

# 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 SENATE INQUIRY INTO  
COMMONWEALTH INDIGENOUS ADVANCEMENT  
STRATEGY TENDERING PROCESSES**

**JUNE 2015**

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## Section 1: Introduction

The National Family Violence Prevention Legal Services Forum (National FVPLS Forum) is pleased to submit to the Finance and Public Administration References Committee *Inquiry into the Commonwealth Indigenous Advancement Strategy Tendering Processes*. For clarity and ease of reference the National FVPLS Forum does not intend to answer every term of reference individually but rather address some of the main challenges experienced by Family Violence Prevention Legal Services (FVPLS).

The submission will highlight key issues and concerns experienced by our members about the process and implementation of the Indigenous Advancement Strategy (IAS).

### About the Family Violence Prevention Legal Services

Family Violence Prevention Legal Services were established 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.

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. Family Violence Prevention Legal Services also provide an important community legal education and early intervention and prevention function. FVPLSs have adopted a holistic, wrap-around service delivery models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face. Nationally 90% of our clients are Aboriginal and Torres Strait Islander women and children.

Family Violence Prevention Legal Services 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.”<sup>1</sup>

### About the National FVPLS Forum

The National Family Violence Prevention Legal Services Forum (the National FVPLS Forum) was established in May 2012. The goal is to work in collaboration across FVPLS services and increase access to justice for Aboriginal and Torres Strait Islander victims/survivors of family violence. The National FVPLS 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

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<sup>1</sup> Productivity Commission, *Access to Justice Arrangements Draft Report*, 2014,610.

develop tools for capacity building, good governance, professional development, training, the development of evaluation frameworks and improved data collection.

National FVPLS Forum members are currently:

- 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)

### **Background: Rationalisation of FVPLSs into the Indigenous Advancement Strategy**

The background of rationalising the National FVPLS Program into the IAS has been well documented. In summary, in the 2014-15 Federal Budget it was announced that more than one hundred and fifty Indigenous programs under the responsibility of the Department of Prime Minister and Cabinet (PM&C) would be 'rationalised' into five high level program streams under the Prime Minister's *Indigenous Advancement Strategy*. Under the Strategy, \$534.4 million has been cut from Indigenous Affairs across five years, commencing 2014/15.

The National FVPLS Program was one of the programs collapsed into the *Indigenous Advancement Strategy*. This resulted from a decision in December 2013, to shift responsibility for the National FVPLS Program from the Attorney General's Department (AGD) to the PM&C. The three other legal assistance services, Legal Aid, Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services, all remained in AGD. No rationale was given for the shift, creating uncertainty as to whether FVPLSs would continue to be recognised by Government as frontline legal services and as a national program.

Current status of FVPLS Units under IAS:

- All FVPLSs were successful in their application under the Indigenous Advancement Strategy, including funding secured for the National Secretariat
- Nine of the FVPLSs initially received only one year of additional funding, extending significant funding uncertainty and its distressing impacts on staff and victims/survivors
- Following further negotiation these funding agreements were extended to two years
- Five FVPLS Units received confirmation that three year funding agreements would be offered
- No Forum members received an increase in funding or inclusion of CPI, despite a rise in the hospitalisation rates of Aboriginal and Torres Strait Islander women and other evidence<sup>2</sup> to support increased funding for culturally safe, specialist legal services; and
- Despite these 'successful' funding outcomes, the National FVPLS Program was effectively defunded under the *Indigenous Advancement Strategy* and continues to have no direct allocation. This means there is no transparency or guarantee of funding for the program into the future, nor national recognition of the value of this model;
- The treatment of CPI is an effective cut and the application of the ERO/SACS Supplementation may be a further cut (TBC at time of writing);
- Funding cuts to Early Intervention and Prevention Programs sustained in 2012 have not been reversed;
- FVPLSs and their frontline services remain at high risk through future tendering under the *Indigenous Advancement Strategy*;

The introduction and outcomes of the *Indigenous Advancement Strategy* run counter to a growing body of compelling evidence concerning the value and increased funding needs of FVPLSs, as stated above. The National FVPLS Forum maintains that adequate, long-term resourcing must be provided. We continue to call on the Government to treat FVPLS as a standalone program with a transparent commitment through treasury and budget processes to a secure direct allocation of funding.

## Summary of Concerns

### **The impact of the IAS on National FVPLS program**

The National FVPLS Forum calls for the reinstatement of the National Family Violence Prevention Legal Services as a national, standalone programme provided with a transparent commitment through treasury and budget processes to secure a direct

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<sup>2</sup> See for example: Productivity Commission, Final Report, Access to Legal Assistance Services Inquiry, 2014; Senate Finance and Public Administration Committees, Interim Report, *Domestic Violence in Australia*, March 2015; Judith Stubbs and Associates, 'Economic Cost Benefit Analysis of Community Legal Centres', June 2012.

allocation of resources. Without recognition as a standalone provider FVPLSs remain vulnerable to further policy and programme changes. The impact of many years of funding uncertainty combined with escalating rates of family violence experienced by Aboriginal and Torres Strait Islander women requires more secure resourcing of the Aboriginal Family Violence Prevention Legal Services rather than being subjected to further competitive tender processes. The National FVPLS Program has been subjected to numerous reviews, further detailed below, and all findings have supported its continued resourcing as an essential and specialised service. The Productivity Commission called for an increase of \$200 million for legal assistance providers.

