors of family violence. The National Forum has its own Charter, is led by an elected National Convenor and supported by a Secretariat. Members are represented by their CEO/Coordinator (or delegates) and have worked together to develop tools for capacity building, good governance, professional development, training, the development of evaluation frameworks and improved data collection.

At the time of writing this submission, the National Forum comprised 13 members:

- Aboriginal Family Violence Prevention and Legal Service Victoria (Melbourne HO, Mildura, Gippsland, Barwon South West)
- Aboriginal Family Legal Service Southern Queensland (Roma)
- Binaal Billa Family Violence Prevention Legal Service (Forbes)
- Central Australian Aboriginal Family Legal Unit Aboriginal Corporation (Alice Springs HO, Tennant Creek)
- Family Violence Legal Service Aboriginal Corporation (Port Augusta HO, Ceduna, Pt Lincoln)
- Many Rivers Family Violence Prevention Legal Service (Kempsey)
- Marninwarnitkura Family Violence Prevention Unit WA (Fitzroy Crossing)
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council Domestic and Family Violence Service (Alice Springs, NPY Tri-state Region)
- Queensland Indigenous Family Violence Legal Service (Cairns HO, Townsville, Rockhampton, Mount Isa, Brisbane)
- Southern Aboriginal Corporation Family Violence Prevention Legal Service (Albany)
- Thiyama-li Family Violence Service Inc. NSW (Moree HO, Bourke, Walgett)
- Warra-Warra Family Violence Prevention Legal Service (Broken Hill)
- Western Australia Family Violence Legal Service (Perth HO, Broome, Carnarvon, Kununnura, Geraldton, Kalgoorlie, Port Hedland)

The rates of family violence affecting Aboriginal and Torres Strait Islander women and children

Nationally, Aboriginal and Torres Strait Islander women are 34 times more likely to be hospitalised for family violence⁷ and 10 times more likely to die from violent assault than other women.⁸ These figures are likely to be a significant under-estimate, as Aboriginal women are less likely to report family violence than other women and many will not seek medical attention.

In 2013-14, compared with non-Aboriginal children, Aboriginal and Torres Strait Islander children are:

- Seven times as likely as non-Aboriginal children to be receiving **child protection services**.⁹
- Seven times as likely to be the subject of **substantiated child abuse and neglect**¹⁰
- Almost nine times as likely to be on **care and protection orders**¹¹
- Nine times more likely to be in **out-of-home care**¹²

A recent report by the Australian Institute of Health and Welfare reveals that of the **\$4.1 billion** spent on community support and welfare services for Aboriginal and Torres Strait Islander people, the largest proportion (**29%**) was spent on **child protection and out-of-home care services**. This compares with 6.5% for non-Aboriginal people.¹³

Aboriginal and Torres Strait Islander women make up 22% of all clients of **specialist homelessness services**.¹⁴ Aboriginal and Torres Strait Islander children make up 32.7%, or almost one third, of children aged 14 years or less in specialist homelessness services.¹⁵ Family violence is the single greatest reason people present to homelessness accommodation services in Australia,¹⁶ with Aboriginal and Torres Strait Islander women 15 times more likely to see assistance from crisis homelessness services than non-Aboriginal people.¹⁷

Impacts on Aboriginal and Torres Strait Islander children

While FVPLS is not gender-specific, nationally over 90% of our clients are women and children. Reliable data is not collected on the number of children who indirectly benefit from FVPLS services, but a file audit undertaken in one service identified a ratio of 1.6 children recorded against each FVPLS client. Most members estimate in practice there are at least 2 affected children per FVPLS client, which does not include affected children in broader family networks. However many Aboriginal and Torres Strait Islander children affected by family violence have simply not come into contact with an FVPLS service.

The Victorian Commissioner for Aboriginal Children and Young People, Andrew Jackomos, reported that “[f]amily violence is one of the largest drivers of children and young people to out-of-home care”.¹⁸ Preliminary findings from the Commissioner’s *Taskforce 1000* (commenced in 2014) indicate that men’s violence against women is a primary driver in up to 95 per cent of Aboriginal children entering out of home care.¹⁹ In Victoria, where this research was undertaken, the number of Aboriginal children admitted to care and protection orders increased by 85 per cent between 2006-07 and 2013-14.²⁰ This compares to an increase of 38% in the number of non-Aboriginal children admitted to care and protection orders in the same period.²¹ The number of Aboriginal children placed in out of home care increased by 98% between 2006-07 and 2013-14, compared to an increase of 45 per cent for non-Aboriginal children.²²

These increases in Victoria correspond roughly with the introduction of legislation to better identify and address the impacts of family violence on children who witness it.²³ In 2013-14 in Victoria, 62% of Aboriginal children had substantiations for emotional abuse, compared to just over 7% for neglect.²⁴ Victoria is the jurisdiction with the highest proportion of substantiations for emotional abuse. The national data shows that 34% had substantiations for emotional abuse and 41% had substantiations for neglect.²⁵ However, National FVPLS Forum members confirm that, in their experience and work with communities, family violence is a key driver of child removal, irrespective of variations in legislative instruments used by child protection services.

