



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



Improving accessibility of the legal system for  
Aboriginal and Torres Strait Islander victims/survivors  
of family violence and sexual assault

POLICY PAPER SERIES JUNE 2010  
PAPER 3 of 3

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

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

Artwork by Wanda Bargo – ‘Gathering of Women’.

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

Copyeditor Julia Farrell.

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



Legal Services **BOARD**

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# ACKNOWLEDGEMENTS

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

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

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

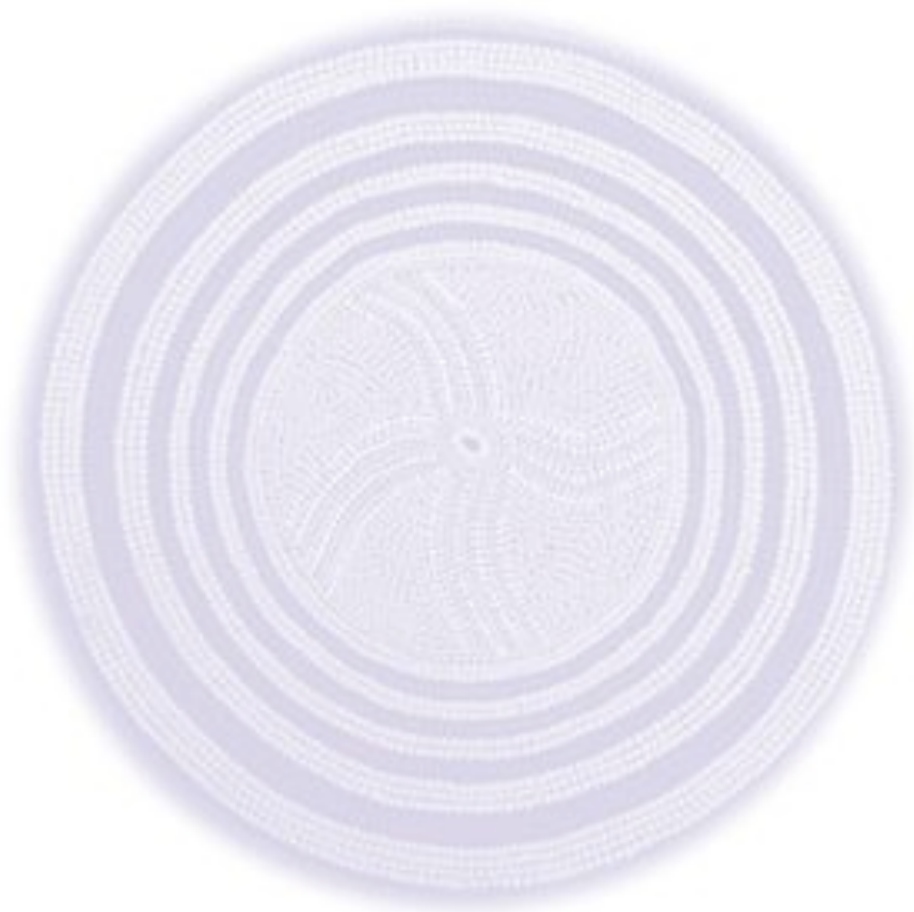
There are many people who have guided and assisted in the development of these papers. Firstly, to all of those women who agreed to be interviewed about their experiences with the justice system, thank you for sharing your experiences and knowledge with such openness and for your enthusiasm and commitment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

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

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

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

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## FOREWORD

Antoinette Braybrook  
**Chief Executive Officer**  
**FVPLS Victoria**

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

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

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

The three key areas on which the papers focus are:

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

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

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

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

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

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

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

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

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

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## EXECUTIVE SUMMARY

This is the third of three FVPLS Victoria discussion papers addressing improved law and justice responses for Aboriginal and Torres Strait Islander (ATSI) victims/survivors of family violence and sexual assault and ATSI women and children. This paper and its proposals focus upon FVPLS Victoria's areas of legal practice. The other papers are entitled:

- *Paper 1: Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander victims of family violence and sexual assault and women and children: National policy issues—a Victorian perspective* (examines national policy and program issues within a human rights framework)
- *Paper 2: Strengthening on the ground service provision for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in Victoria* (looks at actions required in Victoria to strengthen legal and associated services to ATSI victims of family violence and sexual assault and women and children)

The legal system has been used as a tool of oppression against ATSI people; thus considerable mistrust and fear of the consequences of engaging with it justifiably continues. ATSI law and justice policy development has prioritised criminal justice, resulting in a greater focus on ATSI men. Improved cultural accessibility within areas of the legal system that impact upon victims/survivors of family violence and sexual assault, and upon women and children, is essential. Access to culturally appropriate legal and associated supports together with ATSI-driven initiatives to address systemic change will be key to such change.

The current Victorian Government has demonstrated significant commitment to ATSI-led law and justice developments. A range of reviews and projects are currently underway. It is critical that all relevant ATSI policy and law reform is driven by ATSI communities and that the voices of women are prominent. Dedicated core funding to enhance policy and law reform capacity within ATSI women's organisations working on the ground, including the FVPLS program, is urgently required. FVPLS Victoria's knowledge and experience are in high demand. In Paper 1, we argue for the need for funded policy/law reform activity and propose a strategy and framework for implementation of this at the national, state and territory levels.

For ATSI victims/survivors of family violence and sexual assault, the legal system can offer legal rights and protections including safety notices and intervention orders, family law orders setting out safe arrangements for children, and assistance/compensation as victims of crime. These are legal areas that ATSI people can choose to access for assistance. However, statistics indicate that low numbers of ATSI people have been utilising the current legal system in this way. (It is noted that an initiative by the Victims of Crime Assistance Tribunal in Victoria to increase ATSI accessibility has resulted in increased applications by Aboriginals and Torres Strait Islanders.)

In the area of child protection intervention, family violence is a significant factor and ATSI children are vastly overrepresented in the system. ATSI families are forced into the Children's Court in cases

where children are considered to be at unacceptable risk. Given the history of removal of ATSI children and the importance of family and cultural connection, the Children’s Court and child protection system have unique obligations in relation to ATSI children.

Whilst some positive initiatives to improve cultural responses and Aboriginal and Torres Strait Islander accessibility are encouraging, there is still a long way to go. It is especially disappointing when initiatives are begun but not sustained (as witnessed in the Family Court of Australia). Long-term commitment is required.

Given the breadth and complexity of the issues under discussion, in-depth research and analysis were not within the scope of this project. Discussion in this paper is focused on ATSI accessibility rather than on broader legal and policy reform. It is hoped, however, that proposals made in each section will prompt and inform development within these law and justice areas and lead to improved on-the-ground outcomes for ATSI people.

Improved integration of the legal system for people impacted by family violence is currently being examined by the Australian Law Reform Commission. Interaction between family violence intervention orders, family court orders, child protection proceedings and the criminal law is complex, often clumsy, and stressful for victims/survivors. Development of ATSI-specific family violence responses across the legal system should also incorporate cross-jurisdictional cohesion. Paper 2, which looks at strengthening on-the-ground services, highlights the importance of FVPLS Victoria being appropriately resourced to provide seamless legal services to victims/survivors across jurisdictions.

Each section of this paper focuses on areas of primary concern to FVPLS Victoria and its clients, which are outlined below:

- Section 1 deals with family law—improved ATSI accessibility and cultural awareness, combined with expanded culturally appropriate family law service provision, is a key requirement. Law reform to strengthen family violence responses in the family law system is supported, and examinations of a more coordinated approach to cross-jurisdictional issues within family law are welcomed.
- Section 2 explores child protection—the vast overrepresentation of ATSI children in the legal system demands urgent system-wide attention to strengthen culturally appropriate responses, to advance their legal rights and to ensure greater accountability. Given the serious human rights issues at stake and significant power differentials within the system, greater priority must be given to the protection of the legal rights of ATSI children and families. Strengthening of culturally appropriate out-of-court dispute resolution processes will be effective only within a robust legal framework that has necessary safeguards including family violence/safety screening and culturally appropriate legal representation.
- Section 3 looks at family violence law—new family violence legislation in Victoria, together with a broader ATSI and mainstream family violence strategy, has marked a positive step.

Development of a more culturally appropriate court process and integrated crisis and support system will improve outcomes for ATSI victims/survivors. Dedicated after-hours ATSI crisis supports are also needed.

- Section 4 discusses victims assistance—the Koori list within the Victims of Crime Assistance Tribunal (VOCAT) has been very successful in improving ATSI accessibility. Still, particular legal provisions and processes that better assist victims of family violence and sexual assault crimes are required.
- Section 5 examines the impact of being a witness—feedback indicates that this remains a traumatising experience for ATSI women and young people. Additional supports are proposed.
- Section 6 discusses police responses—FVPLS Victoria is currently undertaking a Koori Family Violence Police Protocols Project within six Victorian communities. This section documents the consultation feedback about police responses to family violence and presents proposals related to improved communication with victims, access to female officers, enhanced cultural awareness training, strengthened crisis supports and better police complaint/feedback processes.
- Section 7 briefly considers restorative justice—FVPLS Victoria urges caution in proceeding with restorative justice approaches to crimes of family violence and sexual assault. The Victorian Parliament Law Reform Committee report, *Inquiry into Alternative Dispute Resolution and Restorative Justice May 2009*, is discussed.

The discussions in each section are informed by:

- FVPLS Victoria’s experience and learning in relation to service provision
- Relevant external developments in the law and justice area, both in Victoria and nationally
- Confidential consultations with ATSI victims/survivors of family violence and sexual assault who have experienced aspects of the legal system. The consultations included past clients of FVPLS Victoria, and ATSI and non-ATSI workers in support, policy and legal roles (29 in total, 22 ATSI and 7 non-ATSI, 16 from urban and 13 from rural areas). Twenty-four formal interviews were carried out face to face, and on average took about two hours each. The remaining five ATSI participants contributed through informal discussion with respect to particular areas of interest. A standard set of questions for workers and non-workers was prepared about key legal and associated issues encountered by victims/survivors under the following headings:
  - legal services
  - experiences with police

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

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

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

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

# Section 1: Aboriginal and Torres Strait Islander accessibility and the family law system

## 1.1 Introduction

Family law is one of the priority areas of legal assistance offered by FVPLS Victoria and is also defined as a key legal assistance area in the FVPLS program guidelines nationally. FVPLS Victoria assists Aboriginal and Torres Strait Islander victims of family violence and sexual assault and non-ATSI parents/carers of ATSI children. Family violence is prevalent in family disputes, often requiring court intervention in cases where alternative dispute resolution is inappropriate and when urgent response is required. **Family law disputes related to Aboriginal and Torres Strait Islander children where family violence is a factor are generally complex, lengthy, and always involve cultural considerations. Culturally appropriate, specialised legal assistance and support is therefore critical.**

Project consultations and FVPLS Victoria's experience to date indicate that there are three key issues needing to be addressed:

- improved Aboriginal and Torres Strait Islander accessibility and culturally appropriate processes within the Family Court and the broader family law system, led by ATSI people
- strengthened access to culturally appropriate, specialised family law legal services for Aboriginals and Torres Strait Islanders (recommended in the 2009 Commonwealth document *A Strategic Framework for Access to Justice in the Federal Civil Justice System*).
- improved responses to family violence within the family law jurisdiction and enhanced co-ordination between the various jurisdictions dealing with family violence issues.

Statistics from both the Family Court and the Federal Magistrates' Court indicate the numbers of ATSI people accessing the courts to be low (Family Court data indicates less than 1%). Given the established high levels of family violence and child protection interventions in ATSI families, one would expect these numbers to be higher. (It is noted that the reliability of the data is in question. The government and the courts have acknowledged this as an issue that requires attention.)

Through the project consultations, workers commented that it is generally only those ATSI family violence victims who receive intensive support who engage with the legal system at the point of crisis, adding weight to the importance of culturally appropriate service provision.

FVPLS Victoria has noted a marked increase in demand for family law services, particularly since commencement of the family law secondment arrangement with Victoria Legal Aid and the enhanced legal service capacity of the organisation overall. This confirms that the link between access to culturally appropriate, safe legal services and engagement with the legal process, including

family law, is strong. FVPLS Victoria is unique within the national program in that the organisation has secured alternative state government, Victoria Legal Aid and non-government funding to facilitate this enhanced capacity and to maintain a presence in metropolitan Melbourne. Most other FVPLS services restricted to rural/remote locations do not have this same capacity. In Paper 1, recommendations are made to significantly strengthen and broaden the program, including through consideration of subsuming it within a national ATSI women's legal program. This could provide a better structure for enhanced family law services at a national level.

Emphasis on Family Dispute Resolution (FDR) as the primary means to resolve family disputes is now entrenched in the Family Law Act. However, in cases where intractable disputes arise involving family violence and children, or where urgent action is needed, court intervention is required and exemptions to FDR apply. Escalation and continuation of family violence is often more likely without court intervention. **Given the disproportionately high levels of family violence experienced by ATSI women and children, it is essential to ensure that the family law system and the Family Court are accessible and culturally appropriate for ATSI children and families.**

In the experience of FVPLS Victoria, there is still some reluctance amongst ATSI victims/survivors of family violence, particularly in the less urgent cases, to initiate and follow through with family law proceedings in circumstances where positive outcomes could be achieved. The experience of FVPLS Victoria in legal service provision indicates, as do the project consultations, that where ATSI family disputes arise, many arrangements for children are made informally with extended family involvement. ATSI support workers and lawyers at FVPLS Victoria, however, acknowledge the need for and potential benefit of legal involvement in some cases, particularly in disputes involving violence and safety issues. **A more culturally appropriate family law system that is better equipped to respond to cultural and family violence issues is needed. Family Dispute Resolution processes in which ATSI people engage must also be culturally accessible, and the option of legal representation guaranteed throughout.**

Aboriginal and Torres Strait Islander law and justice policy has focused more on the criminal justice system and less upon issues of concern for ATSI women and children—family law issues being a prime example. Initiatives to improve ATSI accessibility within the Family Court commenced in the previous decade but have not been sustained. **There is an urgent need for a dedicated review of Aboriginal and Torres Strait Islander accessibility within the family law system that is informed by ATSI people.** The nature and prevalence of family violence must be a priority focus within this. Awareness raising with communities about family law would best occur either following or as part of an initiative to strengthen ATSI accessibility.

## **1.2 Proposed family law reforms and reviews**

The *Family Law Act 1975* (Cth) has been significantly reformed over the past few years, incorporating an emphasis on shared parental care and out-of-court dispute resolution. Where family violence is a factor exemptions apply; however, the processes involved are complicated. Legal

assistance in family law proceedings, especially where family violence is a factor, is absolutely critical.

In 2009 the federal government announced several reviews of the family law system. The Australian Law Reform Commission and the New South Wales Law Reform Commission will look at the 'harmonisation of domestic violence and family law', and will 'address inconsistencies in the interaction and application of Commonwealth and state laws regarding domestic violence, child protection, sexual assault and family law'. 'It will also examine ways in which laws can better protect women and children from domestic violence when a case crosses state boundaries and involves multiple jurisdictions.'<sup>1</sup> An additional review by Professor Richard Chisholm has now been published recommending legal reform and improved Family Court processes in relation to family violence.

Whilst this section concentrates on ATSI accessibility rather than broader family law reform, FVPLS Victoria strongly supports measures that strengthen the way family violence is dealt with in the family law system. ATSI women and children impacted by family violence will benefit from such reform.

FVPLS Victoria also welcomes the review of family violence and multiple cross-jurisdictional issues including child protection, sexual assault and family law. These are very significant for ATSI victims/survivors and ATSI women, given the high levels of family violence and child protection intervention experienced and victims' movement between states and territories in seeking to connect with family and/or to escape violent partners.

The above reviews create an opportunity for input in relation to ATSI-specific issues. However, FVPLS Victoria urges that consideration also be given to undertaking a dedicated project that focuses on Aboriginal and Torres Strait Islander accessibility within the family law system more generally. The complexity of the issues involved demands a holistic approach.

### **1.3 A background to Aboriginal and Torres Strait Islander accessibility in the Family Court**

It is unfortunate that previous initiatives within the Family Court aimed at improving Aboriginal and Torres Strait Islander accessibility have not been sustained. Yet it is useful to examine what has occurred in this regard.

In early 1993 the Family Court set up an Aboriginal and Torres Strait Islander awareness committee to consult with ATSI groups, to assist the court with cultural awareness training for staff, to encourage recruitment of ATSI staff, to develop identified positions within the courts and to ensure input on other cultural issues.

A number of reports have been produced relating to improved ATSI accessibility within the Family Court. One of these, from the Family Law Pathways Advisory Group entitled *Out of the Maze:*

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<sup>1</sup> Joint McClelland & Firth media release, 'Review of laws to protect women and children', 24 July 2009.

*Pathways to the Future for Families Experiencing Separation* (2001), recommended that the Family Law Act be amended to give greater recognition to kinship issues and child-rearing issues for ATSI children. The report stated:

*... The Advisory Group recognises the unique position of indigenous Australians in their interaction with the family law system.*

*... Historically, indigenous families have responded to the cultural inappropriateness of Australian family law by avoiding the court and dealing with family disputes informally, or under traditional lore.*

The following recommendations were also made in this report:

**...Recommendation 23**

*...23.1 That culturally appropriate service delivery be expanded through:*

*a all professionals of the Family Court of Australia (including counsellors, registrars and judges) and service providers involved in indigenous parenting issues receiving ongoing bicultural education. This education should include the history and effects of forcible removal of children and indigenous cultural values, particularly those related to child-rearing. Competency standards also need to be developed;*

*...b development of an indigenous employment strategy in courts with family law jurisdiction. This would include retention and expansion of the Indigenous Consultant positions in the Family Court of Australia;*

*c provision of interpreters particularly, but not only, in courts; and*

*d sponsoring the establishment of local-level indigenous community networks, where local expertise and knowledge can be shared with non-indigenous service providers.*

*23.2 That new service types be developed and tested, in partnership with indigenous communities. Two interventions tailored specifically for indigenous families—narrative therapy and indigenous family law conferencing—need assessment for their applicability to family dispute resolution and as alternatives to litigation.*

*23.3 That a database be created to collect information about indigenous family law cases. This would require identification of indigenous cases and would facilitate research into the way customary lore is taken into account in determining the best interests of children.*

*23.4 That national standards for indigenous children be in accordance with the recommendations from the Bringing Them Home report.*

*23.5 That programs and initiatives be developed, owned and implemented by local indigenous communities, to help ensure best practice in working with indigenous people.*

Indigenous Family Liaison Officers were employed in the Family Court and six officers were located in Darwin, Alice Springs and Cairns. Some of these officers also became trained mediators. The intention was to extend this program within the Family Court, yet this failed to eventuate. The Family Court also initiated circuits in some remote communities, and seminars involving Family



Court judges and other staff were held in Aboriginal and Torres Strait Islander communities. In 2006 the Family Law Act was amended to strengthen the provisions relating to best interests of ATSI children:

Changes were made to Family Law Act Section 60CC in relation to how the court is to consider the best interests of Aboriginal and Torres Strait Islander children:

- (h) if the child is an Aboriginal child or a Torres Strait Islander child:*
- (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and*
  - (ii) the likely impact any proposed parenting order under this Part will have on that right;*

and Section 61F:

- In:*
- (a) applying this Part to the circumstances of an Aboriginal or Torres Strait Islander child; or*
  - (b) identifying a person or persons who have exercised, or who may exercise, parental responsibility for such a child;*
- the court must have regard to any kinship obligations, and child-rearing practices, of the child's Aboriginal or Torres Strait Islander culture.*

The inclusion of these provisions within the law was a positive development; however, it is equally important that process and procedure are in place that support and inform implementation. The court must ensure that it is accessing expertise in relation to ATSI cultural issues and that culturally appropriate court procedure is in place.

## **1.4 Some current barriers to Aboriginal and Torres Strait Islander people accessing the family law system**

*... across the board, legal processes are not understood ... taking court action means Gubba's telling us what to do ... historically the justice system has not been appropriate for our people ... this has gone down through the generations. **Aboriginal support worker***

In seeking to improve Aboriginal and Torres Strait Islander accessibility current barriers must be identified. It is those cases in which family violence is prevalent that are more likely to require court intervention, and in which FDR is often not appropriate. Given the established higher levels of family violence within the ATSI community greater use of the Family Courts would be expected but statistics indicate otherwise.

The experience of FVPLS Victoria and the project consultations indicate:

- A history of poor experiences with the justice system within the ATSI community generally, coupled with a lack of trust in the courts to be cultural understanding, continues to impact

significantly as an access barrier. The association between the family courts and 'welfare' raises fears that children will be removed as a result of engaging with the court process.

*... I felt like a criminal and on top of all this strangers were interviewing my child ... my child thought she was in trouble too. **Aboriginal victim/survivor***

*... Most would say it is an intimidating process ... alienating ... very formal. **Non-ATSI lawyer***

- The courts are intimidating places and the formality of the court does not work for ATSI people. The Family Court and Federal Magistrates' Court are seen as non-Koori-friendly environments and lacking respect for ATSI culture.

*... the judge did not talk personably to me ... they didn't look at me ... very removed ... culturally this way of operating is very confronting ... very different to the Koori community ... struggled with the fact that the judge could not be personable to me about my family.*

*... It was not a good experience in the court ... did not sound like my case/my life because it sounded so bad ... it felt like my voice was not heard especially when the child rep was appointed. I felt then that I was no longer the mother of the children and that I did not have a say over my children's life. I felt so disconnected from my children through that process. I didn't understand the jargon, why decisions were made as they were.*

*... didn't understand jargon ... very formal, cold ... more tiresome/time consuming ... other priorities take over. **Aboriginal victim/survivor***

*... I am an Aboriginal woman and I was told to go to court and listen to the Western law ... this felt all wrong to me ... they did not know me or my culture. **Aboriginal victim/survivor***

*... **Not aware of any support in there. No place within the building that there is any information about Aboriginal people who need support ... very clinical space. Aboriginal victim/survivor***

*... I felt I lost my dignity through the court system. **Aboriginal victim/survivor***

- The family law system does not deal well with extended family arrangements, which are so important in ATSI families.

*... Agreements are too inflexible from the Family Court ... doesn't fit dynamic of Aboriginal family ... needs to take extended family into account ... bigger than what family law makes provision for and more fluid. **Non-ATSI lawyer***

- Threats to and intimidation of women by their partners in the context of a history of domestic violence makes taking action difficult.
- There is a lack of knowledge within the ATSI community about the family law system, why you would use it and what can be achieved.

*... Community doesn't know about [family law] ... is long drawn out process ... barriers with authority. **Aboriginal support worker***

- There is confusion about the difference between the Children’s Court (Family Division) and the Family Court.
- Comprehensive and culturally appropriate legal and general supports are needed for ATSI people in the family law legal system.

*... Had no support person in court ... needed help with decision making. In court a long time ... when there are long processes it's hard to stay in them. Aboriginal victim/survivor*

- The process is too long, drawn out and inflexible—it’s too hard to make changes.

*... Frustrating ... divorced from experience of living life with family ... long drawn out ... too legalistic to be useful. Non-ATSI lawyer*

- There is a lack of willingness on the part of many ATSI women to disclose a history of domestic violence to non-ATSI people, including family report writers. (If documents subsequently prepared [e.g. by FVPLS] disclose extensive violence it may be seen as a recent invention.)
- There is well-founded concern that cultural sensitivities will not be taken into account.

*... recently I received an Outline of Case from an Independent Children’s Lawyer ... under the section best interests s60CC(3)(h) ATSI heritage they put N/A ... how bad is that. Non-ATSI lawyer*

*... don’t recall cultural issues being talked about. Aboriginal victim/survivor*

- Barristers do not really get to know people and their culture and talk as if people are not part of the process.

*... was a slow process ... felt that no one understood me ... felt my barrister didn’t understand me either. Aboriginal victim/survivor*

- Urgent issues in rural areas have to go into the Magistrates’ Court where the presiding magistrate may have limited family law experience—people cannot pay to travel and stay in Melbourne.

*... Issue in Magistrates’ Court because regional circuit too infrequent to respond ... if need to issue need to do so this week ... not in Melbourne or when the circuit is here ... only FMC comes here. Non-ATSI lawyer*

## **1.5 Dispute resolution, Family Relationship Centres (FRCs) and Aboriginals' and Torres Strait Islanders' entrance point to the family law system**

FVPLS Victoria, during its period of operation, has found that ATSI people and victims of violence in particular will access the legal system for assistance where appropriate dedicated ATSI legal supports are available. There is concern that the perception of having to go to a mainstream FRC may discourage ATSI people from seeking assistance or that prevalent family violence may not be dealt with appropriately.

FVPLS Victoria is of the view that Family Dispute Resolution, whether legally assisted or not, is inappropriate and contrary to the interests of victims and children in most cases involving family violence. However, it is acknowledged that some ATSI people may wish to participate in Family Dispute Resolution in circumstances involving family violence and that culturally appropriate and safe options need to be made available to cater for those situations.

**Consistent with the above, FVPLS Victoria proposes that the entry point of ATSI people to family law assistance should be available through ATSI organisations that have appropriate resourcing for family law assistance, and that there be the option of accessing mainstream FRCs in the first instance if preferred.** This view is based upon the following:

- established high levels of family violence in Aboriginal and Torres Strait Islander communities
- mistrust of mainstream organisations and unwillingness to access them, particularly in relation to family violence and sexual assault
- general mistrust of the legal system and of authority, particularly with respect to children's issues
- barriers to Aboriginal and Torres Strait Islander women disclosing family violence and sexual assault, including fear of shame and consequence
- lack of knowledge within the Aboriginal and Torres Strait Islander community about the family law system
- limited access to the family law system.

The experience of FVPLS Victoria and the information gained through the project consultations both highlight concerns about the current FDR process for ATSI people. In particular, FVPLS is concerned by the fact that FDR has been assessed as appropriate in situations involving high levels of long-term family violence, where FVPLS's own subsequent assessment has been that FDR was manifestly inappropriate. In most cases the family violence, including its severity and extent, was not disclosed, the client was not made aware of the family violence exemption and in none of these situations was the victim referred to an ALS or FVPLS (or mainstream legal service) before participating. Clients have also reported feeling pressured and/or intimidated into participating in FDR.

FVPLS Victoria examples of FDR proceeding inappropriately:

- A client disclosed a long history of physical and sexual abuse at intake, much of which had occurred in the presence of the children, yet the case was still assessed as appropriate for

FDR. It was considered that the family violence was appropriately addressed prior to FDR by the mother attending three counselling sessions and the father participating in three men's behaviour change sessions.

- A client disclosed family violence with past child protection involvement because of family violence and the FDR provider deemed it appropriate that FDR proceed. The father failed to attend the second session and FDR did not proceed; however, the client indicated that the FDR practitioner was suggesting that shared care would be appropriate. This was prior to FVPLS becoming involved.
- In another case where serious violence had occurred and a no contact order had previously been made with liberty to apply, FDR was considered appropriate and the proposal was to include the child. The client had received a letter saying they must proceed but which did not explain there were exemptions for family violence. Upon suggestion (by FVPLS) that the FDR practitioner contact the child psychologist, the FDR did not proceed at all.

In the experience of FVPLS Victoria most clients are exempt from Family Dispute Resolution processes where family violence is present. Provided that the required documentation is filed, direct court access is generally granted. There are, however, ATSI people attending FDR without prior legal advice who are likely to be unaware of these provisions or of the benefits of legal advice and assistance.



*Sharing the Spirit 2009.*

It is noted that a model of legally assisted FDR is to be piloted; however, a specific model for

Indigenous people is not part of this. Despite this, it is likely that ATSI people will be involved in FDR, so a culturally appropriate process must be made available. Parties should be asked whether they identify as Aboriginal and/or Torres Strait Islander and in the view of FVPLS Victoria ought to be offered the option of direct referral to an ATSI or other legal service prior to intake screening commencing.<sup>2</sup> Appropriate referral sheets detailing ATSI and mainstream referral options should be provided by all FRCs.

Some ATSI people may elect to continue with FDR. It is therefore essential that culturally appropriate practices that also maximise safety are in place at all stages of the process. The FRCs must ensure appropriate Aboriginal and Torres Strait Islander cultural awareness of all staff in the context of both gender and family violence. Cultural awareness training should be ongoing.

**FVPLS Victoria is of the view that *all* clients requesting legal assistance for FDR at the screening stage should be able to access it, as is the case for Victoria Legal Aid's round table dispute**

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<sup>2</sup> FVPLS Victoria, *Response to draft model of assisted FDR in family violence cases (Integrated Dispute Resolution Process (IDRP))*, Women's Legal Service QLD.

**management process. At the very least, legal assistance should be available in all cases where violence is identified.**

FVPLS Victoria is concerned that ATSI clients may not challenge an assessment that a lawyer is not required, and might slip through the lawyer screening process in the same way that ATSI clients slip through the screening process with family violence or the extent of the violence is not disclosed, as witnessed by FVPLS Victoria. With respect to ATSI clients FVPLS's observation is that cases are very often complex and always require specific advocacy involving cultural considerations. ATSI consultants could be engaged in screening and risk management processes to avoid these problems.

FVPLS Victoria also sees a need to ensure that legal practitioners who assist at the FDR stage can continue to assist their client should the matter go to court. Given the significant barriers to ATSI people engaging in and sustaining legal processes, the understandable lack of trust ATSI people have in the legal system, and the requirement for culturally appropriate service provision, the notion of a legal representative (including an ATSI legal service provider) having to agree not to act in the event that the matter is required to go to court is problematic, and creates another access to justice barrier.

The project consultations found that most people had not participated in primary dispute resolution and mediation due to family violence and it was widely recognised that such processes are inappropriate in these circumstances. There was positive feedback from a grandparent who had found the process helpful, but generally there was concern about dispute resolution processes being inappropriate where family violence is a factor.

*... got out of that because he was violent ... no way I would sit in the same room as him. **Aboriginal victim/survivor***

*... I never had to confront him ... wouldn't want to see him in mediation. **Aboriginal victim/survivor***

*... would have been good to have Aboriginal liaison person there at mediation. **Aboriginal victim/survivor***

*... mediator knew Aboriginal issues ... knew about family connection ... found her good. **Aboriginal victim/survivor***

*... Remains concern that Aboriginal women will not disclose family violence ... women have said that they haven't ... worried that DHS will be notified ... not wanting to deal with the family violence ... think violence not relevant to contact ... not wanting other people to know their business ... FRCs /DRCs not screening out for FV ... is screening in so they can address it ... most family lawyers are of the view that it should be screened out ... FRCs do not want to screen out because they think they are equipped to address it. **Non-ATSI lawyer***

*... Are some clients that would be OK with the RDM process if in separate rooms and they have a lawyer representing them and where they do not want to go to court ... But the lawyer with the client needs to decide in the first instance whether RDM is appropriate. **Non-ATSI lawyer***

*... More traumatised ... total waste of time ... didn't work. **Aboriginal support worker***

*... FRC ... non-Aboriginal staff not enough cultural awareness training ... not good understanding of how to do comprehensive risk assessment ... rely on self-disclosure ... Aboriginal people need proactive eliciting of information and assessment of risk. **Non-ATSI lawyer***

*... example of client who did not want to go to Family Court wanted to settle ... many do prefer to settle in extended family network regardless of family violence or sexual assault. Example of client who is personable and malleable disinclined to raise concerns or to disagree when things put to her ... said wanted mediation with partner in jail. IO taken out to stop his contact ... FRC said need to ring prison ... get him to participate in mediation ... mediation centre rang prison and gave out client's phone number ... horrified. **Non-ATSI lawyer***

*... Mediation with counsellor was horrible because I was just told to turn up on the day but not what to expect. He [the mediator] sat there and stared down at both of us. The session was uncomfortable. He was full of aggression. This happened at the Family Court ... only lasted half an hour and he walked out. I felt forced to participate ... like the court did not care about the family violence but more about the outcome of the children having access to both parents. Nothing about cultural identity was talked about. I felt like I was caught in a white world system ... with no one to understand where I was coming from as an Aboriginal mother ... that no one was there fighting for me. Felt like I think my mum would have felt when no one was there fighting for her as a little girl. I felt out of my league. **Aboriginal victim/survivor***

## **Proposal 1**

That ATSI people be provided with the option to access family law assistance through an ATSI or mainstream legal organisation prior to FDR screening.

That introduction of ATSI consultants be considered to support intake and risk management screening.

That all ATSI people undertaking FDR have the option to access legal assistance from an ATSI or mainstream legal organisation throughout the FDR process.

That FDR processes be culturally appropriate and all FRC staff access cultural awareness training incorporating family violence and gender issues.

## 1.6 Strengthening ATSI accessibility in the Family Court

*... Re. Koori families ... making sure Koori family at centre of decision making ... that everything going on around that family is not dictated by procedures and policies ... the family is the core of the issue ... cultural connections in community must be central to decisions, culturally sensitive people working in the area needed, culturally sensitive processes, and ensure that cultural implications are considered. Put this at front of decision making. That would be a more equitable legal system in place for Aboriginal people and families. Aboriginal victim/survivor*

### **Family Court practices and Aboriginal and Torres Strait Islander cultural awareness**

**Neither the Federal Magistrates' Court nor the Family Court has measures in place to adequately address ATSI accessibility.** Indigenous Family Liaison Officers are no longer employed in either court. No formal procedures are currently dedicated to ATSI children or families. External family report writers have not been receiving ATSI cultural awareness training. The Family Court does not have a circuit to rural locations. There are no Aboriginal or Torres Strait Islander consultants. No Aboriginal and Torres Strait Islander advisory committee has operated for some time, although it is understood that a new joint working group has recently been established with the following terms of reference:

- *The impact of the shift in the provision of services to Indigenous clients, previously provided by Indigenous Family Liaison Officers, to Family Relationship Centres.*
- *How to manage applications for parenting orders concerning residence, contact and specific issues as a result of traditional and customary adoption practices by Torres Strait Islanders.*
- *How to meet the needs of Indigenous clients at both Courts.*
- *The development of a joint Reconciliation Action Plan, as required by Government, which identifies the steps the two Courts will take to build relationships and enhance respect for Indigenous Australians in undertaking both Courts' work.<sup>3</sup>*

FVPLS Victoria is advised that an Indigenous Working Group has been established comprising a Federal Magistrate, the Executive Assistant to the CEO of the Family Court and a Family Court judge. It is not clear how this working group plans to move forward; however, **it is critical that ATSI people from diverse communities and representative of gender equity drive all ATSI accessibility changes within the Family Court and most importantly that commitment by both the government and the courts be sustained.**

The courts and the government refer to ATSI staff based in Family Relationship Centres as evidence of Aboriginal and Torres Strait Islander accessibility in the family law system. As we have stated above, many family violence cases and other complex cases require court intervention and it is imperative that the court itself be culturally responsive.

During 2009, FVPLS Victoria staff were invited to a meeting with federal magistrates in Melbourne, initiated by Federal Magistrate Hughes, to discuss ATSI accessibility issues within the court. Barriers

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<sup>3</sup> Response by the Chief Justice of the Family Court and the Chief Federal Magistrate on behalf of the Family Court of Australia and the Federal Magistrates Court of Australia to the Senate Legal and Constitutional Committee Inquiry: *Access to Justice*, 13 May 2009.



to access and possible strategies to address these were discussed, the latter of which were to be provided to the newly formed Courts Working Group. This initiative is welcomed.