### **IAS tendering processes**

The National FVPLS Forum experienced significant levels of mixed messages, untimely information and responses that lacked clarity and service disruption during the IAS tendering processes.

The National FVPLS Forum consider the level of community consultation before, throughout and since the IAS tendering processes to be insufficient to the scale of the changes being implemented.

### **Level of funding committed**

The National FVPLS Forum shares concerns expressed by other submissions about the level of funding committed to Aboriginal and Torres Strait Islander services, including in particular the \$534 million cut announced under the 2014 budget and a lack of transparency about how much funding is actually available. In March 2015 the Minister announced<sup>3</sup> that \$860 million had been granted under the IAS to 964 organisations to deliver 1297 projects. As indicated in other submissions \$860 million is not adequate to address the very high levels of complex needs experienced and lack of culturally safe services for Aboriginal and Torres Strait Islander communities. PM&C spent \$311 million to administer the IAS in the first year (2014/15), which is more than the funding allocated to the entire Safety and Wellbeing Programme (\$279 million) for direct service delivery.

In relation to the funding of Aboriginal and Torres Strait Islander organisations, the levels and purpose of funding under IAS is not yet publically available. The information that is available confirms that significant funding has been allocated to large mainstream organisations such as major sporting bodies, private companies, state and local governments, universities and large non-government organisations. The National FVPLS Forum is very concerned about the lack of transparency for mainstream expenditure.

The National FVPLS Forum considers it imperative that Governments develop genuine and transparent community consultation mechanisms to ensure policy is informed through the lived experience of community members and established and trusted community agencies. Adequate funding levels required to invest in addressing

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<sup>3</sup> Minister for Indigenous Affairs, *\$860 million for investment through Indigenous Advancement Strategy Grants Round*, 4 March 2015.

community needs can be determined through improved collaborative engagement, particularly prior to significant changes.

The Federal Government should work proactively with Aboriginal and Torres Strait Islander Controlled Community Organisations in any future funding processes provide longer term certainty and ensure support for smaller community agencies to provide culturally safe services that are responsive to local needs.

## Section 2: Indigenous Advancement Strategy Tendering Process

### Consultation and Stakeholder Engagement

*This section addresses:*

*a) the extent of consultation with service providers concerning the size, scope and nature of services tendered, determination of outcomes and other elements of service and contract design*

The National FVPLS Forum considers the consultation and stakeholder engagement conducted under the IAS was insufficient.

Prior to the release of the IAS Guidelines, FVPLSs were subject to many external reviews. These included:

- *Access to Justice Arrangements Inquiry Report* (Productivity Commission, released 2014).
- *Review of the National Partnership Agreement on Legal Assistance Services* (Allen Consulting, report released 2014)
- *Family Violence Prevention Legal Services – Research and Needs Analysis Report* (NOUS Group, released in 2013).
- *Review of the Family Violence Prevention Legal Service Program* (Allen Consulting, report released 2012)

All of these reports commonly determined there is an ongoing need for FVPLSs specialist services and a need to provide secure sustainable funding.

In December 2013, the FVPLS Program was moved from the Attorney-General's Department into the Prime Minister's portfolio. No rationale was given for the shift. Between the portfolio shift and the announcement of the IAS under the 2014-15 Federal Budget, very little consultation was undertaken with the National FVPLS Forum, despite numerous attempts to engage with the Department of Prime Minister and Cabinet (PM&C).

In February 2014, PM&C attended a National FVPLS Forum teleconference at the request of members to provide clarity as to future funding arrangements. National FVPLS Forum Members were consistently told that any discussion regarding funding arrangements would need to wait until after Federal Budget announcements, despite this leaving FVPLSs, its clients and Aboriginal and Torres Strait Islander communities,

carrying the impacts of this uncertainty for several months. This also limited the ability of FVPLSs to provide any meaningful input into the tendering process.

On the 14 May, FVPLSs were formally provided a letter by the Department of Prime Minister and Cabinet, announcing that the FVPLS program would be rationalised into the IAS. In June 2014, the National FVPLS Forum invited PMC to our national annual meeting. At this meeting very limited information was given about future funding arrangements under the IAS and no confirmation was given as to whether FVPLSs would need to tender for services, leaving members with ongoing uncertainty as to the continuation or future of FVPLSs.