The National FVPLS Forum recognises the evidence about the impacts of witnessing violence on children and put forwards this additional evidence in recognition of:

- Harms incurred to Aboriginal and Torres Strait Islander children and their communities through intergenerational child removal; and
- Harms incurred to children within the out of home care system including subsequent pathways through juvenile justice and adult prison systems;
- Systemic barriers and failures to implement legislative and other obligations relating to the Aboriginal Child Placement Principle, including failures of courts and child protection services to understand and apply their obligations;

Any assessment of the impacts on Aboriginal and Torres Strait Islander children of family violence must include an assessment of the impacts of our service responses and/or lack of service responses that can prevent these harms. This includes, in particular, failures to adequately resource security and protection for Aboriginal and Torres Strait Islander victims/survivors through culturally safe:

- holistic and specialised legal assistance to victims/survivors of family violence;
- early intervention and prevention initiatives;
- policy, law reform and advocacy;
- access to safe and appropriate housing;
- access to financial resources and/or independence; and
- support for the self-determination of Aboriginal and Torres Strait Islander peoples including specifically self-determination of Aboriginal and Torres Strait Islander women.²⁶

Mainstream awareness raising activities for domestic violence will not well serve Aboriginal and Torres Strait Islander women or children well if victims/survivors and their communities continue to be afraid of reporting violence due to child protection intervention. More targeted investment is needed urgently to ensure these fears are understood and respected and better service responses available. Refer previous submissions for more specific recommendations.

Research needs relating to impacts on children

Support for improved data collection and impact assessment for Aboriginal and Torres Strait Islander women and children through FVPLS services would be of significant benefit. The FVPLS National Outcomes Framework provides a model through which this can occur but is not yet resourced or formally supported through government.

The research undertaken in Victoria by Taskforce 1000 has been invaluable and comparable assessments in other jurisdictions is strongly encouraged.

In addition, opportunities to assess impacts on victims/survivors of family violence, including children, across the whole service system are urgently needed, to ensure investments are well targeted and based on evidence that over-rides the current constraints of political and funding cycles.

Endnotes

- ¹http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Legal_assistance_services
- ²http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Commonwealth_Indigenous/Submissions
- ³ http://www.nationalfvpls.org/images/files/Submission_National_Forum_Family_Law_Council_Reference_FINAL.pdf
- ⁴http://www.nationalfvpls.org/images/files/National_FVPLS_Forum_Submission_to_the_Senate_Inquiry_into_Out_of_Home_Care.pdf
- ⁵http://www.nationalfvpls.org/images/files/National_FVPLS_Forum_Submission_to_Senate_Inquiry_into_Domestic_Violence.pdf
- ⁶ Productivity Commission, *Access to Justice Arrangements Report*, 2014, p 667
- ⁷The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014*, 2014, page 4.93, table 4A.11.22 available at <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014/key-indicators-2014-report.pdf>.
- ⁸ Australian Institute of Health and Welfare, *Family Violence among Aboriginal and Torres Strait Islander people*, 2006, page 66 available at <http://www.aihw.gov.au/publication-detail?id=6442467912>
- ⁹ Australian Institute of Health and Welfare, *Child Protection Australia 2013-14*, 2015, page 15 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859>
- ¹⁰ Australian Institute of Health and Welfare, *Child Protection Australia 2013-14*, 2015, page 25 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859>
- ¹¹ Australian Institute of Health and Welfare, *Child Protection Australia 2013-14*, 2015, page 40 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859>
- ¹² Australian Institute of Health and Welfare, *Child Protection Australia 2013-14*, 2015, page 50 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859>
- ¹³ Australian Institute of Health and Welfare, *The health and welfare of Australia's Aboriginal and Torres Strait Islander peoples 2015*, p.150 Available at <http://www.aihw.gov.au/publication-detail?id=60129550168>
- ¹⁴ Australian Institute of Health and Welfare, *The health and welfare of Australia's Aboriginal and Torres Strait Islander peoples 2015*, p.123 Available at <http://www.aihw.gov.au/publication-detail?id=60129550168>
- ¹⁵ Australian Institute of Health and Welfare, *The health and welfare of Australia's Aboriginal and Torres Strait Islander peoples 2015*, Table S7.18 Available at <http://www.aihw.gov.au/publication-detail?id=60129550168>
- ¹⁶ Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women's Offending*, 2010, page 28 available at <http://www.aic.gov.au/documents/F/4/0/%7bF400B08D-7ECB-43EE-BB6E-38B2C3580A46%7drpp107.pdf>
- ¹⁷ Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women's Offending*, 2010, page 28 available at <http://www.aic.gov.au/documents/F/4/0/%7bF400B08D-7ECB-43EE-BB6E-38B2C3580A46%7drpp107.pdf>
- ¹⁸ Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, Sept 2014, page 36 available at <http://www.cryp.vic.gov.au/downloads/annual-reports/cryp-annual-report-2014.pdf>
- ¹⁹ *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care – October 2014 Update*, a joint submission from the Commissioner for Aboriginal Children and Young People and Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 3; see also Papers submitted to Aboriginal Justice Forum October 2014.
- ²⁰ Productivity Commission, *Report on government services: Volume F Community Services*, 2015, Table 15A.6 available at http://www.pc.gov.au/data/assets/pdf_file/0017/132362/rogs-2014-volumef-community-services.pdf
- ²¹ Productivity Commission, *Report on government services: Volume F Community Services*, 2015, Table 15A.6 available at <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection>
- ²² Productivity Commission, *Report on government services: Volume F Community Services*, 2015, Table 15A.19 available at <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection>
- ²³The *Children, Youth and Families Act 2005* (Vic) identified children who have suffered, or are likely to suffer, emotional or psychological harm as in 'need of care and protection' and subject to mandatory reporting.
- ²⁴ Australian Institute of Health and Welfare, *Child Protection in Australia 2013-14*, Table A11, available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859>
- ²⁵ Australian Institute of Health and Welfare, *Child Protection in Australia 2013-14*, Table A11, available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859>
- ²⁶ See Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences* to Human Rights Council, 17th Session, United Nations General Assembly, 2 May 2011, p.20