Family law system conferences were held in Canberra in August 2008 and February 2009. Whilst a workshop was dedicated to ATSI accessibility at the February conference, we understand that only two ATSI people, both from Victoria, were invited to attend the conference.

The following comments were made in the project consultations:

*... A Koori-specific process could assist ... better understanding as to how a lot of Aboriginal families work ... for example leaving children with grandma and relatives for a few weeks at a time here and there ... understanding that not a bad thing ... if all assessed by white middle class standards ... too difficult to challenge lack of cultural understanding if don't have Koori-specific process. **Non-ATSI lawyer***

*... Koori-specific process would assist in terms of perception and outcomes ... apparent that Independent Children's Lawyers and report writers don't have specialist knowledge which is affecting the recommendations they are making.*

*... some clients struggle with having some aspects in an affidavit ... don't want to rehash the past perhaps initial process where first hearing date happens without affidavits? **Non-ATSI lawyer***

*... Meeting about court issues should be in office not courts and with elders, Aboriginal judges. **Aboriginal victim/survivor***

*... better taking into account extended family. **Non-ATSI lawyer***

*... If was a specific Koori process which was less formal ... and if understood how worked ... and education about it ... people may think a bit more about it and what can be gained from going through the process ... this needs to happen. ... Koori list ... same powers but not so long and drawn out ... things change ... kids love both parents ... need to be binding orders in some cases but make it easy to change when situation changes. **Aboriginal support worker***

*... Panel of Indigenous consultants from each state. **Non-ATSI lawyer***

## **Proposal 2**

That a dedicated project examining Aboriginal and Torres Strait Islander accessibility within the family law system occur, informed by Aboriginal and Torres Strait Islander people. A process for this should be developed and implemented as soon as possible. Previous relevant initiatives should inform discussion. The project should include:

- Access to family law legal assistance through Aboriginal Legal Services as the primary initial entry point to family law assistance.

- The role of Family Relationship Centres and Family Dispute Resolution for ATSI people— cultural accessibility, family violence issues and access to legal representation.
- The impact of the prevalence of family violence as a factor in family disputes involving ATSI children and cross-jurisdictional issues, particularly child protection and state family violence laws.
- Development of processes and services within the Family Court which are more culturally appropriate to Aboriginal and Torres Strait Islander people, which may include:
  - the development of a dedicated Aboriginal and Torres Strait Islander list for cases involving ATSI children
  - Aboriginal and Torres Strait Islander family decision making/dispute resolution processes (with the prevalence of family violence informing such processes)
  - the introduction of ATSI consultants to advise the Family Court in decision making and to possibly conduct court ordered dispute resolution.
  - strengthening of cultural awareness of Family Court staff including external report writers
  - ATSI liaison or support roles within the court
  - improved community engagement between the ATSI community and the Family Court.

### **Proposal 3**

That the Family Court develop processes at national, state and territory levels to receive ongoing advice in relation to Aboriginal and Torres Strait Islander accessibility generally (keeping in mind that Aboriginal and Torres Strait Islander communities are diverse, and that accessibility measures and requirements are likely to differ according to the location). Advisory committees at national and state/territory levels are likely to be required.

### ***ATSI Liaison Officers***

Project consultations indicated that there is strong support for Aboriginal and Torres Strait Islander Liaison Officers to be located within the Family Courts. It is not infrequent that ATSI women who experience family violence do not have family support when engaging with legal processes. At the same time, there are often multiple issues that must be dealt with—such as those related to housing, Centrelink, emotional/counselling support and health issues—requiring considerable coordination. These issues must be dealt with in a way that ensures that women can engage with and sustain the legal process.

FVPLS Victoria receives funding (from the Commonwealth AGD) and more recently from the Department of Human Services Victoria for paralegal workers. This has proven to be a successful model for providing a more holistic service and assisting women to better sustain their engagement with the legal process. FVPLS Victoria urges commitment to continue this funding.

In addition, ATSI Liaison Officers located at the Family Court could assist with practical supports, make necessary legal and other referrals, and most importantly offer culturally appropriate support and information. The parameters of these liaison roles would need to be clearly defined. More intensive supports must be provided through separate legal or other family violence support services. Several women consulted in this project expressed that it would be helpful to have ATSI Liaison Officers:

*... Aboriginal liaison in the court would have been good to explain to me what was happening in the court process. Felt like the lawyers and court don't like to keep you in the loop. I was thinking ... what is going on?* **Aboriginal victim/survivor**

*... Aboriginal liaison at court would be helpful to help sort out supports and practical arrangements ... very scary alone ... intimidating when other half there with all of his supports and family.* **Aboriginal victim/survivor**

*... Could be a role for an Indigenous liaison worker which does not involve the private issues ... but which provides more practical assistance and information. You could feed back about cultural sensitivity to the liaison officer.* **Aboriginal victim/survivor**

*... I would have taken up the offer of support through an Indigenous liaison officer ... issue of trust and confidentiality with that worker may be an issue for some people but it's about choice ... of being able to access a worker.* **Aboriginal victim/survivor**

*... ALO ... works well ... mainstream seen as scary ... if have someone can relate and talk to like ALO ... are comfortable ... means people don't walk away.* **Aboriginal support worker**

*... paralegal support role is important ... the support a service is able to provide to a client is important ... able to track how the client is going and to provide assistance to other crisis management ... housing, Centrelink ... these have major impact ... assists to have them hang in there with the legal process.* **Non-ATSI lawyer**

#### **Proposal 4**

That the Family Courts in states and territories employ ATSI Liaison Officers and other ATSI staff.

That the importance of paralegal support workers in the FVPLS program and Aboriginal Legal Services more generally be acknowledged through a commitment to ongoing funding.

#### **Family reports**

**One of the areas of concern based on the experience of FVPLS Victoria is that family report writers external to the court often do not deal appropriately with cultural issues or family violence. It has been noted that whilst internal family report writers receive cultural awareness training, external psychologists do not.**

Much family law work at FVPLS Victoria has proceeded through the Federal Magistrates' Court and involved external report writers. Given the critical importance of family reports and the opinions contained therein, this is seen as a key issue in the courts when dealing with family violence cases. Parties may be advised to consent to arrangements on the strength of an opinion presented in a family report and the court will accord the report significant weight in its decision making. If the family violence has not been fully disclosed and properly analysed, inappropriate outcomes are more likely to occur.

The interaction of Aboriginal and Torres Strait Islander cultural issues and family violence compounds the complexity of these issues. **The importance of family report writers and family consultants having high levels of cultural awareness in the context of broader family violence expertise is patently clear.**

FVPLS lawyers emphasise that:

- Many ATSI women will not disclose, or not disclose fully, details of family violence to report writers, resulting in a significant impact on court outcomes. The intersecting issues of culture and family violence require in-depth understanding on the part of report writers and the judiciary. FVPLS Victoria has experienced family report writers being critical of women for not disclosing family violence contained in affidavit material (despite not being explicitly questioned about it) and then drawing adverse credibility conclusions. Cultural awareness training and comprehensive family violence training are critical in this regard. Comments made to the FVPLS Victoria family lawyer about this include:

*She didn't ask me about it so I didn't think it was right to just say it.*

*It would have been a shame job telling the white lady about my problems; I didn't want her looking down on me and thinking I'm a bad mum because he bashed me.*

*I didn't want him to think I was trashing their dad by bringing it up.*

- Family report writers should have access to expert input from Aboriginal and Torres Strait Islander consultants in the preparation of reports. An FVPLS lawyer recently had the experience of the Family Court referring a case to an Indigenous consultant, despite the fact that no such positions currently exist in the court. The Family Consultant to whom the case was referred expressed the view that expert cultural input would have been of great assistance.
- There is inadequate analysis of the nature of family violence and the impact of the violence upon children by family report writers in some cases. In one instance, the family report writer minimised the mother's allegations of violence occurring over a seven-year period, much of which had taken place in the presence of the six-year-old child. Detailed analysis of the serious impact of violence upon the child by a psychologist engaged for victims of crime proceedings was quite different to the analysis of the family report writer.

- FVPLS Victoria has experience of family reports acknowledging mothers’ allegations of violence and then either not further addressing the issue or leaving the finding as to the family violence to the court, but then making recommendations for shared or substantial and significant time without setting out how their recommendations would be affected were family violence found to have occurred.
- Family report writers often fail to give adequate weight to emotional and verbal abuse and its impact—clearly demonstrating a lack of understanding of family violence. (An expanded definition of family violence in the Family Law Act would assist.)
- In situations where the mother’s parenting capacity may be in question due to depression or alcohol abuse, for example, there is often limited (if any) analysis of whether those difficulties have been situational and related to the family violence experienced. It is concerning that in the absence of such analysis recommendations are being made that children be placed in the care of the alleged perpetrator on the basis that the mother has experienced depression or alcohol abuse during the relationship.
- At times, inappropriate weight is given to strong attachments children appear to have with violent parents without adequate analysis of the child’s situation.
- Family report writers at times do not appear to have read material thoroughly enough (or at all) prior to arranging appointments, and thus are not fully apprised of the circumstances to be considered. FVPLS Victoria is aware of cases where report writers have proceeded to interview only having received documents from one party.
- Practical arrangements made by external family report writers when preparing reports also require scrutiny and greater accountability. Where intervention orders are in place and/or family violence is a factor, ensuring the safety and wellbeing of the children and parents is critical. FVPLS Victoria has witnessed situations where great trauma was caused by meeting arrangements being poorly or carelessly handled. By way of example, one report writer advised that there was nothing she could do to avoid contact between the mother and father while waiting at court for an interview and suggested that the mother wear dark glasses.

The following observations emerged from the project consultations:

*... don’t recall cultural issues being talked about. **Aboriginal victim/survivor***

*... second family report didn’t talk about family violence at all. **Aboriginal victim/survivor***

*... I could not believe I was expected to sit in a room with my ex-partner. There was an intervention order in place. The children had not seen him for a period of time. I could not believe that was happening. I felt unsafe about the whole arrangement. She set it up to see us in separate parts of the day; however, our sessions ran into each other. Little about cultural issues was asked ... I recall*

*offering that information up to her. Explaining that some of the past trauma associated with child removal and my mother's experience transformed to my generation. She treated it as nothing of significance. Would have been good to have a good discussion at the beginning about cultural issues ... cultural issues make us what we are ... the psychologist has to have a good understanding of that. The family report must be written up so that the court understands what we are as an Aboriginal family. Family report writers are needed with expertise in writing reports for Indigenous families.*

**Aboriginal victim/survivor**

*... She wrote about family violence in the report ... it was disclosed ... she did not have adequate understanding of the family violence issues. I don't think she captured the true impact of the violence.*

**Aboriginal victim/survivor**

*... Find it useful ... important to be given a lot of insight re. what will happen at the appointment for clients ... bad when you don't know what it all means ... what will happen ... psych must understand Indigenous importance of family. **Aboriginal victim/survivor***

*... the report writer did have a good understanding of culture. **Aboriginal victim/survivor***

*... In a recent family report, the ATSI mother was unable to talk to the report writer about the physical violence she had experienced ... but when she spoke about the verbal abuse the report writer was dismissive of it. **Non-ATSI lawyer***

*... There are problems with cultural awareness of report writers ... now requesting it be someone with cultural awareness training ... and including family violence issues ... one recently not picked up on child being Aboriginal ... not even mentioned. **Non-ATSI lawyer***

*... Relocation case ... psychologist said while mum talks about Aboriginality ... found that Vic Aboriginal Health Service will see people from all over Australia and otherwise could go back twice yearly for cultural festival ... mum criticised for not accessing Aboriginal community here in Victoria.*

**Non-ATSI lawyer**

*... also lack understanding of why women may not have reported violence to police/doctors etc. ... often have their credibility attacked if they haven't done so. **Non-ATSI lawyer***

*... Women are saying not having family violence dealt with by psychologists ... specialised training on family violence and how relates to Indigenous community needed. **Non-ATSI lawyer***

## **Proposal 5**

That ongoing cultural awareness and family violence training for all family consultants (internal and external) conducting family dispute resolution and preparing family reports be implemented. That a process within the court whereby specialist Aboriginal and Torres Strait Islander cultural advice is available also be established (possibly through the introduction of Aboriginal and Torres Strait Islander consultants).

## ***Cultural awareness training***

Ongoing ATSI cultural awareness training for all staff working within the Family Court is essential. This includes solicitors, counsel, Independent Children’s Lawyers and external report writers as detailed above. ATSI communities must be provided with the opportunity to lead the development of such training programs to ensure that local cultural knowledge is drawn upon in each of the states and territories.

Cultural awareness training for judicial officers is also required to ensure appropriate responses to cases involving ATSI children. FVPLS Victoria understands that Family Court judges and other staff have in the past visited ATSI communities (in 1998) as part of the cultural awareness training provided. **This local community engagement is extremely important as an indication of commitment to learning and cultural respect. It also offers education to the ATSI community about the role of the court.**

*... Any cultural awareness program is critical to those working or seeking to work with Aboriginal families/communities. A knowledge of and understanding [from an Aboriginal viewpoint] of the history of this country and an understanding of the impact of successive government policies on Aboriginal life today is vital in ensuring a quality of life that is based on tolerance, acceptance and a recognition of the uniqueness of ATSI people in this country. **Aboriginal educator***

*... pot luck as to which federal magistrate you get ... whether any cultural awareness training. **Non-ATSI lawyer***

*...training for all report writers. **Non-ATSI lawyer***

### **Proposal 5 (continued)**

That high-level ongoing ATSI cultural awareness training be provided for the judiciary which involves connection with local ATSI communities (as has previously occurred).

That ongoing ATSI cultural awareness training for all Family Court staff and stakeholders be implemented which is led and informed by local ATSI communities, thus reflecting diversity in each of the states and territories.

## ***Child care in the Family Court***

**The lack of adequate child care support in the Family Law Courts is a frequently expressed concern.**

FVPLS Victoria on a number of occasions has had to locate and pay for child care for clients who have Family Court hearings, despite the fact that the service receives no funding for this. It is a particularly pressing issue in cases where the mother has fled the state due to family violence and been forced

to return pursuant to a recovery order. In such situations the mother may not often have family or other support in Victoria to assist with care of her children. It is often assumed that refuges, family violence workers or legal services will be able to provide child care services (or funding for them) when this is not the case. Extending the availability of child care at the court or in the court precinct must occur.

*... Child care is a big problem ... women can't afford it. Non-ATSI lawyer*

*... Child minding was an issue when attending court proceedings. Aboriginal victim/survivor*

*... Child care is a problem ... support workers are not employed to mind children. Aboriginal support worker*

### **Proposal 6**

That available child care facilities at the Family Court be strengthened.

#### ***Family Court circuits***

Lawyers in rural areas indicated that they were issuing family law proceedings in local rural Magistrates' Courts because of delays with Federal Magistrates' Court circuits and absence of Family Court circuits. There were concerns raised that the Magistrates' Courts are not best equipped to deal with family law disputes; however, this was preferred to having clients travel to Melbourne for urgent hearings.

*... Issue in Magistrates' Court because regional circuit too infrequent to respond ... if need to issue need to do so this week ... not in Melbourne or when the circuit is here ... only FMC comes here.*  
**Lawyer**

### **Proposal 7**

That there be improved accessibility to Family Court and Federal Magistrates' Court services in rural areas.

## **1.7 Family violence**

**FVPLS Victoria, as previously stated, supports legislative reform to strengthen responses to family violence in the Family Courts.** This includes expanding the definition of family violence under the Family Law Act; amending the law relating to the presumption of equal shared parental responsibility and best interests provisions for children to ensure that the child's right to maintain a relationship with a parent is not taking precedence over family violence concerns; reviewing the costs provisions with regard to false allegations or statements which may inhibit full family violence disclosure; improving the Family Court forms with respect to detailing family violence and children's



safety; strengthening family violence risk assessment processes; and ensuring comprehensive and broad-ranging family violence training which also addresses cultural issues.

A particular issue faced by ATSI women is the reluctance to report family violence to police and the lack of independent evidence of the violence, particularly at the interim stage. Significant weight is placed upon whether there has been police or medical reporting, which for ATSI women is less common. In one particular case, extensive allegations of family violence had been made in affidavit material by the mother and the presiding judicial officer made comments along the lines that if things were really as bad as alleged, the mother would have gone to the police, she would have reported the incidents to doctors, or someone would have reported it. This is also an example where cultural awareness training would have likely provided greater insight into the barriers for ATSI women in reporting family violence.

Relocation and recovery cases also raise particular issues for ATSI women who seek to escape family violence. It is not uncommon for perpetrators to take women away from family supports resulting in them needing to relocate to seek out support for themselves and their children. FVPLS Victoria lawyers report a generally punitive approach to women in these situations. It is noted that access to family law services and Family Courts is restricted in rural areas, which further complicates these issues.

FVPLS lawyers comment that the current Notice of Risk form is not sufficient to deal with family violence in parenting cases and that a new family violence screening process is required in the Family Courts. Lawyers also say that little weight is given to intervention orders in the Family Courts' assessment of family violence.

Various concerns about the often clumsy interaction between the Family Courts and child protection intervention were raised. FVPLS Victoria lawyers support improved communication and understandings between the two jurisdictions. Lawyers also express concern about the often punitive rather than supportive approach taken by the Department of Human Services to parent victims of violence in the Children's Court. As previously mentioned, FVPLS Victoria generally supports enhanced integration among jurisdictions dealing with allegations of family violence, particularly intervention orders, child protection intervention and family law parenting arrangements. The Australian Law Reform Commission is comprehensively reviewing these issues in its family violence inquiry. In seeking improved ATSI accessibility across these jurisdictions opportunity for coordinated approaches to dedicated initiatives should also be explored. This may, for example, include culturally appropriate alternative dispute resolution processes, introduction of ATSI Liaison Officers or consultants and dedicated lists for cases involving ATSI children. Family violence considerations must be paramount.

*... With respect to court responses to family violence, it varies between federal magistrates. **Non-ATSI lawyer***

*... Family violence is regularly dealt with inappropriately or not dealt with at all. Family violence is given little focus ... for example, family reports and reports by consultants often do not address family violence*

where it is raised as a significant allegation. As a consequence judicial officers rely on recommendations in reports which have ignored or not properly dealt with the family violence. **Non-ATSI lawyer**

... In one FVPLS Victoria case police had applied for an intervention order for a client following violence in which the father had slammed her against the wall while holding the baby. DHS told the client to go to the Family Court. The family report writer in her report does not mention the incident but finds the father has greater insight into the needs of the child because she said the mother commented that she wished the father would drop off the face of the earth. This young mother was substantially younger than the father. The fact that the police had applied for the intervention order was ignored in the report. **Non-ATSI lawyer**

The definition of family violence under the Family Violence Protection Act Victoria is better because it forces the court to focus not just on physical and sexual violence but also on broader forms of verbal, financial and controlling violence which form a pattern in the relationship. For example, control issues are particularly problematic with respect to contact orders. It is seen as 'parent friendly' by the mother to have changeover at the home regardless of the controlling and abusive conduct by a father. **Non-ATSI lawyer**

**The Family Courts often draw conclusions about DHS conduct or lack of conduct which lead the court to conclusions that are not accurate reflections of DHS's position. Non-ATSI lawyer**

## Proposal 8

That reforms to family law legislation and procedure be implemented to ensure strengthened responses to family violence and to ensuring children's safety. That particular issues for ATSI children and families be specifically considered in all proposed reforms.

### 1.8 Contact/visiting arrangements

In the experience of FVPLS Victoria, the lack of appropriate contact centres at which to facilitate and supervise child contact visits is a critical issue.

Ensuring secure arrangements for handover or the supervision of visits is often required where family violence or other child safety concerns exist. Workers in rural areas in particular said that the one such centre in each of their rural towns had long waiting lists and was inaccessible to people unless there were family law orders in place.

**FVPLS Victoria has witnessed situations in which women have conceded to unsupervised contact visits because the waiting lists (three to six months) at Child Contact Centres are too long. Women worry that the wait will overly upset the other party.**

**Resorting to changeover at police stations or DHS offices is considered inappropriate by consultation participants. Similarly, use of ATSI organisations not specifically set up for this function is considered problematic.**

**There is support from both ATSI women and ATSI support workers for the option of dedicated Aboriginal and Torres Strait Islander Child Contact Centres. Similarly, the availability of ATSI or mainstream supervisors, where required, is thought to be positive.**

Below are some of the comments made during the consultations on this subject:

*... Lot have six-month waiting lists now ... women say can have unsupervised because the bloke will go crazy if he has to wait that long. ... Even three-month waiting list is too long. **Non-ATSI lawyer***

*... More clients use handover process ... still a month or so to wait ... and not enough of them that operate during the week (or seven days). **Non-ATSI lawyer***

*... Was discussion about child contact centres in my case but need culturally appropriate places to go. More choices. **Aboriginal victims/survivor***

*... After an hour kids are struggling because they are confined in small space. **Aboriginal victim/survivor***

*... court should check out environment they are sending people to ... I think they need to understand the place they are sending people and children to.*

*... always use police or DHS offices which is a traumatic place for drop off/collection ... should be more options. **Aboriginal regional family violence coordinator***

*... There is one in Mildura ... can only get in if have a court order to say safe handover at contact service ... hard because most of our clients don't go through Family Court. **Non-ATSI lawyer***

*... no huge problem in region ... one Contact Centre in Gippsland ... waiting list prioritises court orders. **Non-ATSI lawyer***

*... very difficult for Aboriginal organisations to supervise access ... not enough safe places or venues for supervision. **Aboriginal support worker***

*... purpose-built Contact Centre would be good ... where there could be no following of car etc. ... needs multi-purpose hall ... open spaces for kids ... Koori specific ... option to use Koori Centre would be good ... so as to not put back on to Aboriginal organisation for that ... that has been happening but that not appropriate ... does happen ... risk to others using service and everyone knows your business. **Aboriginal support worker***

*... Need Koori supervisors also to understand cultural issues ... or at least give option ... ask re. preference ... need to ensure no connection between families. Need to declare connection if that arises ... then people make choices. **Aboriginal support worker***

## Proposal 9

In relation to Child Contact Centres:

That there be increased availability of and resourcing for child contact centres for both changeover and supervision of visits, including for non-court-ordered arrangements.

That, in consultation with ATSI communities, consideration be given to the establishment of dedicated ATSI child contact centres/services for contact changeover and supervisions as an option available where ATSI children are involved.

## 1.9 Family law legal services for Aboriginals and Torres Strait Islanders

Culturally safe and trusted legal services are key to improving access to justice for Aboriginal people in the complex family law area, both in direct service provision and in community legal education.

It is noted that the report of the Commonwealth Access to Justice Taskforce, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009), includes a recommendation that the Commonwealth should consider options for improving access to culturally appropriate legal assistance services for family and civil law matters for Indigenous Australians (Recommendation 11.4). It states that:

*... the availability of culturally appropriate legal assistance services for Indigenous people with family and civil law problems is limited and this compromises the ability of Indigenous Australians to realise their full legal entitlements.* (p. 143)

Until the FVPLS program was funded nationally, the Aboriginal Legal Services were the main ATSI legal service providers, and their services were concentrated on criminal law. ATSI victims of family violence lacked dedicated legal supports, often as a result of the legal conflicts that inevitably arise in family disputes. The FVPLS program is dedicated to the support of ATSI victims/survivors including in family law cases. **However, the FVPLS program is confined to rural and remote Australia and is limited in the breadth and depth of family law services it can provide. With necessary strategic development the program has the potential to significantly strengthen family law services for the ATSI community as demonstrated through the experience of FVPLS Victoria.**

FVPLS Victoria has secured support from outside of the FVPLS program to strengthen capacity for family law services, with the secondment of a family lawyer from Victoria Legal Aid since 2007 which has recently been extended for a further three years. This position ensures continued service delivery to metropolitan Melbourne but also services Victoria. Lawyers in the three FVPLS rural offices (Mildura, Bairnsdale and Warrnambool) also provide family law assistance. The family law secondment position has strengthened capacity considerably through service provision, mentoring and community education. It is a most effective means for Victoria Legal Aid to increase access to legal aid services for Aboriginals and Torres Strait Islanders in Victoria and is a recommended strategy for strengthening family law services for the ATSI community.

FVPLS Victoria urges the Commonwealth, in collaboration with the states and territories, to extend FVPLS funding to urban areas to ensure access to justice for all ATSI women, and in order to provide a stronger structural model for the FVPLS program overall. The FVPLS program must also be supported by joint Commonwealth and state initiatives to strengthen family law capacity, consistent with the recommendation contained in *the Access to Justice* report. Given the prevalence of family violence in ATSI communities, it is critical that the FVPLS services are funded and supported for family law work, including litigation where necessary. FVPLS Victoria is urging consideration of a national ATSI women's legal program to broaden and strengthen legal services for ATSI women and children.

The majority of FVPLS Victoria family law work involves arrangements for children. In the experience of FVPLS Victoria, cases in which ATSI children are engaged in family law proceedings usually involve crisis situations, including:

- location and recovery orders (given the dislocation of ATSI families across Australia, movement to connect with family interstate is not uncommon, particularly where violence is a factor)
- grandparents seeking orders in relation to grandchildren
- child contact arrangements—often where one parent is not Aboriginal
- DHS withdrawing from Children's Court proceedings based on Family Court orders being obtained.

Where women have intensive crisis supports in place (e.g. through a refuge) they are more likely to see a lawyer and engage with family law; without such support they often will not.

There is also demand for assistance in small property disputes where family violence is a factor; however, strict legal aid guidelines are prohibitive in this regard. Specific proposals are made in Paper 2, Section 6 with respect to necessary changes to Legal Aid funding guidelines in the family law area to improve access to justice for Aboriginals and Torres Strait Islanders. The need for greater attention to, and flexibility of, funding for particular cultural and family violence situations is addressed.

It is also proposed that culturally appropriate legal representation for ATSI children in family law proceedings be strengthened through the inclusion of Aboriginal legal service lawyers on Independent Children's Lawyer panels and ongoing cultural awareness training for other ICLs. FVPLS Victoria has seen instances where Independent Children's Lawyers have failed to acknowledge and respect ATSI cultural issues. In a recent FVPLS Victoria case, with respect to an Aboriginal child an ICL marked as 'not applicable' issues of ATSI heritage in an outline of the case documents. Improved cultural awareness training for all lawyers and barristers as part of their professional development requirements is proposed in Paper 2, Section 13.

It is also critical, as demonstrated by the recently announced family law multi-jurisdictional review, that ATSI victims of family violence are able to access holistic legal service delivery that integrates the overlapping areas of family violence law, child protection law, victims assistance and family law.

One of the strengths FVPLS Victoria has developed is the ability to assist and follow through in all of these legal areas. Fragmentation of services is not effective and whilst choice must be available, this holistic service delivery model provides best practice for ATSI victims of family violence.

Finally, in funding family law services, appropriate consideration must also be given to the more intensive resource requirements of this work.

In 2005, the Joint Committee of Public Accounts and Audit Report 403, *Access of Indigenous Australians to Law and Justice Services*, found that improved access to family and civil law services for Indigenous Australians was required, and acknowledged the higher levels of resources required for these types of cases:

*...2.41 However, the accessibility of family and civil law services to Indigenous people is important in two respects:*

*to ensure that Indigenous Australians are aware of and can realise their full entitlement under the law; and*

*as a means of resolving issues that might otherwise escalate into future criminal law matters.*

*...2.44 If AGD considers that it is desirable that ATSILSs provide family and civil law services, it needs to put in place funding arrangements that acknowledge the costs of establishing civil law practices and the greater amount of time and resources required of a legal service to conduct family and civil law matters.*

## **Proposal 10**

In relation to Legal Services:

- That family law services for Aboriginal and Torres Strait Islanders be strengthened Australia wide.
- That either the national FVPLS program be strengthened through increased resourcing to all communities (including urban) and further resourced to ensure family law expertise in the support of ATSI victims/survivors of family violence and sexual assault (mainly women and children), or this be implemented through the introduction of a national ATSI women's legal program (see Paper 1, Recommendations 4 and 8).
- That in funding ATSI family law legal services, the more resource-intensive and long-term nature of the work be factored in as well as the clear benefit of paralegal support roles.
- That high-level and ongoing cultural awareness training for Independent Children's Lawyers be implemented. That lawyers from Aboriginal Legal Services including the FVPLS program be included on ICL panels.
- That cultural awareness training be provided through continuing professional development

programs for other legal practitioners including counsel working in the family law jurisdiction.

- That Legal Aid family law guidelines be reviewed to strengthen access to justice for ATSI people, particularly women and children experiencing family violence. For more detail on this subject see Paper 2 Section 6 Victoria Legal Aid.

## 1.10 Community legal education

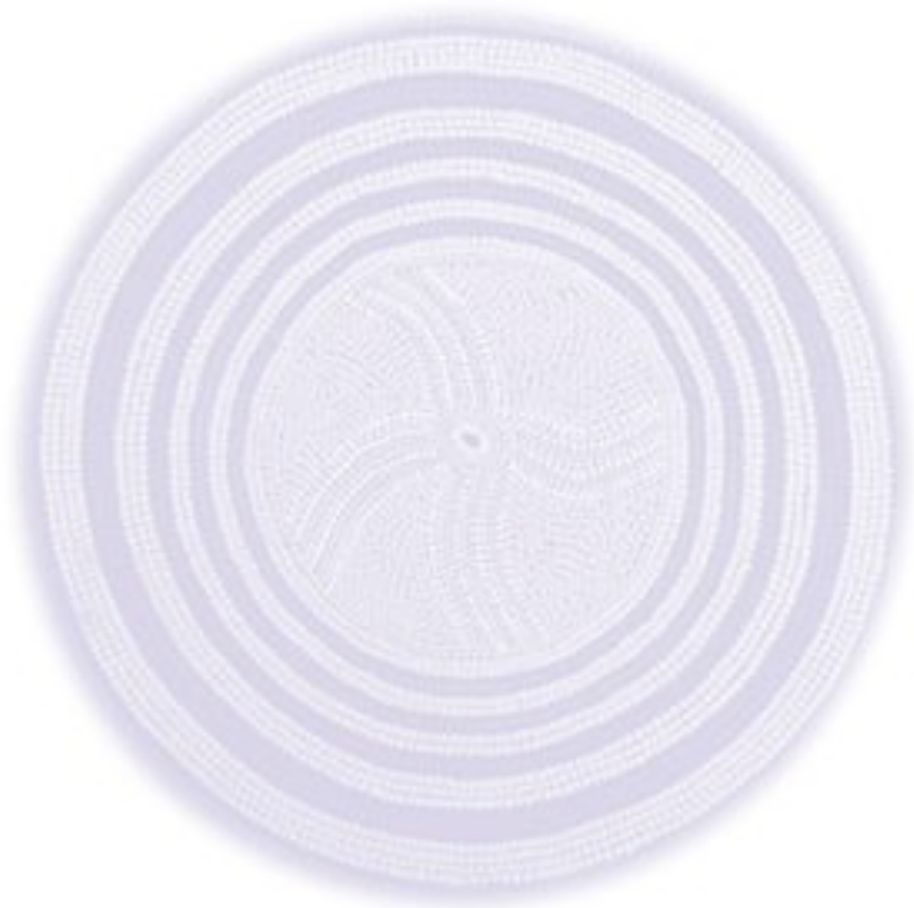
*... Need to get more information out to the community about what the Family Court does. Different roles of different courts in family violence situations ... need to explain to women ... more information.*

**Aboriginal support worker**

**FVPLS Victoria's experience and the project consultations indicate there is very limited knowledge within the ATSI community about the Family Court and how it operates. Significant confusion surrounds the distinction between the role of the Children's Court and that of the Family Court/Federal Magistrates' Court. Culturally accessible community education and engagement with the ATSI community about the legal system and legal rights is essential to improving access to justice.** FVPLS Victoria provides information about family law and other legal issues through its statewide *Sisters Day Out* workshop program and other information sessions. There is, however, a need for more comprehensive community education about the family law system, to which the courts, government and community organisations all must contribute. This would be assisted by a more ATSI-friendly family law system and culturally appropriate court process.

### Proposal 11

- That a program to improve awareness within the ATSI community about the role of the Family Court be established. (It is noted that the implementation of more culturally appropriate family law and Family Court processes would dramatically assist this.)
- That pamphlets and other information be produced by the Family Court directed specifically at ATSI clients. This information would refer to the right of ATSI children to maintain their connection with their culture and to any ATSI-specific processes that the Family Court adopts.
- That a program of community education for Aboriginal and Torres Strait Islander communities about the Family Court and family law be carried out in conjunction with cultural awareness training for the judiciary and Family Court staff when visiting ATSI communities. (Within the Family Court this could be facilitated by Aboriginal and Torres Strait Islander Liaison Officers.)
- That legal service providers ensure improved community education for the ATSI community about family law, and funding for innovative education projects should be extended.





## Section 2: Child protection

*In any reform to the child protection system in Victoria, FVPLS Victoria is seeking enhanced protection of legal rights for ATSI children and families.*

### 2.1 Introduction

Aboriginal and Torres Strait Islander children are vastly overrepresented in the child protection system in Victoria, being 12.9 times more likely to be on care and protection orders than non-ATSI children.<sup>4</sup>

Family violence is a significant factor in child protection interventions. The *Victorian Government Indigenous Affairs Report 2007–2008* indicates that:

- Family violence is present in 64% of child protection cases where Aboriginal and Torres Strait Islander children are involved.
- Family violence is the single biggest risk factor for substantiations of Aboriginal and Torres Strait Islander child abuse in Victoria.

FVPLS Victoria assists Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault and non-ATSI parents/carers of ATSI children where child protection intervention has occurred. Whilst women and children are in the majority as victims of violence in the home, other family members including grandparents may be legally assisted depending upon the circumstances.

It is the strong view of FVPLS Victoria lawyers that inadequate access amongst ATSI families (particularly family violence victims) to culturally appropriate legal representation at the early stage of DHS intervention and beyond, combined with inadequate enforcement of rights specific to ATSI children, has contributed to unsatisfactory outcomes. In any reform of the child protection system, FVPLS Victoria is seeking enhanced protection of the legal rights of ATSI children and their families.



*FVPLS Sisters Day Out  
Coordinators Kelly Faldon  
and Wanda Braybrook.*

**Through FVPLS Victoria’s community legal education work, it is evident that there is an urgent need to raise awareness in the ATSI community about child protection law, specific provisions that apply to ATSI children and the importance of seeking legal assistance early to ensure that rights are protected.**

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<sup>4</sup> Australian Institute of Health and Welfare (2009) *Child Protection Australia 2007–2008*, Child Welfare series no. 45 Cat .no. CWS 33, Canberra: AIHW, p. 51.

**The introduction of the unique Aboriginal Child Specialist Advice and Support Service in Victoria (ACSASS) through the Victorian Aboriginal Child Care Agency (VACCA) has been a progressive step forward. However, community education aimed at clarifying the role of ACSASS—including in relation to the broader role of VACCA and its relationship with DHS child protection—is also urgently needed.**

There are generally multiple issues contributing to child protection intervention including drug and alcohol use, mental health concerns, financial hardship and family violence. Support services must be positioned to respond holistically and be capable of intensive long-term assistance to both adults and children where required.

