

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 to the
Senate Finance and Public Administration References Committee:

INQUIRY INTO DOMESTIC VIOLENCE IN AUSTRALIA

July 2014

Executive Summary

This submission has been prepared by the National Family Violence Prevention Legal Services Forum. Family Violence Prevention Legal Services (FVPLSs) are specialist legal assistance services established in response to the lack of access to appropriate legal services for Aboriginal and Torres Strait Islander victims/survivors of family violence.

Family violence is everybody's business – people, communities, services and government. We ask that this Senate inquiry lead to a genuine prioritisation of family violence by Government. We also encourage more substantive consultations with Aboriginal and Torres Strait Islander communities and organisations, including specialist agencies delivering services on the ground, and increased allocation of resourcing relative to the impact family violence has within communities.

While available data is limited, we know that Aboriginal and Torres Strait women are 31 times more likely to be hospitalised as a result of injuries caused by assault,¹ and that 1 in 5 has been a victim of violence in the last year.² In 2008–09, the total cost of all violence against women and their children (including non-domestic violence) was estimated to have cost the Australian economy \$13.6 billion.³

Reducing and eliminating family violence will not be achieved without genuine commitment to an informed, integrated and united government approach. This must include investment in early intervention, prevention and community education approaches, increased inter-disciplinary, multi-agency whole-of-government systemic and strategic national responses and genuine consultation with experienced community services and their consumers.

This submission provides information and advice in response to the Inquiry requests including:

a) *the prevalence and impact of domestic violence in Australia as it affects all Australians and, in particular, as it affects women from Aboriginal and Torres Strait Islander backgrounds*

- Family violence must be recognised as one of Australia's biggest social issues, in which the prevalence is vastly disproportional for Aboriginal and Torres Strait Islander women;
- The economic costs of family violence are extensive and undermines economic and social development in Aboriginal and Torres Strait Islander communities;
- Family violence has significant and long term effects on the mental health of those affected, which is a major contributor to its economic costs;
- Experiences of family violence can lead to increased use of drug and alcohol, as substances are used to self-medicate and cope with trauma;
- A high proportion of Aboriginal and Torres Strait Islander women in prison have been victims of physical and sexual assault, and their experiences of family violence are often linked to their offending;
- Addressing family violence is an essential element of reducing the overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system, and must be understood in the context of past and contemporary forms of Aboriginal and Torres Strait Islander child removal; and
- Family violence is the single greatest reason people in Australia present to homelessness accommodation services.

¹ The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2011*, 4, available at http://www.pc.gov.au/_data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf

² The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2011* available at http://www.pc.gov.au/_data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf

³ National Council to Reduce Violence against Women and their Children and KPMG management consulting, *The cost of violence against women and children*, 2009, 4.

b) the factors contributing to the present levels of domestic violence

There are multiple and complex factors contributing to high levels of family violence against Aboriginal and Torres Strait Islander victims/survivors, which includes violence by non-Aboriginal and Torres Strait Islander perpetrators.

c) the adequacy of policy and community responses to domestic violence

- The Second Action Plan of the National Plan to Prevent Violence Against Women and their Children does not adequately respond to the prevalence and impacts of family violence;
- Some components of the Second Action Plan may reflect an ongoing diversion of Aboriginal and Torres Strait Islander women's safety funding into the Northern Territory;
- There is a chronic lack of protection measure and services available and strong evidence of the importance of legal services and access to justice;
- The Second Action Plan needs to do more to capture on-the-ground experiences of local need, gaps and systemic failure. Consultation should be expanded to include the National Forum as the key national body with expertise in access to justice and human rights for Aboriginal and Torres Strait Islander victims/survivors of family violence;
- Telephone and web-based technologies can increase communication and cultural barriers;
- Increased police presence is not a solution. Projects that support integrated system responses, agreed practice protocols and police training are more effective;
- More work is needed to ensure family violence orders are accessible and breaches actioned;
- Increasing reporting of family violence requires effective, timely and holistic responses;
- Family Dispute Resolution does not adequately protect victims/survivors of family violence;
- Victims compensation schemes should be nationally consistent and reflect the level of harm;
- Aboriginal and Torres Strait Islander families and communities must be resourced, supported and empowered to provide for the safety of their children; and
- The FVPLS model should be expanded as a demonstrated and effective response to supporting Aboriginal and Torres Strait Islander victims/survivors of family violence, including children.

d) the effects of policy decisions regarding housing, legal services, and women's economic independence on the ability of women to escape domestic violence;

- Recent policy decisions by government have had a major impact on the service delivery of FVPLSs, with funding uncertainty impacting on community trust and service engagement;
- A shift of the Departmental and Ministerial responsibility for the FVPLS program may have detrimental impacts on its role and recognition as a legal assistance program;
- Women escaping family violence need a safe and affordable place to live, yet this will be much harder for them under changes introduced in the May 2014-2015 Budget;
- Changes introduced to welfare payments will negatively impact on Aboriginal and Torres Strait Islander women and children escaping family violence;
- The introduction of a \$7 co-payment will be detrimental for victims of family violence; and
- The ability of agencies to refer people to income management has potential to deter help-seeking behaviour.

e) how the Federal Government can best support, contribute to and drive the social, cultural and behavioural shifts required to eliminate violence against women and their children

- More resources are needed to build the capacity of Aboriginal and Torres Strait Islander women and women's organisations to participate in national policy discussions;
- Early intervention, prevention and community legal education activities can drive social and behavioural shifts and increase access to justice; and
- Responsible messages from government and through media are critically important.

1. Introduction

The National Aboriginal Family Violence Prevention and Legal Services Forum (National Forum) welcomes the opportunity to provide input to the Finance and Public Administration References Committee for the inquiry into 'Domestic Violence in Australia'.

Despite numerous inquiries, recommendations and actions plans, family violence remains at epidemic proportions within the Australian community. This is particularly true for Aboriginal and Torres Strait Islander people who continue to experience family violence at levels that are grossly disproportionate to that experienced by non-Aboriginal and Torres Strait Islander people.

The National Family Violence Prevention Legal Service (FVPLS) Program provides holistic, culturally safe legal services to in 31 rural and remote locations across Australia. Despite the indisputable need for these services in the community, FVPLSs continue to be restricted by current Commonwealth funding agreements and thereby limited in terms of the areas of law they can assist in and geographic service areas in which they can deliver services.

Ninety per cent of FVPLS clients are Aboriginal and Torres Strait Islander women and children. Family violence is complex and the issues our clients face are complex. As well as family violence driven homelessness, our clients live with intergenerational trauma, removal of children, discrimination, poverty, mental health issues, disability, lower levels of literacy and numeracy, as well as a range of other cultural, legal and non-legal issues. A greater investment of resources is required to enable disadvantaged Australians appropriate access to justice and to enable services to effectively address multiple complex needs.

Despite their experience delivering services for more than 15 years, FVPLSs continue to be subjected to funding cuts by Government and face an unknown future. Current funding for the national program is due to end 30 June 2015. This continued uncertainty has significant impacts on maintaining and further developing trust within Aboriginal and Torres Strait Islander communities and the ability for FVPLSs to provide effective service delivery.

The National FVPLS Program has recently been separated from other Legal Assistance Services, including Aboriginal and Torres Strait Islander Legal Services (ATSILS), which are administered through the Commonwealth Attorney General's Department. FVPLSs now sits under the new Indigenous Advancement Strategy in the Department of Prime Minister of Cabinet, from which \$534.4 million is expected to be cut. This move also blurs the relationship between FVPLSs and the National Partnership Agreement on Legal Assistance Services including FVPLSs contributions to its objective and outcomes.

One of the most significant issues impeding the progress towards reducing and eliminating family violence is a lack of an integrated, united government approach. This must include early recognition of problems, more appropriate targeting, increased collaboration and cooperation across agencies and a strategic national response to critical challenges and pressures affecting the legal sector.⁴As shown below, policy decisions in relation to housing, health and the welfare system all have direct impacts on family violence and therefore increase pressure on legal services.

⁴ National Partnership Agreement on Legal Assistance Services s.16

While primarily a legal assistance service, FVPLSs approach family violence from the perspective of the individual, rather than treating legal issues as though they are in isolation from the social factors that contribute to them.