As reported by a National FVPLS Forum member:

*'In June that year at the FVPLS national gathering in Brisbane we had hoped to know more but were again left in the dark. The catch cry seemed to be "I have no vision on that" repeated often by the senior representative from Canberra.'*

In addition, the National FVPLS Forum and its members actively provided feedback through:

- A Parliamentary Event hosted by Senator Nova Peris in July 2014
- Submission to the Senate Inquiry into Domestic Violence in Australia

Following the release of the *Indigenous Advancement Strategy* Guidelines in August 2014, the National FVPLS Forum;

- Immediately identified significant risks with the Guidelines and provided this feedback to the Department;
- Requested a direct allocation to the program, nationally and as individual members, on the basis of FVPLS specialist expertise and significant risks associated with an open competitive process. This request was refused;
- Sought clarification about whether legal assistance services were eligible under the Guidelines. This was confirmed;
- Sought clarification about the eligibility of policy and advocacy. There remains a lack of clarity;
- Consistently sought clarification from the IAS hotline on issues that arose throughout the application process.

No FVPLSs were consulted prior to the release of the IAS outcomes or elements of service and contract design. The National FVPLS Forum are of the view that that outcomes of the IAS were not consistent with the work of the FVPLSs and did not fit the service provision of legal services.

In late 2014, the Australian Council of Social Services (ACOSS) advised the National FVPLS Forum that PMC was open to establishing a high-level sector group, including national Aboriginal and Torres Strait Islander Community Controlled Organisations or representatives, to give feedback to the PMC on IAS process and implementation.

The National FVPLS Forum strongly endorsed the establishment of this group however the idea was not implemented.



## Timeframe

*This section addresses:*

*b) the effect of the tendering timeframe and lack of notice on service collaboration, consortia and the opportunity for innovative service design and delivery.*

The IAS Guidelines were released on 8 August 2014. Through the release of these Guidelines and other formal communications, FVPLSs understood that they would be required to enter an 'open competitive grants rounds' under the terms of the Guidelines.

On 12 August 2015, the National FVPLS Forum submitted an application for a direct allocation of funding to the program with capacity to apply for additional funds. This application was developed under the terms of the Guidelines (on the basis of specialised expertise and other key claims) and submitted through the National Secretariat with the endorsement of forum members. This application can be provided to the Senate Committee in confidence.

The application was refused on Friday 5 September, no more than 40 minutes before open communications with the Department closed. The Departmental response to this application can also be provided on request.

Some members also submitted applications in this period for a direct allocation of funds to their service. These applications were also refused

The IAS Guidelines were not clear about the eligibility of Legal Assistance Services. A formal question was put to the Department on 8 August 2015, and followed up in multiple communications with the Department. The answer confirming the legal assistance services transitioned into the IAS under the FVPLS Program were eligible was received –not in writing despite multiple requests - just prior to open communications with the Department closing.

This status is still in question. In March 2015, Attorney-General George Brandis announced that \$25.5 million of proposed cuts to frontline legal assistance services will not go ahead. At the time of writing it appears at least \$11.5 million for Indigenous legal assistance over the next two years may be funded through the Indigenous Advancement Strategy. None of this additional funding was for FVPLS Services, which instead sustained a cut through the administration of CPI and (TBC) the ERO Supplementation.

In face of this we join the National and Torres Strait Islander Legal Assistance Services (NATSILS) in the broader national call for the Government to heed the Productivity Commission's Access to Justice Arrangements report which called for a further \$200m investment into the legal assistance sector, including the Family Violence Prevention Legal Services.

The IAS application kit was released on Monday 8 September 2015 with an initial closing date of Tuesday 7 October. This closing date was subsequently extended to 17 October following significant sector pressure.

The timeframes for applying were completely inadequate relative to the task and as such had significant impacts on the National FVPLS Forum members and the Aboriginal

and Torres Strait Islander communities they service. Considerable organisational and Forum resources were dedicated to researching, preparing, developing and writing IAS applications.

PM&C staff members' consistent messages to FVPLSs were to perceive the IAS application process as an 'opportunity', particularly an opportunity to potentially access greater funding to further address the needs of the clients and expand the communities FVPLSs serve. Units therefore dedicated scarce resources to carefully articulating service unmet needs and demands and determining ways to align FVPLSs unique services' outcomes with the IAS designed outcomes which were simultaneously vague and prescriptive.

Funding announcements about funds transitioned from former FaCHSIA were scheduled in December 2014. As these timeframes could not be met by PM&C, variations extending these funds to 30 June 2015 were offered to existing providers.

There were no adverse impacts on our members from this extension and the National FVPLS Forum recognises and supports this decision as a proactive response to the circumstances of smaller Aboriginal organisations and frontline services. For National FVPLS Forum Members, these funds were important to some, but minor compared to the core FVPLS funding transitioned from the Attorney General's Department. Not all members were affected.

Funding announcements about FVPLS core funding were scheduled for March 2015 and an initial notification was made to the National Convenor directly from the Minister on 4 March 2015. Notifications to National Forum Members in writing took significantly longer and details of funding amounts for individual services are still being finalised through the contract negotiation process.

### Information Provided

*This section addresses:*

*d) the clarity of information provided to prospective tenderers concerning service scope and outcomes*

The information provided to potential applicants was not timely, clear or consistent.