There has been significant change to child protection laws in Victoria over the past few years, entailing a shift towards community-based child and family services taking a stronger preventive and support role. The success of these initiatives is directly related to levels of resourcing which clearly remain inadequate.

Broad-based early intervention and prevention support is critical to reducing the numbers of ATSI children in the child protection system. **Moreover, strengthening of culturally appropriate early resolution processes for ATSI children is imperative, and these must contain legal safeguards and appropriate screening for family violence and safety concerns. (Aboriginal Family Decision Making (AFDM) meetings are currently underutilised.)**

Given the ongoing high levels of legal intervention, however, culturally strong and accessible legal support is critical. The complicated nature of the system together with the significant powers exercised by the state with respect to ATSI children necessitate strengthened legal services for ATSI people in the area of child protection law. Processes to ensure earlier access to legal assistance and information about rights are critical to address significant knowledge and power differentials within the child protection system. The prevalence and complexity of family violence also demands dedicated legal and associated supports for adult victims and children.

Some legislative and procedural provisions specific to the best interests of ATSI children are in place, yet require strengthening. Moreover, implementation of existing measures is not occurring as it should. Culturally appropriate legal advocacy can contribute to increased system-wide accountability in this regard. Further legal reform to ensure more proactive judicial oversight could also assist with enforcement. A dedicated independent oversight function with respect to ATSI children in the child protection system that is driven by the Koori community might also strengthen outcomes and provide broader accountability beyond court processes.

The Victorian Ombudsman has recently released a report, *Own motion investigation into the Department of Human Services Child Protection Program*, containing a raft of recommendations.<sup>5</sup> The Victorian Government responded to the report with a range of commitments including a Ministerial Taskforce and reference to the Victorian Law Reform Commission (VLRC). FVPLS Victoria

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<sup>5</sup> November 2009 [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

notes that the government has taken up the Ombudsman’s proposal for a less adversarial approach within the Children’s Court. However, this must be balanced against the requirement for robust legal process and legal representation, which is fundamental to the protection of human rights and equitable access to justice. FVPLS Victoria supports a strengthened legal framework for child protection processes rather than the reverse. With the necessary safeguards, improved culturally focused out-of-court dispute resolution processes can be incorporated within this framework—the two approaches are not mutually exclusive. **New models of alternative dispute resolution to be introduced to the Children’s Court Family Division in Victoria must be culturally appropriate for ATSI children and families.**

Whilst the Ombudsman’s report, government response and VLRC reference do not have a specific focus on ATSI children, it is hoped that these initiatives will provide scope for the unique situation of ATSI children to be further addressed. It is a matter of serious concern to FVPLS Victoria that the Victorian Government’s reference to the Victorian Law Reform Commission made no reference to the vast overrepresentation of ATSI children in the child protection system in Victoria or to the need to consider the impact of options under consideration upon ATSI children and families. Furthermore, the timeline of the reference has not allowed for adequate consultation with the ATSI community.

It is noted that the Department of Justice Victoria, Courts and Tribunals is undertaking a research project to look at strengthening processes for Koori children within the child protection legal process. Whilst in its early stages, this initiative is welcomed by FVPLS Victoria as an extremely positive response to the current situation, and one which will be informed by the Koori community. Reform to the child protection system for Koori children and families will be most appropriately driven by a dedicated Koori project. The following comments and proposals are made for consideration within this context.

## 2.2 The current situation for ATSI children

The Australian Government Productivity Commission’s *Overcoming Indigenous Disadvantage: Key Indicators 2009* provides the most recent national statistics in relation to law and justice outcomes for Aboriginals and Torres Strait Islanders. The data shows that Aboriginal and Torres Strait Islander children remain vastly overrepresented in the child protection system. The following are reported as key indicators:

- The rate of substantiated notifications for child abuse or neglect increased for both Indigenous and non-Indigenous children from 1999–2000 to 2007–2008, with the rate for Indigenous children more than doubling over this period:
  - the rate for Indigenous children increased from 16.4 to 35.3 per 1000 children
  - the rate for non-Indigenous children increased from 4.8 to 5.5 per 1000 children.
- Indigenous children were more than six times as likely as non-Indigenous children to be the subject of a substantiation of abuse or neglect in 2007–2008.

- 41.0 out of every 1000 Indigenous children were on care and protection orders, compared to 5.3 per 1000 non-Indigenous children at 30 June 2008.

From 1999–2000 to 2007–2008:

- The substantiation rate for Indigenous children increased from 14.8 per 1000 children to 35.3 per 1000 children.
- The rate for non-Indigenous children increased from 4.2 per 1000 children to 5.5 per 1000 children.

As at 30 June 2008:

- The rate of children on care and protection orders was 41.0 per 1000 children for Indigenous children and 5.3 per 1000 children for non-Indigenous children.

From 1999–2000 to 2007–2008:

- The rate of Indigenous children on care and protection orders increased from 19.9 per 1000 children to 41.0 per 1000 children; for non-Indigenous children the rate increased from 3.3 per 1000 children to 5.3 per 1000 children.

The Australian Institute of Health and Welfare also published statistics in *Child Protection Australia 2007–2008*, recording that 977 Aboriginal and Torres Strait Islander children in Victoria were on care and protection orders as at 30 June 2008.<sup>6</sup> This was an increase in 354 children from 2007.<sup>7</sup> Over the same period there was an increase of 34 children in out-of-home care.<sup>8</sup> (These figures are likely to be lower than the actual numbers due to data identification gaps.)

The relationship between the high rates of ATSI young people in the criminal justice system and in the child protection systems must also be acknowledged. A report cited in the *Melbourne Age* newspaper on 14 March 2010 indicates that 42% of children on youth justice orders are under child protection<sup>9</sup> (this figure is for all children).

The Victorian Parliament Drugs and Crime Prevention Committee, in its July 2009 report *Inquiry into strategies to prevent high volume offending and recidivism by young people*, states the following:

***Young people and out-of-home care***

*... In Victoria the Committee received evidence that there is a high percentage of young people in juvenile detention who have a history of family breakdown, disruption and/or removal from families into out-of-home care. (p. 87)*

<sup>6</sup> Australian Institute of Health and Welfare (2009) *Child Protection Australia 2007–2008*, Child Welfare Series 45 Cat. No. CWS 33, Canberra: AIHW, p. 51.

<sup>7</sup> Australian Institute of Health and Welfare (2008) *Child Protection Australia 2006–2007*, Child Welfare series no. 43 Cat. no. CWS 31, Canberra: AIHW, p. 50.

<sup>8</sup> See footnote 6 p. 63.

<sup>9</sup> *The Sunday Age*, 'Foster kids face bleak future', 14 March 2010, p. 7.

*In a submission to this Inquiry, Professor Julian Bondy and Dr Marg Liddell said:*

*... An analysis of the current client profile in the youth justice system suggests that those that enter the system via correctional orders are the victims of significant trauma. Many are dual order clients having transitioned through the Child Protection system. This transition has not been particularly positive (see Liddell 2004) with many being the victims of chaotic family life, significant abuse, unstable placements, insecure attachment to family or significant others, and few positive life choices.*

*... Workers in the youth justice system have some difficulty interrupting the cycle of offending for many of these young people as their behaviours have become entrenched and the young people more difficult to engage...*

***Given the research by Lynch et al. (2003) (cited in the Discussion Paper) suggests that 91% of young people on care and protection orders progressed into the adult justice system, more attention needs to be given to the problems that face many children and young people who enter the Family Division of the Children's Court and progress into the child protection system. (p. 88)***  
(Emphasis added)

## **2.3 What role can legal services play?**

### ***Early intervention/prevention and community education***

The Australian Productivity Commission's report *Overcoming Indigenous Disadvantage: Key Indicators 2009* at 4.10 states:

*... In many situations family support, primary prevention and early intervention programs are more successful and cost effective in supporting Indigenous families than statutory interventions. While it is appropriate for government departments to maintain a strong role in statutory intervention where child protection measures are required, there is wide recognition of the positive work of Indigenous community organisations which are more effective in providing early-prevention and out-of-home care services (HREOC 2008).*

FVPLS Victoria strongly supports early intervention programs as a strategy to reduce formal DHS intervention. It is important that early intervention services are accessible and culturally appropriate for ATSI children and families. Where ATSI families are encouraged to informally agree to place children in out-of-home care, it is the view of FVPLS Victoria that access to independent legal advice with respect to implications and rights remains essential, and that judicial oversight of such decisions should be implemented.

FVPLS Victoria is primarily funded to provide legal assistance and other supports in the area of family violence and sexual assault and the issues and proposals made below relate to these matters. As a legal service FVPLS Victoria cannot tackle or resolve all of the underlying causes which are resulting in the high rate of ATSI children on care and protection orders in Victoria. Given that family violence

is a significant factor, however, it is reasonable to conclude that the safety of children can be enhanced through family violence intervention and prevention.

Culturally safe early intervention programs such as the FVPLS Victoria *Sisters Day Out* program which reach women who would not otherwise access legal information and support are key preventive initiatives. Feedback from project consultations confirms family violence to be very isolating for ATSI women and this is compounded by all of the barriers that exist for ATSI people in accessing the justice system more generally.

Culturally appropriate community legal education about child protection issues directed to the community and to support workers, aimed at ensuring early access to legal assistance, is a key strategy in improving outcomes to which FVPLS Victoria is committed. Unfortunately, the Commonwealth-funded community legal education position within FVPLS Victoria is restricted to the Barwon South West and Gippsland regions, which is inhibiting the reach of the organisation's community legal education.

### ***Legal services***

It is essential that adequate legal resources are available to follow through with women who make contact through these early intervention and community education programs and FVPLS Victoria, as detailed in Papers 1 and 2, is keen to extend its legal capacity. Family violence legal options include: intervention orders; family law orders; victims assistance, including access to financial support; practical safety measures; recovery strategies; and healing/counselling. All of these legal responses may improve child safety and reduce the likelihood of child protection intervention.

There is a view, predominantly held within the Department of Human Services, but also more broadly, that lawyers impede dispute resolution processes due to their adversarial approach. **Given the grave human rights implications and power differentials at stake in this jurisdiction, together with evidence of a lack of procedural fairness and natural justice accorded to ATSI families in some out-of-court processes, legal representation must be guaranteed. Adult and child victims of family violence and sexual assault in particular must have the option to be represented at all stages of the child protection intervention process.** In this regard, the role of lawyers will include:

- negotiating with DHS to fully understand the reasons for the intervention and to seek an early resolution
- providing broader legal advice and assistance as appropriate—for example, for intervention orders, family law or victims assistance—thus ensuring a coordinated approach
- ensuring that ATSI people do not agree to arrangements with community child services or DHS which are unfair or out of proportion to the seriousness of the situation on the ground
- advocating for culturally appropriate out-of-court resolution processes such as AFDMs and providing legal representation at these to ensure that clients' voices are heard, that procedures are fair and that family violence and safety issues are appropriately dealt with
- ensuring ATSI people understand the child protection process and feel supported so as to reduce the stress and trauma of their involvement

- negotiating with ACSASS/VACCA in relation to their position in a given case and ensuring clients understand the role of ACSASS as advocating for the child's best interests
- ensuring ATSI people are adequately supported so they remain engaged in the court process, and do not feel it is all too hard and hopeless
- holding DHS to account in relation to laws and processes in place when intervening for ATSI children and more generally
- providing broader supports and referrals with respect to court conditions and requirements
- attending Case Plan meetings for ATSI children as advocates to ensure best outcomes for clients
- providing court representation to ensure the Children's Court is fully aware of all relevant cultural issues and compliance with specific ATSI legislative provisions, and to advocate on behalf of ATSI clients and children.

The child protection area is another where dedicated ATSI legal services are best equipped to deal appropriately with cultural issues and to advocate for necessary systemic change. **Past policies of removal of ATSI children continue to impact significantly on the ATSI community, especially where DHS child protection intervenes. In the end, the outcomes must be in the best interests of the children and it is the role of courts, lawyers, DHS and VACCA to ensure that ATSI cultural issues are central to those best outcomes.**

FVPLS Victoria has been utilising short-term Legal Services Board funding for dedicated child protection services to 30 June 2010. Support from the state government to continue this position in the short term is anticipated. Ongoing funding for this work through either the state or Commonwealth government must be secured. FVPLS Victoria solicitor Rebecca Boreham stated the following in an opinion piece published in the *Age* newspaper on 21 December 2009, which highlights the importance of legal representation within the process:

*... Much of our experience shows that, whilst a high rate of protection orders are made once proceedings are initiated, the fact that our clients can be legally represented in the court process will usually result in higher levels of contact between children and their families that is guaranteed with greater certainty, more comprehensive clinical and medical assessments and treatments for the family, and more appropriate family and foster care placement decisions. For the many parents unable to access legal representation these matters are usually beyond their ability to negotiate.<sup>10</sup>*

Further issues raised about legal assistance through the project consultations are detailed below.

## **2.4 Key issues raised through project consultations, FVPLS community forums and FVPLS service delivery**

The project consultations raised many issues about the child protection legal process. For simplification we have divided the issues into a number of categories, outlined in the sections below.

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<sup>10</sup> <http://www.theage.com.au/opinion/society-and-culture/the-chance-to-be-heard-20091220-l7e1.html>

## ***Family violence***

Family violence is one of the most prevalent factors in child protection notifications. The project consultations indicated a widespread view that DHS needs to adopt a different approach to women who experience family violence in cases where child protection intervention results. There was a strong sense that women as victims are often being re-victimised by an unhelpful, blaming approach, rather than being supported to deal with and understand the broad-ranging impacts of the violence. In the view of project participants and FVPLS Victoria, the latter approach is far more likely to lead to positive outcomes that better support the best interests of children impacted by such violence.

**A number of project participants expressed serious concern about the level of supportive intervention provided to children in care who had experienced family violence or other trauma.** A lawyer related a case in which DHS had removed children following significant family violence, highlighted the trauma experienced by the children in reports, but then completely failed to provide any counselling or therapeutic intervention for those children. FVPLS Victoria can cite other examples of this.

The consultations also highlighted the fact that, as a result of the more integrated response to family violence, reporting to DHS Child Protection through family violence support services has become more frequent, thus also impeding therapeutic responses. **Effective, ongoing engagement with therapeutic support services for women experiencing family violence is critical to improved safety and outcomes, and ultimately to children remaining in home care.** The suggestion was made that court-mandated and DHS-monitored counselling may be best kept separate from other sources of therapeutic intervention accessed by victims/survivors. Participants also suggested that the development of protocols or guidelines with regard to these issues might assist in better identifying and preserving key therapeutic relationships.

The strengthening of broader family violence legal and support services and early intervention strategies is also critical, given the high level of family violence present in child protection notifications. Legal intervention with respect to family violence within ATSI families occurs in the Magistrates' Courts under the Family Violence Protection Act, the Children's Court (Family Division) and the Family Court. **It is important that legal and court responses are integrated and that family violence issues involving ATSI children and families are addressed with consistency and within a strong cultural context.**

**Family violence and safety issues must also be considered in determining whether AFDMs or other forms of dispute resolution should proceed and if so in what format.** The experience of ATSI women and children in the family law system with respect to Family Dispute Resolution and family violence must be heeded. FVPLS Victoria is concerned that ATSI women are not disclosing or fully disclosing family violence and safety issues, resulting in Alternative Dispute Resolution proceeding and sometimes concluding with inappropriate outcomes. Careful screening with respect to family violence and safety issues as well as access to legal representation (including specific referral options to Aboriginal Legal Services) at the earliest time and throughout the process is imperative.



*... The victim of family violence is often the one held accountable. They say the woman hasn't provided a safe environment for the child. Do they understand the psychological impact of family violence ... its impact financially ... where she is going to go (accommodation problems), psychological factors ... perpetrator is not charged with neglect ... often DHS don't even contact him if can't find him ... tell her all she has done wrong ... put constraints on her life and re-victimise her.*

*... new approach needed so that mothers who have experienced family violence are not re-victimised ... but are supported ... Women's and children's services need to work more closely together ... so that woman not on her own in that situation ... i.e. better supported to support the children ... Policy makers in child protection need to become more aware of family violence and the impacts of it.*

**Aboriginal regional family violence support worker**

*... Good ones [DHS workers] knew I was a good mother ... treated me with respect ... others didn't. I often felt like I was doing the wrong thing. They were giving me ultimatums. Had to make a choice between father or children. This is not a good approach. They would have been better offering supports to me. **Aboriginal victim/survivor***

*... Definite increase in involvement of DHS where family violence is a presenting issue ... because of new protection act and new risk assessment framework ... increasing information sharing between police and DHS services ... reflected in increased in DHS involvement with families we work with ... has been increase in child protection demand ... is a need to protect children ... and this reflects a better response ... if you think DHS will solve problems ... but involvement of DHS does not improve the situation as things stand ... net effect is that therapeutic support from DV counsellors is reduced because they become more a partner with DHS than with the client ... relationship between DHS and DV service is barrier to accessing support ... involvement does not make family stronger. **Non-ATSI Lawyer***

## **Proposal 12**

That research be undertaken with respect to the impact of family violence upon child protection notifications and interventions, incorporating an analysis of the most effective and supportive intervention for victims within the process.

That consideration be given to development of best practice guidelines for DHS where family violence is identified as a factor in child protection notifications and interventions.

That as far as possible integrated and culturally appropriate processes inform developments within the Children's Court (Family Division), the Magistrates' Courts and the Family Court in responding to family violence involving ATSI children and families.

That, in introducing greater reliance on alternative dispute resolution into the Children's Court Family Division, stringent family violence and safety screening processes be introduced as well as guaranteed legal representation throughout.

(ATSI community consultation must be integral to all reviews relating to ATSI children and families.)

Also see Proposal 20 requiring DHS to ensure appropriate therapeutic intervention for children impacted by family violence.

### ***Legal advice and assistance***

Ensuring that ATSI people are aware of and have available to them legal advice and support as soon as contact is made by the Department of Human Services about a child protection investigation was considered critical amongst survey participants.

*... Initial contact re. support and legal information is imperative in the child protection area. **Aboriginal lawyer***

*... clients are making agreements to have children removed without having had legal advice ... DHS should be required to make legal referrals. **Aboriginal lawyer***

Project participants believe that the reasons why people are either not accessing lawyers early or not at all include:

- DHS informing clients that they do not need legal assistance
- DHS not formally acknowledging or forwarding correspondence to lawyers when they are involved
- people thinking that they have no choice but to do what DHS says and not being aware of their right to legal representation
- people being confused about processes and how to get a lawyer
- people lacking understanding of the role of lawyers—that people often have other supports involved and do not believe that they also need legal advice
- a lack of community education about the child protection system generally
- people being in denial about the child protection intervention process
- people thinking that because the ACSASS/Lakidjeka program is involved they have a Koori advocate and do not therefore separately need a lawyer
- extended family members not being aware that they have a right to be involved in a case, coupled with DHS not investigating possible extended family placements for ATSI children
- legal referrals not being made early, but rather at the first court date via the direction of the court or through the duty lawyer service.

Child protection legal work is resource intensive, particularly given the need for multiple family members, including children, to have separate legal representation. FVPLS Victoria is available to assist victims of family violence in Children’s Court Family Division cases, the Victorian Aboriginal Legal Service provides representation more generally, and Victoria Legal Aid runs a duty lawyer service at the Children’s Court and can assist people in-house or assign cases to private practitioners.

As mentioned previously, FVPLS Victoria is concerned that ATSI children and families, particularly family violence victims, have not been adequately pursuing their legal rights or accessing legal representation in child protection cases. Raising awareness about the need for and benefit of legal representation in child protection cases is vital.

*... Many clients do not fully understand the meaning of legal language in child protection cases ... the meanings of words are different to what people are used to ... clients think one thing when DHS and/or the court actually means something else ... there is a lot of misunderstanding ... the client sometimes has a completely different version as to what is going on which can lead to unintended outcomes. Lawyers, particularly where there is cultural respect and understanding, can build trusting relationships with clients, which is fundamental in negotiating good outcomes with the Department [DHS].* **Aboriginal lawyer**

*... Aboriginal families in our area have not been contesting child protection cases where it is warranted ... they appreciate that we [FVPLS] are assisting them to pursue their rights.* **Non-ATSI lawyer (rural)**

FVPLS Victoria supports the extension of culturally appropriate dispute resolution processes, provided that the importance of both legal representation and a degree of judicial/court oversight is acknowledged within these processes. Much of the work of lawyers is in negotiation and out-of-court dispute resolution. The involvement of lawyers will not always result in litigation but should always ensure protection and advancement of a client's rights, with the 'best interests of the child' being the priority consideration. FVPLS Victoria lawyers express concern that many DHS case workers and ACSASS workers are not aware of or confident with legal principles, further highlighting the importance of the involvement of lawyers at all stages of the process.

*... Many DHS workers are not clear on the law ... particularly for Aboriginal children ... some have only a low level knowledge of the legal requirements and this interferes with good process ... lawyers therefore play a big role ... Excluding lawyers from out-of-court processes will only make the system less accountable ... there are currently too many people with non-legal backgrounds involved.* **Aboriginal lawyer**

Lawyers consulted were of the opinion that Victoria Legal Aid should review its guidelines for child protection cases to ensure that lawyers, including children's lawyers, are funded to attend Aboriginal Family Decision Making meetings and Best Interest Case Plan meetings. Key decisions are made at these meetings which set the path for reunification or permanent care. Legal advocacy is also required to ensure accountability in relation to compliance with specific provisions in place for ATSI children and to address power differentials, particularly where family violence is a factor.

Administrative review of these decisions is available at VCAT; however, it is difficult to obtain a Legal Aid grant to make a review application. Legal Aid funding to challenge DHS and Court decisions more generally, in cases where ATSI cultural issues or specific ATSI legislative provisions have not been met, must also be assured.

Finally, it is imperative that lawyers representing Aboriginal children in Children's Court (Family Division) cases have a strong understanding of cultural issues. Aboriginal Legal Services including FVPLS Victoria ought to be properly resourced as accessible options for such representation and referral protocols for ATSI victims/survivors involved in child protection proceedings would also be beneficial.

### **Proposal 13**

That the government review funding for the provision of Aboriginal and Torres Strait Islander legal services in the area of child protection in Victoria.

Given the prevalence of family violence as a factor in child protection interventions for ATSI children in Victoria, that ongoing dedicated child protection legal capacity at FVPLS Victoria be funded.

That provisions which require DHS to refer ATSI families for legal assistance at the earliest time be implemented.

### **Proposal 14**

That Victoria Legal Aid review its grant guidelines and procedures with a view to strengthening access to justice for Aboriginals and Torres Strait Islanders in the Children's Court (Family Division) by:

- a) broadening assistance available in the area of child protection to Best Interest Case Plan meetings and Aboriginal Family Decision Making meetings which occur as part of, but outside of, the court process, including for lawyers representing children
- b) broadening assistance available for the review of DHS administrative decisions
- c) specifically including in the guidelines a provision for assistance to be granted to challenge orders made where there has been a failure to comply with the principles of decision making for ATSI children
- d) ensuring that Aboriginal Legal Services including FVPLS Victoria are available to ATSI children and families through adequate support and resourcing of those services together with refined referral protocols.

### **Proposal 15**

That legal practitioners working in the Children's Court (Family Division), including Victoria Legal Aid, Department of Human Services and private practitioners, receive ongoing and targeted Aboriginal and Torres Strait Islander cultural awareness training.

### ***Community knowledge of laws and procedures, particularly relating to ATSI children***

**Participants indicated that there is a lack of knowledge in the community about specific laws and procedures that should be followed in relation to ATSI children in the child protection process.**

Examples of these are:

- the protocol between VACCA and DHS which determines what each organisation is supposed to do e.g. joint visits
- the right to object to ACSASS involvement
- decision-making principles for ATSI children
- the Aboriginal child placement principle—particularly the priority of placement with extended family or relatives where possible

- Aboriginal Family Decision Making meetings—the right to request one and when they can take place
- the involvement of ACSASS in court reports, placement in out-of-home care and Best Interest Plans and meetings
- Cultural Plans—when they must be prepared, and who is responsible for preparation and oversight of them
- obligations where permanent care orders are made
- the rights of parents who remain guardians of children.

Project consultation comments about community knowledge included:

*... No ... think support workers struggle to understand what is happening and the process. Not much information is provided about the rules for Aboriginal children. **Aboriginal support worker***

*... I didn't know about the special rules/laws for Aboriginal children in the Children's Court/child protection system ... a pamphlet in the court about it would assist ... one which sets out rights where Aboriginal children are involved. **Aboriginal victim/survivor***

*... Aboriginal principles not followed and clients not aware of them. **Aboriginal support worker***

*... Very complicated and laws change all the time. **Aboriginal support worker***

*... Not at all ... very complicated ... women get very frustrated ... it's a mine field ... constantly changing law and procedure. **Aboriginal support worker***

*... more community legal education needed. **Non-Aboriginal support worker***

*... clients don't know about rules that apply for Aboriginal children. **Non-ATSI lawyer***

*... No it is very complicated ... process that is changing all the time ... plain English explanation needed by lawyers and ACSASS workers ... ACSASS employed to be a link between child protection and Indigenous clients [children] ... role to explain things ... what the order ... and the words mean. **Aboriginal support worker***

*... Don't understand legalities of what is occurring ... more community legal education needed. **Lawyer***

*... No I don't think they do understand ... depends on DHS workers ... whether they have explained what is happening. I don't understand as a worker all the time. Definitely lack of knowledge of Aboriginal rules/principles. **Aboriginal support worker***

## Proposal 16

That, either in conjunction with a community education program by VACCA about the ACSASS program or separately, further community education programs be delivered to the ATSI community and key workers about the child protection legal process in Victoria and the specific rights stipulated for cases involving ATSI children. Funding must be made available for this.

### ***The role of VACCA/Lakidjeka/ACSASS***

There is a protocol between the Victorian Aboriginal Child Care Agency and the Department of Human Services setting out the procedures to be followed when DHS receives a notification about an ATSI child. The DHS child protection manual states the following:

*... The aims of the protocol are to:*

- *include an Indigenous perspective in risk and safety assessments of Aboriginal children*
- *improve case planning and decision making concerning Aboriginal children*
- *improve the engagement of Aboriginal families with relevant support services and*
- *improve the involvement of family and community members in providing support to Aboriginal children.*

*... In addition to consultation with Child Protection, a key role of regional ACSASS workers is to facilitate communication and understanding between Aboriginal children and families and Child Protection practitioners.<sup>11</sup>*

**A strong view was expressed during the project consultations that ATSI families do not understand the role of Lakidjeka/ACSASS in the child protection process.** Some support workers indicated that they were also unclear about the role. This is consistent with FVPLS Victoria's experience through its legal service provision.

There is a misapprehension in the community that the Lakidjeka/ACSASS workers are there to advocate for the family, so a great deal of anger and frustration can ensue when ACSASS workers take the position of DHS in determining the best interests of the child. This anger could be diminished if the community had a better understanding of their role.

Community education and awareness about the role of Lakidjeka/ACSASS, and VACCA more broadly, is thus urgently needed and must be prioritised. Clarification that it is not the role of ACSASS in child protection proceedings to advocate for parents or families is critical. The importance of family members having their own advocates throughout the DHS child protection intervention and legal process must also be communicated.

Tensions sometimes arise between the role VACCA has as a support agency and its role in advising DHS through the ACSASS program. Clients become frustrated with VACCA workers supporting them

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<sup>11</sup> Department of Human Services Victoria, *Protecting Victoria's Children: Child Protection Practice Manual*, Responding to Aboriginal Children Advice No. 1059.

(for example, in access/visiting arrangements) and then later providing information or advice to DHS through the ACSASS role which may be adverse to their case and which they may dispute. This has implications for the future support relationship, and for some ATSI women it reinforces negative views of the system. There is further discussion about support arrangements for parents/carers below.

**Feedback suggested that greater formality in the advisory process would assist in clarifying the role of ACSASS, perhaps through a requirement that advice to DHS be in writing and provided to the parties on a confidential basis.**

**There was also widespread recognition that the ACSASS program is underresourced relative to the high numbers of Aboriginal and Torres Strait Islander children on DHS books and that this is limiting the capacity of the program.** FVPLS Victoria has been made aware of the excessive caseloads of individual ACSASS workers, which is unacceptable given the intensive nature of the work. Improved government resourcing for the ACSASS program appears necessary.

The following comments emerged from the consultations in relation to the ACSASS program:

*... Problem ... clients not clear about the role ... not enough resources ... not enough workers to cover huge demand. **Aboriginal support worker***

*... Important to explain role of ACSASS ... ACSASS workers are there to explain to families what is happening ... what DHS is seeking and what that means ... they are a specialist advice and support service ... resourcing of program is an issue ... needs adequate resourcing to meet demand. **Aboriginal support worker***

*... Most women seem to understand they can insist on having a Lakidjeka worker turn up but there is a misperception that VACCA are there to support them or advocate for them and then hostility against VACCA follows when this is found not to be the case ... ACSASS is not funded to work with the number of cases on DHS books ... so there are limits as to what they can do. **Non-ATSI lawyer***

*... DHS workers often don't understand the role of Lakidjeka and VACCA. **Aboriginal lawyer***

*... The Lakidjeka/ACSASS workers' caseload is huge. **Aboriginal lawyer***

*... Clients don't understand the role ... it's not clear and can be confusing. **Non-ATSI lawyer***

*... [As a worker] I don't understand Lakidjeka's role ... most clients think VACCA can step in and fix a situation and advocate on their behalf ... they don't realise that VACCA advocates on behalf of the children. **Aboriginal regional family violence coordinator***

*... Clients don't understand ... the parents think person is advocate for them ... don't understand that ACSASS worker puts the child first ... not the family. **Aboriginal support worker***

*... It's taxing for workers in this role ... taking an independent stand on issues. **Non-ATSI lawyer***

### **Proposal 17**

That VACCA engage in broad community education about the role of its ACSASS program, in partnership with other ATSI community organisations in providing support and assistance in the child protection area.

That more detailed information be provided to ATSI family members at the commencement of child protection interventions to ensure clearer understanding of the ACSASS role.

### **Proposal 18**

That, in conjunction with ACSASS providers, the state government increase its support of the ACSASS program with a view to strengthening its capacity across Victoria.

### **Proposal 19**

That consideration be given as to whether ACSASS advice to DHS about an ATSI child should be formalised in writing and confidentially provided to the parties.

## ***Department of Human Services***

Given the role of DHS in intervening and often removing children from their families, criticism of and frustration with processes and workers in this area are to be expected. Consultation feedback indicated that attitudes and approaches differed amongst DHS workers, which directly impacts on communication and outcomes. A defensive and non-transparent approach on the part of DHS was seen to inhibit the positive outcomes for ATSI children and families.

There is significant concern about: the high turnover of staff in DHS child protection; the lack of resources and workers to meet the workload; the inadequate training and experience of staff, resulting in inconsistent outcomes; the lack of transparency and accountability of internal DHS processes; and the reluctance of DHS caseworkers to effectively communicate with legal representatives at every stage of the process (see Proposal 22). The failure by DHS workers to ensure procedural fairness and to implement current law and policy specific to ATSI children was also cause for significant concern during the consultations. The need for more cultural awareness training was highlighted.

*Until our office became involved, DHS claimed they were not aware "T" was Aboriginal and had failed to inform VACCA/Lakidjeka that "T" was in out-of-home placement. "T" has been in approximately 10 different placements over the three-year period. Since our involvement, "T" has been placed in a Kinship placement (family placement) with the maternal uncle, Lakidjeka became aware and involved, "T" is now attending support services e.g. counselling. **Aboriginal lawyer***

Some lawyers said that DHS sometimes advised clients that they did not need legal representation. FVPLS Victoria is aware of cases where people had no representation in pre-court processes and



consequently agreed to outcomes without being aware of their rights—particularly the parents or carers of ATSI children.

Lawyers consulted also expressed frustration that DHS workers often do not embrace a positive approach to the involvement of lawyers, and argued that open exchange of information and communication about the intervention and meetings must instead be encouraged. Reports and information only being provided to clients at the last minute was a common criticism. Concern was raised about pre-prepared Case Plans being distributed at the door of Best Interest Planning Meetings.

The failure by DHS to take all reasonable steps to locate extended family members according to the Aboriginal Child Placement Principle was raised as a concern, often resulting in those family members later seeking to be involved in proceedings.

*... Canvassing of family members re. concerns about child ... cases where no one in family knows they can step forward about wanting the child in their care ... then being joined as party in proceedings ... there are people being excluded who should have been included at the first instance. Onus on DHS to find out who is parent and grandparents and uncles and aunts ... tick off boxes ... find immediate family to meet Aboriginal placement principle. **Non-ATSI lawyer***

*...Grandma said she wanted access to the children. DHS said no. Children were later removed ... but grandma was not notified of this. Grandma now referred to FVPLS Victoria. Grandma is an eligible carer under the Aboriginal Child Placement Principle. DHS has not advised her of her rights or ensured compliance with legislated principles. **Non-ATSI lawyer***

The inability of DHS to adequately support and resource family members to meet the conditions of orders and Case Plans was another concern to emerge from the consultations. This role is falling to underresourced support services which are often not specifically funded for this role. A number of participants thought greater attention should be given to the support of parents in fulfilling conditions in relation to, for example, parenting programs, urine screening, family violence counselling and anger management.

Participants also commented that the orders themselves are often too onerous—in fact sometimes clearly impossible for the person to comply with, not tailored to their particular circumstances, and lacking a focus on the best interests of the child. It was observed that if orders could be made in more positive terms rather than as a form of punishment of the parents, and be linked more directly to the interests of the children, attitudes and outcomes could be improved.

Concern about DHS not providing therapeutic intervention for children under court orders who have experienced family violence has been detailed above.

The following is a summary of project consultation comments about DHS:

*... Not listening ... say one thing, do another. **Aboriginal victim/survivor***

... Not talking to extended Aboriginal family about possible placement of children. **Non-ATSI lawyer**

... I did things [they asked] like move but then it didn't change anything. **Aboriginal victim/survivor**

... Good and bad workers ... good ones treated me with respect ... others didn't. **Aboriginal victim/survivor**

... Sometimes DHS do not even realise they have an Aboriginal child ... missing that people are Indigenous. **Non-ATSI lawyer**

... Giving ultimatums ... choose between father or children ... not good approach ... would have been better offering supports to me ... workers like reading out of book ... no real understanding. **Aboriginal victim/survivor**

... Attitude of workers made a big difference whether working against me or with me. **Aboriginal victim/survivor**

... Need Aboriginal child protection workers and cultural training for non-Aboriginal workers. **Non-ATSI lawyer**

... DHS workers need cultural awareness training ... same as police. **Aboriginal support worker**

... Inconsistent approach by workers ... some very judgemental ... approaches by different caseworkers and offices inconsistent ... same set of circumstances ... but very different outcomes re. Reunification. **Non-ATSI lawyer**

... [Conditions] make people climb Mount Everest. **Aboriginal support worker**

... Not enough support for people in meeting conditions ... not clear how people are to meet conditions. **Aboriginal support worker**

... DHS not following the legislative requirements. **Non-ATSI lawyer**

... Aboriginal principles not followed and clients not aware of them. **Aboriginal support worker**

... No legal acknowledgement by DHS when legal representatives involved ... need formal process for this. **Non-ATSI lawyer**

... DHS regularly ignore lawyers acting for clients ... don't communicate through lawyers don't provide with notice of meeting details. **Non-ATSI lawyer**

... Lack of resourcing. **Aboriginal support worker**

... DHS has big staff turnover. **Aboriginal support worker**

... DHS very defensive about it all. **Non-ATSI support worker**

... There is a lack of understanding of Aboriginal people – DHS do not understand cultural issues in

*home and family. There is a need to do more in depth and varied cultural awareness training.*

**Aboriginal lawyer**

## **Proposal 20**

That the program of cultural awareness training for DHS child protection workers be reviewed and strengthened and that specific training about:

- Aboriginal decision making principles and other legislative provisions with respect to ATSI children and
- the impact of family violence upon ATSI victims/survivors in the child protection context be incorporated within this.