We ask that this Senate inquiry lead to a genuine prioritisation of family violence by Government. We also encourage more substantive consultations with Aboriginal and Torres Strait Islander communities and organisations, including specialist agencies delivering services on the ground, and allocation of resourcing relative to the impact family violence has in Aboriginal and Torres Strait Islander communities.

The National FVPLS Forum would be pleased to provide further information in addition to this submission if required, and would be pleased to appear before the Committee in a hearing.

2. About the FVPLS Program

FVPLSs 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 Australian Government provides funding for the National FVPLS program. 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 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.

There is a continued and ongoing need for the National FVPLS program as a unique and specialised service. This is supported by the Productivity Commission's Access to Justice Arrangements Draft Report which found that, "specialised legal assistance services for Aboriginal and Torres Strait Islander people remain justified".⁵

3. About the National FVPLS 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 develop tools for capacity building, good governance, training and evaluation and data collection.

National Forum members are:

- 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)

⁵ Productivity Commission, *Access to Justice Arrangements Draft Report, 2014*, 677

- 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)

a. the prevalence and impact of domestic violence in Australia as it affects all Australians and, in particular, as it affects:

- i. women living with a disability, and***
- ii. women from Aboriginal and Torres Strait Islander backgrounds;***

Family violence must be recognised as one of Australia's biggest social issues. Aboriginal and Torres Strait Islander people, overwhelmingly women and children, are disproportionately overrepresented as victims of family violence.

Family violence can be defined as any behaviour that causes harm to a person's wellbeing or aims to control another family or community member. Family violence is not limited to physical abuse, and can include sexual, emotional, financial, cultural or spiritual abuse. For the purpose of this submission, we use family violence and domestic violence interchangeably.

While available data is limited, we know that Aboriginal and Torres Strait Islander women are 31 times more likely to be hospitalised as a result of assault, than non-Aboriginal and Torres Strait Islander women,⁶ and that 1 in 5 Aboriginal and Torres Strait Islander women has been a victim of violence in the last year.⁷

In 2002–03 in Australia, the total cost of domestic violence to victims, perpetrators, friends and families, communities, government and the private sector was estimated to be in excess of \$8 billion.⁸ In 2008–09, the total cost of all violence against women and their children (including non-domestic violence) was estimated to have cost the Australian economy \$13.6 billion. If no action is taken to address the problem, these costs will rise to \$15.6 billion in 2021–22.⁹ This includes costs associated with:

- pain, suffering and premature mortality (which accounts for almost half of all associated costs);
- provision of health services;

⁶ The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2011*, 4, available at http://www.pc.gov.au/_data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf

⁷ The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2011* available at http://www.pc.gov.au/_data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf

⁸ Access Economics, *The cost of domestic violence to the Australian economy*, 2004, 63

⁹ KPMG Management Consulting, *The cost of violence against women and their children*, 2009, 4.

- the impact on employment and productivity;
- replacing damaged property, defaulting on personal debts and moving;
- exposure to domestic violence among children, child protection services;
- the response of the criminal justice system, support services and prevention programs; and
- victim compensation and financial support from a range of sources.¹⁰

Family violence has broad ranging impacts on the mental and physical health and wellbeing of Aboriginal and Torres Strait Islander victims/survivors. It places a heavy burden on the health and legal systems and undermines economic and social development in Aboriginal and Torres Strait Islander communities. There are also strong connections between family violence and sexual assault and contact with the child protection and justice systems.

Family violence and mental health issues

There is significant evidence of the negative and often long-term mental health impacts of family violence. An Australian study of women who have experienced family violence and/or sexual assault found that women who were the victims of such violence were more likely to experience mental illness over the course of their lives than women who had not experienced family violence/sexual assault.¹¹ Demonstrated health impacts of family violence include to higher rates of depression, smoking, obesity and alcohol and drug misuse. Studies have also found suicidal tendency rates of up to 77 per cent among women who have experienced family violence.¹²

Economic analyses have indicated that the indirect social and psychological impacts of family violence may in fact be the greatest cost to the general community. These impacts can continue long after the abuse:

Abuse tends to cause fear, distrust, emotional pain and suffering. Abuse can damage self-esteem, family relationships, intergenerational relationships, and our sense of community well-being. For the woman, abuse can represent significant loss of choices and loss of opportunities to enjoy life.¹³

The 2006 *Social Justice Report* points out that mental health problems such as low self-esteem, depression, guilt, fear and relationship difficulties, substance abuse through to self-harm and suicide “are as much as a result of exposure to violence and crime, as drivers of it. Crime victimisation feeds into a broader pattern of trauma experienced by many Aboriginal and Torres Strait Islander people that must be acknowledged by governments and policy makers.”¹⁴

Conversely, social support and social cohesion are associated with good mental health. Studies show that people in long-term familial relationships and close-knit communities have greater resilience and are better able to deal with stress.

Family violence and alcohol and other drug issues

¹⁰ KPMG Management Consulting, *The cost of violence against women and their children*, 2009, 22.

¹¹ National Mental Health Commission, *The Mental and Social and Emotional Wellbeing of Aboriginal and Torres Strait Islander Peoples, Families and Communities*, 2013.

¹² Golding J 1999, ‘Intimate partner violence as a risk factor for mental disorders: a meta-analysis’, *Journal of Family Violence*, vol. 14, 112.

¹³ ADFVC, *Economic Costs of Family Violence*, 2002, 16.

¹⁴ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander Communities: An overview paper of research and findings by the human rights and equal opportunity commission*, 2001-2006, Human Rights and Equal Opportunity Commission, 108.

There is evidence to indicate that women who have experienced family violence and/or sexual assault are more likely to have alcohol problems and to use non-prescription drugs than other women. Anecdotally FVPLS clients regularly inform their legal representatives that their alcohol or drug use became a problem following their experiences of family violence and/or sexual assault. Often this is in the context of self-medicating or attempting to escape negative feelings and memories. It is also common for women to be introduced to problematic drug use by an abusive partner.

There is some empirical evidence that supports these observations that women often use substances to self-medicate and cope with trauma. For example, interviews with 150 Australian women in the late 1990s found that for some women the only way they reported being able to cope with the violence was to find comfort in alcohol and drugs.¹⁵ Similarly, a U.S. study of 182 women reported that many women self-medicate to alleviate the effects of violence.¹⁶

Data on women in prison with a history of family violence and sexual assault is also significant, as many are charged with drug or alcohol related offences and often self-report on the relationship between these factors.¹⁷

Family violence and imprisonment

The Social Justice Commissioner's Report *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities: Key Issues 2006* points to a consistent pattern indicating that incarcerated Aboriginal and Torres Strait Islander women have been victims of physical and sexual assault at some time in their lives. In a survey of Aboriginal and Torres Strait Islander women in prison and their experiences of victimisation, over 80 per cent state that they believed their offending was an indirect consequence of their victimisation.¹⁸

Aboriginal and Torres Strait Islander women in prison have broadly experienced a significant level of trauma and abuse beginning in childhood.¹⁹ In a NSW study conducted by the Aboriginal Justice Advisory Council of Aboriginal and Torres Strait Islander women in prison, 73 per cent reported being victims of abuse as adults and 69 per cent said they had been abused as children.²⁰ One of the key findings of the study was 'the clear link between child sexual assault, drug addiction and the patterns of offending behaviour that led' to the women's imprisonment.²¹ Some said that the underlying cause of their alcohol and drug and criminal behaviour was to avoid dealing with the abuse they had suffered.²²

In addition it is clear there are high levels of ongoing family violence which are also connected to their offences and convictions.²³ For example, the high rate of Aboriginal and Torres Strait Islander women incarcerated for 'acts intended to cause injury' has been linked to higher rates

¹⁵ Australian Domestic & Family Violence Clearinghouse, *Alcohol Issues in Domestic Violence*, 2005, 6.

¹⁶ Australian Domestic & Family Violence Clearinghouse, *Alcohol Issues in Domestic Violence*, 2005, 3.

¹⁷ NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*, 2001, 7.

¹⁸ NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*, 2001, 7.

¹⁹ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission 335

²⁰ NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*, 2001, 7.

²¹ Bartels, L. *Violent Offending by and against Indigenous Women*, Indigenous Law Bulletin, July/August 2012, Vol. 8, Issue 1, 20.

²² NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*,

²³ Victorian Department Of Justice, *Victorian Aboriginal Justice Agreement - Phase 2*, 2006.

of exposure and involvement in family violence.²⁴ This includes but is not limited to Australian Institute of Criminology data on homicide by Aboriginal and Torres Strait Islander women which shows that the offender and victim were in a domestic or family relationship in 93 per cent of cases, and that it is likely many of these cases involved women responding to violence against themselves.²⁵

Importantly, it is estimated that at least 80 per cent of the Aboriginal and Torres Strait Islander women in prison are mothers to dependent children.²⁶ Imprisonment, self-medication through drug and alcohol and victimisation through family violence (including sexual assault) all contribute to mothers coming into contact with the child protection system and, for too many, the removal of their children. This results in further placements into out of home care, which in turn increases the likelihood of Aboriginal and Torres Strait Islander children entering juvenile justice and/or the adult prison systems themselves. The impacts of this intergenerational cycle is understood and experienced by many as the new stolen generation.

Family violence and child protection

Aboriginal and Torres Strait Islander children are vastly overrepresented in the care and protection system. National statistics show they are over nine times as likely to be on care and protection orders and ten times more likely to be in out of home care than non-Aboriginal and Torres Strait Islander children.²⁷

Victoria is the first jurisdiction to have a Commissioner for Aboriginal Children and Young People. This role has considerable practical and symbolic value and should be considered in other jurisdictions. The current Commissioner, Andrew Jackomos recently observed that, at today's levels, the rate of Aboriginal and Torres Strait Islander child removal in Victoria exceeds levels seen at any time since white settlement.²⁸ With family violence present in 64 per cent of child protection cases involving Aboriginal and Torres Strait Islander children in this jurisdiction, it is clear that addressing family violence is an essential element of reducing the overrepresentation of Aboriginal and Torres Strait Islander children in the system.²⁹

The over-representation of Aboriginal and Torres Strait Islander children in child protection and out of home care cannot be separated from past policies of forced removals and intergenerational trauma. The *Bringing Them Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* in 1997 clearly identified the legacy of past policies of forced removal and cultural assimilation, including intergenerational effects of forced removals, as underlying causes of the current situation.

This history is not in the past. As removals continue, albeit under contemporary laws, so too does trauma continue, and so too does Aboriginal and Torres Strait Islander children's dislocation from family, community and culture. As of 30 June 2013, 13,914 Aboriginal and Torres Strait Islander children were in out of home care,³⁰ compared to 2,785 children when the

²⁴ Kilroy, D. *The over-representation of Aboriginal and Torres Strait Islander women in prison*, Sister's Inside, April 2013,3.

²⁵ Bartels, L. *Violent Offending by and against Indigenous Women*, Indigenous Law Bulletin, July/August 2012, Vol. 8, Issue 1, 20.

²⁶ Behrendt, L., Cunneen, C. & Liebesman, T, *Indigenous legal relations in Australia*, Melbourne, Oxford University Press, 2009.

²⁷ Australian Institute of Health and Welfare, *Child protection Australia 2010–11, 2012*, viii.

²⁸ Victorian Aboriginal Community Controlled Organisations & Community Service Organisation, *Koorie Kids: Growing Strong in their Culture- Five Year Plan for Aboriginal Children in Out of Home Care*, 2013, 7.

²⁹ Victorian Government Indigenous Affairs Report 2007-08, 47.

³⁰ Productivity Commission, *Report on Government Services 2014- Indigenous Compendium*, 15.11.

Bringing Them Home Report was released in 1997.³¹ It is clear from this data that mainstream services and systems still fail to understand and adequately address the relationship between past and contemporary forms of Aboriginal and Torres Strait Islander child removal.

Specific recommendations on Aboriginal and Torres Strait Islander child protection are included in **Section c**.

Family violence and homelessness

The single greatest reason people in Australia present to homelessness accommodation services is family violence.³² Homelessness Australia has repeatedly said that to reduce homelessness, you must first reduce family violence. In 2012, 53 per cent of women accessing Salvation Army homelessness services reported family violence or some other family/relationship breakdown as the main reason for seeking support.³³ Aboriginal and Torres Strait Islander women are also 15 times more likely to seek assistance from crisis homelessness services than non-Aboriginal people.³⁴

The availability of housing for women fleeing family violence is limited and women are often turned away due to overcrowding. There is a shortage of low rent private housing options, forcing more people onto public housing waiting lists. Within Aboriginal and Torres Strait Islander communities, homelessness as a result of family violence may be particularly devastating, as it can also mean dissociation from community, kin and a disconnection to country. Yet culturally safe, Aboriginal and Torres Strait Islander specific crisis housing is very rare.

b. the factors contributing to the present levels of domestic violence;

Family violence can affect everyone in our community. However it has been well established that Aboriginal and Torres Strait Islander people are among the most disadvantaged in Australia and Aboriginal and Torres Strait Islander women and children, in particular, are overrepresented as victims/survivors of family violence. The National Forum recognises however that there are male victims/survivors of Aboriginal and Torres Strait Islander family violence and includes male victims in the scope of its work.

There are multiple complex and diverse factors contributing to the high levels of family violence in Aboriginal and Torres Strait Islander communities. There is substantive evidence that violence by men against women stems from common factors. It simply does not follow that Aboriginal and Torres Strait Islander men are more likely to be perpetrators, or that culture is a causal factor for violence. Men's violence against women and children - a fundamental violation of human rights - is widely recognised as being at global pandemic proportions. Importantly, family violence in Aboriginal and Torres Strait Islander communities includes violence by non-Aboriginal and Torres Strait Islander perpetrators. The impacts of this violence occurs across

³¹ SNAICC Report, *Whose Voice Counts- Aboriginal and Torres Strait Islander participation in child protection decision-making, 2013*, available at <http://www.snaicc.org.au/uploads/rsfil/03197.pdf>.

³² Australian Institute of Health and Welfare, *Domestic Violence a major factor in homelessness among women and children, 2008*, available at <http://www.dpmc.gov.au/women/publications-articles/safety-women/women-synthesis-report-HTML.cfm>.

³³ Salvation Army, *Homelessness Across Australia: The Salvation Army's Response, 2013*, 18.

³⁴ Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women's Offending, 2010*, 28.

Aboriginal and Torres Strait Islander communities and victims/survivors seek assistance within Aboriginal and Torres Strait Islander cultural and community contexts.

Violence against Aboriginal and Torres Strait Islander women includes many forms of abuse that are directed against them because they are women, or that affects women disproportionately compared to men. Significant causes of this violence are embedded social attitudes, norms and structural inequalities with regard to their place and value. The Forum further recognises other contributing factors in the high incidence and prevalence of family violence among Aboriginal and Torres Strait Islander people, and promotes considerations on these issues. This includes:

- inter-generational trauma
- dispossession of land
- forced removal of children
- interrupted cultural practices that mitigate against interpersonal violence
- removal of children
- economic exclusion

This is in accordance with various inquiries and other studies which link high levels of family violence in Aboriginal and Torres Strait Islander communities to the impacts of colonisation.

The *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, *United Nations Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples* must all be complied with in order to ensure appropriate legislative, policy and community responses to family violence in Aboriginal and Torres Strait Islander communities.

c. *the adequacy of policy and community responses to domestic violence;*

Policy and community responses to domestic and family violence are not adequate and are not proportional to the impacts on the community. While there have been improvements in public perceptions and media coverage of the issues, there is much more to be done. This must include an increased focus and resourcing to address family violence in Aboriginal and Torres Strait Islander communities. Any strategies should be informed by rates of violence against Aboriginal and Torres Strait Islander women and children, led by Aboriginal and Torres Strait Islander organisations and appropriate representatives and guided by evidence, including practice experience and feedback from communities, on ‘what works’ in addressing family violence.

Historical and current institutionalised and individualised racism and discrimination have left Aboriginal and Torres Strait Islander community members reluctant to engage with the legal system or to seek mainstream legal assistance. The 2004 *Senate Report on Legal Aid and Access to Justice* identified that Aboriginal and Torres Strait Islander women remain chronically disadvantaged in terms of their access to legal services, awareness and exercise of their legal rights and domestic violence support. Importantly, the 2004 *Social Justice Report* demonstrated that “an approach that assumes that the needs of Indigenous women will be met through services designed of Indigenous men, or those for women generally, will not work. The lack of attention to the distinct needs of Indigenous women marginalises and...entrenched inequalities in service delivery.”³⁵

³⁵ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission, 2004, 20.