It is clear that Machinery of Government processes, cuts to public sector staffing and changes in the core functions of the Department of Prime Minister and Cabinet have all impacted on the way information was provided, with significant variation in the quality and clarity of communications.

This had a significant and very distressing impact on National FVPLS Forum members, staff and service users, compromised the integrity of the process and increased the risks to clients. In addition, there were concerns about the timing of information provided (e.g. response to the query about legal assistance services) and concerns about when and whether decisions were driven by political rather than due process imperatives.

Some examples include:

- The National FVPLS Forum received mixed messages about whether we were tendering for services, with the Department consistently calling the tendering process an ‘open competitive process’;
- When members called the IAS hotline for assistance, answers were often inconsistent or contradictory;
- PMC representatives often did not understand or were not in a position to comment on critical points of the application;
- PMC staff were inexperienced and did not understand the services they had responsibility to assist;
- After the applications had closed, the National FVPLS Forum were informed through ACOSS that policy and advocacy were eligible activities under IAS, in line with the eligibility of these activities under mainstream funding streams (e.g. DSS). This is contrary to advice given to members who did not apply for policy and advocacy under the IAS based on:
  - the exclusion in the current contracts transitioned from AGDs,
  - the government’s public position on policy and advocacy
  - advice from Minister Scullion to other organisations
  - advice from some departmental representatives to the National FVPLS Forum Members

### Commonwealth Grants Guidelines

*This section addresses:*

*h) the implementation and extent of compliance with Commonwealth Grant Guidelines*

Other submissions to this inquiry have identified that the IAS process did not comply with the Commonwealth Grants Guidelines (see for e.g. submission by Family and Relationships Services Australia, VACCA and VACCHO). The National FVPLS Forum endorse this position and these concerns including that there was a lack of robust planning and design, or collaboration and partnership to ensure that grants administered achieve value with public money.

The Commonwealth Grants Guidelines continue to privilege competitive tendering processes, which have been reported under the Forrest Review to deliver ‘the lowest common denominator’ outcomes for remote communities. This applies to Aboriginal and Torres Strait Islander communities more broadly.

Aboriginal and Torres Strait Islander Community Controlled Organisations require equitable access to tender processes and opportunities, particularly to compete against large mainstream organisations with dedicated resources to develop funding proposals. Front-line services are negatively impacted by diverting organisational focus towards securing organisational sustainability. In 2015-16 in particular this has had very adverse impacts on FVPLSs frontline services.

The Department of the Prime Minister and Cabinet submission to this review identified that of the 2,472 applications received 1,233 (49.88%) were non-compliant; the National FVPLS Forum considers this attests to the complexity of the tendering process, the onerous requirements placed on applicants, confusion around eligibility and criteria, and the lack of time given to complete the application form.

Additionally, the National FVPLS Forum note that ‘the Minister did not accept all Departmental recommendations in determining the successful applicants under the IAS.’<sup>4</sup> He does not have to report until March 2016, well after the repercussions and impacts of his funding decisions have been fully implemented.

The National FVPLS Forum is concerned that it costs \$311 million to administer the IAS in the first year, considerably more than was allocated to the entire Safety and Wellbeing programme to deliver essential front-line services.

## Feedback

*This section addresses:*

- f) the information provided to tenderers about how decisions are made, feedback mechanisms for unsuccessful tender applicants, and the participation of independent experts in tender review processes to ensure fairness and transparency*

In various discussions too detailed to document here, The National FVPLS Forum Members representatives have sought information from departmental representatives about how decisions were made regarding its direct and open applications for funding (seeking consideration of a direct allocation through The National FVPLS Forum Members) and have been advised to formally request feedback through the IAS Grants line.

Like other submissions to this Committee, the National FVPLS Forum has significant concerns about the lack of feedback particularly in terms of how the applications were evaluated. The Secretariat and members sought feedback from the Department on multiple occasions and were told to go through the IAS grants line. The grants line feedback provided applicants with very generic information.

*“They said our capacity and experience were very good but we had not made our case for the need strongly enough. I wasn’t expecting much and that’s what happened.”*

All 13 members of the National FVPLS Forum have received notification that their funding levels will be at the same level as 2013-14 (without any CPI increase). It is difficult to establish whether the evaluation process genuinely took into account the level of need demonstrated by each Unit and consideration given to the resources requested or whether the decision was made to simply retain funding for the program, at least for the time-being.

The National FVPLS Forum Members calls for transparency of the evaluation process and subsequent decision making and a commitment to ensuring comprehensive feedback to both successful and unsuccessful applicants. Comprehensive feedback would enable organisations to improve future resource proposals.

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<sup>4</sup> Department of Prime Minister and Cabinet, *Submission to the Senate Finance and Public Administration References Committee Commonwealth Indigenous Advancement Strategy Tendering Process*, 30 April 2015.