ATSI community organisations working in the area should be invited to present at this training.

That DHS workers also receive training with respect to the role of lawyers in Children's Court (Family Division) proceedings and the responsibility to actively include legal representatives in all communications with respect to the proceedings.

That processes to ensure early referrals for legal representation by DHS be implemented (see also Proposal 11).

With a view to greater transparency, understanding and effectiveness of its operations, that DHS conduct training for key legal and other stakeholders in the child protection system about its key internal processes.

That DHS provide reports and proposed Case Plans within reasonable timeframes (depending, of course, on the nature and urgency of the proceeding).

That DHS ensure that culturally appropriate supportive/therapeutic intervention is provided for ATSI children who are the subject of protection orders and who have experienced family violence or other trauma.

### ***Aboriginal Family Decision Making meetings and dispute resolution processes***

Aboriginal Family Decision Making meetings (AFDM) are convened by an ATSI community convener from VACCA and a convener from DHS child protection, and involve an ATSI elder, a child protection worker, an ACSASS worker, family members, extended family, and can involve other support people including lawyers. The principle behind the meetings is that ATSI family and community are central to determining the best outcomes for ATSI children.

Section 12(b) of the Children, Youth and Families Act says:

*... (b) a decision in relation to the placement of an Aboriginal child or other significant decision in relation to an Aboriginal child, should involve a meeting convened by an Aboriginal convener who has*

*been approved by an Aboriginal agency or by an Aboriginal organisation approved by the Secretary and, wherever possible, attended by ...*

Participants in the consultation expressed disappointment at the small number of AFDMs currently taking place, and were of the view that if there was a greater capacity to hold more of these meetings and at an earlier time, resolutions might be reached, thus removing the need for court action. The meetings also bring a strong cultural context to the family situation. The importance of children and family members having access to legal assistance in AFDMs was emphasised, given the far-reaching decisions made and the significant power differentials both between the family and DHS and also within some families (Victoria Legal Aid funding guidelines need to reflect this).

*... There is an AFDM to which I am not invited as the lawyer of my client who wants me to be there ... I have been told by DHS that I am not invited to attend. I seek to attend to ensure that my client is able to put her views forward, to see that the process is a fair one for my client and so that I can assist my client with any questions which come up about the child protection process or what the law says about her rights. I understand that my role is very much in the background. I have a trusted relationship with this client who is seeking my assistance. **Aboriginal lawyer***

**There was also concern that AFDMs, where they are appropriate and sought, are taking place too late in the child protection process and that it would be beneficial to some cases if they could be convened earlier and more quickly.** Lawyers were supportive of the AFDM process for appropriate cases, but felt there is a lack of clarity within DHS as to when an AFDM may be convened. Frustration was also expressed by lawyers over the fact that, whilst an AFDM can be requested of DHS, there is no legal requirement that the request be met.

Comment was made that AFDMs and other dispute resolution processes that bring family together will not be appropriate in all cases, particularly where there are family violence or safety concerns and that case-by-case assessment is therefore required. **Lawyers also expressed concern that in some situations women, particularly young women, feel they must agree with what family members propose despite it not being what they believe is best for their child. The following case study highlights this, as well as the critical importance of legal assistance:**

*... A family group meeting (not a formal AFDM) had happened, where extended family were all telling mum that she had to sign over her child into care. Mum signed a voluntary placement agreement to put her child into an out-of-home care foster placement with an agency carer, against her own wishes about where she wanted her child to live (i.e. with her). After the young mum became our client, and our request to DHS to return her child, bub is back with mum ... earlier advice probably would have meant she could have had her child in her care for the months the child was in foster care, whilst getting supports to address concerns. **Non-ATSI lawyer***

*... where family violence is a factor and safety concerns exist meetings which bring family together may not be appropriate and this must always be considered. **Non-ATSI lawyer***

**With respect to alternative dispute resolution more generally, consideration should be given to the introduction of legislated safeguards to ensure that the process does not inappropriately occur where safety cannot be guaranteed, or where the wellbeing of a child or family member may be compromised because of family violence. The Family Law Act contains specific exemptions to**

**dispute resolution where family violence is a factor. FVPLS Victoria's experience with the family law system suggests that some ATSI women are reluctant to disclose or fully disclose family violence and that these exemptions are therefore extremely important.**

In moving forward with respect to strengthening culturally appropriate process in child protection cases the relationship between AFDMs and other pre-court and court dispute resolution processes will need to be clarified. Some feedback was received that the dispute resolution conferences at the Children's Court convened by a Court Officer have limited effect. It is noted that a new model of ADR is soon to be introduced to the Children's Court along with judicial resolution conferences. The introduction of pre-court conferencing is also indicated. The development of culturally appropriate processes for all out-of-court conferences involving ATSI children must be ensured. Family violence screening and the option of legal representation is integral. Further development through the Koori Children's Court Family Division project is appropriate. Some elements of the Koori Court model may be considered.

*... Where there is a high level of family feuding the meeting process is difficult ... sometimes split meetings may be appropriate ... convenors independent of DHS would help. **Aboriginal lawyer***

*... Meetings need to happen early ... have an example of where AFDM could have stopped child protection proceedings ... where DHS withdrew from case anyway ... quick AFDM would have resolved issues ... if family had been given the opportunity to sort through AFDM ... could have been resolved. Going into court often entrenches problems. **Non-ATSI lawyer***

*... AFDMs are not happening as much as they should ... when they are being conducted it is too late in the proceeding. **Non-ATSI lawyer***

*... The only one [AFDM] we were involved in took two months from agreement to have it to schedule it and then it was scheduled for six weeks further along. Time taken to get AFDM to happen is approximately three months. Long period. **Non-ATSI lawyer***

*... When can they happen ... at what point? ... AFDM was convened ... and as a result of decisions in it discontinued action ... example of positive outcome from AFDM. **Non-ATSI lawyer***

*... Dispute resolution conference was not approached in a way which gave any opportunity for genuine resolution ... it is important that all convenors of conferences involving Aboriginal children are culturally aware and that the process itself is appropriate for the Aboriginal family. **Non-ATSI lawyer***

*... During a dispute resolution conference, DHS did not invite the Lakidjeka ACSASS worker to provide her views about the children's placement and care, access with mother, and best interests or cultural issues. The legal representative for the mother requested the Lakidjeka ACSASS worker to outline her views regarding these matters. When information was provided as to the worker's ambivalence toward current care, placement and access arrangements, as well as the possibility of different views held by the children as to their care, DHS and the children's lawyer revealed they did not know this and stated that in light of this information they would follow it up.*

*Issues:*

1. *DHS is required to consult with and take the advice of Lakidjeka ACSASS re. Aboriginal children. They did not on this occasion.*
2. *DHS did not invite the worker to express her views about the issues in dispute.*
3. *The children's lawyer had not met the Lakidjeka ACSASS worker and was not aware of her views, nor did he show any interest in inviting her to give her views. **Non-ATSI lawyer***

## **Proposal 21**

That all child protection dispute resolution processes at the pre- and post-court stage involving ATSI children must:

- incorporate family violence and safety screening to ensure the process is appropriate
- guarantee the option of culturally appropriate legal representation throughout
- be culturally appropriate.

That, in consultation with the ATSI community, a review of the Aboriginal Family Decision Making process and legislative provisions occur. The relationship between AFDMs and other court dispute resolution processes for ATSI children must be clarified. Subject to the above safeguards, consideration ought to be given to ensuring Aboriginal Family Decision Making meetings are more readily available prior to court intervention.

That appropriate resourcing by government support the development of ATSI-specific child protection legal processes and services, including through training of more ATSI convenors.

### ***Case Plan (Best Interest Planning) meetings***

**The main issue arising during the consultations about Case Plan meetings was the importance of having a legal advocate and support person present. It was pointed out that very significant decisions are made at Case Plan meetings in relation to reunification or otherwise.**



*FVPLS Vic. Board members Damien Goodall and Karen Bryant, 2004.*

Case Plan meetings can be highly stressful for clients as a result of DHS workers going through the client's alleged failings in some detail. This can prompt anger and frustration on the part of clients, which can further entrench DHS's position. Workers consulted also said that DHS workers generally go into planning meetings with pre-prepared plans and that without advocacy it is therefore very difficult for clients to challenge this position. Ensuring compliance with ATSI principles and processes was considered the other important role of advocates at these meetings, and participants also mentioned that ACSASS workers are not always focused on this issue.

In one Case Plan meeting described by an FVPLS Victoria lawyer, DHS presented a plan for a Guardianship Order:

*The Chairperson of the meeting gave out copies of the plan and went through it “telling” the mother how it was going to be. His demeanour was very intimidating. He tried to argue the law with the legal representative, even though we stated that a Case Planning meeting was not the place to discuss interpretation of the law. There was no interest from DHS about why the mother had delayed in taking the requisite action, no attempt to understand the mother’s current circumstances and certainly no offers of support or assistance with access.*

*The lawyer’s presence:*

- 1. allowed the mother’s views to be expressed*
- 2. challenged some of the issues raised by DHS*
- 3. highlighted DHS’s disinterest and disregard for the views of clients, family members, and the professional role of Lakidjeka ACSASS and lack of skill in running a bona fide Case Planning discussion. **Non-ATSI lawyer***

Victoria Legal Aid came in for some criticism in that its guidelines generally do not fund lawyers to attend Case Plan meetings. In addition, lawyers appointed to act on behalf of children in the Children’s Court do not attend these meetings—again due to the limitations of Victoria Legal Aid’s guidelines (see Proposal 13). Case Plan meetings could more often take the form of an AFDM.

Applications for review of DHS Case Plans must currently be made to the Victorian Civil and Administrative Tribunal (VCAT). FVPLS Victoria is of the view that this is entirely inappropriate. It confuses families, VLA rarely funds these applications, and the jurisdiction is not equipped to appropriately deal with these cases. A VCAT review hearing can replicate a contested hearing in the Children’s Court, but without the specialist expertise of the Children’s Court. **Jurisdiction for Case Plan reviews must be transferred to the Children’s Court** (see Proposal 22).

Comments emerging from the project consultations regarding Case Plan meetings included:

*... Support at meetings very important ... women/parents often cannot advocate for themselves ... VACCA aligned with DHS. Women feel re-victimised. **Aboriginal regional family violence coordinator***

*... Support workers very important ... there for the parent ... terrified ... say what they think they should say. **Aboriginal support worker***

*... Important at Case Planning meetings ... I got better at advocating for myself. **Aboriginal victim/survivor***

*... Client support ... at BIP meeting DHS read out what is happening and what is to happen ... client may say they agree even though they don’t really agree ... no input ... DHS say minutes agreed but they not ... important to have advocate at those meetings. **Aboriginal paralegal worker***

*... DHS go in with the plan they already made. Advocacy important ... difficult to get DHS to change from plan they had already made ... plans not circulated prior to the meeting ... given to you when you sit down ... not a lot of time for analysis. **Non-ATSI lawyer***

*... Is important ... and VLA should fund ... this is where crucial decisions are made ... re. reunification or permanent care ... it is where the case is tracking ... they are critical meetings ... needs to be funded ... lot of time DHS already have plan written up ... this is why an advocate is needed. **Non-ATSI lawyer***

*... Children's lawyers not being kept up with what going on ... not funded to do stuff outside of court hearing ... lot happens outside of court they should be involved in. **Non-ATSI lawyer***

*... It is very important for the client to have legal representation at those meetings and an Indigenous advocate **Aboriginal support worker***

*... lawyer must be at Case Plan meetings ... to advocate client's wishes, views and opinions. **Non-ATSI lawyer***

*... Yes ... to address power imbalance ... client feels very disempowered ... under attack ... have examples put to her about the way she is deficient ... having advocate can help client not be angry ... help calm an inflammatory environment. **Non-ATSI lawyer***

*... Very important to have people there at Case Plan meetings ... support person has already gained trust of woman ... more open to explain process at meetings. Women will sit and say yes but don't know what has happened. **Aboriginal coordinator family violence service***

*... when we attend Case Plan meetings ... the person providing DHS with cultural information is often our Koori paralegal worker. **Non-ATSI lawyer***

### **Conditions on Children's Court Orders and in Best Interest Plans**

The difficulties with conditions attached to orders and Case Plans were twofold: firstly, that the conditions are often overly onerous and not tailored to the parent's circumstances; and, secondly, that it is not clear who is responsible for assisting parents to meet these conditions. There was a common view amongst participants that DHS does not provide much support and that other services such as refuges and legal services are investing significant time and resources into this work. There was also mention of people meeting conditions but this not making any difference to the outcome of the intervention (despite DHS having said it would).

**Concern about access/visiting arrangements between parents and children was also raised on the basis that without specific arrangements being detailed (often access is stipulated to occur as by agreement) access is not appropriately facilitated by DHS, which can adversely impact upon reunification.**

Questions were also raised about the level of support provided to children who are the subject of care and protection orders, and consultations revealed a sense that DHS is not ensuring that the necessary supports are being provided (also see Section 4.5).



... who is responsible for taking women for urine screens? ... to pay for psychiatric support? ... to be assessed by psychologist/psychiatrist? ... DHS don't follow through with this at all well. Onus seems to be on support services to do it all ... Onus seems to be on woman to do things ... she is punished for not doing things. For example, order parenting course but don't tell women where to access one. What about people who don't have supports in place? **Aboriginal support worker**

... VACCA and DHS are about the child ... it is not their role to support adults. **Aboriginal support worker**

... Often lots of conditions on orders ... too onerous ... woman have no way to do it ... no idea where to go to. Need to fund support workers to do that ... problems with conditions ... period of time in which to do ... different types of conditions ... very onerous ... adult has to find a way to meet conditions themselves ... not enough support available to meet conditions ... supports are crucial to improved outcomes ... refuge workers get stuck with support to meet conditions ... needs to be better resourced. **Aboriginal support worker**

... DV worker helped me find parenting course and counsellor. **Aboriginal victim/survivor**

... DHS workers leave them to it ... we take this role ... we make sure it is all done [FVPLS] ... client given very little support when has child back. **Non-ATSI lawyer**

... No ... DHS do not provide any assistance ... actively saying up to the client to address ... mostly will not even provide referrals ... if we acting can link in with services but if we not doing it ... mostly will not happen ... sometimes many conditions attached and it's too difficult to meet all of the conditions on a practical level ... not doing enough to support families ... more time needed to link families in with services etc. ... less time on court process ... clients often confused about the conditions/what they are required to do and haven't had it explained to them [or the implications of non-compliance] if they haven't been represented. Most who have been unrepresented have thought DHS would arrange all of the counselling etc. **Non-ATSI lawyer**

... Don't think they are getting enough supports ... if come through our service ... yes but otherwise no. **Aboriginal coordinator family violence service**

... Are services available e.g. drug and alcohol ... men's programs ... is stuff there ... accessing them is the issue ... depends on who works in those jobs ... is a lot of worry about confidentiality. **Aboriginal support worker**

... DHS places a lot of demands on clients which are unrealistic for client's personal situation ... where has to seek housing for example ... but she barred from Department of Housing and has debt ... DHS not doing anything to assist her in this dilemma ... doing nothing ... lack of clarity re. who to provide supports for conditions ... where live five k away from service and no car ... all very difficult and needs to be factored in. More attention needed on these support issues. **Non-ATSI lawyer**

... Community organisations are providing this support re. fulfilling orders ... DHS may make referrals at the most ... co-ops, health centres ... NGOs require a lot of support given the issues in people's lives. **Non-ATSI lawyer**

...Needs to be solid arrangements with regard to times and dates for access because DHS will say they

*cannot guarantee transport of a child which is especially problematic when the child is at an undisclosed address – if left as ‘by agreement’ then access may not happen. **Aboriginal lawyer***

### **General supports for family members in the child protection process**

Project participants generally agreed that good supports are essential for ATSI people in the child protection system. **We have previously detailed the need for legal representation, but given the multiple issues facing parents/carers where DHS has intervened, and also given the onerous conditions often included in court orders or Case Plans, general case management support is essential. Several participants mentioned the need for support services to be working more closely together. Support services independent to the ACSASS advisory role administered through the Lakidjeka program of VACCA and Mildura Aboriginal Corporation are required.**

ATSI victims of family violence or sexual assault who are involved in the child protection legal process clearly require high levels of support when engaging with the legal system. Dedicated, culturally appropriate support roles are required to increase access to justice and to improve outcomes for children and parents/carers impacted by violence. **FVPLS Victoria strongly supports the funding of paralegal support positions to work alongside lawyers in ATSI legal programs.**

In relation to support issues, project consultation comments included:

*... Right from the moment that DHS was involved I needed a support person to advocate for me. DV worker helped me understand it better ... had to do counselling ... DV worker found me the counsellor. **Aboriginal victim/survivor***

*Good to also have paralegal support ... taking different role to lawyer ... helping client cope with anger/emotional issues and again practical issues e.g. transport etc. Many clients not in a good place emotionally for various reasons ... general support more important for these reasons. **Aboriginal paralegal support worker***

*... Need to work together with services ... need all pieces together ... need extended family and support services linked in ... legal services working together [more] ... emotional and wellbeing ... clinical supports. **Aboriginal support worker***

*... more variety of family support and community support services available for Aboriginal families that are evaluated and successful. **Non-ATSI lawyer***

*... DHS say to get child need to do ‘a b c d e f g’ ... but where does person go to get supports for this? ... not enough support available to meet conditions ... need to fund support workers to do that ... supports are crucial to improved outcomes ... supports for carers needed. **Aboriginal support worker***

*... Follow-up support needs to be clearer ... meetings are useful to coordinate services ... What about people who don’t have supports in place? **Aboriginal support worker***

*... Need to work together with services ... not go off on their own ... need all pieces together ... have to do extended family stuff ... need extended family and support services linked in. **Support worker***

## **Proposal 22**

That an ATSI-led review be conducted of the way in which support is provided to ATSI family members in child protection cases (including to meet conditions attached to court orders) with a view to better resourcing and coordinating this process. That the role of Aboriginal Family Decision Making meetings or Case Plan meetings be incorporated within this review.

Given the intensive support work required for ATSI victims/survivors involved in child protection legal proceedings, that dedicated culturally appropriate support positions be funded to complement child protection legal assistance.

### ***Court process and the law***

As mentioned already, a number of reviews related to child protection and legal process are currently underway. With respect to specific initiatives for ATSI children and the impact of broader changes upon ATSI children and families, it is important that the ATSI community is centrally involved through established law and justice community processes.

**Project consultations indicated strong support for the introduction of ATSI Liaison Officers into the Children's Court. Participants also recommended for the court to produce a reader-friendly pamphlet about the principles it must apply which should be made available where ATSI children are involved in the child protection process.**

*... An Aboriginal liaison person in the Children's Court would be helpful ... to provide support ... check that I understand what's going on and that I feel listened to ... I didn't know about special rules/laws for Aboriginal children in the Children's Court/child protection system. A Children's Court pamphlet would help. **Aboriginal victim/survivor***

*... Aboriginal liaison would be good at the Children's Court. Lot not being represented ... liaison officer may be able to sort this out. **Non-ATSI Lawyer***

*... Koori liaison officer at the Children's Court would be helpful ... ensure Koori people are aware of their rights/understanding of the process. **Aboriginal regional family violence coordinator***

*... More information about rules and procedures for Aboriginal children in the court. **Aboriginal support worker***

*... Information at court about Aboriginal principles in making decisions about Aboriginal children would be good. **Aboriginal support worker***

There was a suggestion that consideration should also be given to providing a basic Koori-accessible information pamphlet, including referral details, when notices are served relating to ATSI children.

... Consider Koori-specific notice with service. **Non-ATSI lawyer**

... should be referral for legal advice ... through notice or at time of apprehension ... list of referrals ... in NSW do get the referral from Department Of Community Services because they do provide the information ... wouldn't be too difficult but needed on a regional basis. Perhaps could include information about Lakidjeka also ... and Aboriginal principles. Information needs to look different to the application ... needs colour, logos etc. ... so that it does not look like a publication of DHS ... possibly trial it as a pilot? **Non-ATSI lawyer**

Participants viewed the court itself as intimidating to ATSI people and, as previously mentioned, support was expressed for greater options to access Aboriginal Family Decision Making meetings prior to or alongside court proceedings. Ensuring culturally appropriate court dispute resolution processes has also been discussed. A Koori Court model for dispute resolution/conferences may be appropriate in some circumstances. A more Koori-friendly process within the court itself, which may include a Koori List, and strengthened cultural awareness training for magistrates and staff were seen as positive developments. **Again, FVPLS Victoria is encouraged by the current Department of Justice research project aimed at strengthening Children's Court processes for Koori children and families, which is the appropriate forum for these developments.** It is noted that the Children's Court is represented on the project steering committee through the President of the Court, Judge Grant, who is keen to strengthen culturally appropriate processes within the Family Division of the court.

As stated above, given the very significant human rights at stake in this jurisdiction and the power differentials, it is imperative that robust legal process and provision of legal representation are guaranteed in any reform of the court. On this point, FVPLS Victoria Mildura Solicitor Rebecca Boreham has publicly expressed concern about the evidence relied upon in the Children's Court in its decision making in the context of the importance of strong legal advocacy and process:

... In child protection investigations which proceed to Court most of the evidence which is presented is in the form of allegations about what the worker believes and what others may have told them: rarely is their investigation supported by primary source evidence like medical reports, police investigations or reports from workers who have a history of working with the families. Assertions about the long-term effects of decisions like separating children from family, the importance of establishing routines and the effects of exposure or experiences of child trauma are presented to the Court without any sociological, scientific or medical supporting material. Important decisions with such huge consequences as these—taking children from their families, stopping or limiting contact with parents, siblings and extended family, relocating children to new suburbs, schools and towns—need to be made in the bright light of facts and a process which allows for the rule of law to be relied upon. Allegations need to be proved to be true, proposed courses of progress need to be shown to be in the best interests of the children, and support children's continued need to be able to (where possible) be a part of their families of origin.

*... The Children's Court and the judicial process provides often the only opportunity that our clients have to test allegations and ensure fairness for them and their children. For many of our Koori clients it is the only way to ensure that the mandatory Aboriginal Child Placement Principles are given proper weight and in many instances even adhered to. In the Children's Court they are able to challenge decisions of the investigating child protection workers, often made arbitrarily and on the basis of incomplete investigations and inaccurate assumptions.<sup>12</sup>*

FVPLS Victoria strenuously supports retention of the Children's Court Family Division and is opposed to any change to a tribunal model. The Criminal and Family Divisions of the Children's Court must remain integrated.

Improved or simplified processes for family members to be joined to proceedings were suggested.

*... where significant family members with significant interest in proceeding e.g. grandparents or other close family members ... needs special provision for Aboriginal family members ... more simplified process to be involved. **Non-ATSI lawyer***

*... cases where no one in the family knows can step forward about wanting the child in their care ... then being joined in proceedings ... are people being excluded who should have been included at the first instance. **Non-ATSI lawyer***

*... where parties do not have lawyers, extensions to orders often seem to be agreed to without much in-depth investigation as to how things are proceeding other than as detailed in the DHS report. **Non-ATSI lawyer***

Strong concern was expressed by lawyers about DHS not appropriately communicating with them as legal representatives about the progress of cases and meetings. The introduction of procedural regulation is required to address these matters.

*... there needs to be legislation which requires DHS to notify legal representatives of all key events including when a Best Interest Planning meeting is on. Recently I was notified by a midwife involved in my client's case that a key meeting was on that afternoon where DHS was intending to propose tracking to permanent care and cessation of contact. **Aboriginal lawyer***

*... there is no legal acknowledgement by DHS when a legal representative is involved ... there needs to be a formal process for this ... lawyers are cut out of the system. **Non-ATSI lawyer***

*... DHS regularly ignore lawyers acting for clients ... don't communicate through lawyers, don't provide with notice of meeting details. **Non-ATSI lawyer***

*... on one occasion my client rang me in the morning and said, are you coming this afternoon? ... it*

<sup>12</sup> <http://www.theage.com.au/opinion/society-and-culture/the-chance-to-be-heard-20091220-l7e1.html>

*turned out a crucial BIP meeting had been scheduled and despite my having been involved in the case for some time DHS had not notified me that the meeting was on. My client presumed that I knew.*

**Non-ATSI lawyer**

There was also a lot of criticism about DHS's late provision of reports and the impact of this upon Court time and Court process. The manner in which DHS is represented in the Children's Court requires review.

*... DHS give excuses for why they have not provided crucial material earlier ... it is very problematic ... the Department's Court Advocacy Unit do not get the report until the caseworker arrives at Court either ... the lawyer/counsel for DHS never seem to have info about the last court date. The Department's duty lawyers change regularly ... there is no consistency ... the duty lawyers lack knowledge about the background of cases ... unless a case is going to trial and then they try to keep the same lawyer/counsel involved. **Aboriginal lawyer***

As detailed in Section 4.7, review of DHS Case Plans must be heard in the Children's Court rather than at VCAT.

### ***The law***

Most criticism emerging from the consultations was about awareness and implementation of existing law for ATSI children; however, there were several areas for which reform was suggested. The requirement for a child to be in out-of-home care for a period of six months prior to a permanent care order becoming available was considered inappropriate. Given the multiple issues in people's lives and the longer time period needed to address such issues this timeframe is considered too short.

*... The new six-month law leading to permanent care is stupid ... previously two years ... very short time for parents to get themselves together ... takes a long time to work through issues ... DHS makes people climb Mount Everest to get kids back ... is a long struggle. **Aboriginal support worker***

**There was a suggestion that cultural plans ought to be legislated as mandated in more out-of-home care placements of Aboriginal children, and that legislation to further clarify the Aboriginal Family Decision Making process would be of benefit.**

*... Cultural plans ... only mandated to be prepared by the Department at the guardianship stage ... need to be written more and at an interim stage ... damage that can be done at interim stage is no less than at the later stage ... not properly planned response to the child at risk. **Non-ATSI lawyer***

### **Proposal 23**

That, in consultation with the ATSI community, a review of Children's Court (Family Division) processes, legislation and procedure applicable to ATSI children in the child protection system in Victoria proceed (noting the current Koori-specific Children's Court (Family Division) project underway within the Department of Justice Victoria), incorporating consideration of:

- a review of court procedure with respect to ATSI children and families. Given the significant human rights at stake in Children’s Court Family Division decisions, this review must acknowledge the requirement for a robust legal process that is culturally appropriate and addresses access to culturally appropriate legal and support services.
- culturally appropriate pre- and post-court dispute resolution processes for ATSI children, incorporating review of the Aboriginal Family Decision Making Meeting process (see proposal 21)
- the requirement of preparation of cultural plans in broader circumstances
- a review of the provision allowing a permanent care order to be made after a child has been in out-of-home care for at least six months or for periods that total at least six of the last 12 months
- jurisdiction for review of DHS Case Plans transferring from VCAT to the Children’s Court
- regulation which improves the provision of information and reports by DHS and requires DHS to formally notify legal representatives of case events
- creation of an ATSI liaison position in the Children’s Court (Family Division)
- the production of a Children’s Court pamphlet setting out the specific law and procedure which applies to cases involving ATSI children in the Children’s Court (Family Division)
- ongoing cultural awareness training for all Children’s Court staff, magistrates (and lawyers/counsel providing assistance through VLA grants)
- trial of an ATSI-specific information/referral notice to be served with protection applications involving ATSI children.

### ***Placements and visits***

Some concerns expressed in the project consultations about placements and visits included:

- inadequate access arrangements between parents and children in out-of-home care
- placement of children in locations where visits by a parent was very difficult to arrange, thereby hindering reunification
- not fully investigating extended family placement options
- separation of children in placement which impacts on their bonding
- placements where children are not well cared for
- lack of follow-up by DHS of children in placements
- inadequate visiting times
- inadequate follow-up on permanent care orders
- inadequate checking of children in out-of-home placements.

*... Placed with both Indigenous and non-Indigenous family. Non-Indigenous foster carers were terrible ... I complained and DHS never followed up. DHS would say that the kids were lying. Separated the children for some reason ... better all together. Bond has been broken between children ... can still see the impact now. Children were apart for about eight months. **Aboriginal victim/survivor***

*... without legal advocacy, arrangements for visits between ATSI children in out-of-home care and parents is often completely inadequate. **Aboriginal lawyer***

*... Often if DHS do not have resources to facilitate access it doesn't go ahead ... there are examples of parents having to travel very long distances to see children ... where DHS have moved children to locations making access almost impossible. **Aboriginal lawyer***

*... More attention to kids' needs in care ... are their needs being met properly ... how are they going with carer ... instances of abuse by carers ... needs much more intensive follow-up and oversight. **Aboriginal support worker***

*... No follow-up happening on permanent care orders ... cultural planning is critical ... oversight and review on permanent care. **Aboriginal support worker***

### ***Improved support for carers***

A number of participants raised the issue of out-of-home carers receiving inadequate support, particularly where extended ATSI family or relatives assume that role.

### **Proposal 24**

That the arrangements for ATSI children in out-of-home care be strengthened through an ATSI-led review of:

- adherence to the Aboriginal child placement principle and location of suitable extended family placements
- parental access/visiting arrangements with respect to ATSI children on out-of-home care orders
- the support (financial and practical) provided to extended family who become carers
- oversight of ATSI children in out-of-home care incorporating:
  - enhanced scrutiny by the court at the time of extension of applications/orders
  - improved resourcing to community agencies for this oversight function
- the oversight of ATSI children placed in permanent care arrangements, including of cultural issues and implementation of cultural plans where appropriate.



## **Complaints/oversight**

Those participants who had been involved in making complaints against DHS's conduct were unhappy with the outcome, and thought there should be a dramatically improved process that ensures speedier responses and enhanced accountability.

There was also strong support for the introduction of accountability/audit processes to ensure that the required legal and procedural provisions applicable to ATSI children and families within the child protection system are being implemented. This suggestion was raised in the context of evidence of failings in this regard, and also in response to the vast overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system in Victoria.

*... Some kind of overseeing of individual client files to ensure being done properly. **Aboriginal support worker***

*... the independent complaint process to the Ombudsman is too slow. **Aboriginal lawyer***

*... There should be an efficient, independent complaints process for DHS child protection matters which is easily accessible. **Non-ATSI lawyer***

*... Oversight by Aboriginal Children's Commissioner? ... responsibility to report every year on compliance with key issues e.g. numbers of Aboriginal children in out-of-home care and on care and protection order, the numbers of Aboriginal children under voluntary out-of-home agreements, cultural plans prepared, compliance with placement principle, AFDMs held etc.*

**Non-ATSI lawyer**

*... Checking of what has been done for Aboriginal child ... who is doing what ... have principles been complied with. **Non-ATSI lawyer***

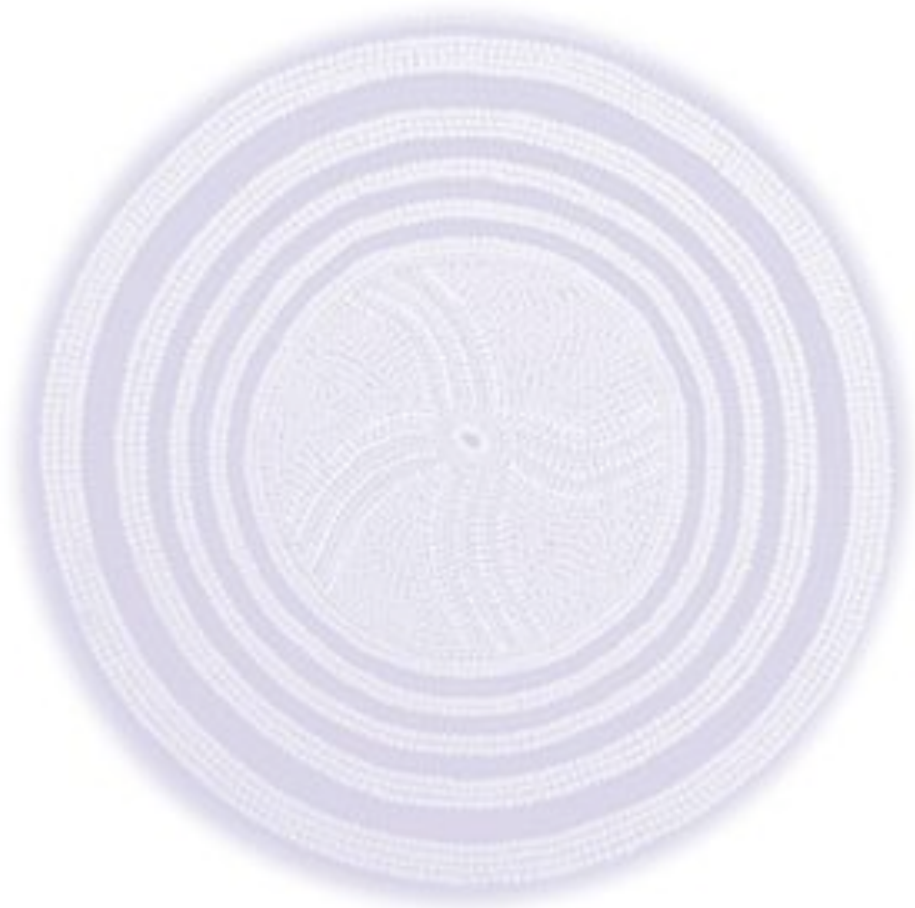
*... Needs some type of oversight system for child protection cases. **Non-ATSI lawyer***

*... Complaints mechanism needs to be better ... access easily and quick action. **Non-ATSI lawyer***

### **Proposal 25**

That, in consultation with the ATSI community, consideration be given to the introduction of an independent oversight process to increase accountability in relation to the implementation of legislative and procedural provisions specified for Aboriginal and Torres Strait Islander children in Victoria. A systemic advocacy role may be incorporated within this role.

That a simplified and improved complaints process be implemented for ATSI families in relation to DHS Child Protection conduct to ensure speedier responses and enhanced accountability.



## Section 3: Family violence/intervention orders

### 3.1 Introduction

It has been the experience of FVPLS Victoria that ATSI victims/survivors of family violence and sexual assault are more reluctant to report family violence and sexual assault and to take out intervention orders than are the broader population. This is anecdotal, but is consistent with the lower take-up of family law options by ATSI people.