Second Action Plan

The *Second Action Plan of the National Plan to Prevent Violence against Women and their Children* has committed an additional \$100 million over four years. New initiatives include:

- \$3.3 million for CrimTrac to develop and test a prototype for a National Domestic Violence Order (DVO) Scheme, to strengthen the identification and enforcement of DVOs across state and territory borders.
- \$1.7 million for the Australian Bureau of Statistics to build a more consistent basis from which to gather, analyse and use data on all aspects of violence against women and their children, including: more than \$1 million for 1800RESPECT, Australia's first national professional telephone and online counselling service, to expand its service.

The National Forum welcomes this commitment to family violence, including the DVO Scheme and development of the evidence base through the ABS. However, the National Action Plan does not adequately respond to the prevalence and impacts of family violence, particularly in Aboriginal and Torres Strait Islander communities.

The *Second Action Plan* does not make any commitment to ongoing funding for the National FVPLS program. It makes no reference to the work of FVPLSs in the plan itself, or in its fact sheet 'How the Second Action Plan Helps Indigenous Women'. Instead, the release of the Second Action Plan coincides with recent cuts in funding to the National FVPLS program, despite this program's unique role and experience delivering family violence prevention services for Aboriginal and Torres Strait Islander victims/survivors of family violence.

Some components of the Second Action Plan that are identified as supporting Aboriginal and Torres Strait Islander women and children may reflect an ongoing diversion of Aboriginal and Torres Strait Islander women's safety funding into the Northern Territory to supplement the Stronger Futures program, at the expense of Aboriginal and Torres Strait Islander communities across the rest of Australia. The National Forum's concerns on this issue follow a decision in 2012 in which the National FVPLS Program lost funding for early intervention and prevention activities when funds were diverted to the Northern Territory Stronger Futures program. Resources for the Northern Territory should be in addition to - and not instead of - resources for other Aboriginal and Torres Strait Islander programs and communities across the country.

Comments on these and other individual components of the Second Action Plan are detailed further below.

Demand for Legal Services under FVPLS Program

Given the complexity and sensitivity of family violence, legal support is critical. While limited by the lack of evaluation focussed on victims, there is strong evidence of the importance of legal services in addressing family violence long-term, especially the use of protection orders and victims compensation. The effectiveness of protection orders is enhanced by victims having legal representation, advice and advocacy. FVPLSs consistently witness the role of legal services in empowering women to recognise and address their experiences of family violence, and the benefits of a service model that recognises the complexity of the issues experienced.

The 2009 Senate *Access to Justice* report found that Aboriginal and Torres Strait Islander people's access to justice is compromised by a lack of properly funded Aboriginal and Torres Strait Islander Legal Services and noted that people living in regional, rural and remote areas were particularly disadvantaged. However, people living in urban areas also experience

challenges with policy decisions to restrict FVPLS services to rural and remote areas leading to urban Aboriginal and Torres Strait Islander people being ‘in effect abandoned to mainstream services, without adequately addressing issues of access, flexibility and relevance.’⁵

It is well established that Aboriginal and Torres Strait Islander disadvantage “does not start and stop at remote Australia [which] is especially true when comparisons are made with the urban non-Indigenous population.” It is not disputed that outcomes for remote Aboriginal and Torres Strait Islander communities are worse than that of their regional and urban counterparts. However, around three quarters of Aboriginal and Torres Strait Islander Australians live in a regional or urban area, and almost a third live in a major city. ³⁶

Case Study: Andrea’s Story³⁷

Andrea, an Aboriginal mother of 10, was violently killed by her former de-facto partner after separation. Her former partner made repeated threats against Andrea and she sought multiple restraining orders. After repeatedly breaching the restraining orders he was charged and jailed. After his release from prison, her former partner made repeated threats to Andrea and their children. When Andrea notified police that her partner was violating the restraining order and in violation of his parole no action was taken to notify his parole officer.

Prior to her death Andrea had many encounters with various state government agencies charged with assisting women to escape from family violence. Andrea requested emergency accommodation for her and her children and was unsuccessful in securing a referral due to the number of children in her care.

Andrea attempted to seek legal assistance from the local Aboriginal Legal Service but was informed that they could not assist her because the perpetrator had already sought their assistance and there would be a conflict of interest. When seeking a referral to a specialist FVPLS service, Andrea was unsuccessful because she lived in an urban area. Andrea remained in her home with her children where she was stalked and murdered by her violent partner.

This case highlights the chronic lack of adequate protection measures and services available for Aboriginal and Torres Strait Islander people experiencing family violence, including police assistance, refuges or other safe housing and short-term emergency assistance.

It also highlights the gap in relation to access to justice for Aboriginal and Torres Strait Islander women as Andrea was unable to access a culturally specific legal service, such as an FVPLS, because she lived in one of the many areas of Australia without adequate FVPLS coverage. The perpetrator in this case study however, had access to an Aboriginal Legal Service, which are not subject to the same geographic funding restrictions on service delivery.

Dedicated services for Aboriginal and Torres Strait Islander victim/survivors of family violence were not available for Andrea. Whilst it is not possible to predict the difference in outcome had

³⁶ Nicholas Biddle, *Indigenous Gaps in the City*, 2009, Indigenous Law Bulletin 7(14), 16.

³⁷ Some details changed. For more information see

<http://www.abc.net.au/4corners/stories/2012/07/30/3554420.htm>

she been able to access specialist services, it has been our experience that specialist services provide a crucial alternative, often the only option, for Aboriginal and Torres Strait Islander women victim/survivors of family violence. If she had attended an FVPLS they would have advocated with police on her behalf and would have been able to facilitate appropriate referrals to other services she needed.

Consultation with Aboriginal and Torres Strait Islander Organisations and Communities

Advancing Aboriginal and Torres Strait Islander people's self-determination is fundamental to addressing family violence in Aboriginal and Torres Strait Islander communities. Aboriginal and Torres Strait Islander people must be engaged in determining and developing programs for their own communities that ensure that social, cultural and economic needs are being met.

In addition, 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.

In light of these principles and their implications for effective practice, Forum Members are disappointed that the *Second Action Plan* did not adequately reflect their submissions or other advice provided through the consultation process. Further, the *Second Action Plan* commits to consulting with Aboriginal and Torres Strait Islander women and communities only through the National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA) and the Prime Minister's Indigenous Advisory Council.

While commending the involvement of NATSIWA, this process alone is insufficient to ensure that implementation of the plan is informed by on-the-ground experiences of local need, gaps and systemic failures. In addition to ongoing review and incorporation of specialist advice, which must include the expertise held by providers of family violence services, resourcing for policy, advocacy, law reform and local community consultation and engagement is needed to achieve and maintain best practice and ensure real outcomes for Aboriginal and Torres Strait Islander communities.

Support to Aboriginal and Torres Strait Islander communities will only be effective if they have a say in the development and implementation of community led interventions that are adequately and sustainably resourced. One method of achieving this is to engage with and work through existing Aboriginal and Torres Strait Islander community controlled organisations like the National FVPLS Forum and existing networks and groups such as National Congress and NATSIWA in the development and roll-out of initiatives.

National Telephone Line

The *Second Action Plan* commits additional funding to 1800RESPECT, which may signal an increasing reliance on telephone and web based technologies in supporting victims of family violence. Members of the National FVPLS Forum consider systemic reliance on web-based and telephone access can further disadvantage members of regional and remote communities where access to telephones and computers are limited. In communities such as Kalumburu, WA, for example, there is no mobile phone coverage at all and one public pay phone. Low literacy and language skills are barriers to using a telephone or web-based interface even if available. Face to face contact can eliminate many barriers of low literacy and English language skills. There are

also issues of cost and access to 1300/1800 numbers for those with access to a mobile phone but no calling credit. Telephone and web-based service reliance can create further communication barriers through the use of technology, which in turn can increase client frustrations and isolation.