## Section 3: IAS Rationale and Supporting Evidence

This section addresses:

- c) the evidence base and analysis underlying program design;
- m) factors relating to the efficient and effective collection and sharing of data on outcomes within and across program streams to allow actuarial analysis of program, cohort and population outcomes to be measured and evaluated;
- j) the framework and measures in place, if any, to assess the impacts of these reforms on service user outcomes and service sustainability and effectiveness;

A mix of public and private communications by the Department of Prime Minister and Cabinet declared that:

- The IAS was designed to achieve better outcomes in the community with discussions focused more specifically on Safety and Wellbeing
- Applicants would be selected based on demonstration of their ability to achieve better outcomes in relation to Safety and Wellbeing

National FVPLS Forum concerns include:

- IAS lack of evidence base underpinning selection of outcomes and KPIs
- Did not demonstrate or build off current sector expertise including in particular Aboriginal and Torres Strait Islander organisations, family and domestic violence or other frontline services
- As the only legal assistance service formally rationalised into the IAS it was clear little thought had been given as to how FVPLSs would fit into the IAS outcomes and whether it was appropriate for specialist legal services to be included within a broad 'safety and wellbeing' program

FVPLSs found it challenging to match the unique service provision of FVPLSs with the outcomes set down by the IAS. It was very clear to FVPLS services that there had not been sufficient consultation with service providers and communities to co-design programme outcomes and elements develop tangible, meaningful indicators required to produce effective service impacts.

As noted by one member:

*'We accept that change is inevitable and can be a positive force however this one needed a lot more thought put into it that has been displayed.'*

Through the National Secretariat of the National FVPLS Forum, Member FVPLSs had opportunities to collaborate and a national body providing assistance to support them through this process. For example, this enabled FVPLSs to collaborate to develop a National Outcomes Framework. These outcomes had a focus on the overarching objective of safety and wellbeing and demonstrated the unique role and contribution of FVPLSs more broadly.

Unfortunately, this work developing National Outcomes and some underpinning measures has not yet been taken into account in the contracts, resourcing or support for data capture by PMC. The National FVPLS Forum is concerned, despite assurances to

the contrary, that the simplistic numeric targets (or outputs) set down by the Department do not adequately or appropriately measure the nature and complexity of FVPLS service provision or assist services to demonstrate impact sufficiently.

The National FVPLS Forum would welcome the opportunity to work with PM&C to further refine and implement the National Outcomes Framework to provide monitoring and evaluation of FVPLS service delivery in the future. This would include adequate resourcing to assist in the development of this important work.

Following feedback on these concerns at the National FVPLS Forum Meeting the members received an undertaking that neither the KPIs nor output targets agreed for 2015-16 would be taken as a meaningful measure of performance in decision making processes.

## Section 4: Outcomes for Applicants

### Funding Levels

*This section addresses:*

- g) analysis of the types, size and structures of organisations which were successful and unsuccessful under this process.*

As identified earlier:

- All FVPLSs were successful in their application under the Indigenous Advancement Strategy, including funding secured for the National Secretariat
- Nine of the FVPLSs initially received only one year of additional funding, extending significant funding uncertainty and its distressing impacts on staff and victims/survivors
- Following further negotiation these funding agreements were extended to two years
- Five FVPLS Units received confirmation that three year funding agreements would be offered
- No Forum members received an increase in funding or even inclusion of CPI, despite a rise in the hospitalisation rates of Aboriginal and Torres Strait Islander women and other evidence<sup>5</sup> to support increased funding for culturally safe, specialist legal services; and
- Despite these 'successful' funding outcomes, the National FVPLS Program was effectively defunded under the *Indigenous Advancement Strategy* and continues to have no direct allocation. This means there is no transparency or guarantee of funding for the program into the future, nor national recognition of the value of this model;
- FVPLSs and their frontline services remain at high risk through future tendering under the *Indigenous Advancement Strategy*;

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<sup>5</sup> See for example: Productivity Commission, Final Report, Access to Legal Assistance Services Inquiry, 2014; Senate Finance and Public Administration Committees, Interim Report, *Domestic Violence in Australia*, March 2015; Judith Stubbs and Associates, *Economic Cost Benefit Analysis of Community Legal Centres*, June 2012.



The National FVPLS Forum Members has been advised verbally that the FVPLS program, now defined by the Department as a Safety and Wellbeing 'activity' has secured \$23.2 million per year. However, details of the funding amounts cannot be provided because some negotiations are not finalised and some members are unclear about how to interpret the funding advice with which they have been provided. This includes for example:

- How to interpret and apply the SACS supplementation – it is not clear if there is an administrative error but it may be having a 5-6% impact (effective cut);
- How to absorb and manage impacts of the effective cut of CPI;
- Maintenance of transparent and accountable funding for FVPLS in the transition from a “Program” to “Activity”, including ensuring the previous year’s funding levels are maintained;
- Members have received mixed messages from the Department about how much funding they had secured, including how it relates to the prior financial year;
- Funding for the Secretariat was unclear, with individual services initially allocated this funding without explanation, until it was identified to the Department as requiring resolution.