Women and children are disproportionately impacted by family violence, and women make up about 90% of FVPLS Victoria's client group. The Australian Government Productivity Commission report, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, provides the most up-to-date relevant data indicating appalling outcomes for Aboriginal women and children nationally:

- Indigenous females were 35.1 times more likely to be hospitalised due to family violence than non-Indigenous females.
- Indigenous females sought Supported Accommodation Assistance Program (SAAP) assistance in 2006–2007 to escape family violence at the rate of 45.0 per 1000 population compared with 3.3 per 1000 population for non-Indigenous females.
- Indigenous children accompanying SAAP clients escaping family violence attended a SAAP agency at a rate of 569 per 10 000 Indigenous children, while for non-Indigenous children this rate was 66 per 10 000.
- Police data indicates that in Victoria, in 2007–2008: for Indigenous females, the rate of domestic violence–related assault was five times as high as the rate for non-Indigenous females (a warning about the unreliability of police data is given due to underreporting and the failure to identify Aboriginality).

The availability of dedicated legal services for ATSI victims/survivors through FVPLS Victoria has resulted in their growing engagement with the legal system and a greater willingness to seek protection through legal options. More proactive policing whereby police take out safety notices and intervention orders on behalf of victims is also resulting in more ATSI victims/survivors engaging with the legal process and having orders made in their favour. Department of Human Services intervention in the child protection area, where family violence is prevalent, is another prompt for ATSI victims/survivors to take out intervention orders on behalf of themselves and their children.

As a result of a Victorian Law Reform Commission inquiry and 2006 report, *Review of Family Violence Laws*, a new Family Violence Protection Act was introduced in Victoria in 2008. The Act specifically recognises Aboriginal and Torres Strait Islander family relationships within its definitions. The Act also broadens the definition of other family relationships, introduces police-initiated, after-hours

Family Violence Safety Notices (FVSNs), extends the definition of family violence, provides for associated persons to obtain orders, strengthens provisions for children’s safety, and introduces a raft of measures to improve legal processes.

**Despite these significant developments, FVPLS Victoria’s experience and the project consultations confirm the need to improve ATSI accessibility in the family violence/intervention order process.**

The Department of Justice Victoria is currently undertaking a Koori Family Violence Court Support pilot project. This initiative emanates from the ‘10-year plan’ developed by the Victorian Indigenous Family Violence Partnership Forum.<sup>13</sup>

*...Action 5.1.2 Enhance court capacity to provide culturally competent responses to Indigenous people affected by family violence.*

The project will proceed not as a specific Koori court list model but rather as an approach to tracking intervention order (IVO) applications involving Koori applicants or respondents and to providing a culturally competent service. FVPLS Victoria seeks to ensure that culturally competent processes are in place in all Victorian courts.

The Commonwealth Government has also initiated an inquiry into the relationship between family law and family violence law which will look at cross-jurisdictional issues including in the child protection area.

FVPLS Victoria welcomes the changes that have occurred in Victoria and the recently announced Commonwealth review. The interaction amongst family law, family violence law and child protection is significant in the legal work of FVPLS Victoria in supporting ATSI victims/survivors—yet it is also complex. The opportunity to contribute to a process aimed at better integrating and strengthening culturally appropriate responses in these areas for the benefit of our client group is welcomed.

FVPLS Victoria is also proposing that a dedicated project be undertaken at the Commonwealth level to examine Aboriginal and Torres Strait Islander accessibility in the family law system.



*FVPLS CEO Antoinette Braybrook, Minister for Housing, Local Government and Aboriginal Affairs Richard Wynne, Wurundjeri elder Aunty Joy Wandin Murphy and FVPLS Chairperson Marion Hansen.*

This discussion will focus on the feedback received through the project consultations about the experience of ATSI victims/survivors with intervention orders, with the aim of informing what might improve ATSI accessibility. The experience of FVPLS Victoria in the delivery of services over the past five years also informs the discussion. Some of this information has already been fed into the Victorian Department of Justice Koori Family Violence Project consultation.

<sup>13</sup> *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities*, Department of Planning and Community Development, May 2008.

## 3.2 Key consultation findings

### *Crisis response and legal referrals*

Whilst the focus of the new family violence legislation in Victoria and the introduction of Family Violence Safety Notices support women and children remaining in the home, for many women this is not a safe option and refuge or emergency accommodation is necessary. Going to stay with other family members is not always safe and taking out an intervention order in isolation will not necessarily be the safest option for women and children either.

**FVPLS Victoria welcomes recent funding by the Victorian Government through DHS for additional ATSI refuges for rural areas. This will provide more culturally appropriate crisis and safety options for ATSI women and children. It has also been pointed out that some women, particularly from smaller communities, will inevitably be safer in the metropolitan area, which must be factored into refuge, legal service and other support arrangements.**

*... Problems with Aboriginal women going to the refuge here ... women have breached refuge protocols ... refuge not appropriate for Aboriginal women ... is a problem where only one service available ... treatment at hotels is a problem ... Indigenous refuge ... funded through DHS ... in Mildura ... is a good development. Aboriginal coordinator family violence service*

*... because of best practice for safety ... women need to access urban areas for safety reasons ... it is easier to keep women safe in an urban areas ... small communities make it very hard to keep people safe. Key statewide Indigenous service*

It is important that women are supported in making decisions about safety options at the time of police attendance. Family and friends will often not be available and, given poor interactions with police, the availability of an independent person to assume this role and advocate with police on the victim's behalf is critical. **Due to past and ongoing trust and communication difficulties between ATSI people and police, it is the experience of FVPLS Victoria that access to culturally appropriate legal and general support services is vital to ensuring women remain engaged with the legal process from the point of crisis.**

*... It is my experience that being able to take time to talk through the legal options with a woman before her having to go to court and having the opportunity to advocate with the police on her behalf about the terms of an order or about the status of criminal charges reduces her stress and can change her attitude to the way she wants to proceed significantly. Often the police also appreciate receiving information that has been missed and things tend to get off to a much better start. Even where a woman decides not to proceed, being able to discuss her reasons with police assists in their understanding and hopefully with an improved response by them the next time. Non-ATSI lawyer*

The introduction of after-hours Family Violence Safety Notices issued by police was a major reform contained in the *Family Violence Protection Act 2008*. FVSNs must be returned to the court within 72

hours of issue. Feedback indicates that in many instances women are not accessing independent support and advice prior to the return date for the Family Violence Safety Notice. **FVPLS Victoria is concerned about the high numbers of ATSI women/victims not appearing at return dates for Family Violence Safety Notices and the safety implications of this.**<sup>14</sup> FVPLS Victoria's experience indicates that court procedures vary where the applicant fails to appear. It is important that court processes ensure that ATSI women have had the opportunity to obtain culturally appropriate support and legal assistance prior to striking an application out. Again, a stronger culturally responsive ATSI crisis support system would assist with addressing this problem. FVPLS Victoria has a 1800 105 303 number which operates between 9 and 5 pm only, and refers to mainstream crisis support services after hours.

We have previously recommended the review and strengthening of culturally appropriate crisis support services for ATSI victims/survivors—to assist in making safety decisions, to advocate with police and to make and follow up on necessary referrals. We have argued that this review needs to happen at the state and local levels (see Paper 2, Section 7: After-Hours and Crisis Supports).

*... We are not being notified in the early FVSN stage ... MOU arrangement may help a bit ... something to keep an eye on. **Aboriginal coordinator family violence service***

*... Still issue about people not turning up to court ... depends on the person ... victims need support at the initial phase ... on-call workers ... immediate support response ... to ensure they don't fall through the loops in terms of support and referrals. **Aboriginal support worker***

*... Quite a lot of women who are not turning up to court on return date ... gets struck out ... not sure how much attempt to contact the woman there is. **Key statewide Indigenous service***

### **Proposal 26 (See Paper 2, Section 7)**

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after hours support) who experience family violence and sexual assault, and that this review incorporates the role of Victoria Police. The review must incorporate statewide and local processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

See the Victorian Law Reform Commission's Family Violence Report 2006:

*...26. The Indigenous Family Violence Partnerships Forum should consider the possibility of providing an Indigenous victim support scheme that is available to offer support when the police are called to a family violence incident.*

<sup>14</sup> Reported by the Mildura FVPLS office, February 2010.

## ***Family Violence Safety Notices (FVSNs)***

In addition to the need for culturally appropriate support services after issuance of an FVSN, other concerns have arisen on the basis of the experience of FVPLS Victoria with respect to Family Violence Safety Notices around:

- the initial FVSN form not containing provision for ATSI identification
- concern that women may stay in the home with an FVSN when removal would be a safer option
- FVSNs being struck out where parties fail to appear
- children being inappropriately omitted from FVSNs by police
- court support services not being available on FVSN return dates
- legal services not being accessed or available following issue of an FVSN and prior to return date due to the short turnaround period
- police/prosecutors failing to adequately explain the details of the FVSN to a family violence victim or to tailor it appropriately to the protected person's situation
- inappropriate negotiation about arrangements for children at the FVSN return date where legal advice is not available or has not been obtained
- provisions in the legislation with respect to property return etc. not being adequately dealt with.

### **Proposal 27 (See Proposal 11, Paper 2)**

That crisis legal referrals for ATSI victims/survivors be made at the earliest possible time to ensure improved legal outcomes.

That court processes with respect to the return of Family Violence Safety Notices ensure that the victim has had reasonable opportunity to access culturally appropriate legal assistance prior to applications being struck out or final determinations made.

## ***Taking out intervention orders***

### *Key issues and barriers to ATSI women accessing intervention orders*

Whilst appropriate responses to family violence differ between individuals according to their generally complex circumstances, consultation feedback indicates that reluctance remains amongst ATSI women to take out intervention orders, although access to culturally appropriate services has a positive impact in this regard. The reasons for this reluctance include:

- don't want to add another person (family member) to the justice system
- dislike of police and unwillingness to engage or expectation of a lack of assistance from police
- the stigma within extended families and fear of backlash
- that it will add fuel to the fire and make the violence worse
- embarrassment/shame

- don't know what it is or what it means
- fear of an, unfriendly court process
- feeling isolated with the violence with nobody to talk to
- fearing police will involve DHS child protection
- concern that the order will mean the father can't see the children
- not knowing that you can have an intervention order and still live together.

*... I didn't want to be in court in the first place. I don't believe in intervention orders because it provokes the other person ... it's a piece of paper ... they still come. Restricts you in the community because you are seen to provoke a situation ... so I stayed away from my community. **Aboriginal victim/survivor***

*... Yes ... I knew about them and had to trust that the law would look after me ... without a paper I wouldn't feel protected ... I had to feel protected. I had not taken out an IO earlier because I thought it would make it much worse. It actually did get worse and charges and prosecution followed. **Aboriginal victim/survivor***

*... In the past I haven't ... because they were my family ... I didn't want to get them into trouble ... it's the Aboriginal way ... in the end I got sick of being stood over ... it also helps having someone to support you in making decisions about this. I had a DV support worker involved. **Aboriginal victim/survivor***

*... I reckon it provokes the other person ... agitates them. Have got orders because support services have encouraged me to. I just cooperated. **Aboriginal victim/survivor***

*... Still reluctant ... this is because the court process is confronting ... the set-up of court ... formal and unfriendly place. **Aboriginal support worker***

*... don't want to add another person to the criminal justice system ... hate justice system, hate police, stigma in extended families, don't believe will help ... add fuel to fire ... he will come back twice as hard ... too embarrassed ... don't know what it is ... how to access ... what it means. **Aboriginal support worker***

*... Problem with family violence is that you get isolated from everything ... you feel like you are on your own ... you can't talk about what is going on. **Aboriginal victim/survivor***

*... I didn't want my family involved with what was going on. I was scared for my family. I was embarrassed as well about what was happening. **Aboriginal victim/survivor***

*... Police made me get one. For safety ... I stayed in a shelter. **Aboriginal victim/survivor***

*... sometimes fear around upsetting their own family or other party's family if they take out IVO i.e. might lead to further violence/inter-family dispute or isolation within their own family. **Non-ATSI lawyer***



Reluctance to have police lay charges relates to similar issues as those listed above, and is compounded by the situation then becoming a criminal process.

*... I would not lay assault charges against him. I didn't because I thought it would make things worse. That he would be locked up and then be let out again ... nowhere to go with domestic violence.*

**Aboriginal victim/survivor**

Women appear more likely to have intervention orders where:

- police have acted as complainant
- the violence is more serious and women are more prepared to obtain an order for themselves and their children
- there is DHS involvement in relation to child protection concerns
- support services are involved early e.g. refuge or other family violence or legal services.

*... Case by case ... where people are reluctant is often because of how they thought others would see them ... depends how connected they are to family/community. Most are not reluctant to take out orders ... where incident serious are more prepared to take out. Support workers make a difference ... breaks down mistrust of the system. **Aboriginal regional family violence coordinator***

*... Better professional supports throughout process. Don't want family to worry. Breakthrough came when came to your service [FVPLS Victoria]. Matter of trust that I will be respected. **Aboriginal victim/survivor***

Lawyers and support workers emphasise that intervention orders must be viewed as part of a broader safety plan that incorporates practical support, counselling and other legal assistance.

*... Contribute to safety to some degree but also more effective within a holistic response i.e. counselling for respondent, safety plans for women and kids. **Non-ATSI lawyer***

*... is a tool in a safety plan. **Aboriginal regional family violence coordinator***

### *The role of legal and support services*

- Culturally trusted legal supports can address barriers to seeking assistance/safety through the legal system. The experience of FVPLS Victoria indicates that the availability of culturally safe and trusted legal, crisis counselling and other supports, whereby all of these issues can be worked through, is absolutely critical. Without these supports the barriers remain, and consideration of legal options and potential benefits is unlikely. It is important to make clear that the barriers to access and the need for culturally safe and trusted legal assistance are equal for women in rural and urban areas (whereas the Commonwealth does not consider that FVPLS services are required in urban areas).

*... should be no different ... still Aboriginal women needing support. **Aboriginal victim/survivor***

*... lack of legal services adds to the problems Aboriginal communities have to deal with ... everyone should have the right to legal assistance. It should not be about funding restrictions. I should know as an Indigenous woman that I can get access to culturally appropriate legal services when I need it.*

**Aboriginal victim/survivor**

*...what are metropolitan families supposed to do? ... I disagree that we will access mainstream services ... we are the First Australians. **Aboriginal victim/survivor***

- Support services: The involvement of support services, including at court, was seen as essential by consultation participants. Access to an ATSI support worker means that women are more likely to follow through on the legal proceedings, and it lessens the stress of going through the process.

*... Need a support person there from start to finish. Women don't know how to speak in the courtroom ... don't understand that they have to say everything. **Aboriginal support worker***

*... Feel more confident when Indigenous worker at the court ... and support worker in tow. If left to own devices ... confidence is low. Feel re-victimised when questioned about what has happened. Have to retell story and justify themselves. **Aboriginal regional family violence coordinator***

*... Having an Aboriginal worker is a great support. **Key statewide Indigenous service***

*... Our women need to have support worker/counsellor. **Aboriginal support worker***

*... would have been great to have an Indigenous worker to support me. I was so nervous that the magistrate said ...- need to have a break ... I had no one to support me. Felt emotional with complete strangers, which was uncomfortable. **Aboriginal victim/survivor***

*... X supported me in her role at the court. She is also a friend ... this made a big difference for me. **Aboriginal victim/survivor***

- Child protection issues: With respect to the fear of child protection notification, FVPLS Victoria generally urges people to seek confidential legal assistance as soon as contact is made by DHS child protection in all situations. Legal advocacy with the Department can relieve the stress experienced by women and can often resolve matters early. The taking out of intervention orders is generally viewed by DHS as a protective action—obtaining independent legal advice about this to ensure the full exploration of options and tailoring of any order to the victim's particular circumstances are essential. With appropriate information and support, fears about the removal of children can be dissipated.

- Access to legal advice even where police prosecute: Accessing legal advice early was also seen as important. Even where police take out Family Violence Safety Notices or act as complainants on intervention orders, obtaining legal advice to ensure that the order is tailored to the applicant's needs and circumstances is deemed necessary. Examples were cited of police not paying sufficient attention to the victim's particular situation, not clearly explaining the order or the process, and not having the time to deal with children's or other issues arising as a consequence of the order.

*... legal representation really important ... especially when police take out the order ... they tick every box on the sheet ... don't tailor orders to the needs of the victim ... if no one to support them to get legal advice ... order is likely to be breached if not appropriate to the situation. **Aboriginal support worker***

*... legal representation is paramount for women ... to ensure understands full options and what it means ... so not to minimise safety issues ... tailoring of order needed ... more likely with legal assistance. **Aboriginal regional family violence support worker***

*... legal representation important at application time ... often is only available at first mention ... then often too late ... mistakes made in intervention order application. **Non-ATSI lawyer***

Comments were made that police training on the new Family Violence Protection Act needs to be strengthened to ensure that victims are accessing their rights under the legislation.

*... Need for more training on the new Act. Police had training but not detailed enough or practical enough. **Non-ATSI lawyer***

*... Police don't want to implement new things under the Act such as return of personal property clauses. **Non-ATSI lawyer***

*... not responding to the terms of individual people's orders in terms of breaches ... under the old Act police would charge for physical assault but not otherwise. **Non-ATSI lawyer***

- Early access to legal advice: There are still instances where women are applying for orders without police involvement (including by choice); again, legal assistance is very important at the application stage to ensure the complaint and the orders sought are appropriate. Reference was made to the application form process not being culturally friendly and to the fact that women with limited literacy will perceive the application process as another barrier.

Women's experience in seeking an interim intervention order is highly determinant of their willingness to return for the full hearing. The more supported women are, the more likely they will be to follow through.

- Safety issues: Lawyers provide additional safety for women in the court process. One lawyer said she had witnessed situations in which being able to explain to extended family members the intervention order process—that it was a civil and not a criminal process, and about the different types of orders that could be made—had helped the woman applicant deal with those tensions.
- Tailoring orders: There was a strong sense amongst lawyers and support workers that the community is not aware of the extended family violence definitions, of the various types of orders available under the new legislation and that it is possible to have an intervention order in place but to remain living together. Ensuring the community can access this information was considered important to breaking down some of the misinformation and mistrust surrounding intervention orders.

*... Knew a little about intervention orders but not about the different type of orders you can get. I thought order could only cover my street ... couldn't be got in other places ... police did not explain properly. **Aboriginal victim/survivor***

- Arrangements for children: Where children are included on intervention orders it is generally not appropriate that child visitation arrangements be made on the return date of the Family Violence Safety Notice or intervention order in that pressured environment (see similar comments in relation to return dates for Family Violence Safety Notices). This is another reason why obtaining legal advice prior to that date is beneficial. Feedback received also indicated that women are in some cases seeking to revoke or are not proceeding with orders because they believe the order will stop the father seeing the children. Again, legal advice in relation to these issues is essential.
- Holistic legal response: The new Family Violence Protection Act specifically sets out its interaction with Victorian child protection law (Children, Youth and Families Act) and federal family law (Family Law Act). It is more critical than ever before that all of these issues are dealt with holistically. There is substantial benefit to ATSI victims/survivors having one legal service that can assist them with all legal areas, particularly given the high rate of ATSI children on care and protection orders and substantial impact of family violence. As FVPLS Victoria has developed, one of its strengths has been the capacity to follow cases through to conclusion in all of the interconnected legal areas. Access to justice for ATSI women tends to break down with the introduction of referrals, particularly to mainstream services. Determinations on Commonwealth/state funding of legal services for ATSI women must take into account the required resourcing for this comprehensive service provision.

One woman who had previously been to private lawyers (prior to FVPLS Victoria commencing) said that she had struggled through the intervention order process on her own the first time around because her family lawyer said she did not need legal representation and that he did not get involved in intervention orders. As a result, her order did not include her children and she was significantly traumatised by the experience.

... No I did it myself the next day ... I didn't know what to expect ... I was in gaga land ... still in shock. I had the lawyers assisting with the family law but they did not assist with intervention order applications ... that was seen to be separate to the family law issues. I felt it was my responsibility to look after the intervention orders. I thought the family law was separate to the family violence issues.

**Aboriginal victim/survivor**

- Equitable access to legal assistance: It is important that perpetrators of violence responding to intervention orders also have access to legal assistance and general supports.

**Proposal 28 (See Paper 1, Proposal 4 and Paper 2, Section 4)**

That state and Commonwealth governments collaborate to ensure funding of FVPLS units or ATSI women's legal services for rural, regional and urban communities and that funding be adequate to ensure integrated legal service provision for family violence law, family law, child protection and victims assistance.

**Proposal 29**

That ATSI support workers be available to support ATSI victims/survivors of family violence and sexual assault in the court process. Appropriate models for this may vary according to local circumstances.

- ATSI victim support workers should be considered for some Magistrates' Courts to provide support with intervention orders, VOCAT, victim support in giving evidence in criminal prosecutions and family law cases where relevant.
- Paralegal positions must be attached to FVPLS Victoria and ATSI support workers funded for other key family violence services.
- Perpetrators responding to family violence intervention orders must have access to legal and support services.

**Proposal 30**

That Victoria Police ensure ongoing training of its members in relation to the *Family Violence Protection Act 2008*.

**Child care**

The issue of child care arrangements for women seeking intervention orders was raised by a number of survey participants. Support workers said they are often faced with having to mind children who are not permitted in the courtrooms (as stipulated in the legislation). They pointed this out as unsatisfactory given their role to support women in the court process. At short notice and without access to money, obtaining adequate child care is a significant problem for many women.

*... It did expire ... I forgot about it and had no time to renew. Have kids ... hard to take them to court ... don't want to do that. **Aboriginal victim/survivor***

*... Kids not allowed to be in court. Support worker can't support children and be in court. If support worker minds children, which happens a lot ... they cannot take on support role. **Aboriginal support worker***

*... have to mind children sometimes ... hard with short turnaround on FVSN ... we try to manage. **Key statewide Indigenous service***

Survey participants reported that children are regularly included on intervention orders. One or two participants observed that police are mistakenly leaving children off Family Violence Safety Notices but that in general magistrates are very proactive in ensuring that children's safety is protected.

### **Proposal 31**

That consideration be given to the provision of assistance with child care arrangements for women applying for intervention orders who cannot make or cannot afford other arrangements—including where a court appearance is required at short notice.

See VLRC Report recommendation 64:

*... Measures should be taken to provide facilities for children attending court in the context of family violence matters.*

### ***The court environment***

**In relation to the court process itself, the physical environment of the court was raised as a significant issue—particularly in rural courts.** Small courts with small waiting areas are highly inappropriate for family violence matters in terms of creating problems around safety, intimidation of victims and lack of confidentiality. Often the older courts have a more traditional set-up and reference was made to a witness box being much higher than the bar table and thus being significantly intimidating, as well as to the lack of space in waiting areas. The physical environment can be a barrier to women seeking an intervention order, and in fact waiting in this environment can be an ordeal in itself.

*... I was really scared ... had to get into the witness box to speak ... I was very nervous ... the magistrate was very good. **Aboriginal victim/survivor***

*... was OK but stressful. Tiny little court ... one interview room. The waiting area was very small ... other people were in the courtroom. I wanted it over and to get out of there. The magistrate was OK ... straight down the line. **Aboriginal victim/survivor***

... Physical environment is important ... smaller courtrooms are a problem in this way ... have to talk outside the court in park etc. ... in foyer of court all together ... no good. **Aboriginal support worker**

... Intimidating to get up on stand because of old style [rural] court where you are up above the bar table when in the witness box ... very hierarchical layout ... not friendly. **Non-ATSI lawyer**

... At smaller courts nowhere to wait away from each other. In those courts lots of intimidation ... physical and emotional ordeal for people ... The doors get opened to outside when it's hot ... makes it even more public. **Non-ATSI lawyer**

... physical surroundings would be better, a bit more laid back. Would be a good idea to screen victims from perpetrator ... have a screen back behind the lawyer so victim cannot see perpetrator ... looks from perpetrator often make women want to back out. **Aboriginal support worker**

... needs Koori-friendly environment ... maybe use Koori court room? **Aboriginal support worker**

... Koori-friendly environment would help ... e.g. like Koori court ... nothing at some courts to make Koori-friendly environment. **Key statewide Indigenous service**

Koori-friendly courtrooms were favoured, with some suggesting that the Koori Courts be used. Other suggestions in relation to the physical court environment included:

- separate doors in and out of court to avoid confrontations between victims and perpetrators
- less formal and Koori-friendly surroundings
- a screen sitting just behind the bar table so that victims and perpetrators are not in each other's vision during the court hearing
- separate waiting rooms to keep victims safe and out of the view of respondents.

### **Proposal 32**

That the Victorian Government conduct a review of Magistrates' Courts in Victoria where family violence applications are heard with a view to improving safety and privacy arrangements for victims/applicants. Particular attention should be paid to rural courts where facilities are poor.

The following recommendations of the Victorian Law Reform Commission, in its *Family Violence Report 2004*, remain relevant:

... 56. All courts dealing with family violence matters should have separate waiting areas in which it is possible to ensure the safety of an applicant waiting for a matter to be heard.

... 57. The availability of separate and safe waiting areas should be brought to the attention of applicants wherever possible before they attend the courtroom, and immediately on their arrival at the courtroom.

... 58. *Wherever possible, there should be at least one separate and safe entrance and exit from the courtroom for the use of applicants in fear of their safety.*

... 59. *Applications for intervention orders should not be required to be made at the inquiries desk or other public spaces in court buildings.*

... 60. *A private space should be made available for inquiries and applications for intervention orders.*

## **Court processes**

**In relation to the court process itself, many women said that having to talk about the violence they had experienced in the witness box in front of a busy court was a terrible and shaming experience.** One woman who had to give evidence from the witness box with a black eye also had her case reported in the local newspaper the next day.

*... Had to talk about personal stuff to a full court ... had to hear others' family violence stories ... that made it much more traumatic. I felt that if I could have run I would have but my legs were too heavy to move from fear. **Aboriginal victim/survivor***

*... magistrate was good but ... but was the fact I was in the witness box ... all eyes on me with people writing things down. **Aboriginal victim/survivor***

*... didn't like the witness box ... my face was bashed up ... everyone was looking at me ... it was a shame job ... like I'm the one who has done the wrong thing. There were lots of other people in the court. That should be a closed court ... should be personal. It's like the whole town is watching you. I'm well known in the community ... that makes it even harder. **Aboriginal victim/survivor***

*... Looking at emptying court beforehand is good ... where Koori community at court ... Extended family of perpetrator sitting in on IVO very hard for victims ... be better if court could be closed. **Support worker***

*... Manage courtroom better ... so that not a lot of people in the courtroom. **Aboriginal support worker***

*... Young Aboriginal client had to get into witness box in front of packed court at Melbourne ... she had to face everybody and talk about private things she had found it hard to talk to me about ... luckily the magistrate picked up the inappropriateness of the situation quickly and allowed more informal evidence but it was still harrowing and stands out in my mind as an example of the justice system failing Aboriginal women. **Non-ATSI lawyer***

Preference was expressed by participants for the court to be closed to the public for intervention order hearings and for there to be the option of providing sworn evidence from the bar table. Feedback revealed that women often feel victimised when giving evidence for intervention orders, as if they have in fact committed a crime. It was observed that different magistrates approach



intervention order hearings with varying degrees of formality; and there is no doubt that the less formal approach is less intimidating.

There is a recognised need for increased awareness of availability of remote witness facilities and that this should be actively presented as an option to victims. The preparation of victims for the court hearing by taking them into the courtroom to go through what will happen was also encouraged (the possibility of the court producing an online DVD for victims who must attend the Magistrates' Court for various types of hearings is discussed in Section 4: Victims assistance).

The difficulty of court security only extending a certain distance from the court, and the resultant potential for women to be unsafe in getting to their vehicles, was raised.

*... security at court ... but security can only walk so far ... need to park within range of security staff because beyond that is no protection. **Aboriginal support worker***

**In small towns the ability to have the application heard in another town, where there is more confidentiality and less chance of intimidation for the victim, was considered important.** This would also apply to other types of cases including VOCAT hearings.

*... went through local court first to make the application ... had to have the application shifted to another court because of confidentiality reasons within the community ... there was no confidentiality for me there. **Aboriginal victim/survivor***

Court listing processes for intervention orders were also seen as a concern.

*... Listing family violence orders on the same day as criminal mentions is inappropriate ... [it results in] victims hanging around with offenders. **Non-ATSI lawyer***

### **Proposal 33**

That the pilot Koori Family Violence Court Support initiative within the Department of Justice Victoria address culturally appropriate court process and procedure with a view to improving ATSI accessibility of those arrangements in all relevant Magistrates' Courts in Victoria.

The other issue raised in connection to small, part-time rural courts was the difficulty in accessing interim intervention orders and having to either wait until the court house is next open or travel to the next town where a court is open. It was suggested that police should be able to obtain interim orders by telephone in these situations.

*... inappropriate court venues ... small, part-time courts ... can't get interim order ... have to wait for next day at court. **Non-ATSI lawyer***

*... problem with women who want court protection but don't have good relationship with police and don't have own car ... court registry in small town only open once per week ... FVSN from police only*

*available after hours ... may be told to drive to Mildura. Non-ATSI lawyer*

### **Proposal 34**

In small towns where court registries are open only on a part-time basis, that police have the ability to obtain interim intervention orders by telephone during business hours to avoid the victim having to travel to another town to obtain the interim order.

### ***Police responses to repeat calls and breaches (also see Section 6, Proposal 54)***

Concern was expressed by workers that in cases where women fail to attend an intervention order hearing it is much harder to get police to respond where subsequent violence occurs. A common point was put forward that it often takes many incidents or attempts to leave before a woman will **undertake the final act of leaving**. One woman said she had tried to leave about 17 times, that she supported her partner after police took out an intervention order on her behalf and that it was not until violence occurred again that she finally left.

*... With repeat attendances police get cynical ... 'not again' ... level of frustration with women who decide not to proceed ... they often decide this because of attitude of police attending. History of abuse by partner ... she made a number of contacts over time ... no sense of urgency in serving warrants ... she remains unprotected when tried to take action ... everyone knows she will take him back ... this is education again ... on average women go back seven times before they take any action ... police need better understanding about this. Non-ATSI lawyer*

*... police apply initially then woman doesn't turn up for hearing ... then go back to police and police say you must do it yourself because you didn't turn up to court last time. Non-ATSI lawyer*

FVPLS Victoria can work with women and negotiate with police in these situations to produce better overall outcomes.

*... Police are referring to our service [FVPLS] where the woman does not want the order ... we negotiate with police and the client ... police will get a limited order where women do not want to proceed. Our negotiations with police are important. Non-ATSI lawyer*

Problems with the follow-up of intervention order breaches were mentioned by almost all of the project participants. It was reported that breaches viewed as serious and for which there was accompanying supporting evidence are followed up by police more often. **However, participants also described the difficulty in getting follow-up by police on many breaches, thereby undermining the intervention process as a whole.** Some feedback indicated good levels of follow-up, but overall the responses were varied. In cases where police had taken action on breaches women reported that the problems had settled down. A common view shared by participants was that police response and follow-up diminished with repeated call outs.

... They came out ... he nicked off ... police did take him to court. He backed off after this. Took the police a while to take action. **Aboriginal victim/survivor**

... Eventually did report ... phone calls. Police went and spoke to him ... no charges ... but it did cause him to stop. **Aboriginal victim/survivor**

... Yes there were breaches ... coming within distance of workplace. Phoning continually, spontaneously ... small breaches which police would not take seriously. Felt not a police issue until a big breach, as is what happened. The smaller breaches were not acted on. Police would say, don't worry ... ring back if more problems ... you have to expect that. It's the little breaches that can make a big impact on victims, especially when raising children ... in getting on with your life the little breaches really get in the way and tire you out. It actually did get worse and charges and prosecution followed. **Aboriginal victim/survivor**

... breached and he was charged with that breach. So was good to have the order ... police followed up [a serious breach]. **Aboriginal victim/survivor**

... Yes, breaches by coming to my house, assaults, in the street etc. ... At first I reported ... no action, so I stopped reporting because didn't seem to achieve anything. Then in the last two or three years I have been on to reporting because I know there is an officer there who will deal with the problem. ... Sometimes police say there is no proof ... other times would blame me for letting him in and I would be charged for allowing him to breach ... I didn't willingly let him ... he barged in and wouldn't get out. After a while you think it is useless. **Aboriginal victim/survivor**

... Police drop off with large number of call-outs... probably rural area is worse ... response slows down. **Aboriginal support worker**

... I don't think police respond well to breaches ... have experience where police not acted on breaches where repeat calls ... breaches not taken seriously so women think why get an intervention order. **Aboriginal support worker**

... Further criminalisation of Aboriginal perpetrators is not a positive outcome but there needs to be some outcome so women have faith that the system is there to protect them. **Non-ATSI lawyer**

... No police action so women stop calling ... helps to get advocates involved when police won't take action. **Aboriginal support worker**

... Responding to breaches of IOs ... need to have very serious breach and witnessed etc. ... seems never enough evidence to secure police response. ... one client said police kept sending her away ... had witnessed him in the street but they had not taken action. **Non-ATSI lawyer**

Participants commented that the new family violence law extends the definition of family violence but that police are still not acting on the full range of breaches under the new orders:

... police not responding to the terms of individual people's orders in terms of breaches. **Non-ATSI lawyer**

*... you don't have to have bruises and cuts to be a family violence victim ... may look OK but been through family violence ... police too focused on physical assaults. **Aboriginal support worker***

Participants also viewed the process enacted by police following the report of a breach as inefficient and not conducive to best safety practice for victims:

*... Reporting the breach can be time consuming for the victim. It's not as simple as ringing to come to the house. They are told to go to the station. Once crisis is past ... need to get on with urgent business of safety. Three hours at the station for a statement is a disincentive. Then police get frustrated ... next time they do nothing. **Non-ATSI lawyer***

*... example where police say have to come back in two weeks to see the initial officer ... hard to follow through. **Non-ATSI lawyer***

**Proposal 35 (Also see Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault)**

That there be a comprehensive review of ATSI cultural awareness training within Victoria Police (including police prosecutors) at the statewide and local levels which is informed by ATSI expertise to strengthen and broaden its scope.

Police training in responding to ATSI victims of family violence/sexual assault must combine ATSI cultural awareness within the family violence context. Barriers to ATSI victims/survivors seeking assistance from police in situations of family violence and sexual assault must be dealt with in detail, and strategies developed to address issues specific to breaches.

***Follow-up / varying orders***

Participants also raised the importance of the process of following up with women after an intervention order has been taken out—regardless of the ultimate outcome.

*... There is no follow-up after reconciliation e.g. family counsellor. Have a support person available to be called. After the dust settled ... woman needs person to talk to. **Aboriginal victim/survivor***

*... police don't follow up with victims. **Aboriginal support worker***

Feedback confirmed that women generally do not vary their intervention orders if there is a change in circumstance and that women will simply ignore the order if reconciliation occurs. Workers emphasised that they are trying to increase awareness about the option of the limited order whereby the parties can remain living together with an intervention order in place, and argued that greater awareness of this option is needed. The value of legal assistance for victims in these situations was emphasised. The example of magistrates imposing more limited orders where revocation applications are made by victims was seen as a positive outcome.

... Example of woman who wanted to change order but court wouldn't let her change it. Court did the right thing for the kids in not changing the order. **Aboriginal support worker**

... Don't change the IO if reconcile ... let it go ... and then is a problem if it is breached. **Aboriginal regional family violence coordinator**

... Not a lot of awareness that live with order available ... limited order needs to be publicised. **Support worker**

### ***Men's behaviour change***

A degree of support was expressed for a greater number of options for the use of men's behaviour change programs—alongside the reservation that it is not clear whether the programs result in any real changes to the behaviour of perpetrators. FVPLS Victoria understands that an ATSI-specific men's behaviour change program will be introduced in the near future, and welcomes this development. It is also understood that dedicated supports for ATSI women who have experienced violence will be incorporated within the model. The importance of a strong cultural base for such programs which are developed and delivered within the ATSI community cannot be underestimated.