A service providing telephone and web-based legal information will not be considered local and will struggle to develop trust relationships with potential clients. Aboriginal and Torres Strait Islander victims/survivors of family violence have engaged with FVPLSs based on client perception of high-quality, culturally safe service delivery. To address the complex needs and nature of family violence matters FVPLSs have developed the essential community trust in our services and staff that is required to increase the safety and well-being of our clients. In addition, sometimes it is simply unsafe for our clients to use the phone to discuss family violence matters.

The National Forum argues community engagement and outreach are far more effective in addressing our clients' needs due to nature of family violence and a highly diverse and disadvantaged client group which continue to need targeted and specialised approaches.

Increased Police Presence

A major commitment of the Second Action Plan to help Aboriginal and Torres Strait Islander women and their children is to work with governments "to make sure that remote Indigenous communities are safer for women and their children, including through establishing a permanent police presence in some communities." There was \$54.1 million included in the budget to increase police presence in remote communities.

Effective police responses are very important, but diverting funding away from culturally responsive services into police services is counter-productive, and will make things worse for Aboriginal and Torres Strait Islander women and children.

There is ample evidence to show that increasing policing and surveillance in Aboriginal and Torres Strait Islander communities is not the solution. In Aboriginal and Torres Strait Islander communities in particular, distrust of policing, child protection and the criminal justice system is well recognised as a key barrier to access to justice. It is important to ensure victims/survivors of family violence have access to culturally safe services that can negotiate with police, courts and child protection services on their behalf.

It is also very important to allocate resources to cultural education/training for police and other key professions to ensure they have the skills and cultural competence to keep Aboriginal and Torres Strait Islander victims/survivors safe. For example, the Aboriginal Family Violence and Prevention Legal Service Victoria received state funding to work on a Koori Family Violence Protocols Project, in partnership with the Victoria Police and the Victorian Department of Justice and local Aboriginal and Torres Strait Islander communities. This project supported the development of a set of culturally and regionally specific protocols to complement the Victoria Police Code of Practice for the Investigation of Family Violence, including provisions for cultural awareness training in the specific regions. The initiative also forged relationships between police, communities and service providers in order to build Aboriginal and Torres Strait Islander people's trust and confidence in disclosing family violence.

Family Violence Orders³⁸

³⁸ The name of family violence orders vary by jurisdiction, and includes intervention orders, violence restraining orders and equivalents.

FVPLS experience continues to expose ongoing failures by police to act on breaches of family violence orders. These comments are supported by substantive evidence collected across the sector, including for example a recent South Australian State Coroner's Report directed to the SA Premier.³⁹

The extent of involvement by police in applications for restraining orders varies across jurisdictions. It is traditionally highest in South Australia (up to 90 per cent).⁴⁰ The Family Violence Legal Service Aboriginal Corporation (SA) has reported significant levels of police inaction and/or inappropriate advice. These findings are consistent with extensive informal and formal sources of evidence which demonstrate that police handling of family violence matters is often linked to their perceptions and/or responses to culture, including but not limited to Aboriginal and Torres Strait Islander culture, and does not reflect best practice for responding to family violence. FVPLS clients specifically continue to be subjected to prejudice based on their Aboriginality, which includes inappropriate and racist comments, not taking the matters seriously, and/or encouraging clients not to take action to protect their safety.

A recent report by the Law Reform Commission of Western Australia shows that victims of family violence experience a number of barriers to initiating an application for a restraining order, including fear of the process and of repercussions from the perpetrator, as well as lack of understanding of the process, and that these issues are compounded with language and cultural barriers. The Commission is of the view that ideally police officers should be more actively and directly involved in the application process to assist victims of family and domestic violence, but also make a case for broadening the range of persons who may apply for a restraining order on behalf of a person seeking to be protected.⁴¹

The National Forum argues there is a need for improved avenues for private and professional applications for restraining orders across jurisdictions, including fees and levels of evidence that are on a par with applications submitted by police, while also encouraging further police training and accountability in matters relating to family violence.

In addition, FVPLS experience shows that community awareness of relevant legal options, including family violence orders, creates specific barriers to access to justice. For example, there is relatively low awareness in Aboriginal and Torres Strait Islander communities that family violence orders are an option and are part of the civil law system. This information about civil law specifically is needed to support disclosures of family violence in light of community fears and distrust of the criminal justice system. It is also important that the community is aware that these orders can be tailored to individual circumstances, including options to support safety for victims/survivors living in the same home as a violent partner or family member. Family violence orders can and should be varied as circumstances change and there may be risks for individuals if this does not occur.

Some service responses to increase community awareness are detailed under **Section f** below.

Mandatory Reporting

Mandatory reporting of family violence differs through states and territories but means that adults would be required by law, in institutions, workplaces and the home to report suspected instances of family violence.

³⁹ South Australian State Coroner Inquest Number 23/2013 0400/2010.

⁴⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws*, Discussion Paper 4, ,115

⁴¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws*, Discussion Paper 4

The National FVPLS Forum strongly supports calls for increased accountability of family violence and changing societal attitudes, to put family violence into the public arena. However, increased reporting of family violence without effective, timely and holistic responses to those reports has potential to cause further harm. In some circumstances mandatory reporting of family violence would mean that a mother who is a victim of family violence may face imprisonment for failing to report to police, which is of significant concern to Forum Members and other family violence specialists.⁴² There is the risk of a 'chilling effect' in which victims may not seek help for fear of being prosecuted for not reporting violence earlier, and indeed perpetrators may make direct threats of such prosecution in order to silence and maintain control over their victims.

It is vital that family violence is a collective responsibility of all members of our community. This includes a responsibility to ensure the debate is responsive and effective and focusses clearly on the ongoing needs and safety of victims/survivors of family violence.

Family Dispute Resolution

FVPLSs consultations have identified many cases in which Family Dispute Resolution has been applied inappropriately or contrary to the interests of our clients. In family law matters, parties must undertake mediation, without legal representation, before going to court (although some jurisdictions do permit eligible clients to undertake lawyer-assisted mediation funded and facilitated by Legal Aid Commissions as discussed below). While victims of family violence can seek exemption from undertaking mediation, our experience shows that clients are often reluctant to disclose family violence to Family Relationship Centres and other mainstream services, and/or do not understand their rights as a victims of family violence.

We support the development of collaborative relationships with Family Relationship Centres however it has its limits for our clients. Providing dispute resolution and/or legal assistance services to Aboriginal and Torres Strait Islander victims/survivors of family violence is a highly specialised and complex skill set. The National Forum supports Roundtable Dispute Management as an alternative, which is funded by Legal Aid and provides access to dispute management with legal representation. This provides a safer and more protected environment for clients, who with the help of legal representation from a specialist legal service like FVPLSs, can understand their legal rights.

Victims Compensation

Victim compensation schemes differ significantly throughout states and territories. This means that assistance given to victims under the scheme also differs based on jurisdiction. For instance in Victoria the highest amount awarded under victims compensation is \$10,000 while in the Northern Territory it is \$40,000. Schemes also vary as to what constitutes a claim under the scheme and the standard of proof required to substantiate that claim. These discrepancies creates a level of discrimination based on location and are inherently unfair to victims of family violence. This can also result in technical and administrative complexity where victims have been in a violent relationship across states (for example those living on the APY lands and moving between the Northern Territory, South Australia and Western Australia). The National Forum suggests that victim compensation schemes should reflect the harm family violence can

⁴² Letter to Victorian Parliament- *Crimes Amendment (Protection of Children) Bill 2014* available via <http://www.fvpls.org/images/files/Joint%20Letter%20Women%20LNP%20MPs%20Protection%20of%20Children%20Bill%2001052014.pdf>

have on a victim and recognise the difficulties associated with ease of access for victims who need immediate access to financial assistance. In addition some schemes include provision for payment for counselling services, without those services actually being available to clients or without the necessary accommodation and travel costs that may be associated with accessing them in an alternative location outside communities.

Child Protection

A 2013 report *Our Children, Our Dreaming: A Call for a More Just Approach for Aboriginal and Torres Strait Islander Children and Families*⁴³ echoes the *Bringing Them Home* Report in 1997, supporting principles of self-determination and the transfer of responsibilities for children's safety and wellbeing to Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander families and communities must be supported and empowered to provide for the safety of Aboriginal and Torres Strait Islander children. There is little doubt within Aboriginal and Torres Strait Islander communities that community controlled organisations are best placed to work with and support children and their families when children are at risk.