## Organisational Size

*This section addresses:*

- h) analysis of the types, size and structures of organisations which were successful and unsuccessful under this process.*

The National FVPLS Forum has noted that the 9 organisations who initially received an offer of 12 months funding were the smaller organisations, while the each of the larger FVPLS organisations received offers for three years funding. There were mixed and inconsistent messages about the reason for this decision but it was clarified through further discussions with the Department that they were considering opportunities for amalgamation into larger organisations early in the 2016 calendar year.

Department representatives attended the National FVPLS Forum face-to-face annual meeting and heard Members feedback about this process and its impacts. Immediately following this meeting an additional year’s funding was offered to the 9 members. Concerns about communications and process have been expressed elsewhere in this submission however the National FVPLS Forum Members recognise and fully appreciate the responsiveness to Member feedback on this critical issue by both the Department and the Minister.

## Supporting Innovation

*This section addresses:*

- e) the opportunities created for innovative service design and delivery, and the extent to which this was reflected in the outcomes of the tender process*

The IAS tendering process did not support or reward innovation for the 13 members of the National FVPLS Forum despite Units having worked very hard within very tight timelines to articulate opportunities for service innovation and expansion to address

unmet community need. All agreements offered to National FVPLS Forum Members appear to be a combination of the funding agreement levels of 2013/14 without CPI with the addition of numeric/activity based targets to be negotiated and delivered.

### Contract negotiations

National FVPLS Forum Members are currently undertaking the contract negotiation process. This inquiry is being conducted whilst most FVPLS Units are in the midst of these contract negotiation processes. Much of the relevant information is still commercial in confidence and/or sensitive to discuss prior to contracts being negotiated and signed. The National FVPLS Forum has concerns about the timing of this inquiry given that funding contracts are still being finalised by our services. Other organisations also may decide not submit to the inquiry for fear of being penalised in negotiations for funding contracts.

As articulated above, poor process and a lack of transparency have contributed to a lack of clarity in regards to funding arrangements and a short period for the finalisation of contracts.

The National FVPLS Forum is concerned that funds will not be released in time for July 2015 and services will be required to have a rollover on hand to cover running costs for July 2015. This could reduce the bargaining power of services, as some may not be in a position to cover a rollover of funds and may have to agree to unfavourable terms to finalise contracts by the end of June.

FVPLSs have also expressed concerns about the lack of understanding among some PM&C representatives about the nature and benefits of the FVPLS program. This is alarming given that services are negotiating targets which will impact future service provision.

The National FVPLS Forum may be in position to provide more information if invited to attend a public inquiry after contract negotiations have been finalised.

## Section 5: Self-determination and community control

### Cultural Safety

It has been well established that Aboriginal and Torres Strait Islander people's self-determination is fundamental to effective service delivery particularly addressing family violence in Aboriginal and Torres Strait Islander communities. It is imperative that Aboriginal and Torres Strait Islander people, women in particular, are engaged in determining, designing, developing, monitoring and evaluating programs for their own communities thereby ensuring that social, cultural and economic needs are being met.

The framework of cultural safety specifically extends beyond cultural awareness and cultural competence and incorporates self-determination into the provision of services. The fundamental importance of cultural safety in effective service provision to vulnerable clients speaks to the access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness. FVPLSs conceptualise cultural



safety as the creation of an environment where Aboriginal and Torres Strait Islander people feel safe and draw strength in their identity, culture and community.

The basis for cultural safety, self-determination and community control has been detailed in many submissions to many inquiries, these principles are critically important in relation to FVPLS services and the needs of Aboriginal and Torres Strait Islander victims/survivors of family violence. It is not possible to effectively achieve safety for Aboriginal and Torres Strait Islander women and children without it.

The National FVPLS Forum Members joins NATSILS, ANTaR and other Aboriginal and Torres Strait Islander organisations calling for real engagement with the government on the development of social policy and the distribution of funding for social services to achieve real outcomes for Aboriginal and Torres Strait Islander communities.

The IAS created competition in the sector at all levels which has had many destructive impacts. In particular, The National FVPLS Forum Members is concerned that the IAS forced Aboriginal and Torres Strait Islander organisations and communities to compete with each other for funding which does not support the safety and wellbeing of communities.

## Policy and Advocacy

*This section addresses:*

### *1) The impact on advocacy and policy services across the sector*

Inconsistent and mixed messages were provided about the eligibility of policy and advocacy under the IAS Guidelines, with encouragement not provided until applications had closed. See details above under 'Information Provided'.

This advice detrimentally impacted on FVPLSs and with the result that FVPLSs expertise and experience in front line service provision will not be well reflected in public policy.

Strategic policy, advocacy and law reform work can address systemic issues with the potential to impact a far greater number of clients than can be reached through direct service alone. It has the capacity to lead to prevention/reduced severity of legal problems by advocating for investment in addressing the root causes of legal problems. This will also have a significant impact on opportunities to address family violence through the identification of stronger, more integrated response systems and improved prevention approaches.