... One of the prosecutors locally has said that without powers to direct perpetrators to behaviour change programs ... will not be lasting change ... very strongly wants magistrate to direct perpetrators to behaviour change as an effective preventive measure ... similar to the family violence pilot courts ... not sure whether these programs do change behaviour ... need to determine through research etc. ... Option is important, however. **Non-ATSI lawyer**

...If ATSI women victims of violence are to be involved in men's programs in any way it is critical that women's organisations are consulted with respect to processes and that women are referred for appropriate advice and support. **Non-ATSI lawyer**

### ***Supports for children experiencing family violence***

The significant impact of family violence upon children, whether as primary victims or as witnesses of violence, is discussed in detail in Paper 2. Current family violence legislation in Victoria has strengthened the protection of children and it is important that dedicated supports are in place for children impacted by violence. **Participants expressed high levels of concern during the project consultations about the gaps in dedicated services and supports for children impacted by family violence.** In Paper 2, proposals for strengthening services as well as prevention and education initiatives for children are presented (and detailed again below). It is vital that legal and support services are well linked to the court system at the time intervention orders are made.

... It has been difficult to locate support and counselling services for children who have experienced family violence ... sexual assault services are more readily accessible. All services funded for family violence work must develop dedicated responses for children. This includes family violence services, legal services, health services, the Victims Support Agency and Victims Assistance and Counselling Programs and the Victims of Crime Assistance Tribunal. Culturally appropriate services and supports

*must be readily available. Culturally appropriate education for children about family violence, backed up by available support and counselling services, is also needed. Non-ATSI lawyer*

**Proposal 7 (from Paper 2)**

That strengthening of dedicated legal and support services, and prevention activity, for ATSI children experiencing family violence and/or sexual assault in Victoria is urgently required.

That the legal rights of ATSI children under care and protection orders in Victoria be protected and pursued.

**Action**

That the Victorian Government in conjunction with key ATSI stakeholders conduct a review of services and prevention activity required for ATSI children in relation to family violence and sexual assault in Victoria, with a view to improving services and implementing effective prevention/education.

That Victoria Legal Aid review its arrangements for the legal representation of ATSI children in the Children’s Court and family law jurisdictions.

That a process to ensure the pursuit of the legal rights of ATSI children who are victims of crime, and under care and protection orders, must be established.

**Responsibility**

Department of Justice Victoria, Indigenous Family Violence Partnership Forum, Aboriginal Justice Forum, Victoria Legal Aid, FVPLS Victoria, Department of Human Services Victoria, VACCA

***More integrated victims assistance***

Project participants suggested that magistrates/courts should have the capacity to make Victims of Crime Assistance Tribunal orders on the same day as intervention order hearings, to ensure the availability of assistance for urgent expenses for victims of family violence including children. Processes to facilitate this should be actively pursued (see Section 4, Proposal 43).

***Conclusion: Koori family violence project Department of Justice***

All those consulted for the project were keen to see changes in the intervention order process to make it more Koori friendly. Key issues raised included:

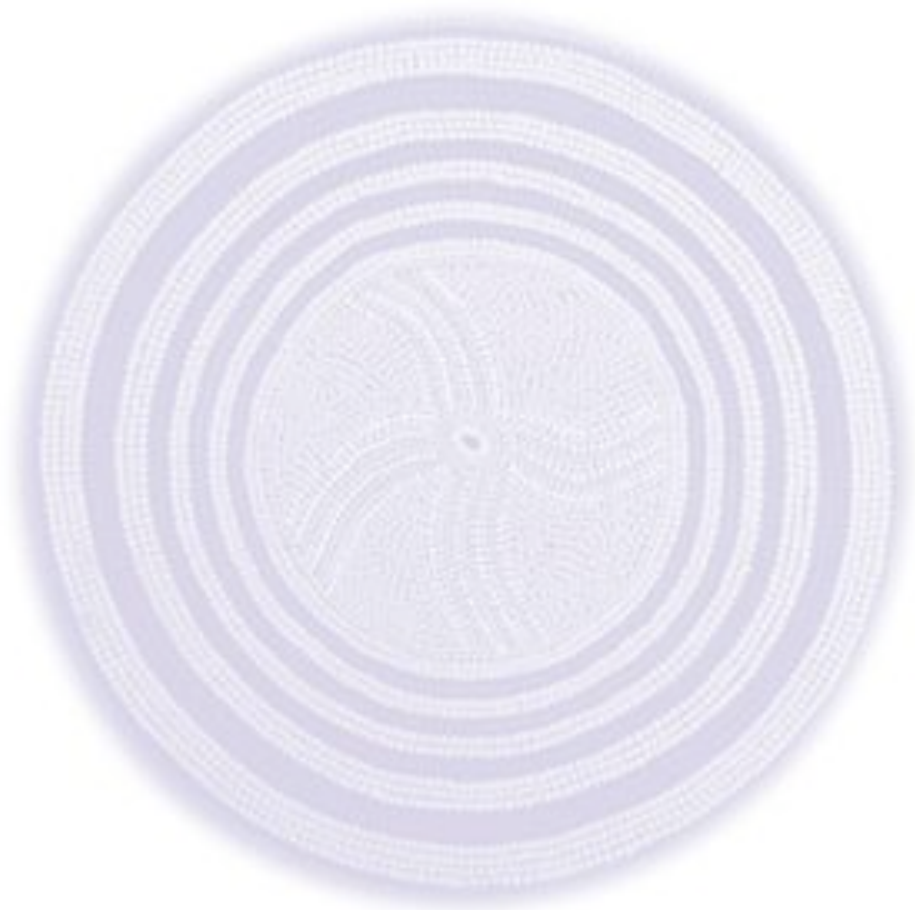
- access to culturally appropriate legal assistance and crisis support in all communities
- improved police responses
- earlier legal referrals, particularly at crisis
- a Koori-friendly physical environment in the courts
- a physically safe environment (with particular attention to rural courts)

- greater attention to the support of children
- dedicated Koori support workers
- a more Koori-friendly court process
- cultural awareness of magistrates and staff.

**The Koori family violence project currently underway within the Department of Justice provides a welcome opportunity for these matters to be addressed. The project consultations indicated the importance of measures to improve statewide ATSI accessibility to strengthen overall outcomes in Victoria. The situation in some rural areas was viewed as particularly concerning. Due to the diversity of communities, including in relation to local court facilities and arrangements, there is a need to adapt ATSI appropriate court processes and systems to local circumstances.**

### **Proposal 36**

That the Koori family violence pilot project within the Department of Justice Victoria aim in the long term to strengthen family violence court and associated arrangements across Victoria, taking into account and adapting to local diversity. Attention to current arrangements within rural Magistrates' Courts must be incorporated as a priority.





## Section 4: Victims assistance

*The Tribunal acknowledges that the historically fractured relationship Indigenous Australians have experienced with all aspects of the justice system has an impact on their inclination, and indeed capacity, to participate in a scheme that is intended to acknowledge and provide financial assistance to all victims of crime committed in Victoria. VOCAT Magistrate Susan Wakeling*

### 4.1 Introduction

Victims Assistance constitutes a considerable part of the caseload at FVPLS Victoria. Indeed, most people who contact the service are eligible to make an application in relation to recent and/or past crimes of family violence or sexual assault against them. FVPLS Victoria is of the view that dedicated responses are required to effectively assist victims who have experienced crimes of family violence and sexual assault.

Legal assistance or compensation for victims of crime in Victoria may be accessed through the Victims of Crime Assistance Tribunal (VOCAT, or the Tribunal) process, through Sentencing Act orders where an offender is convicted or through civil legal action. Given the impecunious status of most perpetrators, the complexity of many family violence and sexual assault crimes, and the FVPLS program guidelines, VOCAT is the predominant form of assistance accessed by clients of FVPLS Victoria and is therefore the major focus of this section. The Victims Support Agency is the primary general support service for victims of crime in Victoria and is referred to in this paper where appropriate.

It is noted that the Department of Justice Victoria has recently released a discussion paper *Reviewing Victims of Crime Compensation: Sentencing Orders and State-funded Awards*.<sup>15</sup> FVPLS welcomes this review and the opportunity it provides to strengthen law and process, particularly with respect to crimes of family violence and sexual assault. FVPLS Victoria strongly supports the retention of a judicial model for VOCAT that incorporates both the hearing and 'decision on the papers' option.

**Initiatives within Victoria to improve accessibility for ATSI victims of crime provide a positive leadership example to other courts and tribunals.** In July 2006 a Koori List was established within VOCAT, resulting in the implementation of a more Koori-friendly process and increased numbers of Aboriginal and Torres Strait Islander applications to the Tribunal for assistance. Feedback from applicants, lawyers and support workers indicates that the experience of the Koori List has been very good and emphasises its importance and value in ensuring ATSI people have positive experiences with the justice system.

This discussion looks at the background to improving ATSI accessibility within VOCAT with the aim of providing important insight for other jurisdictions. Feedback received from project consultations is

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<sup>15</sup> Department of Justice Victoria, *Reviewing Victims of Crime Compensation: Sentencing Orders and State-funded Awards*, Melbourne, December 2009.

also analysed with a view to formulating recommendations for strengthening of laws and processes for ATSI victims, particularly in relation to crimes of family violence and sexual assault. **Current Victims of Crime Assistance legislation and VOCAT procedures do not adequately acknowledge the unique nature and impact of family violence and sexual assault crimes. FVPLS Victoria proposes reform to strengthen victims support and assistance in these areas.**

## 4.2 Background to the VOCAT Koori List

In a paper delivered at the first National Indigenous Courts Conference organised by the Australasian Institute of Judicial Administration in Mildura in September 2007, Magistrate Susan Wakeling provided an overview of the development of the VOCAT Koori List and of broader initiatives to increase the numbers of ATSI victims of crime who apply to the Tribunal. The following are excerpts from that paper:



Magistrate Susan Wakeling, FVPLS CEO Antoinette Braybrook and FVPLS Chairperson Marion Hansen.

*... In 2004, in response both to the very positive outcomes being reported from the Koori Court and community discussion with regard to the high incidence of family and sexual violence in the Aboriginal community, the VOCAT Coordinating Committee of the Magistrates' Court considered the adequacy of the Tribunal's response to Aboriginal applicants.*

*... On the anecdotal evidence available in consultation with regional registrars and magistrates, it appeared that the number of Aboriginal applicants to the Tribunal was very low. Certainly the numbers did not reflect the incidence of victimisation understood to be occurring in the community.*

In August 2004 the Tribunal hosted a consultation forum about access of ATSI people to Victims Assistance, which included the ATSI community and a range of key stakeholders. Susan Wakeling observed:

*... It was apparent that there was very little awareness of the Tribunal or entitlement to awards of assistance in the Aboriginal community. One of the comments made was that the focus of both the criminal justice system and the aboriginal community had for many years been on criminal offenders and on issues with regard to the incarceration of offenders. Discussion at the forum focused on reluctance within the community to engage with 'court processes' and on the disincentives to participation created by the legislation.*

Following this consultation the Indigenous Issues Unit, Department of Justice Victoria, convened a working group to improve Koori access to VOCAT under the Victorian Aboriginal Justice Agreement. FVPLS Victoria was represented on this working group, and went on to host a project position that produced an information pamphlet about VOCAT for the Koori community.

The Victims Support Agency, in partnership with VOCAT, convened 30 community information sessions across Victoria to provide information to Koori communities about victims assistance. VOCAT magistrates and registrars attended these forums alongside key ATSI service providers including FVPLS Victoria. Participant feedback indicated that the attendance by magistrates was significant in breaking down barriers to ATSI people accessing the justice system.

In July 2006 the Koori List was implemented as a two-year pilot. Magistrate Wakeling summarised its objectives as follows:

*... This List enables the Tribunal to respond with maximum flexibility to the particular circumstances of an indigenous applicant. The Tribunal can determine applications without a hearing where the issues to be determined are not controversial, but where hearings are conducted, seeks to do so in a manner conducive to the best evidence becoming available. Tribunal members have received cross cultural training and are cognisant of the history and experience of indigenous Victorians when determining applications.*

Under new procedures implemented:

- Applicants are asked to identify as Aboriginal and/or Torres Strait Islander on the application form.
- All identified applications are processed through the Koori List in the Melbourne VOCAT registry and managed by a dedicated VOCAT Koori List registrar.
- Applicants can elect to have their application heard locally or in Melbourne, and the Tribunal can be informed by ATSI community members and elders at the applicant's request.
- A flexible and less formal approach is adopted in the hearing—all magistrates in the list receive ongoing cultural awareness training which is reflected in the hearing process.
- Particular attention is paid to the complexity of applications and to culturally appropriate approaches to various legislative provisions.

It was announced during 2009 that the position of the VOCAT Koori List registrar to support the Koori VOCAT List will receive ongoing funding. FVPLS Victoria welcomes this development.

It is noted that the Department of Justice discussion paper questions whether a centralised or a decentralised structure for VOCAT generally would be more effective. It is the view of FVPLS that achieving some balance between the two might be preferable. Based on people's experiences of the Koori List, a degree of centralisation has considerable benefit in ensuring consistency of culturally appropriate responses. Legal representatives can more confidently inform prospective applicants of processes they can expect, which assists in dismantling mistrust of the legal system. The option available to Koori List applicants to have their application determined either at regional courts or in Melbourne is also of great benefit. The local knowledge of registrars in rural areas in particular is also an asset and must be incorporated into these considerations.

## 4.3 Feedback from project consultations

### ***Learning about victims assistance rights***

As FVPLS Victoria provides assistance only to victims/survivors of family violence and sexual assault or to parents/carers of ATSI children, comments and suggestions offered through the project consultations are from people who have experienced these crimes or who are working to support victims/survivors.

The consultations indicated that most people assisted by FVPLS Victoria with victims assistance claims became aware of their eligibility for victims assistance through the statewide FVPLS Victoria *Sisters Day Out* program, through seeking assistance from FVPLS Victoria for other legal matters, or through local family violence support workers.

Several participants said they had some prior knowledge of the scheme but either were too stressed by the crime and the police process to pursue the legal process earlier, or were afraid that the offender would find out, resulting in further retaliation.

One person recalled getting a piece of paper in the mail from police about the Victims Support Agency but said it did not mean anything to her so she did not follow it up. It is noted that few referrals for legal assistance seem to be coming from crisis contacts through police or the Victims Support Agency. A family violence worker in a regional area has been providing good information about victims assistance rights to clients, resulting in numerous referrals to the FVPLS office there.

Lawyers at FVPLS concur that many clients who contact the service in relation to current family violence legal issues have experienced crimes against them as young people, including sexual assault. **Advice is therefore regularly given about victims assistance rights with respect to past crimes and some clients choose to pursue applications in relation to these also. In some cases clients have not previously disclosed these crimes, in which case ensuring that appropriate supports are in place is critical.** Numerous women interviewed for this project were also either not made aware of their right to pursue legal action earlier or were unable to access appropriate assistance.

**In many instances the impact of crimes experienced in childhood upon people's lives has been very significant.** (*The Medical Journal of Australia* has recently published research detailing disproportionately high rates of suicide and drug overdose amongst people who had been sexually abused as children.)<sup>16</sup> In Paper 2, Section 11 the implication of this for women's imprisonment is also discussed, and later in this paper the pursuit of rights for children in out-of-home care is also raised. **As a matter of public policy, greater attention must urgently be paid to this issue, including within victims assistance legislative provisions and broader victims support mechanisms.**

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<sup>16</sup> ABC News 14 February 2010 'Abuse children face greater suicide risk' [www.abc.net/au/news/stories/2010/02/14/2818989.htm](http://www.abc.net/au/news/stories/2010/02/14/2818989.htm).

Participants felt that community education about victims assistance rights in all of its forms needs to be ongoing, both for workers and more broadly, although it was also noted that awareness has generally increased through word-of-mouth. Knowledge about VOCAT interim orders, particularly in relation to family violence crimes, remains limited—clearly there is a need for more information dissemination and education.

*... Through FVPLS for current and past issues. It was the current incident that increased my awareness about the past. **Aboriginal victim/survivor***

*... wish I had known my rights when I was younger ... I wish I had spoken up more when I was younger. **Aboriginal victim/survivor***

In answer to a question about how people become aware of their eligibility to make a claim, participants' responses included:

*... Is still a lack of understanding of how it [VOCAT] works ... still more awareness is needed about how it works ... More knowledge about urgent interim orders needed ... Centrelink takes time for urgent orders ... \$600 so limited. Kids in particular need financial supports post crisis ... Uptake has increased ... convincing community about not being ashamed to access VOCAT ... is entitlement ... accepting that they are victims ... sometimes want to move away from it. **Aboriginal regional family violence coordinator***

*... Found out through FVPLS Victoria. Brochure from police about Victims Support Agency ... but didn't mean anything without other advice/information. **Aboriginal victim/survivor***

*... too much going on to follow up straight away ... felt like had enough stress ... didn't want more. **Aboriginal victim/survivor***

*... Through DV worker ... she referred to FVPLS. **Aboriginal victim/survivor***

*... Through local workers and FVPLS. **Aboriginal victim/survivor***

*... Most not aware ... learnt from either community education SDO day or through coming to us about another legal matter. **Non-ATSI lawyer***

*... it is still the case that many support workers are not aware of a victim's right to seek assistance from VOCAT for urgent expenses where family violence has occurred. **Non-ATSI lawyer***

### **Proposal 37**

That community education about victims assistance rights continue in an ongoing way in the ATSI community in Victoria and that key stakeholders who provide services to victims/survivors of family violence and sexual assault collaborate in community legal education activities. That information targeted to support workers and the community about urgent interim assistance available through VOCAT be particularly highlighted.

### **Proposal 38**

That key agencies that provide services to ATSI victims/survivors of family violence and sexual assault review respective roles and referral procedures in the provision of advice and support to strengthen access to the victims assistance system.

### **Proposal 39**

That appropriate assistance be ensured for people who have experienced crimes against them as children but who, either through late disclosure, or lack of knowledge or means, have not had the opportunity to pursue legal remedies.

### ***The role of legal assistance***

The importance of legal assistance for ATSI applicants to VOCAT is in part revealed by the fact that most applicants assisted by FVPLS Victoria learn about their rights as a victim of crime through accessing FVPLS Victoria for other legal issues or at a community forum.

The majority of applications to the Koori VOCAT List are complicated and attract difficult provisions in the legislation. **In conducting community education sessions with the ATSI community about victims of crime assistance, it is clear that most people believe they are ineligible for assistance because there has been no prosecution or no police report, or because the crime took place a long time ago.** Sometimes these issues may impede a successful application; but without legal advice and assistance, rights are unlikely to be pursued. Applicants are best served by culturally appropriate legal assistance that is also able to coordinate all other required supports.

There are not a lot of legal practitioners currently handling VOCAT cases. In the case of ATSI applicants it is critical that issues of culture and gender are appropriately addressed, particularly in applications relating to family violence and sexual assault. This applies equally to applicants in urban and metropolitan locations, although Commonwealth funding for the FVPLS program is restricted to rural/remote locations. Limited-term positions resourced through Victoria Legal Aid are currently enabling FVPLS Victoria to service metropolitan Melbourne, one of which is handling all VOCAT work in the urban area and other Victorian regions not funded by the Commonwealth. **There is an urgent need for dedicated ongoing VOCAT legal services at FVPLS Victoria to ensure that ATSI victims of crime across Victoria have legal representation. Consideration could be given to a funded VOCAT legal position.**

## **Proposal 40**

Given the complex nature of Koori List VOCAT applications, and the requirement for culturally and gender appropriate legal assistance for ATSI victims of family violence and sexual assault, that the state government ensure ongoing funding for VOCAT legal services at FVPLS Victoria, including for the Melbourne metropolitan area.

### ***Koori victims support services***

#### *Magistrates' Courts/VOCAT*

Whilst Magistrates' Courts currently have an Aboriginal Liaison program, these workers mainly assist defendants in the criminal process. In Paper 2, Section 14 a proposal is made to introduce Koori victim support officers to Magistrates' Courts, who have the dual role of assisting and supporting Koori people with VOCAT, intervention order and family law hearings and providing support to Koori people required as witnesses in the criminal jurisdiction (also see Paper 2, Section 5: The experience of ATSI victims/survivors as witnesses).

## **Proposal 41 (See Proposal 20 in Paper 2, Section 14, and Paper 3, Section 3, Proposal 29)**

That ATSI Liaison Officers be introduced to support ATSI victims of crime in the Magistrates' Courts in crimes of family violence, VOCAT, and family law proceedings and as witnesses in criminal prosecutions.

#### *Victoria Police*

In Section 6 of this paper, an improved Victoria Police process for engaging and communicating with victims is proposed. Substantial project consultation feedback was received indicating that victims are unhappy with the way in which police communicate with them about the progress of prosecution.

As part of this review, the relationship between police and the VOCAT process should be clarified including with respect to referrals and the provision of police information. (Reference is made later in this paper to the significant delay faced by those seeking to obtain the necessary documentation to support an application pursuant to Freedom of Information [FOI] processes.)

### ***The hearing process***

#### *The hearing*

Feedback regarding the VOCAT hearing process was very positive. **Project consultation participants who had attended Koori List hearings had good things to say about the informality and attitude of the Tribunal members.** All described feeling extremely nervous prior to the hearing and being worried that it would be similar to their previous bad experiences in Court.

*... was easy ... not stressful ... good experience. In a back room at court rather than in courtroom itself [rural hearing].* **Aboriginal victim/survivor**

*... Very nervous in the lead-up ... took me back to that time when I was going to court which wasn't good. Didn't feel like there for court ... felt supported ... felt there to be assisted not because I'd done the wrong thing.* **Aboriginal victim/survivor**

*... Very nervous ... but was like I'd been believed ... good that it was a woman who heard the case. Best part that was female judge ... she explained had own kids ... knew what it would feel like to have this happen to a child. Sitting down at the table was great ... I felt privileged ... felt immediately like she was on my side.* **Aboriginal victim/survivor**

*... Hearing at Tribunal ... magistrate was female, I was happy with her ... she made me feel comfortable. Didn't feel intimidated. Comfortable to answer her questions ... felt better about myself ... she lovely. OK going to court ... being met out front made a difference for me.* **Aboriginal victim/survivor**

*... Magistrate sitting at same table was good ... she not looking down at me. This one of most important parts of being made to feel comfortable ... her sitting down at the table ... talking ... and listening.* **Aboriginal victim/survivor**

*... All I been involved in have been really happy about someone listening/understanding and giving recognition for what they have been through ... very culturally competent/respectful and understanding ... Good ... less formal ... casual but professional ... judge focused on acknowledging ... that behaviour wasn't appropriate ... money can't fix what happened but help to move in new direction ... that was brilliant.* **Aboriginal support worker**

*... Positive court experience mostly. Easier than anticipated ... lot had to do with privacy of courtroom at VOCAT.* **Aboriginal support worker**

*... Koori Court magistrates hear Koori VOCAT matters because have had cultural awareness training ... and experience sitting within Koori Court ... more attuned to the needs of Koori victims of crime ... more compassionate ... understand cultural barriers etc.* **Aboriginal support worker**

Some people indicated a strong preference not to attend a hearing and asked that this choice be respected wherever possible.

*... Prefer not to go at all ... no faith in the system ... Respect people's wish not to attend court where possible.* **Aboriginal victim/survivor**

*... Didn't want to go and explain things that happened to people that I didn't know ... statement much preferred.* **Aboriginal victim/survivor**

*... No hearing ... decided on papers. Happy not to go to hearing ... been in court too many times.* **Aboriginal victim/survivor**



**Participants expressed their appreciation for being able to choose where to have the hearing, and the value of this is reinforced by FVPLS's experience. For some, getting away from the local community in which the crime or the prosecution case occurred is very positive.** Generally in these circumstances FVPLS Victoria pays for such costs and seeks reimbursement from VOCAT. Other participants were happier with local hearings. Confidentiality remains a key concern.

*... Was a good decision to have the hearing away from the local community where the crime happened. Trip to Melbourne was good ... got out of the house for the day. I was quite happy once we got there. **Aboriginal victim/survivor***

*... Koori List staff need to have cultural awareness training, and also some knowledge of the community in regions where they are listing matters, and should be prepared to take advice from those who do have that knowledge if they do not [comment made in relation to location of video links]. **Non-ATSI lawyer***

**It was suggested in the consultations that pre-hearing nerves might be eased by the provision of a visual presentation about what it will be like at the Tribunal.**

*... Online or DVD for watching what it will be like at the Tribunal. Even though you are told what it will be like e.g. more relaxed hearing, you don't believe it till you get there. You are worried court will be bad like it was before. **Aboriginal victim/survivor, young person***

Participants also highlighted the need for having the option to be supported by a Koori liaison officer, particularly for applicants who have no other supports.

*... Another support person is a good idea ... Aboriginal support person ... giving the option of having a worker ... liked to have support person there. **Aboriginal victim/survivor***

A young person made the suggestion that it would be good to be able to access even a small part of the award right after the hearing—that is, on the day. This is thus seen as a positive ending to a stressful experience, and providing symbolic closure.

It is noted that the Department of Justice review is looking at the merits of a judicial versus administrative victims assistance process. Several of the advantages of an administrative process listed by the Department, including doing away with legal representation and hearings, do not seem to be beneficial to ATSI victims. Given the feedback received through the project consultations, a refined judicial process appears to be the preferable option.

### *Video links*

None of the consultation participants who had made applications to VOCAT had experienced video links. **In the experience of FVPLS Victoria, however, video links are extremely unsatisfactory as a means of conducting a VOCAT hearing and all possible alternatives should be explored.**

In the event that a video hearing must occur due to the applicant's location (most likely interstate) and/or inability to travel, the location of the link must be carefully selected, a support person for the applicant must be on hand, and the Tribunal must facilitate a private discussion via video link between the applicant and legal representative following the conclusion of the hearing.

*... the applicant who was in another state became extremely upset during the hearing. She had travelled to another town to attend the video conference venue and was without any support person at her end. Support provided by myself and the Tribunal member via video from Melbourne was quite inadequate. **Non-ATSI lawyer***

Considering that applicants are generally extremely nervous prior to and during hearings, and that cases are complex and give rise to the recall of traumatic events, the inability to provide on-the-spot support in a video link is extremely problematic.

### **Proposal 42**

That VOCAT's use of video links for hearings be avoided. Where a video link is utilised, an appropriate location and provision for applicant support must be ensured.

#### *Thoughts on alternative hearing venues*

The March 2009 VOCAT forum in relation to the Koori List raised the issue of whether Koori applicants would prefer to have their hearing outside of the court environment. The project consultations revealed mixed views on this. Some participants felt very strongly that there was a greater sense of justice in having a hearing in court. Others indicated that a hearing outside of court would have been preferable in their case, but also said that it is vital that alternative locations be completely confidential and that some ATSI community organisations would not be suitable in this regard (e.g. Aboriginal Cooperatives may not be able to ensure confidentiality due to their broad range of services). Participants were of the opinion that applicants should be given a choice in this regard. Consultation comments on this issue included:

*... Part of why I found the hearing easy was because it was heard in a back room at the court. If the hearing was away from the court it would need to be somewhere confidential to the community. Give options to people. **Aboriginal victim/survivor***

*... Community place would be better for me ... less intimidating. **Aboriginal victim/survivor***

*... I think it's better that it happens in the court environment ... seems more real ... properly acknowledged ... someone in authority is listening ... I can have closure ... I have been heard ... a person in law has acknowledged me. The place makes you feel safe/secure and is of significance. **Aboriginal victim/survivor***

*... I think I would prefer to be at the court ... that is where he got away with it ... I was believed and got something out of it in that same place. If it was away from the court I might not feel that the acknowledgement was coming from so high up. **Aboriginal victim/survivor***

*... If hearing had not been in courtroom would not feel like a legal process. Only other place to take would be down the river ... away from everywhere ... into more natural environment. But away from court would not put that seal of justice being served on the outcome. **Aboriginal victim/survivor***

*... Better to have hearing stay at court because gives official thing to it ... I would feel had been taken more seriously if judge sitting there as the judge acknowledging that what has happened is wrong ... may help to move along. **Aboriginal support worker***

*... That would be a good option for some people ... statement sworn in ... already traumatised. Takes a long time to get over. **Non-ATSI lawyer***

*... Case by case as to where hearing should be ... i.e. in court or other venue ... different for different cases and people. **Non-ATSI lawyer***

*... All clients I am aware of who went to hearing felt great benefit by being acknowledged by the bench. Feeling of vindication/affirmation. **Non-ATSI lawyer***

### **Proposal 43**

That VOCAT consider providing options to applicants in the Koori List to have applications heard in locations in the community, ensuring that confidentiality is respected. Consideration must be given to the importance many VOCAT applicants attach to receiving acknowledgement within the formal court environment.

#### *Gender of the Tribunal member*

**There was strong feedback that ATSI women applicants to VOCAT for crimes relating to family violence and sexual assault preferred their applications to be heard by female Tribunal members.**

Cultural and gender issues are interrelated and must be considered by the Tribunal. In this regard, international human rights instruments and the obligations they entail are relevant.<sup>17</sup>

*Article 4(f) of the Universal Declaration of the Elimination of Violence against Women*

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

Consultation feedback on this issue included:

*... Female ... and that was important ... made it easier. She made things comfortable. **Aboriginal victim/survivor***

*... Magistrate was female, I was happy with her ... she made me feel comfortable. **Aboriginal***

<sup>17</sup> The CEDAW Committee in 2006 urged special measures to improve the human rights of ATSI women in Australia.

**victim/survivor**

*... Female ... yes it was good ... made it easier. Aboriginal victim/survivor*

*...Hearing was good. Had woman magistrate ... that was good. Aboriginal victim/survivor*

*... Male ... he was OK. With my next case which is more sensitive family violence I would prefer a woman ... would find it more relaxing. Easier to talk. Aboriginal victim/survivor*

## **Proposal 44**

That VOCAT ask applicants in the Koori List whether they have a preference for a male or female Tribunal member.

### *Greater integration within court hearings*

Feedback from the project consultations indicated that it would be of benefit to applicants, and likely to increase the number of ATSI family violence victims accessing assistance (particularly urgent interim orders), if VOCAT interim orders were more readily made at the conclusion of or on the same day as intervention order hearings. Court processes to facilitate this, together with practitioner and support worker education about the process, are required.

## **Proposal 45**

That VOCAT interim awards be more regularly made available at the conclusion of or on the same day as an intervention order made in favour of a family violence victim. Refinement of court procedure and education of practitioners and support workers are required.

### **Counselling**

- Conventional one-on-one counselling: Paper 2, Section 8 discusses counselling for ATSI victims/survivors at length. Most consultation participants see one-on-one counselling for victims as important and lawyers at FVPLS Victoria indicated high and growing demand for counselling.

*... Counselling was helpful ... needed someone to record what was happening for me ... did help me. Aboriginal victim/survivor*

*... At the time, the one-on-one counselling helped ... wrote report. Let me get everything out ... made things a bit clearer ... sorted thoughts. I got what needed ... didn't need to continue. Aboriginal victim/survivor*

*... Had counselling and did find it helpful. Found the counsellor good to talk to. It was woman ... must be a woman. We don't trust men because of the violence. Took a little while to trust her and to deal with things. Helped me get a lot of emotions out ... need counselling after happens. Aboriginal*

**victim/survivor**

Given the limited resources for counselling in the community, access to counselling funds through VOCAT for both adults and children was considered an important aspect of assistance by participants as it broadens the options available. Counselling support for children was mentioned as helpful by several mothers, although difficult to locate—particularly in relation to family violence issues (sexual assault counselling is available mostly through the Royal Children’s Hospital and regional Centres Against Sexual Assault).

- Counselling options for children: Many workers felt that much more attention should be paid to the provision of support and healing services for ATSI children, and made mention that it would be great if VOCAT could support that process. It is noted that the Western Metropolitan VACP program has a child counsellor.

*... Kids are falling through ... need to look after kids ... case manage ... plans to meet emotional wellbeing ... Home and Community Care Program ... some service like that is needed for children ... create package after assessed ... could be connected to VOCAT ... Properly trained workers to work with children from perspective of healing/wellbeing.*

**Aboriginal support worker**

*... Needs to be more options for Koori kids.* **Aboriginal support worker**

*... through Children’s Hospital ... they were great ... Aboriginal liaison at hospital was helpful ... child techniques good.* **Aboriginal victim/survivor**

- Lack of culturally appropriate counselling options: The limited number of culturally and gender appropriate counsellors is a significant problem, especially in rural areas.

*... mental health services needed ... culturally appropriate services ... likely to be several different problems at the one time ... many incidents as victim causing counselling to be needed ... opens up a lot of wounds ... counselling can be as traumatic as some of the events ... lacking in psychologists/counsellors very badly in the area.* **Rural Aboriginal support worker**

*... is a problem with cultural awareness of counsellors ... disengage reasonably quickly ... counsellors have difficulty ensuring engagement, cultural awareness important.* **Non-ATSI lawyer**

*... Women say counsellors don’t understand where we coming from need to look at options that are more appropriate e.g. narrative therapy and how to fund those.* **Aboriginal coordinator family violence service**

*... styles of counselling must be culturally appropriate ... user friendliness and environment of trusted organisation.* **Key statewide Indigenous service**

Ensuring that psychologists who work with ATSI victims/survivors undergo ongoing cultural awareness training is important, and this extends to counsellors utilised by the various Victims Assistance and Counselling Programs. Quality control is essential with respect to culturally appropriate services. Resourcing for ongoing cultural awareness training and quality control must be ensured (again, see Paper 2, Section 8). Specific referral information for Koori victims in the various regions must be available. It is also important that, once a Koori client engages with a counsellor, access to that counsellor is maintained in the longer term through a VOCAT order.

*Yes and found helpful ... one-on-one has worked for me. If counsellor not Aboriginal ... feel they do not understand cultural things. I feel comfortable with the counsellor I have. I'm happy with the way this counsellor comes across. **Aboriginal victim/survivor***

*One woman I assisted had asked the Victims Support Agency for a list of counsellors for herself and her children. She was disappointed the list contained no information about specific Koori services.*

**Non-ATSI lawyer**

*... Culture was a big part of my recovery. The counsellor included culture in the sessions.*

*... In finding a counsellor for the children went through VSA list but that was unsuccessful ... Children finished up with private psychologist ... limited options for the children in terms of counselling/support ... No Indigenous agencies were on the VSA list I was given ... those options should be listed.*

**Aboriginal victim/survivor**

- Associated costs to access counselling: Participants highlighted the critical need for clients to be assisted with travel costs and child care fees associated with accessing counsellors.
- Funding for alternative healing/therapeutic/cultural programs: Support is essential for the development of options for conventional culturally appropriate counselling for ATSI victims, as well as for culturally based healing models, women's cultural programs and alternative therapy. Consultation participants argued strongly for victims to be given options to access alternative forms of healing including culturally based group work, narrative therapy, massage and yoga. FVPLS Victoria is submitting for funding in 2010 for an intensive women's cultural program, building on the *Sisters Day Out* program and focusing on women's cultural strength and identity.