The *Whose Voice Counts* Report in 2013 identified reforms needed to ensure the voices of Aboriginal and Torres Strait Islander communities count when decisions are made for their children. It proposes stronger models of cultural advice and support, as well as delegation and transfer of decision-making authority as potential solutions.⁴⁴

The National Forum calls for sustained commitments to culturally safe Aboriginal and Torres Strait Islander services that provide dedicated child protection legal assistance to Aboriginal children in and at risk of entering the care and protection system. This is in light of our experience that independent, confidential legal services that are not connected or partnered with agencies involved in the child protection system is important to ensure that Aboriginal and Torres Strait Islander adults and children can and will access the legal services they require. The National FVPLS program currently provides legal assistance directly to Aboriginal and Torres Strait Islander children and with additional resources could achieve a great deal more. Commonwealth and State and Territory Governments should also acknowledge the impact of family violence on child protection notifications and interventions by continuing to fund FVPLSs as proven, effective and supportive interventions for victims within the process.

The National Forum also recommends further development of best practice guidelines for departments responsible for child protection in each jurisdiction. This must include and ensure consistent implementation of Aboriginal and Torres Strait Islander child placement principles with provisions that require referral of Aboriginal and Torres Strait Islander families for culturally safe legal assistance.

Commonwealth and State Governments must also recognise the importance of fostering cultural connections for Aboriginal and Torres Strait Islander children and resource targeted cultural awareness training for judges and court staff. FVPLSs experience with parenting orders between Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander parents demonstrates too many judges have a superficial understanding of cultural connections

⁴³ SNAICC & CPP, *Our Children, Our Dreaming: A Call for a More Just Approach for Aboriginal and Torres Strait Islander Children and Families*, 2013.

⁴⁴ SNAICC Report, *Whose Voice Counts- Aboriginal and Torres Strait Islander participation in child protection decision-making*, 2013, available at <http://www.snaicc.org.au/uploads/rsfil/03197.pdf>.

and the implications for Aboriginal and Torres Strait Islander children. Maintaining cultural connections requires much more than attending events during NAIDOC but requires sustained access to the Aboriginal and Torres Strait Islander community and supporting family members. It is essential that governments appropriately resource culturally safe programs that work with children to meaningfully and effectively re-establish and maintain cultural links.

The protection and promotion of Aboriginal and Torres Strait Islander children's rights is supported by the *United Nations Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples*.

Expansion of the National FVPLS Program

The FVPLS model should be expanded as a demonstrated and effective response to supporting Aboriginal and Torres Strait Islander victims/survivors of family violence, including Aboriginal and Torres Strait Islander children. The National FVPLS program is aligned with numerous national priority policies including the Access to Justice Principles, Closing the Gap, National Indigenous Law and Justice Framework and the National Plan to Reduce Violence against Women and their Children. The National Forum consider our services to be specialised, unique and critical to securing the rights of our community members to live in safety. We endorse the Productivity Commission finding that there is a continued and ongoing need for our specialist services.⁴⁵

In addition, existing FVPLSs are unable to meet the levels of demand for specialised and culturally safe legal assistance within current resourcing and geographic restrictions. The National Forum recommends expanding the program through a staged approach over 5 years, with the aim of achieving geographic coverage that addresses the needs of Aboriginal and Torres Strait Islander victims/survivors of family violence in urban areas and additional regional and remote locations across Australia.

The importance of FVPLS delivering legal services to Aboriginal and Torres Strait Islander women has been acknowledged in multiple reports. The 2004 *Legal Aid and Access to Justice Report* recommended that 'the Government allocate sufficient funding to Indigenous Family Violence Prevention Legal Services to enable adequate provision of effective legal services for Indigenous women in family law and family violence matters...'⁴⁶ The 2005 *Indigenous Law and Justice Inquiry* acknowledged the wide role of FVPLSs in responding to family violence, and emphasised the importance of FVPLSs as legal service providers, stating that "the Committee is not suggesting that FVPLSs withdraw from providing services such as counselling for victims of family violence but rather that the focus of these organisations as providers of legal services be affirmed and acknowledged in their funding and required outputs."⁴⁷

The needs of FVPLS clients are not met through Aboriginal and Torres Strait Islander Legal Services or Women's Legal Services. FVPLSs have adopted holistic, wrap-around service delivery models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face, including barriers to access to justice that are specific to Aboriginal and Torres Strait Islander women and children. We understand that dealing with immediate legal problems is extremely difficult for our clients when also coping with other life issues, often including financial problems, homelessness, drug and alcohol use, ill health and ongoing trauma. While the models differ across FVPLS services, they generally

⁴⁵ Productivity Commission, *Access to Justice Arrangements Draft Report, 2014*, 677.

⁴⁶ Legal and Constitutional References Committee, *Legal Aid and Access to Justice, 2004* at 5.135.

⁴⁷ Joint Committee of Public Accounts and Audit, *Inquiry into Indigenous Law and Justice, 2005*, 32.

involve client support or paralegal support workers who work alongside lawyers to provide critical court and client support, referral and assistance liaising with other services. This supportive, client focused model encourages clients to remain engaged with the legal system, attend and participate in court processes, and contributes to the cultural safety of our services.

d. the effects of policy decisions regarding housing, legal services, and women's economic independence on the ability of women to escape domestic violence;

The National FVPLS program has been detrimentally affected by recent Federal Government decisions to cut funding to legal assistance services. As the primary legal service for Aboriginal and Torres Strait Islander victims of family violence, our services are critical to ensuring the safety of Aboriginal and Torres Strait Islander women and children throughout Australia and preventing and responding to family violence.

Aboriginal and Torres Strait Islander women are being disadvantaged by the government's failure to support equitable access to gender and culturally specific legal services. Mainstream legal services lack knowledge of and access to the complexities of Aboriginal and Torres Strait Islander communities and how to operationalise cultural safety, which means they rarely meet the unique needs of Aboriginal and Torres Strait Islander women. Similarly, many victims/survivors of family violence are unable (due to conflict of interest issues) or unwilling (due to their criminal law focus and because they also provide services to perpetrators) to access Aboriginal and Torres Strait Islander Legal Services.

The impacts of being unable to access culturally appropriate legal services are also exacerbated by failures to adequately protect Aboriginal and Torres Strait Islander women from family violence. For example culturally specific crisis accommodation, and crisis accommodation generally, is limited and many victims/survivors are unable to access support services that could help to keep them safe.

Impacts of Funding Arrangements for FVPLSs

Recent policy decisions by Government have had a major impact on the service delivery of FVPLSs. Funding for the National FVPLS program is not guaranteed post 30 June 2015 creating uncertainty about the future of the program. Most importantly, this situation has an impact on maintaining trust in the communities and target groups the program works with. In particular, victims/survivors of family violence will not know whether FVPLSs will be available to assist them for the entirety of their legal matters and may feel themselves at risk if they proceed without this knowledge.

In the December 2013 Mid-Year Economic and Fiscal Outlook the National FVPLS program was hit with \$3.6 million funding cuts. The Federal Government has stated that these cuts would only be taken from policy and law reform activities. As the National FVPLS program has never been funded for policy and law reform activities, this ultimately affects frontline service delivery.

In 2012 funding for early intervention and prevention activities was also cut. The National FVPLS program has also been the subject of multiple reviews over its history, which have not led to any progress for sustainable funding for the program. Most recently, the 'Indigenous Advancement Strategy' has committed to cut \$534.4 million over five years from Indigenous programs. The implications for FVPLSs, now sitting under this strategy in the Department of Prime Minister's new 'Safety and Wellbeing Programme,' are unclear.

Continued uncertainty also makes 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 leaves FVPLSs in a position of recruiting younger lawyers with limited experience who require additional support and supervision. In addition, FVPLSs report practical challenges, including difficulties in identifying suitable housing for lawyers relocating to remote areas.

Some FVPLS units in remote locations report being unable to fill vacancies for significant lengths of time, which has 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 this client group.