Aboriginal women are too often invisible in public debate, but without resourcing policy and advocacy, Aboriginal victims/survivors of family violence risk remaining invisible and silent within government and legal processes and left at risk of ongoing harm.

This concern is not limited to the Indigenous Affairs portfolio. Funding cuts (SNAICC, Congress, ATSILS) or expected funding cuts (NATSILS) to other Aboriginal and Torres Strait Islander peak organisations and policy and advocacy roles have had devastating impacts. The lack of clarity about eligibility for policy and advocacy activities under IAS

funding has impacted these organisations, their members and other Aboriginal and Torres Strait Islander organisations seeking to do this work. There is however pressure on these organisations to use their existing resources to respond to public interest and inform stakeholders.

Supporting the multiple submissions and statements made by these organisations:

- ANTAR endorses organisations that undertake advocacy, policy development, law reform or similar activities to be supported by government: “This would both improve outcomes for Aboriginal and Torres Strait Islander people and demonstrate government’s commitment to engagement”.
- Oxfam notes that the approach has occurred without sufficient consultation with Aboriginal and Torres Strait Islander communities and organisations and represents a loss of engagement, voice, experience, expertise and advice with and from Aboriginal and Torres Strait Islander communities.

In relation to the process of determining and communicating funding for the Secretariat, The National FVPLS Forum Members submits concerns in relation to standards of good government, governance and transparency of processes and funding decisions.

More broadly, public momentum for improving responses to family violence is increasing exponentially. Recent announcements at the Commonwealth level include the prioritisation of family violence through the COAG Agenda, an Advisory Panel to COAG on violence against women and an ALP commitment to a National Crisis Summit involving state and territory leaders and other key stakeholders. Failure to leverage this momentum to incorporate the multiplicity and diversity of the needs and voices of Aboriginal and Torres Strait Islander women, represents a substantial missed opportunity to the Government, organisations, communities and other stakeholders.

### ORIC Registration Requirement

This section addresses:

- 0) *The effect of mandatory incorporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 on Indigenous organisations receiving grants of \$500,000 or more per annum.*

As mentioned, the short deadline that organisations were given to complete their applications was clearly inadequate for such a complex document. The added requirement of registering under the Office of the Registrar of Indigenous Corporations for services asking for funding over \$500,000 was another level of cost and administrative burden added to an already complex and time-consuming process.

Organisations were told that they had to be incorporated within 6 months of entering a funding agreement with the Government, which is particularly burdensome on smaller organisations where staff and funds are very limited. Further, Aboriginal and Torres Strait Islander organisations were not given a choice, as registration under ORIC was mandated, a requirement that is not enforced on non-Aboriginal organisations which are freely able to choose how they will incorporate. It is the view of the National FVPLS

Forum that this requirement is discriminatory and will unfairly impact on Aboriginal and Torres Strait Islander organisations, causing significant costs and inconvenience.

As articulated by a National FVPLS Forum member:

*There is a strong impression at our level that the Federal government has shown a distrust of community organisations. The requirement to be incorporated under the Aboriginal Corporations Act rather than any other form of incorporation can only be seen as wanting another layer of control. XXXXX has a clear and proud record of service delivery and see no need to come under the ORIC umbrella. Many of our Directors have experience with that organisation and are not confident of the skills shown by their people.*

*This distrust is displayed in the draft Head Agreement for Indigenous Grants. Two points, out of several that we have raised with the regional office;*

- *Section 23 gives us a view of the “big brother” attitude, imposing more compliance and putting a greater workload on us and the program officers.*
- *Section 92 allows the Commonwealth to act to reduce or cancel the contract “Even though the Provider is not in default”. What value is a contract if one side can cancel at any time without cause?*

## Section 6: Impacts on Aboriginal and Torres Strait Islander victims/survivors of family violence

*This section addresses:*

- i. *the potential and likely impacts on service users concerning service delivery, continuity, quality and reliability;*

Delivering a legal assistance service providing support to Aboriginal victim/survivors of family violence requires long-term funding agreements to minimise the negative and disruptive impacts of funding uncertainty on our clients whose legal matters are often multiple and complex. FVPLSs provide an essential service to victim/survivors who have experienced trauma and require longer term engagement to establish and maintain trust in services and their staff. Continued and ongoing funding insecurity for the FVPLSs has not only impacted on staffing and service delivery but directly on our clients' well-being. Until funding announcements under the Indigenous Advancement Strategy were made in March, funding for FVPLSs was not secured past 30 June 2015. Uncertainty regarding the future of our services has an impact on maintaining trust across the communities that FVPLSs work with. In particular, victims/survivors of

family violence have not known whether FVPLSs will be available to assist them for the entirety of their legal matters.