*Healing processes for ATSI women should be about strengthening identity, understanding your role as an Aboriginal woman, reflecting, understanding and drawing on cultural ways to inform the present. Such work should only be done by Aboriginal women. **Aboriginal educator***

*... depends on the trauma that has been experienced and the individual ... what people have been exposed to, and over what period of time. Group work often works well. People can talk about issues and they are not alone/isolated. Others would feel shamed by experiences and will only be able to work one on one. **Aboriginal victim/survivor***

*... Need healing/counselling choices ... counsellors must be flexible with time/place etc. **Aboriginal support worker***

*... and counselling and massage was great ... recommend put in as option the massage. **Aboriginal victim/survivor***

*... Group sessions I've experienced are good ... art work sessions ... women's group have worked well as option ... good healing model. **Aboriginal support worker***

It was noted that the Victims Assistance and Counselling Program in Gippsland is funding alternative therapies under the five session guidelines and there was strong support amongst participants for this to be adopted across the state. Greater flexibility is critical.

*... consideration to be given to traditional forms of counselling ... narrative therapy and alternative types of therapy as well ... yoga ... victims program in Gippsland is doing that. **Non-ATSI lawyer***

- Victims assistance and counselling programs increasing ATSI accessibility: In addition to strengthening culturally appropriate counselling/healing options it is important for VACP programs to link with and be informed by ATSI organisations in improving accessibility for ATSI people (for example, VACP workers outreaching to ATSI agencies, or facilitating services in ATSI agencies or at locations of the victim's choice).

*... Being attached to a Koori service means the counsellor has a better understanding of Koori community ... women can talk about broader issues. **Aboriginal victim/survivor***

*... We are reluctant to refer clients to the Victims Support Agency because there will be referrals to other agencies and because we are not certain that services will be culturally appropriate for the clients. Accessing mainstream services generally is a problem, particularly where family violence or sexual assault is a factor. **Non-ATSI lawyer***

- Strengthened coordination between VACP services and VOCAT orders: In cases where victims access VACP services, and there is a need for continued services to be funded through VOCAT, it is essential that the continuation of service provision is seamless. Consideration must be given to whether the VACP arranged service is available on a long-term basis if VOCAT funded, and, if not, whether it is appropriate for a victim to commence that particular service. In addition, administrative delay should not impede the continuation of services (counselling in particular).
- Accessing psychological assessments where VACP and VOCAT guidelines are not met: Lawyers in the project consultations raised the concern that where psychological/psychiatric assessment reports are required to commence an application and where there is no VSA counselling eligibility, applications cannot proceed unless the legal representatives or the applicant can pay for the initial report. Lawyers also highlighted the need for applicants to

have the option of accessing counselling throughout the VOCAT application process (which often brings back trauma), including where the application relates to crimes long past.

- Option to not have to prove psychological injury where crime established: Some victims wish to proceed with an application but do not want to access conventional counselling, even for the purposes of an assessment and report. Where the crime is proven on the required onus, the client ought to be able to choose not to attend for psychological assessment and report. The proposal put forward in the Department of Justice discussion paper whereby applicants would not have to prove injury in cases in which, for example, a sexual assault had occurred, would assist in this situation. The option to accept a particular award without proving injury ought to be available.

*... I don't want to bring history up again ... it's too painful. **Aboriginal victim/survivor***

*... Bringing past back has been hard. I've thought a lot more about it than previously. I was trying to put past behind. Having to bring it up again has been hard. Was sent to psychiatrist I was not happy with. Am going to follow up with another psychologist. So I can get it all out once in assessment ... may not need to go back after that ... but I know will be available if I want it. **Aboriginal victim/survivor***

#### **Proposal 46**

That VOCAT acknowledge individual preferences for counselling/healing assistance and ensure that access to alternative therapies and culturally based healing processes are available and supported at both the interim and final order stages.

That VOCAT ensure that expenses are covered which facilitate an applicant's access to counsellors/psychologists, including child care and travel expenses.

That the Victims Support Agency and Victims Assistance and Counselling Programs implement processes to ensure strengthening of culturally appropriate counselling/healing options and continue to build links with ATSI organisations with a view to ensuring culturally accessible support options for ATSI victims/survivors.

(See proposals made in Paper 2, Section 9: Counselling services)

#### ***The benefits of the VOCAT application/award***

The project consultations revealed a range of responses as to what was most beneficial in terms of victims assistance.

In the experience of FVPLS Victoria, in crisis situations following recent family violence, interim orders that provide assistance for the items listed below are of substantial benefit:



- removal expenses
- security
- storage
- food/household expenses when relocating
- rent and bond for new premises
- counselling.

Cash payments via special financial assistance were considered most beneficial by a number of consultation participants, both because they had been financially disadvantaged by the violence and its impact and because it provided greater autonomy and flexibility as they progressed through the various stages of recovery. Further discussion about special financial assistance and its limitations is detailed below.

Awards for expenses and the benefits of these differ from person to person. It was observed in the consultations that the process of applicants thinking about what expenses might assist their recovery can be beneficial. The types of expenses that assist recovery for family violence/sexual assault crimes are likely to be unique to those crimes, particularly in light of the often severe and broad-ranging impact of family dislocation. The potential difficulties of being required to demonstrate 'exceptional circumstances' to be eligible for such expenses are discussed further below.

Some of the more commonly referred to items for which expenses were required include: vehicles to access services and safely get about in the community (particularly in rural areas); counselling (where appropriate counsellors are located); specialist medical services to avoid long public waiting lists; holidays to encourage positive bonding for families; new clothing to increase self-esteem; educational items for children including computers; and furniture and household goods (the benefit of being able to purchase new items, often for the first time, was emphasised). Other applicants assisted have benefited from travel expenses that allowed them to reconnect with travel and family.

*... Women get new things for the first time ever ... not second-hand stuff ... brand new uniforms/school books ... this very important. **Aboriginal support worker***

*... Holiday was good ... not able to provide that for a long time ... in fact that is the last holiday we did have ... fun ... bonding ... good to get away as a family and make stronger cultural connection. Gave the chance to see what the family looks like without stressful issues around us ... healthy, happy family. **Aboriginal victim/survivor***

*... Outcome for me affected my child in a good way because I was able to get through it and be my own person and be strong for her ... whole VOCAT process helped me be strong for her. We have become closer as a result of this. Actually brought us together. Having the holiday is about repairing the bond with my daughter ... Giving women back the power to have a say in their future. **Aboriginal victim/survivor***

*... Happy that got security through the Tribunal ... made me feel safer at home ... I slept ... not waking at every sound after got security ... Interim award for safety from Tribunal very important ... sooner*

*can happen the better. **Aboriginal victim/survivor***

*... Yes am glad went through it ... initially not going to because going through another court process was too much. Cash was most beneficial. Going to hearing gave closure. **Aboriginal victim/survivor***

*... relocation costs paid for ... that was great because I was able to move without worry of cost. Meant I was not in a worse situation because of the crime. Felt continually paying out because of the violence. **Aboriginal victim/survivor***

*... Received cash ... that was good for me. Had been financially disadvantaged by the family violence and for me this was the best outcome. **Aboriginal victim/survivor***

*... With the money ... have saved for a holiday ... It's to forget about everything ... time out ... closure. **Aboriginal victim/survivor***

*... All VOCAT assistance useful and able to get back on feet ... practical assistance ... new atmosphere ... and counselling and massage was great ... recommend put in as option the massage. **Aboriginal victim/survivor***

*... Computer ... learning about computers ... done Business 2 Cert., can now look for jobs ... instead of telly can get on computer and access information. Cuts boredom. **Aboriginal victim/survivor***

*... Clothes made me feel better about myself. **Aboriginal victim/survivor***

*... Cash because gives autonomy for spending. **Non-ATSI lawyer***

*... Satisfied ... at the time I was a bit upset about not getting all of the award ... now I am happy that it was broken up ... now years later I have different needs ... now older it is good to have. **Aboriginal victim/survivor***

*... Awards themselves important ... life changing where car etc. awarded. Also good for closure. **Non-ATSI lawyer***

*... Expenses for assisting in recovery ... requires involvement of client re. what will help ... what they want to do ... is more personal and positive spin re. what going on. Encourages clients to think about their recovery. **Non-ATSI lawyer***

*... Kids' counselling important ... VOCAT good if creates more options. **Aboriginal regional family violence coordinator***

*... Main issues ... lack of self-esteem or confidence ... lost transportation and public transport is a problem ... having a course and equipment for course ... gives goal/objective ... when have a lump sum is more empowering ... not being micro-managed ... buying stuff for house ... building up self-esteem and confidence ... opportunity to have a fresh start. **Aboriginal support worker***

*... Money is important ... and things like refurbishing old houses or furniture for people who never had anything ... either as relocation or to assist recovery ... furniture gives a real boost ... where nice things destroyed by perpetrator ... or where homeless because of the violence ... New items really important*

*... Holidays are hard to get ... family holidays are restorative to family ... particularly where children are involved ... Cars are excellent ... can completely change situations ... particularly where distances to travel ... Caravan to retreat to where things too hard in town ... go back to country to regroup ... Art supplies ... where applicant does art ... Teeth fixed ... often very expensive ... private medical treatment. **Non-ATSI lawyer***

*... Cars in regional areas ... very helpful to access services. **Non-ATSI lawyer***

### **Comments about the experience generally**

Participants were positive about the VOCAT experience particularly with respect to the acknowledgement they received and for some the closure it provided. Comments included:

#### **Aboriginal victims/survivors:**

*... Yes am glad ... people listened, something was done and the compensation bonus made me feel good ... debt, holiday ... so it acknowledged ... something happened.*

*... Yes was good thing to do ... to have my case listened to ... heard what I had been through and acknowledged what happened to me.*

*... Yes glad I did it ... helped me start fresh ... being believed was very important ... allowed me to move on.*

*... More cash would have been good. With someone so young ... need to be able to come back when older to get things.*

*... Yes do feel it is the right thing to do ... haven't got anything else to do ... it's about building up trust ... all gets knocked out of you ... you don't trust anybody.*

*... Doesn't equate but good to get something for what I've been through.*

*... Closure ... that can get on with things even knowing he not charged etc. ... that whole VOCAT process has given me closure ... he knows he done something wrong and I stood up and faced it.*

*... Had very good conversations with the VOCAT registrars ... they were very compassionate and that was important for me. They knew about my case.*

*... Yes glad went through it ... best that I was able to be assisted financially ... recognised that was a crime that had been committed. No amount of money would change circumstances but something right happened [through VOCAT] because didn't feel still at court fighting.*

*... Is a positive experience ... gives something would not have had before ... people are traumatised ... doesn't mean pain and suffering goes away ... but leaves them with a positive experience ... happy in short term ... not healed by the process though ... good for counselling ... long term.*

**Aboriginal support worker:**

*... Acknowledgement from the Tribunal ... get strength from ... learn a lot about themselves along the way ... that they can do things ... and get good outcomes.*

***Difficulties with the VOCAT process: how things might be improved***

*Length of time to finalise*

**An overwhelming response, by participants who had been through a VOCAT application as well as amongst lawyers and workers, was that the VOCAT process is too drawn out and needs to be quicker.**

VOCAT applicants are looking for closure and in this regard a slow process does not constitute a therapeutic response. It is important that change is implemented to bring about speedier resolution of applications. At the same time, the complexity of some applications and the deep significance of the process to the victim must be respected.

Some comments about this included:

*... Took a long time to finalise ... would have been better if could have been over much quicker.*

**Aboriginal victim/survivor**

*... Long drawn out process was hard.* **Aboriginal victim/survivor**

*... Clients gets very anxious ... once disclosed ... poured their hearts out ... opens up a lot of stress and emotion to work through ... VOCAT becomes part of working through that ... rings every week to see what is happening ... more about getting through the process with the time it takes ... disclosure required to pursue ... opens up a lot.* **Support worker**

*... One of the main negatives is how slow it is.* **Aboriginal support worker**

*... Time taken ... getting things listed for in-person hearings.* **Non-ATSI lawyer**

*... It takes a very long time to obtain police records through the Freedom of Information process ... as a legal representative it is often important to have access to police documents in preparing an application ... particularly where the application is more complicated. Some FOI requests were taking up to five and six months.* **Non-ATSI lawyer**

*... In some cases it does take longer to access evidence ... particularly for crimes which occurred some time ago. It is inevitable that some applications will take longer to finalise and in the end it is likely to produce a better outcome for the victim.* **Non-ATSI lawyer**

*... Telephone mentions/directions hearings may assist to move applications on a little quicker.* **Non-ATSI lawyer**

Suggestions included:

- Earlier directions hearings to sort out the nature of an application, any potential difficulties and perhaps set a timeline for processing the claim.
- Clarification about obtaining documents in support of applications. Who will access what as between the Tribunal and applicant/lawyer. (Police Freedom of Information requests have at least a four-month waiting period for access by lawyers.) See also the proposal made for an improved Victoria Police victims support/communication process.
- Where the Tribunal is in possession of documentation adverse to the applicant's application there must be a formal process by which VOCAT is required to notify an applicant or their legal representative of this at an early stage so that the applicant can respond appropriately.
- If obtaining other key documentation is critical but is going to be slow (e.g. in cases where there is no police report, or assaults took place many years ago), this should be discussed with the Tribunal with a view to the Tribunal providing whatever assistance it can. In some but not all instances subpoenas may be more appropriate.
- More Tribunal members allocated to the Koori List to facilitate more directions hearings and speedier listing of hearings once final documentation is filed.
- Clarification as to the interaction (in relation to timing) between the criminal prosecution process and finalisation of the VOCAT process.
- The possible introduction of an administrative victims assistance process has been raised within the context of the Victorian review. It is the view of FVPLS Victoria that the hearing option and judicial process must remain, and in fact is critical in many applications. A strengthened and more interactive procedure for applications determined on the papers may result in greater uptake of this option. (It is also noted that consideration is being given to the introduction of judicial registrars to assist in the VOCAT determination process. FVPLS Victoria supports this move, provided the hearing option with a Tribunal member is preserved.)

#### **Proposal 47**

That processes be implemented to ensure a generally speedier resolution of VOCAT applications which may include:

- additional Koori List Tribunal members/decision makers
- clarification with respect to obtaining necessary evidence as between the applicant/representative and VOCAT, noting in particular that obtaining police material through FOI is causing significant delay
- early disclosure by VOCAT of evidence adverse to the applicant
- additional directions hearings or mentions including by telephone to monitor issues that

cause delay

- clarifying the interaction between the criminal prosecution and VOCAT process
- strengthening of the S33 determination without hearing process.

#### *S54 Victims of Crime Assistance Act 1996: prior criminal history*

In determining whether or not to make an award of assistance or the amount of that assistance, the Tribunal must have regard to the following:

*(a) the character, behaviour (including past criminal activity and the number and nature of any findings of guilt or convictions) or attitude of the applicant at any time, whether before, during or after the commission of the act of violence;*

It is common for ATSI victims/survivors of family violence and sexual assault to also have a criminal history. **Often the impact of having been a victim of childhood crimes in particular has contributed to drug use and criminal offending. Poor contact between ATSI people and the justice system more generally has impacted on this situation.**

**Project participants indicated that raising this issue with prospective applicants is often a disincentive to their proceeding, that the connection between prior offending of the victim and their experience as a victim of family violence or sexual assault is unfair, and that discussion of these issues at the final hearing detracts from the hearing and from the overall benefit of the process for the applicant.**

*... S52 and S54 ... problems for many clients ... often want to back out when advised of this ... when they hear will have to go to court and answer questions ... commitment to process is significantly reduced. Goes back to deserving and undeserving victims ... should be as of right. **Non-ATSI lawyer***

*... where legal issues to be addressed ... prior convictions ... discussions need to be had but detract from hearing being about the victim ... perhaps deal with more in directions hearings. **Non-ATSI lawyer***

*... Not positive when questioned about the past criminal history which may have nothing to do with the current set of circumstances of women as a victim and may not even have anything to do with violence against others. Past criminal history may also be repercussions of violence in own life and consequent substance abuse etc. Basically it is irrelevant and other jurisdictions consider it so. ... Criminal history ... thefts re. substance abuse issues ... is part of experience re. what happened [as a victim] ... feel have to justify but have moved on ... in most cases have moved on. In one case a criminal matter was focused upon [drug use] she had moved beyond that ... for her was not worth it ... not worth justifying that not going to happen ... felt so sorry that happened. Day needs to be dedicated to victim's hearing ... other matters should be dealt with before as directions. **Non-ATSI lawyer***

It is acknowledged that Koori List Tribunal members are aware of and sensitive to this issue. However, improvements are still required, particularly to ensure that applicants and legal

representatives are aware of the manner in which the issue will be addressed and are clear about the sort of information the Tribunal will consider in determining whether an award should be reduced. Often evidence or letters from community elders or workers are important in providing the full individual and cultural context of the past offending.



*FVPLS CEO Antoinette Braybrook, FVPLS Lawyer Simone Elias and Sisters Day Out Project Co-ordinator Kelly Faldon.*

**Clarifying Tribunal guidelines on this and other matters would be helpful.**

If prior offending is considered to be a reason to reduce or refuse an award, this should only be in exceptional circumstances. Often offenders have been victims of crimes as young people which has led to drug use, mental health issues and criminal offending; however, those matters may not be disclosed by the applicant or form part of the current VOCAT claim. The Tribunal must consider the background to the offending and determine its relevance.

If prior offending continues as a matter to be considered, processes are needed to ensure that the practitioner is made aware of the applicant’s criminal history so that it can be dealt with at an early stage rather than at the final hearing. The guidelines should set out factors that the Tribunal is to consider when dealing with prior offending, such as counterbalancing community contribution, factors that led to the offending or whether the penalty has been completed, as well as the manner in which evidence may be presented.

*Section 52 Victims of Crime Assistance Act 1996*

52. Mandatory refusal of application:

*The Tribunal must refuse to make an award of assistance if:*

*(a) it is satisfied that-*

*(i) the act of violence was not reported to the police within a reasonable time; or*

*(ii) the applicant failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed—unless the Tribunal considers that special circumstances brought about that result;*

**Failure to report to the police or asking the police not to proceed to prosecution is also a common feature in applications for assistance by ATSI victims/survivors of family violence and sexual assault.**

This is contributed to by the applicant’s poor experiences with police through the criminal justice system, ongoing mistrust of legal and court processes, and concern about the impact that taking further legal action might have upon family relationships. Low rates of the reporting of sexual

assault by ATSI women are well established. In addition, the nature of family violence and sexual assault often results in these crimes remaining hidden.

The legislation makes it clear that the Tribunal must refuse applications not reported to police within a reasonable time or where an applicant failed to provide reasonable assistance *unless special circumstances exist*. It is the experience of FVPLS Victoria that there is limited knowledge in the community of the special circumstances provision or what information the Tribunal will consider to be 'special circumstances'. A belief that claims cannot proceed without police prosecution or reports is a barrier to applications being made.

**Exceptional circumstances for failure to report, delayed reports or failure to assist with an investigation should be clarified in Tribunal guidelines.** So long as there is other supporting evidence to prove that the crime occurred on the required onus, and that reasons for the failure to report are provided, the lack of a police report should not bar an application for assistance. Often it will not be appropriate for a prospective applicant to be forced to make a police report so that the VOCAT application can proceed. ATSI cultural issues and harmful experiences with the justice system and police remain highly relevant in this regard. **At a policy level, the requirement that victims of family violence and sexual assault mandatorily take responsibility for pursuit of legal action against offenders in order to access support and assistance must be reviewed.**

#### *Offender notification*

It is those cases of a serious nature, and where there has either been no police report within a reasonable time or police have not proceeded to prosecution, that offender notification is considered. Offender notification is therefore more likely for applications in the Koori List and particularly in family violence and sexual assault cases where crimes are hidden and barriers to reporting and prosecution have been compounded by the nature of the crimes. Prospective offender notification can be a significant barrier to these applications proceeding.

It was mentioned during the project consultations that in some interstate jurisdictions (NSW being the example provided), offender notification does not happen—a decision is made on the balance of probabilities as to whether a crime has occurred. Participants emphasised that this significantly lessens the anxiety of prospective victims assistance applicants, and therefore would be a preferable procedure for Victoria to adopt.

A refinement to the position of the Tribunal on notification where no police charges are laid should be considered, particularly in cases of historical family violence and childhood sexual abuse which is supported by secondary evidence like medical records, DHS material or contemporary disclosures.

Under the current system, where the Tribunal after receiving an objection to notification intends to proceed with the notification, a Directions Hearing with the applicant present should occur. This would provide the best forum in which to communicate about the Tribunal's concerns and to perhaps come up with alternative ways forward. It might also clarify matters for an applicant who is considering withdrawing.



The safety of the applicant is paramount. Notification may in many cases seriously compromise the safety of the applicant. The Tribunal needs to be aware that notification of an offender in many cases will equate with notification of the broader community if that information goes farther than the offender. In such circumstances, applicants feel that their right to privacy has been invaded.

**A brief fact sheet, or pamphlet or acknowledgement letter, which explains why offender notification may sometimes be raised and that the Tribunal will *never* notify an offender without the applicant first having the right to object or the right to decide whether to proceed, could be of assistance.**

**Where the Tribunal can make a decision early that an offender will *not* be notified, standard procedural orders to this effect would be helpful.**

The Department of Justice discussion paper raises questions about the recovery of VOCAT awards from offenders. In addition to the impecunious situation of many offenders, this issue also gives rise to confidentiality concerns in that offenders become aware that victims have made applications and of what awards they received. Again, in family violence and sexual assault cases in particular, this would be especially confronting for prospective applicants and may engender a risk to safety. Unlike other violent crimes, ongoing direct and indirect contact with offenders often occurs following family violence.

Where an offender has been convicted of a crime it would be appropriate for the state to pursue an offender on behalf of the victim. Safety and confidentiality issues would be less of an issue given that a public trial/hearing would have occurred, and if an independent state body was responsible for the legal action to pursue less responsibility would be perceived to fall upon the victim.

#### *Applications on behalf of children*

Dedicated processes within the Koori List are required to ensure that the rights of ATSI children as victims, and their equality before the law, are progressed. The need for improved access to legal and support services is detailed in Paper 2. The impact of family violence upon children as both primary and secondary victims is significant, and greater awareness of this is evident within the *Family Violence Protection Act 2008*. **The need for enhanced and integrated support services and assistance for children impacted by family violence is widely acknowledged. The role of VOCAT with respect to assistance available for children must also be considered.**

**Issues related to children attending hearings; psychological evidence and counselling; forms of evidence; and appropriate awards require attention. VOCAT guidelines on these areas would assist. Community education is also required to ensure that children's rights are pursued.**

**ATSI children are vastly overrepresented in the child protection system in Victoria. Many are victims of crime. FVPLS Victoria is concerned that ATSI children under care and protection orders may not be accessing victims assistance/compensation rights.**

*... issue of children in care needing VOCAT done ... who responsible to look after ... to pursue VOCAT ... issue of who should apply ... carer not guardian etc. ... case worker is to follow up VOCAT ... process needs clarification and oversight. **Non-ATSI lawyer***

*... I have seen many clients who have been in state care as children and where their rights as victims of crime have not been pursued ... the implications in attempting to pursue these claims many years down the track are multifaceted ... not to mention the trauma to the victim of essentially reliving the past. There needs to be improved processes for dealing with claims for crimes which happened years before, and also mechanisms to ensure that the rights of children in out-of-home care now are appropriately pursued to ensure this serious problem is not perpetuated. **Non-ATSI lawyer***

*... some of the issues which arise when assisting children is how much to involve them in the legal process, particularly where the child has been traumatised, referrals for psychiatric/psychological assessment, the appropriateness of counselling and locating specialist culturally appropriate counsellors, the attendance of children at hearings, the nature of expenses claims. **Non-ATSI lawyer***

### **Proposal 48**

That VOCAT consider developing guidelines for the Koori List to provide direction to applicants and legal practitioners and to assist the Tribunal in its decision making. Issues covered under S52 and S54 of the Act, offender notification, culturally appropriate counselling healing/options, VOCAT hearing options, provision of culturally informative support material and children's applications should be included in the guidelines.

### **Proposal 49**

A dedicated review of victims assistance processes and VOCAT applications on behalf of children should occur. Specific guidelines may be required.

This review must urgently examine the situation of children who are under care and protection orders to ensure that their rights as victims are being pursued in a timely manner.

### *Sexual assault and family violence offences*

FVPLS Victoria is of the view that family violence and sexual assault offending impacts uniquely upon victims and requires a dedicated response. The Victims of Crime Assistance Act and Tribunal procedures do not adequately deal with these crimes. A review of victims assistance provisions for crimes of family violence and sexual assault needs to occur.

Issues to be considered in such a review include the following:

- The Department of Justice discussion paper has raised the possibility of removing the need to prove injury in some cases. As previously mentioned, FVPLS Victoria supports this proposal, which would be of particular benefit in sexual offence cases and where applicants are reluctant to access psychological intervention.

- Sexual assault victims are often victims of multiple assaults over an extended period of time. Where the assaults are perpetrated by the same offender the Tribunal will often determine the acts of violence to be related so that one award of financial assistance is given for one act of violence. Legal advocates, however, are in the position of arguing that such criminal acts should not be treated as related, so as to increase awards commensurate with the gravity and extended nature of the crimes. The same issue arises with family violence, which is rarely limited to a single act of violence.
- Interstate jurisdictions have developed categories of assistance for domestic violence applications to better reflect the nature of these crimes. Similar provisions could be considered for family violence and sexual assault offences in Victoria.
- A review of the levels of awards available for these crimes is required. (It is noted that the Department of Justice discussion paper looks both at alternative models for determining awards and whether the amounts of awards should be increased.) An overall review of award caps for all crimes is required.
- There is established low reporting of sexual assault by ATSI women, and failure to report to the police within a reasonable time or to assist with prosecution is a feature of Koori List and family violence/sexual assault cases. Provision in the Victims of Crime Assistance Act S52 currently makes it difficult for these applicants to make a successful application.
- For adult victims of childhood sexual assault the transitional provisions in the Victims of Crime Assistance Act are complex and necessitate legal assistance. Generally, for crimes that occurred before 1 July 1997, unless a prosecution occurs after that date, victims will not be eligible for special financial assistance despite disclosure of these crimes, yet onset of or connection of psychological injury with the crimes is regularly delayed. (*The Australian Medical Journal* has recently published a research paper indicating that people who were sexually abused are 18 times more likely to commit suicide and 49 times more likely to die from an accidental overdose than are the general population.)<sup>18</sup>
- **In cases of childhood sexual assault where the applicant is not entitled to special financial assistance (SFA), the applicant still must make out 'exceptional circumstances' to be eligible for expenses to assist with recovery. FVPLS views this as highly inappropriate.**
- Tribunal members often take the view that expenses claims are excessive. However, given that many sexual assault applications have no SFA attached to them, and also given the low amounts of compensation for multiple acts of violence and otherwise, expenses to assist with recovery can provide a more appropriate outcome relative to the crime and an improved sense of justice for the applicant.

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<sup>18</sup> ABC News, 14 February 2010 'Abused children face greater suicide risk', [www.abc.net.au/news/stories/2010/02/14/2818989.htm](http://www.abc.net.au/news/stories/2010/02/14/2818989.htm).

- Psychological injury is predominant in cases of family violence and sexual assault. The lack of definition of 'serious' injury in the Act, particularly in relation to psychological injury, gives rise to much uncertainty.
- In relation to past childhood sexual assault offences, psychological reports are often key evidential elements to an application and are required before lodging. At the present time, unless the applicant or their representative can pay for a report or a professional is prepared to be invoiced (almost unheard of) an application cannot proceed.
- Where childhood offences occurred when children were in state care, DHS files will be required which often contain extremely sensitive information that is difficult for applicants to confront. Undertakings are often required for information to be provided only with appropriate professional supports in place. This professional support may be required at a point where the Tribunal is not in a position to make interim orders to cover costs.
- The nature of expenses required to assist with recovery are unique in family violence and sexual assault crimes given the impact of dislocated family and physical relocations for safety reasons.
- **Counselling required for victims of child sexual assault and family violence is often long term; and ongoing connection with family often causes long-term post-traumatic stress disorder (PTSD) triggers.**
- **The gender of Tribunal members hearing family violence or sexual assault applications is critical, and cultural factors must also be considered in applications made by ATSI women.**
- Children will figure in applications relating to family violence and sexual assault as either primary or secondary victims. Appropriate processing of children's applications in terms of assessment of psychological injury and involvement in the VOCAT process needs to be clarified. Links to culturally appropriate supports and services for young people are discussed in Paper 2.
- The time limit for applications by children in the Victims Assistance Act is two years (subject to extension of time provisions), which is restrictive compared to personal injury law time limits for children.
- **Children on care and protection orders are often eligible for victim's assistance; however, it is not clear whether those rights are being pursued. Processes within VOCAT aimed at clarifying the appropriate persons to make these applications are required.**
- **For children who are involved in the VOCAT hearing process dedicated information pamphlets should be available that target young people.**

## Proposal 50

That a review of victims assistance legislation and VOCAT procedure occur with respect to crimes of family violence and sexual assault. This review should incorporate analysis of victims assistance schemes in other states and territories with respect to legislation and procedure as well as levels of financial assistance.

Within the review, particular attention should be given to the assistance available to adults who disclose crimes of sexual assault and family violence committed against them as children with a view to extending special financial assistance to these cases and to ensuring that the rights of children under state care orders are pursued in a timely manner.

VOCAT guidelines should be developed for applications relating to crimes of family violence and sexual assault and which incorporate or separately provide guidance on applications for young people.

Consideration of the particular issues raised in this discussion paper should inform both legislative and procedural reform and the introduction of any guidelines.

### *Amounts of cash available*

**Most applicants in the consultations commented that cash amounts of assistance should be more generous and reference was made to financial compensation previously available in Victoria under earlier victims assistance legislation.** Reference was also made to the fact that interstate clients receive more generous compensation. The staff at FVPLS Victoria who work in both the Victorian and NSW jurisdictions have experienced vastly different outcomes dependent upon which side of the border the criminal act occurred.

Feedback from the project consultations indicated that increased cash compensation through VOCAT would allow for a less paternalistic approach to assistance and give greater autonomy to victims. The view was also expressed that the benefit of a large sum of cash to a victim (as opposed to expenses) is dependent upon their particular circumstances at the time, and that some people have greater difficulty effecting positive change in their lives through cash payments due to ongoing life difficulties such as drug and alcohol issues or gambling. There was, however, resounding support for access to greater assistance through VOCAT—and the most effective means of providing that award is likely to require case-specific flexibility.

The Department of Justice discussion paper notes that the average amount of financial assistance for VOCAT applicants in 2008–2009 was \$7,960. It questions whether there should be additional support available for the unemployed given they cannot access lost wages, whether greater financial assistance should be available for victims who can never recover and whether award caps should be generally increased. FVPLS Victoria supports all of these options. The need for special financial assistance to also be extended to childhood sexual assault/family violence victims disclosing or seeking assistance as adults has been discussed above.

### **Proposal 51**

That the state government again review the levels and availability of special financial assistance under the Victims of Crime Assistance Act with a view to strengthening the assistance available. Flexible options for payment should be incorporated.

*'Exceptional circumstances': expenses to assist with recovery*

**Some of the lawyer participants expressed the view that given the small amounts available for special financial assistance under the legislation, the requirement to show exceptional circumstances to obtain expenses to assist with recovery is inappropriate and should be removed from the legislation. At the very least, applicants who are eligible for assistance other than financial assistance (such as childhood sexual assault victims) should be exempted from the 'exceptional circumstances' requirement.**

### **Proposal 52**

That consideration be given to removing, or at least limiting, the requirement to show 'exceptional circumstances' to obtain expenses to assist with recovery.

### ***Other procedural issues***

#### *Directions hearings*

Lawyers consulted thought that claims would proceed more quickly and final hearings would be less onerous for applicants if more directions hearings or pre-hearing conferences were listed to resolve procedural and legislative complications in an application. VOCAT is likely to require additional resources for this to occur, although some of these hearings could take place by telephone. The Tribunal will often have access to information, particularly police information, to which the applicant or their practitioner will not. If this information is to be relied upon by the Tribunal in its decision making it ought to draw this to the applicant's attention at the earliest possible time. It is inappropriate and unfair to applicants that these issues are raised at a late stage of an application.

#### *Client support issues (also see separate proposal for ATSI victims support officers in Magistrates' Courts)*

With respect to organising quotes and other documents for claims for expenses to assist with recovery, intensive client support is needed, which is not a good or appropriate use of a lawyer's time. The time and resource demands of this work are substantial and need to be acknowledged and funded as an integral part of the VOCAT application process. FVPLS Victoria urges funding of paralegal support workers to work alongside all lawyers in Aboriginal Legal Services to meet the levels of client support required to engage in and sustain the legal process—victims assistance cases being no exception. If there is a decision to fund dedicated VOCAT legal positions, additional paralegal support funding should also be allocated.

### *VOCAT letters to applicants*

**All VOCAT proforma letters should be reviewed so as to contain more useful information and to be more reader friendly for applicants.**

*... Many clients do not understand the formality of the language used in Tribunal correspondence sent to them, particularly about awards. An easy solution would be to redraft the client letters in plain English as the standard form. Non-ATSI lawyer*

### *Related victim applications*

Related victim applications are complicated in terms of privacy. Processes need to be improved and more clearly defined for cases where related victims do not want to be at court with other family members or raise their issues in front of other family members. More information about these processes is required for potential related victim applicants.

### *Medical assessments/reports*

Lawyers commented that organising specialist medical assessments and reports for clients often poses a barrier. Medicare arrangements further complicate this process. Guidelines or practice directions would assist.

*... Few specialists are prepared to let clients take an invoice, mostly they require payment up front on the day ... we can't give the client the cash for the appointment, the specialists won't send the account to us and the Tribunal only pays on reimbursement. Non-ATSI lawyer*

### *Involvement of Koori elders*

A suggestion emerged from the consultations that where the criminal matter that is the subject of the VOCAT claim is dealt with in the Koori Court, victims should have the option of Koori Court elders providing them with information at or to the VOCAT hearing about what was said to an offender in the Koori Court hearing.

*... As a very far-away goal, I also wonder if there may in the future be the ability for the elders from the Koori Court [who have sentenced the offender] to also sit with the Koori VOCAT member at the final hearing [with the victim's consent]. My clients do not usually attend at Koori Court hearings [or even mainstream sentencing hearings] and [so] it is meaningful for them to hear what was said to the offender about their behaviour. This means a lot to them. Non-ATSI lawyer*

The Department of Justice discussion paper also raises the possibility of introducing therapeutic or restorative justice principles to victims compensation processes. FVPLS Victoria urges extreme caution with respect to the introduction of restorative justice where crimes of family violence and/or sexual assault have occurred. Many women who have experienced family violence or sexual assault often do not wish to communicate with the offender and the confidentiality of the victim's application is critical to many (also see Section 7: Restorative justice). Community consultation that ensures that the voices of Aboriginal and Torres Strait Islander victims/survivors and women and children are heard must precede any progress in this regard.

### **Proposal 53**

That a review of VOCAT Koori List procedure be undertaken, which includes the following matters:

- directions hearings
- client support issues
- VOCAT letters to applicants
- related victim applications
- medical assessments/reports
- involvement of Koori elders where the applicant consents.