FVPLS as a Legal Assistance Program

In December 2013 the National FVPLS program was transferred from the responsibility of the Attorney-General's Department to the Department of Prime Minister and Cabinet. The National Forum is concerned that the change of departmental responsibility demonstrates a potential lack of understanding of the National FVPLS Program. It also blurs and potentially complicates the relationship between FVPLS and the National Partnership Agreement on Legal Assistance Services including FVPLS contributions to its objective and outcomes.

FVPLS is a legal assistance service that is underpinned by a holistic service model. Departmental transfer from AGD may challenge continued collaboration between Legal Assistance Services, potentially reducing the effectiveness of the National Forum's membership of the Australian Legal Assistance Forum. Many FVPLS units are also accredited members of the National Association of Community Legal Centres and therefore have common governance practices and processes and involvement in a continual quality improvement program. FVPLSs are important, experienced and specialist legal assistance service providers delivering critical services to highly disadvantaged Australians with complex, multiple legal and socio-legal needs. As identified by the Productivity Commission, "Legal assistance services are essential for the operation of the civil justice system. The four legal assistance providers — legal aid commissions (LACs), community legal centres (CLCs), Aboriginal and Torres Strait Islander legal services (ATSILS) and family violence prevention legal services (FVPLS) — have different and specialised but complementary roles in the legal assistance landscape."⁴⁸

The importance of the National FVPLS program delivering legal services, particularly to Aboriginal and Torres Strait Islander women, has been acknowledged in multiple reports. The 2004 *Legal Aid and Access to Justice Report* recommended that 'the Government allocate sufficient funding to... Indigenous Family Violence Prevention Legal Services to enable adequate provision of effective legal services for Indigenous women in family law and family violence matters...'⁴⁹ The 2005 Indigenous Law and Justice Inquiry acknowledged the wide role of FVPLSs in responding to family violence, and emphasised the importance of FVPLSs as legal service providers, stating that "the Committee is not suggesting that FVPLSs withdraw from

⁴⁸ Productivity Commission, *Access to Justice Arrangements Draft Report*, 2014, 610.

⁴⁹ Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, 2004 at 5.54.

providing services such as counselling for victims of family violence but rather that the focus of these organisations as providers of legal services be affirmed and acknowledged in their funding and required outputs.”⁵⁰

Access to affordable housing

One of the primary impacts of family violence on victims/survivors is homelessness, which in turn has flow on impacts for Aboriginal and Torres Strait Islander women and children. Women and children escaping violence need an immediate and safe place to live. From the experience of FVPLS services the prospect of homelessness may result in a woman staying with a violence partner, putting her own safety at risk and that of her children. This can ultimately lead to interaction with the child protection system, resulting in more Aboriginal and Torres Strait Islander children in care.

Rather than relieving pressures on affordable housing and specialist homelessness shelters recent policy decisions, particularly in the 2014-15 Federal Budget will instead detrimentally impact on victims/survivors and their ability to find a safe and affordable place to live.

Victims of family violence rely on the availability of affordable housing when seeking to escape violent circumstance. Defunding of the National Rental Affordability Scheme (NRAS), which aimed to address the shortage of affordable housing, will worsen the housing crisis and decrease housing options for victims of family violence. It will also increase pressures on homeless shelters, which are already struggling to keep up with the demand. Aboriginal and Torres Strait Islander women, in particular, face discrimination in the housing market with higher birth rates⁵¹ creating the need for four or five bedroom homes, which are in short supply. Homeless shelters may also not have the capacity to accept a woman with several children.

The end of NRAS will mean that at 12,000 affordable dwellings which were to be constructed will no longer proceed. This will put added pressure on the community and crisis housing sectors, including homelessness services.

One in ten Aboriginal and Torres Strait Islander women used a specialist homelessness service in 2012-2013.⁵² Although the National Partnership Agreement on Homelessness (NPAH) has been extended for a further 12 months by the Federal Government, the lack of a long term commitment creates uncertainty for many homelessness organisations. This is particularly concerning given that funding was not provided in the forward estimates in the Budget past 2015 for the NPAH.

The NPAH provides crucial services and support to homeless people, with some FVPLSs units receiving funding under the agreement. For example, FVPLS Victoria is funded for two frontline positions. These positions assist Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault with case management and court support when they are escaping violence.

In the Commission of Audit 2014, it was recommended that funding for homelessness programs become a state responsibility, confining the Commonwealth’s social housing role to rental assistance payments. The Government has also announced a review of its role in housing and homelessness funding and programs nationally. The National Forum has some concerns about this direction, particularly in light of the recent NSW state government decision to put stop

⁵⁰ Joint Committee of Public Accounts and Audit, *Inquiry into Indigenous Law and Justice*, 2005, 32.

⁵¹ ABS, 2010, *The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples*.

⁵² Australian Institute of Health and Welfare, *Homelessness among Indigenous Australians*, 2014.

directly funding specialist homelessness services but instead move to a tender system where smaller services such as women's refuges must compete with large care organisations through the 'Going Home Staying Home' strategy. Commonwealth oversight of homelessness services has the potential to protect national principles and objectives, including targeted access for victims/survivors of family violence.

The Budget has not provided for ongoing funding for the Strategic Indigenous Housing and Infrastructure Program (SIHIP). The five-year scheme funded renovations, rebuild housing remote Aboriginal and Torres Strait Islander communities, and ended in 2013.

One of the factors contributing to demands on housing and crisis services associated with family violence is that policy approaches continue to rely on victims/survivors and their children 'escaping' family violence rather than have the perpetrator leave the home. The National Forum supports the further development of approaches that encourage the perpetrator of family violence to leave the home, with the note that this needs to be implemented carefully in light of the smallness and connectedness of Aboriginal and Torres Strait Islander communities and requires in depth consultations with Aboriginal and Torres Strait Islander organisations and family violence specialists.

In addition to these concerns, Homelessness Australia has stated that the greatest challenges for the homelessness sector from the 2014-15 Federal Budget will come from changes to welfare payments.

Welfare payments

Changes introduced to welfare payments will negatively impact on Australia's most disadvantaged people, including Aboriginal and Torres Strait Islander women and children escaping family violence.

Changes to the welfare system in the budget includes:

- ending income support payments for unemployed people under 30 for six months of every year
- reforms to Family Tax Benefits A & B, including freezing of Family Tax Benefit rates until 2016
- lowering rates of indexation and increasing the eligibility age for the Age Pension

These changes to the welfare system will detrimentally impact on Aboriginal and Torres Strait Islander women and children, including young people. Victims of family violence will find it difficult to afford not only housing but also the everyday essentials of life. The impact of family tax benefits will be felt most significantly by single mothers, who often do not have an alternative support network to turn to. In addition, as noted below, compulsory income management for young people on Unreasonable to Live at Home or Special Benefits payments may have a detrimental impact on the decisions and safety of Aboriginal and Torres Strait Islander young people experiencing family violence in the home.

The decision in 2012 (under the previous government) to move single parents off parenting payments when their youngest child turns eight has specific consequences for victims/survivors of family violence. From January 2013 about 84,000 single parent families saw their benefits cut by as much as \$110 a week.⁵³ The detrimental impact of this on women's economic independence has potential to affect women's decisions about their safety and wellbeing, and

⁵³ Australian Council of Social Services (ACOSS), *Stop Cuts to Sole Parent Payments*, 2013, available at http://www.acoss.org.au/take_action/campaign_to_reverse_cuts_to_single_parenting_payments_acoss_has_been_speaking_out_against_the_feder/

may influence decisions about whether to stay with or return to a violent partner rather than face the risks and stressors associated with poverty and financial insecurity.

Co-payments for General Practitioner visits

Family violence has significant health impacts on victims and may need to visit the doctor more often than the general population. The introduction of a \$7 co-payment for visits to general practitioners and other health services will be significant for victims of family violence, who are often on income support payments or low to moderate incomes and an extra \$7 per visit to their GP is unaffordable. If the co-payment is to come into force, the Forum welcomes suggestions that people on chronic health plans may be exempt from the co-payment and maintain this should include victims of family violence.