As articulated by FVPLS clients:

*"What I am supposed to do, where would I go and who would help me, or even understand me? This office [has] been really good and patient with me".*

*"I know I have had a couple of outbursts and have even cried, but at every instance no one has judged me or said nothing bad. Only kind words and support came from this office, every time and even on the phone. That's just my thoughts what about everyone else you guys help and support, what is going to happen to them?"*

*"Without you guys who looks after the needs of Indigenous kids?"*

### Service Delivery

The IAS process placed a high administrative burden on services and impacted on the front-line service provision of FVPLSs. Due to the complexity of the tendering process many services had to reallocate staff away from front line service delivery or their substantive position to develop tender documentation. This was a considerable drain on resources for all services, particularly for smaller FVPLSs. As reported by a National FVPLS Forum member, in order to complete the tender their CEO worked exclusively on the application for one month.

Services also reported difficulties continuing with 'business as usual' with the uncertainty of contracts ending on 30 June 2015. This included re-negotiating leases, fixing equipment and buying new equipment. Services were also unable to strengthen or expand their services during this time with extra resources diverted towards the tendering process.

*"The delays and uncertainty through the whole process have made it very difficult to operate as a responsible business. For example, we have not been able to sign leases on the offices and we are at risk of having our phones cut off ... where NBN is being connected. We are unable to sign a contract and Telstra kept informing us that the copper wires were to be cut this month regardless."*

In addition, the uncertainty and confusion throughout the tender process made it very difficult for FVPLSs to retain and/or attract funding from other sources. Because of the uncertainty over the core Commonwealth funding, other funders were unwilling to fund or, in some cases, even enter into discussions. The ability to retain core services, expand or innovate was severely hampered in this context and the full extent of impacts on service delivery in 2015-16 are yet to be confirmed.

### Service Quality

Continued funding uncertainty also made it difficult to recruit and retain qualified and experienced staff, especially in regional and remote locations. FVPLSs already compete with the wages and conditions offered by government and legal aid departments and funding uncertainty contributes to high turnover rates and alternate career decisions

for experienced staff. This can leave FVPLSs in a position of recruiting younger lawyers with limited experience who require additional support and supervision.

Some FVPLSs in remote locations reported being unable to fill vacancies for significant lengths of time, which led to gaps in service delivery and some financial underspends. The distances between offices in many rural and remote locations as well as the time required to build community connections and trust make it impractical and costly to provide services from other offices.

While this is not unusual for agencies offering services in remote locations, the role of FVPLS creates specific risks for community members anticipating or seeking assistance. Long term, secure funding and relationships within the community are required to ensure safe and effective delivery to Aboriginal and Torres Strait Islander victim/survivors of family violence.

### Reliability and continuity

The continued funding uncertainty for FVPLS had a substantial impact on FVPLSs frontline service provision, most significantly on maintaining trust in Aboriginal and Torres Strait Islander communities. During the IAS process victims/survivors of family violence did not know whether FVPLSs will be available to assist them for the entirety of their legal matters and may have felt themselves at risk if they proceed without this knowledge.

Amnesty International also reported that there was reticence in the community to approach Aboriginal and Torres Strait Islander organisations for assistance, as couldn't guarantee they would be operating long-term. This is exceptionally high risk for victims of family violence who are considering a step to seek legal protection.

## Section 7: Recommendations

**Recommendation 1: The National FVPLS Forum recommends that the Government reinstate the National Family Violence Prevention Legal Services as a national, standalone programme provided with a transparent commitment through treasury and budget processes to secure a direct allocation of resources.**

**Recommendation 2: The National FVPLS Forum recommends that the Government improve the transparency of its funding allocations and decisions under the Indigenous Advancement Strategy tendering processes.**

**Recommendation 3: The National FVPLS Forum recommends that the Government commit to genuine community consultation and engagement to ensure that further Indigenous Advancement Strategy development is co-designed in collaboration with and informed by Aboriginal and Torres Strait Islander people and the frontline services they access, particularly ACCOs.**

**Recommendation 4: The National FVPLS Forum recommends that the Government recognise that competitive tendering processes disadvantage smaller Aboriginal and Torres Strait Islander organisations, rather than measuring effectiveness of**

**service delivery or community impact, they actually measure organisations' grant writing capacity and resources in comparison to large NGOs, private companies and State and Territory Governments.**

**Recommendation 5: The National FVPLS Forum recommends that the Government enter long-term funding agreements to ensure organisational resources are directed at front-line service delivery and quality improvements for clients and communities rather than organisational sustainability. It is inadequate to provide short-term contracts to address long term social investment needs.**

**Recommendation 6: The National FVPLS Forum recommends that funding to Aboriginal Family Violence Prevention Legal Services should be increased to ensure that Aboriginal and Torres Strait Islander victim/survivors of family violence have access to culturally safe legal services and early intervention and prevention activities.**

**Recommendation 7: The National FVPLS Forum recommends that the Government support and resource Aboriginal and Torres Strait Islander Community Controlled Organisations policy, advocacy and law reform activities to better inform and advise Government policy development and outcome/impact measures.**

**Recommendation 8: The National FVPLS Forum recommends that the Government supports and resources FVPLSs to develop the National Outcomes Framework enabling more effective monitoring and evaluation of meaningful outcome measures and service impacts.**