Concerns have also been raised about the viability of co-payments to Aboriginal and Torres Strait Islander Health Services if impacted by the co-payment, as patients at these services cannot afford to contribute to the cost of care. The closing of Aboriginal and Torres Strait Islander Health Services would have significant impacts on Aboriginal and Torres Strait Islander victims/survivors of family violence and their ability to access decent health care, particularly those living in rural and remote areas and may not have access to other health services. The abolition of Medicare Locals will also have significant impacts on our rural and remote clients who benefit from the locally driven programs, which may also reflect specific areas of need such as family violence.

Income Management

In the 2014, the Budget committed to \$110.1 million to continue and expand Income Management. This program does not apply to everyone, but to individuals and families living in targeted communities. The targeting of communities is clear and has a disproportionate impact on Aboriginal and Torres Strait Islander communities. It also creates specific risks for women and children at risk of family violence.

Income management has been introduced in some of the areas that are serviced by FVPLS, and is for people who:

- have been referred by a social worker or child protection authority
- have been referred by a department social worker
- are a young person who is not a full time student or apprentice and
 - have been granted the Unreasonable to Live At Home rate of payment
 - under the age of 16 and granted a Special Benefit payment
 - under the age of 25 and released from prison and have received a Crisis Payment in the last 13 weeks
- volunteer for Income Management

While arguments have been made that income management protects women and children experiencing family violence, these arguments are unsubstantiated and should not be accepted without appropriate evidence to support them. In fact, the ability for agencies refer people to income management without their consent has potential to deter help seeking behaviour and may therefore increase the risk of harm. For example, in Ceduna concerns have already been expressed that victims/survivors do not want to share their circumstances with the agency providing domestic violence counselling, emergency relief and financial counselling because they are afraid the agency will refer them to income management. Similarly, mandated income management for young people likely to have experienced family violence, which includes young people on the Unreasonable to Live At Home payment, Special Benefit and young people who have been released from prison, may deter them from seeking safety and/or accessing support.

Conversely, the evidence shows that supporting women and young people's economic independence, help seeking behaviour and access to early intervention and support are effective strategies for keeping victims/survivors of family violence safe.

- e. *how the Federal Government can best support, contribute to and drive the social, cultural and behavioural shifts required to eliminate violence against women and their children; and***

Policy and Advocacy

Historically, Aboriginal and Torres Strait Islander women have been poorly represented in national law and justice policy debates due to the strong focus of advocacy groups on criminality and responding to the needs of Aboriginal and Torres Strait Islander men. Recent cuts by the Commonwealth to policy and advocacy services across the sector are highly concerning.

In 2001, 10 years on from the Royal Commission into Aboriginal Deaths in Custody, the then Social Justice Commissioner Tom Calma reported that:

Aboriginal women remain largely invisible to policy makers and program designers with very little attention devoted to their specific situation and needs. This is of critical importance, particularly because of the impact that imprisonment has on Indigenous families and communities (especially through separation from children).⁵⁴

We support building the capacity of Aboriginal and Torres Strait Islander women and Aboriginal and Torres Strait Islander women's organisations to participate in national policy discussions. The current government has repeatedly indicated an unwillingness to support funding for policy, advocacy and law reform functions. However, the National Forum see it as the responsibility of governments to be informed by on-the-ground experiences, especially where there are gaps and systemic failures. Without capacity to contribute to public discussion and policy processes, we risk the development of policy, systems and services that do not reflect the needs of communities and individuals.

The National Forum also supports the continuation and expansion of broader public awareness campaigns around family violence, its impacts on women, children and families. In addition we would like to see more targeted and culturally respectful information about violence against Aboriginal and Torres Strait Islander women and children in the mainstream media and public domain.

Early Intervention, Prevention and Community Legal Education

Early intervention and prevention and community legal education activities are essential components of increasing access to justice, identifying community needs and reducing the social isolation often experienced by victims/survivors of family violence. In addition, given the co-existence of family violence with other devastating social issues including substance misuse, incarceration, unemployment, school avoidance and poverty, work toward its prevention would

⁵⁴ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, Human Rights and Equal Opportunity Commission available at <https://www.humanrights.gov.au/publications/social-justice-report-2001-chapter-1-ten-years-royal-commission-aboriginal-deaths>

logically have positive impacts on other problems faced by the community. This social reinvestment approach requires resources to be dedicated upfront where they can be applied more efficiently than if they were applied at the tertiary level (i.e. paying for prisons, and children in the care of the state).

Victim/survivors of family violence are likely to be socially isolated, afraid to approach anyone for help and/or experiencing other traumatic impacts of their experience. They may have been threatened with further violence, the removal of their children or the wellbeing of their relative if they speak out. It is then the responsibility of services with a mandate of assisting those in that situation to be proactive in our efforts to engage, providing information and every opportunity for women and children to come back to us for assistance.

FVPLSs provide a diverse range of community engagement activities enabling Community Legal Education and Early Intervention approaches within limited resources. Across 31 units, FVPLSs provide a broad range of innovative, locally responsive and effective community engagement activities.

The impact of these activities is significant. Our target group is recognised as being particularly disadvantaged when it comes to accessing justice due to their Aboriginality, and when they do they are “more likely to rely on inappropriate sources of advice.”⁵⁵ Proactively presenting information sessions and programs in the community is one way of providing Aboriginal and Torres Strait Islander communities with face-to-face opportunities to find out what legal remedies may exist for them, and the services available to assist. Without these services, the broader justice system will continue to struggle to engage those who face barriers to access such as communication and lack of awareness.⁵⁶ Culturally safe services are required to mitigate these barriers.

In addition, the provision of information and programs to the community – to all ages and across a variety of topics – allows legal service such as the FVPLSs to reach a broader audience with the aim to prevent the social issue creating the primary legal need for clients of the service. This occurs for example through the provision of education about healthy relationships, responsible parenting and other non-violent behaviours.

The other major benefit of delivering CLE/Early intervention in the community is the regular opportunity to develop relationships with community members, including Elders. Having a regular presence in schools, community groups, community events, and in remote communities is vital to ensuring FVPLS staff are interacting with community members.

Representations of family violence in Aboriginal and Torres Strait Islander Communities

Ongoing levels of family violence in Aboriginal and Torres Strait Islander communities are exacerbated by public perceptions and understanding of family violence in Aboriginal communities that is inadequate and myth-dominated, with limited awareness on many of the key areas, including -

- The prevalence of family violence in Aboriginal and Torres Strait Islander communities, in which the majority of victims are women or children;

⁵⁵ Productivity Commission, *Access to Justice Arrangements Draft Report*, 2014, 10.

⁵⁶ Productivity Commission, *Access to Justice Arrangements Draft Report*, 2014, 28.

- The myths and misconceptions about family violence in Aboriginal and Torres Strait Islander communities, including myths about Aboriginal and Torres Strait Islander men's violence and the role of violence in Aboriginal and Torres Strait Islander culture;
- The causes, nature and dynamics of family violence in Aboriginal and Torres Strait Islander communities;
- The historical context of family violence in Aboriginal and Torres Strait Islander communities;
- The community impacts of family violence in Aboriginal and Torres Strait Islander communities;
- Ways to prevent and respond to family violence in Aboriginal and Torres Strait Islander communities;
- Ways to report on family violence in Aboriginal and Torres Strait Islander communities that reinforce the inherent worth and dignity of Aboriginal and Torres Strait Islander peoples;⁵⁷
- Minimal celebration of positives and victories in relation to family violence in Aboriginal and Torres Strait Islander communities.

Responsible messages from government and through media is particularly important in the critical objective of preventing family violence in Aboriginal and Torres Strait Islander communities. Media engagement for primary prevention requires careful consideration, assessment of potential risks (such as risks to women and children and also community backlash), strategic planning, collaboration and attention to ethics. If we are truly earnest in our commitment to moving away from mere awareness raising efforts, to reducing rates of violence from occurring in the first instance, it is critical a broad range of sectors and community groups work collaboratively and strategically to communicate consistent prevention messages. It is also critical that efforts and prevention messages are informed by the same evidence base and that differing opinions on the evidence base are not played out via the media.

f. any other related matters.

No further comments.

⁵⁷ Aboriginal and Torres Strait Islander Social Justice Commissioner *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues: An overview paper of research and findings by the Australian Human Rights Commission 2001 – 2006* June 2006, Available at <https://www.humanrights.gov.au/publications/ending-family-violence-and-abuse-aboriginal-and-torres-strait-islander-communities-key>.