## **4.4 Sentencing Act orders/civil action**

At the start of this section it was mentioned that due to the limited numbers of convictions for family violence and sexual assault crimes to which the FVPLS Victoria client group are victims, combined with the impecunious situation of most offenders, the scope for these compensation options is generally limited. FVPLS Victoria is not funded to conduct personal injury litigation and clients with prospective claims are generally referred privately.

With respect to Sentencing Act orders it is the experience of FVPLS Victoria that victims are either not made aware of this option by the police or prosecutors, or are not sufficiently supported to pursue the option where it is available. Even where an order is made it is still up to the victim to pursue the debt. In some cases victims decide they are not psychologically able to pursue an offender personally for compensation/damages. In other cases ongoing safety fears cause victims to elect not to personally pursue the offender.

FVPLS Victoria supports a process whereby a state body pursues convicted offenders for damages on behalf of victims. Where a victim is particularly concerned about this causing ongoing security issues an exceptional circumstances provision to exempt recovery should apply (which is likely to include other criteria). FVPLS Victoria does not support seeking any levy from impecunious offenders.



## Section 5: The experience of ATSI victims/survivors as witnesses

The project consultations included a discussion of experiences of having to give evidence in court about family violence or sexual assault crimes. A number of the issues raised have been dealt with in Section 3: Family violence/intervention orders and in Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault.

Consultation responses confirmed that giving evidence remains an extremely intimidating experience for women and that effective support during this process is essential. It was reinforced that the police or prosecutors cannot fulfil this support role. The option to have an ATSI support person was recommended whilst the need for alternative mainstream options is also acknowledged. Again, with crimes of family violence and sexual assault, it was emphasised that family supports are not always available to victims and that availability of professional supports is therefore critical. Below is a summary of additional issues raised together with a selection of comments from the project consultations.

- **Court support** for ATSI victims/survivors of family violence and sexual assault will include criminal prosecutions, intervention orders, family law, VOCAT and child protection. **FVPLS Victoria is proposing that Aboriginal liaison positions be introduced to the Children’s Court and the Family Court. Consideration should also be given to dedicated ATSI victims court support positions at Magistrates’ Courts and for specialist support in County/Supreme Court trials.** Ensuring victim safety and wellbeing would be a key aspect of the role.
- **Paralegal support positions** attached to Aboriginal Legal Services including FVPLS Victoria would facilitate broader support including at court. FVPLS Victoria’s experience confirms that this role would ensure that women sustain their engagement with the legal system.
- **Remote witness evidence** was favoured amongst project participants and there was a mixed response as to whether this option is being offered to victims in family violence cases to an adequate degree. (It is noted that provision for remote witness evidence is stipulated in sex offence cases.)<sup>19</sup> One lawyer commented that prosecutors are not pursuing this option robustly enough. Comment was made that remote witness facilities are being pursued only for very violent crimes and that there needs to be greater awareness of the right to apply to give evidence remotely (these comments were made mainly in connection to the Magistrates’ Court).
- **Police communication with potential witnesses** was raised as problematic, in so far as the police are not keeping potential witnesses updated as to the status of the criminal prosecution and whether evidence would be required, which women find very stressful.

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<sup>19</sup> S37CAA Evidence Act 1958.

FVPLS Victoria has separately proposed that Victoria Police urgently review its processes around communication with victims of crime.

- **Expenses to support court attendance:** FVPLS Victoria has been in the position of funding clients to attend court including for travel, accommodation and food. However, the service receives no dedicated funding for these costs (a donation fund has been used). Therefore, funding arrangements should factor this in.
- **Debriefing:** Access to debriefing directly after giving evidence, in addition to longer-term counselling, was also raised as important in supporting ATSI victims/survivors involved in the court process. For those people already linked in with counselling support this is not such an issue, but for those without such supports in place options should be made available—and this is likely to be the role of a court liaison or support officer.

Comments included:

*... I had to give evidence in front of him ... that was awful ... he was giving me looks etc. ... I felt scared by him being there listening to what I said ... I was worried he would come out of jail and kill me. **Aboriginal victim/survivor***

*... Scary ... confronting ... to have the perpetrator in the same room was scary. **Aboriginal victim/survivor***

*... I haven't been asked to give evidence yet. I wouldn't want to give evidence in court against family ... I don't like court ... would feel worried about doing it ... scared. Also because I would be giving evidence against family. Having support people around would help. Remote witness might help ... not sure. I didn't even want to be in same building as offender. It was good to be in a separate room at the court when waiting.*

**Aboriginal victim/survivor**

*... I had to go through two or three times [giving evidence]. Very stressful and awful ... had a big impact on me ... Gave evidence on video ... video was better ... remote witness would have been better each time. Giving evidence in court in presence of offender was terrible.*

*Debrief after court each day would have helped ... Option of having a talk at the end of each day would have been good. **Aboriginal victim/survivor***

*... use of remote witness facility is good ... feel at ease ... not in room with alleged perpetrator ... gets widely used. Children and adults ... also for security reasons too ... Koori person in victim support role for region would be good to complement the other victims workers ... Having Koori support person is important. **Aboriginal support worker***

*...Very traumatic ... women will be scared to give evidence in front of violent male ... Good when perpetrator is not present ... when perpetrator is present is difficult to get up in front of person and be asked questions about what is in the application ... Court should avoid this as much as possible ... better to have Koori supports for women ... Better out of witness box. **Aboriginal support worker***

... Better exploration of alternatives to give evidence. Yes have to make application for this. People said did not want to have to give evidence in same room but prosecutors do not try hard enough to pursue those alternatives. **Non-ATSI lawyer**

... Had some support from local DV worker ... felt safe because she was there. Helped me along a lot. If the support was not there I would not have been able to go through with it. My answer to everything had been to run away and disappear. **Aboriginal victim/survivor**

... Supports at court is important ... not just professional ... also family support and police support and VSA or DV support services. Needs to be a person there for the victim not because they are the prosecutor and want the case to get up ... they are separate roles. Support person ought to be someone the victim has met before and trusts ... not just meeting on the day. **Non-ATSI lawyer**

... Having an Aboriginal worker is a great support. **Key statewide Indigenous organisation**

... Need support person throughout court process ... family may not support ... professional support also needed ... use of remote room is important ... Should have option for debriefing ... every day after court hearing ... remote witness should be an option ... too much humiliation in the courtroom. **Aboriginal support worker**

... Having a support worker is very important to make sure woman is clear on what is happening ... Sympathetic police officer also makes a big difference. **Aboriginal support worker**

... He taken to court for breach of order. I wouldn't have gone to give evidence ... wouldn't have done it ... I would have known it would have triggered him off. I would have been less safe. It would have been good to have more support throughout. I couldn't talk to friends but could have talked to professional person. **Aboriginal victim/survivor**

... No court evidence required but my statement used. I didn't know what was happening during the police process. I didn't know what my coping mechanisms would be if I had to give evidence. **Aboriginal victim/survivor**

... No information/support offered by police. No preparation for court in the event that I would be called. I was scared of repercussions and of standing in court. I didn't want to physically be in the same room as someone who had instigated violence against us. I had no one to talk to about what I was going through ... I was fearful for family's safety ... family is so important to Indigenous people but I couldn't involve them because I was fearful for their safety. I was not being told my family would be safe. **Aboriginal victim/survivor**

... Didn't have to give evidence. I needed to know what was happening with the offender. I wanted to know something was being done ... that police were pursuing. I needed to know this for closure ... to be able to move on. Police never explained what my role may be as a victim. I didn't understand the criminal process or what was involved. **Aboriginal victim/survivor**

... lead-up is harrowing ... has to deal with families and own emotions and self-esteem ... after been victim of crime ... then to deal with prosecutions and attitudes ... seen prosecutors harassing victims to give evidence ... where don't want to is judgement call ... you have let us down ...

*clients have felt bullied by prosecutors. Non-ATSI lawyer*

*... funding for travel and other costs incurred by victims in attending court is often needed but the service is not funded for this. Non-ATSI policy worker*

*... things like petrol, food, child care must be taken care of. Non-ATSI lawyer*

### **Proposal 54**

That Victoria Police/prosecutors inform victims of their right to seek remote witness options and actively pursue this option if it is the victim's preference.

That ATSI victims/survivors who are required to give court evidence about a crime of family violence or sexual assault have the option to access specialist ATSI victim/witness support workers and culturally appropriate debriefing.

In summary, other proposals made throughout the FVPLS Victoria papers include:

- commitment to ongoing funding of paralegal support workers in the FVPLS program and Aboriginal legal services more generally
- introduction of ATSI Liaison Officers in the Children's Court, Family Court and to support victims in the Magistrates' Courts
- ongoing cultural awareness training of legal practitioners, court and tribunal staff
- enhanced Victoria Police communication with victims of crime including with respect to prosecution process and enhanced ongoing cultural awareness training
- funding for material aid for victims engaged in the legal process e.g. child care, transport, accommodation and food.

## Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault

### 6.1 Introduction

**In improving access to the law and justice system for ATSI victims/survivors of family violence and sexual assault, culturally appropriate police responses are critical.** The police are often present in crisis situations and police responses can determine the path subsequently taken by a family violence victim. Previous experiences with the police also determine the willingness of family violence victims to seek protection.

Police responses to crimes of sexual assault are dealt with discretely, with initial investigations generally occurring through the Sexual Offence and Child Abuse Unit (SOCAU) or the Sexual Offences and Child Abuse Unit Investigation Team (SOCIT).<sup>20</sup> The perpetrator of sexual violence against women and children is likely to be someone well known to them, often a partner or family member.<sup>21</sup> In some cases, sexual assault is clearly part of an ongoing situation of family violence, where sexual assault is used as a tool of violence, a means of control and oppression, and to create fear. See also Paper 2, Section 10 Sexual Assault.

**Underreporting of both family violence and sexual assault (particularly by intimate partners or family members) continues amongst ATSI victims/survivors.**<sup>22</sup> This has been documented in numerous reports and is confirmed by the experience of FVPLS Victoria<sup>23</sup> It is critical that police responses to family violence recognise sexual assault as a significant aspect of family violence and ensure integrated culturally appropriate responses. Strengthening culturally appropriate police responses along with other strategies is likely to improve women's access to the justice system to ensure their safety, protection and pursuit of legal rights.

Given the high levels of underreporting and difficulties with police data collection in relation to identification of Aboriginals and Torres Strait Islanders, available data is likely to significantly underestimate the levels of family violence and sexual assault crimes against ATSI people in Victoria. Nevertheless, the 2009 Productivity Commission report, *Overcoming Indigenous Disadvantage: Key Indicators*, includes Victoria Police data showing the rate of domestic violence-related assault for ATSI females in Victoria to be five times the rate for non-ATSI females (4.137). Sexual assault figures are also higher (about twice as high for adult ATSI women and three times as high for female ATSI children).

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<sup>20</sup> SOCITs are gradually replacing SOCA Units within Victoria Police and will see prosecutions through to conclusion.

<sup>21</sup> Australian Law Reform Commission (2010) *Family Violence: Improving Legal Frameworks Consultation Paper*, April, p. 699.

<sup>22</sup> *Ibid*, p. 699.

<sup>23</sup> *Raped by a partner: A research report*, Women's Health Goulburn North East, 2008 p. 154 (referring to statistical information ACSSA 2003).

## 6.2 Koori Family Violence Police Protocols Project

FVPLS Victoria is currently undertaking a Koori Family Violence Police Protocols Project (KFVPP) funded by the Department of Justice Victoria through Victoria Police.

The overall objective of the project is to strengthen the police response to incidents of family violence in ATSI communities, with the longer-term aim of reducing both the number of family violence incidents and the rates of families experiencing repeated incidents of family violence. The protocols are aiming at a holistic, improved response for all parties including victims, children and perpetrators. The need for improvements to the police response has been identified in a number of forums and prioritised in several key government documents including the Victorian Indigenous Affairs Framework, the Victorian Aboriginal Justice Agreement and *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities 10 year plan*.

The project has been working with reference groups in the three areas of Bairnsdale, Darebin and Mildura. The reference groups comprise stakeholders from Victoria Police, the local Aboriginal community and regional Aboriginal and mainstream family violence networks. Community development principles have been used to build on existing networks and relationships and to strengthen partnerships amongst local stakeholders including the ATSI community, the police, mainstream integrated family violence networks and ATSI family violence and justice networks.

Community consultations have been held in the three trial areas, to identify concerns with the local police responses to family violence incidents. Currently, protocols are being finalised to support police in their work, to ensure a culturally competent response to ATSI people and to provide the contact details for key support/referral agencies. The next phase of the project will be to trial the protocols after which Victoria Police will be required to report on their success directly to the regional Aboriginal Justice Forum.

The project work to date indicates evidence of ongoing conflicting perceptions about the police response to family violence within the ATSI community. **There is still evidence of fear amongst ATSI communities about asking for police assistance for numerous reasons, yet police members show limited understanding of this.** In all three areas, the project has identified the need for ongoing local cultural awareness training for police.

## 6.3 Project consultations

Project consultations provided much feedback about the experiences and perceptions of police responses. Given the dedicated work already taking place through the KFVPP project, this discussion will provide an overview of feedback and draw some conclusions and proposals.

Overall there is a sense that police responses have improved over time and support was indicated for the protocols project. It is also clear, however, that significant work remains to be done. Given

that this project is about improving barriers to access to justice for ATSI victims/survivors, it is natural that the participant focus has been on areas that require attention. At the time of consultation the Family Violence Safety Notice procedure was in its early stages and feedback in relation to this was limited.

It is clear that significant barriers to ATSI people seeking to access the legal system for assistance continue, and are directly related to ongoing mistrust arising from longstanding racist and discriminatory treatment and abuse perpetuated through the law and justice system itself. The barriers apply broadly to institutions of authority, but perhaps more acutely to the police because of the more direct, widely experienced and visible nature of police work.



*FVPLS Sexual Assault Forum presenters, Warrnambool 2009.*

The defensive attitudes of some institutions and individuals constitute the most significant barrier to making progress. The ATSI community must be heard, and issues raised by the community appropriately responded to, in any genuine commitment to further progress. In the end, it is the ATSI community, with cooperation from the police, who must drive necessary change.

The project feedback is divided into a number of areas, out of which proposals have been developed.

#### **6.4 Key issues in ATSI victims/survivors reporting family violence to police**

To strengthen law and justice responses, it is important to understand the factors that determine whether police reports are made, and the experiences and perceptions about these determinations. In the experience of FVPLS Victoria reporting of sexual assault within family violence is limited and requires dedicated attention. The following is a summary of significant factors that emerged from the consultations:

- Prior experiences with the police and with reporting as a victim of violence, together with perceptions of what the police response will be, are key factors. Women who have had a positive experience say they would report again.
- Where police have failed to act on previous breach reports, have taken their time, been disrespectful, culturally insensitive or perceived to lay blame on the victim, the victim is less likely to make another report.
- Women worry that in making a police report they will get into trouble themselves or that DHS will become involved in relation to their children.

- Shame, worry about getting an offender into trouble, fears of retaliation from an offender and the impact of long-term trauma are all prominent for women who report or confront police attending a family violence incident. This stress can translate into anger with attending police, and poor outcomes become more likely where police do not respond well.
- Concern about what will happen within the extended family, and whether a report will heighten the risk of violence or cause more problems within the community.
- Concern about lack of confidentiality when going to police in small towns.
- The shame of having to tell the story about the violence in a public forum—the stigma of feeling re-victimised by the process is a barrier to reporting.
- Fear of the legal system, and of government departments and authority; uncertainty about the justice system; not feeling safe in accessing assistance.
- Acceptance of family violence as a norm—downplaying the seriousness of the violence.
- Lack of access to culturally appropriate crisis supports at the crisis intervention stage. (Women who have support workers in place when reports are made and/or soon thereafter have better experiences with the police and are more likely to follow through.)
- Women prefer reporting to and talking to women police officers.

Comments by ATSI victims/survivors about reporting to the police included the following:

*... I have reported ... but only after a long time and after the abuse had been going on for some time. I kept hoping everything was going to be OK and that he would stop. It went on for some time before I reported. Reporting was as a last resort and I felt guilty for getting him into trouble. It took courage for me to report.*

*... Have reported. Was reluctant to report because of fear of retaliation. Also had a fear of local people finding out about what had happened. My position in the community meant I didn't want the information to get out ... it would affect my job and my family.*

*... In small communities the cycle is hard ... women don't want to get their men into trouble ... what will the women do if the men go to jail. I also held back because I saw other women with injuries. I thought my problem was not as bad as theirs. I worried that he would get more violent as a result of a report. After one police report I could feel his anger ... fear of worse and more violent response.*

*... Police sent police woman to town to assist me ... at the time I was happy with the police response. When I reported it gave me a bit of power to get him to back away. That I could get help gave me power.*

*... I didn't want the charges to proceed because of feeling guilty ... I had got back with him ... felt sorry*



*for him. I signed to say I didn't want the police to go ahead ... The police going ahead with charges took it out of my hands. I went to court and supported him. The police were not happy that I asked them not to proceed ... they were looking at me thinking you have rights but are not using them. I stayed for a few months and then left when he continued to be violent.*

*... In the past I haven't [reported] ... because they were my family ... I didn't want to get them into trouble ... it's the Aboriginal way. In the end I got sick of being stood over ... it also helps having someone to support you in making decisions about this. I had a DV support worker involved.*

*... Children got taken away because I contacted the police. I rang for help and everything turned against me.*

*... Didn't used to [report] ... because police would not intervene ... wouldn't follow up with breaches of IOs. Now I've changed my mind ... have met a good female officer ... after last incident ... she said some male police are not so sympathetic to family violence situations ... not so willing to follow through. She said if I had any more issues to contact her and she would make sure all in her power was done. This built my trust in police ... realised some police are there to help. This is what has kept me how I am today [very together].*

*... Not necessarily [make a report] ... waste of time ... family history in town and because Koori ... they turn a blind eye ... don't want to take any action.*

*Reported breaches ... police said can't do anything about it ... like two different laws ... one for Aboriginal and one for non-Aboriginal. ALOs not helping.*

*... I have reported to police ... I needed their help for protection. I was at risk in a public place ... Other women don't go to police because they are frightened ... can't get out of the house ... or worried he will find out and it will become much worse ... perpetrators don't like witnesses ... this is why violence happens behind closed doors.*

*... Have reported and would not hesitate to do it again and I would encourage others to do the same. Being a survivor of family violence is dear to me and I would ask for the same assistance again and for others.*

Comments by workers about reporting to the police included:

*... hate justice system, hate police, stigma in extended families, don't believe will help ... add fuel to fire ... too embarrassed. **Aboriginal support worker***

*... issues about police are constantly raised at the Aboriginal Justice Forum community forums and RAJACs and the Victorian Aboriginal Justice Forum play a key role in building strong relationships between local police and ATSI communities. **Aboriginal Justice Forum member***

*... Police have been seen as the enemy ... hardest decision is whether to involve police ... goes against the grain of what instilled for generations. **Non-ATSI support worker***

*... Women will generally get to a support service before police are involved. Contact with police might*

*happen through support service. Often police attended but person does not pursue police for further assistance. Aboriginal regional family violence coordinator*

## 6.5 Processes following report

- A sense persists that the police do not adequately respond to incidents where there is no or limited evidence of physical injury.
- Women's stress as a result of the violence and of police involvement often translates into anger—police response needs to reflect better understanding of this.
- That where an FVSN is contemplated by the police it is important that women victims have the opportunity to talk through options with the police in private, away from the scene of the crisis and after the immediate trauma has subsided; however, this is not always occurring.
- Interviewing processes require improvement—in terms of gender, cultural sensitivity and confidentiality for ATSI victims, in small-town police stations in particular.
- That having a culturally appropriate advocate to assist in dealing with police is critical.
- Feedback reveals that women victims are often made to feel like they are the ones who have done the wrong thing when reporting, because the perpetrator has been in the house or because the police notify DHS.
- Police attending family violence incidents sometimes identify the female victim as the perpetrator where the male perpetrator alleges that to be the case.
- Responses to breaches are not always adequate.
- Police sometimes do not respond well to repeat calls by victims, and become frustrated and less prepared to intervene.
- There remains a concern that the police response to ATSI people experiencing family violence is at times inferior, particularly where repeat call-outs occur.
- Police response to victims who also have a criminal history or drug/alcohol issues is not always appropriate and made more difficult by a lack of appropriate services.

Comments on these issues included:

*... Police response not always good ... they seem to take their time to get there. I think they treat me*

*and my family differently to other people. **Aboriginal victim/survivor***

*... I was happy ... they took action quickly ... took statement from me and then took action. **Aboriginal victim/survivor***

*... Some police make you feel like the criminal. This happened to me. Suggest that I've done something to provoke the violence and that it's my fault that I'm still in that situation. **Aboriginal victim/survivor***

*... Police didn't follow up and let me know what was happening after I made a statement at the station. Police didn't explain the process or what would happen next ... It was up to my support worker or lawyer to find out what was happening. **Aboriginal victim/survivor***

*... treatment at first point of contact critical ... police response at first attendance very important. **Aboriginal coordinator family violence service***

*... Police do respond ... is inconsistent ... some good police ... New Age police particularly females are often good ... Recent example of male police laughing with the perpetrator out the front of the house after attending violent incident ... lead to poor perception by victim. **Aboriginal support worker***

*... You don't have to have bruises and cuts to be a family violence victim ... may look OK but been through family violence ... police are too focused on physical assaults. **Aboriginal support worker***

*... police often too quick to not pursue matter when woman says was just verbal dispute. **Non-ATSI lawyer***

*... Re. family violence attendance ... not happy with the way the police dealt with. The police talked to him outside and then to me. Police didn't handle well in terms of the fact that I didn't show physical injury ... was shaken up ... police made me feel it wasn't worth charging him with assault. Options were not presented ... police seemed to rather I forget about ... all will be better tomorrow. **Aboriginal victim/survivor***

*... Have had few situations where bloke alleges woman is perpetrator and he is believed over the woman [even if she has contacted police] ... family violence incident reports then indicate that client is the defendant when that hasn't necessarily been the case. **Non-ATSI lawyer***

*... Since FV protocols in place police are more proactive in applying for IOs but police not good at communicating with women when they turn up to court ... the police have not told clients about bail, whether IO served and where, whether coming to court for hearing, whether to be there for evidence or to advise of sentence. **Non-ATSI lawyer***

*... [Police response improving] ... depends on the area and on the police. In areas where bigger Indigenous populations and more criminal justice 'problems' e.g. substance abuse ... more exposure to community and the family violence response not as good. **Aboriginal regional family violence coordinator***

*... The police station physical environment when giving the statement was not good. It was a closed in little place. Behind me police were in and out coming on and off duty. Could hear their voices.*

*Indigenous women often quiet and shy ... would withdraw even more in this environment ... having other people coming and going and hearing the sound of men's voices ... stern and abrupt. **Aboriginal victim/survivor***

*... Police attend hospital to question ... woman very upset traumatised ... can't think straight ... too hard to make decisions at that time ... rang later ... ALO was a point of call ... Aboriginal Community Liaison Office ACLO and ALO followed up at hospital ... this helped ... Safety is most important issue ... need support person at crisis point ... check if want to be driven somewhere ... someone to sit with her ... are the children OK? ... been injured? ... police not good at this ... Police not responding well with same sex couples. **Aboriginal support worker***

*... Don't think is cultural competency or sensitivity or that processes are followed up correctly. Still an arrogance. **Aboriginal support worker***

*... General complaint by clients that they have been spoken to disrespectfully ... inappropriately ... inexperienced, person responding to someone in crisis ... lack of understanding and compassion mixed with some racism. **Non-ATSI lawyer***

*... In smaller towns police know the offenders and victims and is approach by police to sweep under carpet ... try to calm the waters and walk away. **Non-ATSI lawyer***

*... When the non-Indigenous community is going to know your business most Indigenous women would bolt out the door. I was extra strong to be there. This is a problem in a small community. **Aboriginal victim/survivor***

*... It concerns me that some police on the ground have not got their head around the code of practice for family violence. **Member Indigenous Family Violence Partnership Forum***

*... The police officer did not seem experienced in taking statements ... he was shocked by the information I was giving. I think he had been a policeman for a longish time but not experienced in this type of statement/information. Would have been better doing the statement with a woman. I thought I would be dealing with a woman. Was handed to a man because he was more experienced. **Aboriginal victim/survivor of sexual assault***

*... police not letting women know they can have support person present when attending to give statements etc. **Non-ATSI lawyer***

Some suggestions by project consultation participants, in addition to the preference to deal with female police officers, included:

*... In small towns in particular it would be good to give the option for statement to be given at another station to avoid confidentiality problems ... may be a barrier to reporting ... at least give option for that.*

*... Need to make sure is private and quiet interview room which feels safe and confidential. Don't want to see or hear others in the building. Hard enough to pull up out the front of a police*

*station ... in small community all can see ... privacy is key to making contact with police. **Aboriginal victim/survivor***

*... To really improve the situation we need to move forward on more resources for police in responding to family violence ... for example, there is a family violence officer but no dedicated vehicles to respond to family violence calls ... must not be a bandaid solution ... [for family violence] ... At times police responses to Aboriginal women are poor ... greater accountability is needed in police recording and reporting responses for individual cases ... showing compliance with actions they need to tick off on in family violence situations. **Aboriginal coordinator family violence service***

*... see Sexual Offences and Child Abuse Unit [SOCAU] as specialised unit from start to finish ... passing brief to police investigators is not good ... this is where clients get exposed. Be better to have SOCA Unit following through with investigations in sexual assault cases to ensure more consistent and compassionate responses for victims. **Non-ATSI lawyer***

## 6.6 Police response to multiple/repeat calls

There was a strong view that the police response deteriorates for victims where multiple or repeat family violence calls are made, potentially placing victims at increased risk.

Comments included:

*... Police drop off with large number of call-outs ... probably rural area is worse ... slow down. **Aboriginal support worker***

*... Have experience where police not acted on breaches where repeat calls. **Aboriginal support worker***

*... Women get disheartened with police lack of response. **Key state-wide Indigenous service***

*... I been screaming for someone to attend and police say ... "whenever we can get a car" ... often because they have been at this place before. We know if same black women ... they will take their time. **Aboriginal coordinator family violence service***

*... Fell down strongly where repeated calls ... judgemental toward victims ... frustrated that victim did not leave violent relationship ... became over time less and less responsive. Police develop disinterest in victim ... would not follow up even where clear evidence of breach etc. **Non-ATSI lawyer***

*... Repeat attendances ... police get cynical ... not again ... level of frustration with women who decide not to proceed ... they often decide this because of attitude of police attending. **Non-ATSI lawyer***

*... Did training with group of police re. changes in family law ... one said women just calling police to get perpetrator into trouble where repeated attendances ... if 5 out of 10 police have that attitude cannot expect respect. **Aboriginal support worker***

## 6.7 Responses to breaches of intervention orders

(Also see Section 3, Proposal 34.) Police inaction on breaches of intervention orders was raised as a significant problem by many people consulted, and their comments included:

*... Common theme on file is lack of response to breaches and minimisation of incident. **Non-ATSI lawyer***

*... not enough effort in following up on breaches. Aboriginal support worker ... area of most frustration is in intervention orders ... because police not responding to breaches. **Non-ATSI lawyer***

*... breaches not taken seriously so women think why get an intervention order ... only a piece of paper. **Aboriginal support worker***

*... Generally still difficult to get action on breaches ... Police will be obstructive where woman wants to make statement ... police will often say no go away ... police won't take record of it. **Non-ATSI lawyer***

*... one or two times have made women feel she is responsible for the breach. **Non-ATSI support worker***

*... Police wait for something major to happen before they will do anything. **Aboriginal victim/survivor***

*... Would have preferred if police stopped bailing him out. Recently had problem again ... took them two hours to get to house ... could have been bad outcome in that time ... no apology or explanation as to why they took so long ... took them ages to arrive and they told me to get IO ... didn't offer to take out for me. **Aboriginal victim/survivor***

## 6.8 Cultural awareness of police

- Overwhelming support was expressed by participants for strengthened ongoing police cultural awareness training—both at the statewide academy level and at the local community level—which incorporates diverse knowledge and experience. Police attending FVPLS Victoria events have also made this comment.
- There were many questions about what police cultural awareness training currently entails and a presumption about its inadequacy.
- Comments were made that police working with ACLOs had benefited from the cultural awareness and support that this role brings.

- The need for all police who respond to family violence incidents to be connected with the local Aboriginal community (not just the ACLOs and Police Aboriginal Liaison Officers (PALOs)), including through forums and events, was reinforced.

Comments about cultural awareness of police included:

*... Cultural awareness amongst police is limited ... more Aboriginal-specific training needed ... who does the training ... what does it entail? **Aboriginal support worker***

*... she/police needed to be more culturally sensitive ... know how to deal with vulnerability ... otherwise Indigenous women will say no ... don't tell me what to do. They wonder why women back out sometimes. **Aboriginal victim/survivor***

*... cultural awareness and sensitivity ... training probably needs to be better. Police need to reconnect with community. Need to have ongoing cultural awareness training. Police need understanding of issues in local community ... aware of programs ... connected with community. **Aboriginal regional family violence coordinator***

*... More cultural awareness training needed ... not one session and expect to be culturally competent ... needs to be done every three months ... different facilitators every three months ... local training as well as at academy ... need new facilitators to take different perspectives ... need to understand diversity from a diverse range of Aboriginal people ... female perspective, male, elder, young person. **Aboriginal support worker***

*... Police not aware of services for Indigenous people. ... Police treat clients differently when there is no support person. Don't use plain language ... need to have support workers there for this reason. **Aboriginal support worker***

*... Question about how much training police get in family violence ... also cultural awareness and all of the issues that go with family violence. More training needed. **Aboriginal support worker***

*... ACLO broken down barriers. **Non-ATSI support worker***

*... Police who have worked with PLO and ACLO have better method of response to Aboriginal women rather than police who have not had cultural awareness training or specialised ACLO to work with. **Non-ATSI lawyer***

*... Attended a meeting with police where police justified not developing a specific program for Koori people because a range of other ethnically diverse groups would also want the program and this was not practical. **Non-ATSI lawyer***

*...we are the first people of this nation ... stop putting us in with multicultural groups. **Aboriginal support worker***

*... One police officer was too overbearing in her tactics ... e.g. you have to get that bastard to stop him getting someone else. I felt I had to do what she was saying. Other Indigenous women not as strong as me or stubborn as me would probably back away from it and not follow through. They likely to think ...*

*I won't do it because this white policewoman wants me to follow through. On the other hand, it might have been the edge I needed to keep me following through ... but the police need to be more culturally sensitive ... know how to deal with vulnerability. **Aboriginal victim/survivor***

*... Cultural awareness training ... ongoing cultural engagement at local level very important ... Ongoing and local training ... cultural awareness training will include formal training as well as local community engagement to build understanding and relationships ... Needs to be respect for background to Aboriginal community ... their land ... history of treatment ... no acknowledgement to what happened ... Keep on building relationships between community and local police in local areas. ... Police need to work harder at recruiting more Indigenous people into police department ... Repeat attendance ... cultural awareness training hand in hand with family violence ... nature and cultural aspects of family violence/patterns ... in a process with a victim/survivor. **Non-ATSI policy worker***

### **Proposal 55**

That all police SOCA Units be resourced to carry through with prosecutions in relation to sexual assault offences as soon as possible, and that the significance of sexual assault within family violence be recognised within Victoria Police Koori-specific and general policy and procedure.

That funding be continued for the Koori Family Violence Police Protocols Project.

#### **Also see Proposal 35, Section 3, repeated below:**

That there be a comprehensive review of ATSI cultural awareness training within Victoria Police (including police prosecutors) at the statewide and local levels which is informed by ATSI expertise to strengthen and broaden its scope.

Police training in responding to ATSI victims of family violence/sexual assault must combine ATSI cultural awareness within the family violence context. Barriers to ATSI victims/survivors seeking assistance from police in situations of family violence and sexual assault must be dealt with in detail, and strategies developed to address issues specific to breaches.

## **6.9 Feedback about women police officers**

**There is a clear preference amongst women victims of family violence/sexual assault for dealing with women police officers at the time of crisis, reporting and follow-up, as this enhances comfort in communication, support and trust.** Comments in this regard included:

*... Dealt with mainly women police ... women are easier to talk to ... prefer women police for these things. **Aboriginal victim/survivor***

*... Lady police officer was good ... easier to talk to a lady. Some of the blokes didn't treat me well ...*



*treated me as if I had done the wrong thing ... could have been more compassionate. **Aboriginal victim/survivor of sexual assault***

*... Communication with female officer would have been better. And someone in the force who had more time to talk, explain and listen. When photos taken at station ... was me and a couple of blokes. I thought ... what do I say to them. With women would have talked more ... got more off my chest. Gave my statement to a male officer. **Aboriginal victim/survivor***

*... Police woman was supportive to me and committed to following through. Let me know she was understanding of family violence herself. Felt like being understood. **Aboriginal victim/survivor***

*... No ... not enough female officers go out to incidents; the rogue officers are **really** bad and there seems to be no recourse for correcting their behaviour i.e. complaints systems are weak. **Non-ATSI lawyer***

*... have met a good female officer ... after last incident ... she said some male police are not so sympathetic to family violence situations ... not so willing to follow through. She said if I had any more issues to contact her. **Aboriginal victim/survivor***

*... Police do respond ... is inconsistent ... some good police ... New Age police particularly females are often good. **Aboriginal support worker***

*... Would have been better doing statement with a woman. I thought I would be dealing with a woman. Was handed to man because more experienced. **Aboriginal victim/survivor***

## **Proposal 56**

That Victoria Police ensure that women police officers are available to attend to women victims of family violence and sexual assault, including in the taking of statements and in the follow-up liaison with women victims about prosecution matters.

## **6.10 Crisis support: Referrals**

Victoria Police protocols detail a comprehensive system for crisis referrals to be followed by Victorian police in response to a family violence incident. **Project consultations indicated that a number of women did not feel well supported at the time of their family violence crisis. Insufficient information was obtained through the consultations to examine this issue in detail. However, it does lead to the conclusion that the crisis support system for ATSI victims/survivors requires further dedicated attention. The barriers to reporting and seeking support for sexual assault within the family violence context may also be addressed at least in part by improved crisis support and referral.**

- Feedback was received that culturally appropriate support for ATSI women and children victims at the point of crisis is critical—a support worker to advocate with police and to

assist with whatever follow-up action is required. Culturally appropriate crisis and post-crisis supports need to be strengthened for ATSI victims/survivors statewide.

- Continued support for victims throughout the police prosecution process is also needed.
- In light of the quick turnaround of Family Violence Safety Notices the problem of women not accessing supports and advice prior to the return date was raised. The need for women to discuss safety options in terms of whether it is safe to stay in the home pending the court return date for the FVSN was another issue highlighted.

Participant suggestions about crisis support included:

*... It would be good to have a support person in the legal system to help explain processes ... and to give guidance because when you are in crisis all is fuzzy and difficult to understand ... need support person to be there to help with explaining information at initial crisis and then follow up. Need someone to listen ... be the person in between to help communication. **Aboriginal victim/survivor***

*... I dealt with about eight different police throughout my case. Need support person to pull process together ... very overwhelming for frightened Aboriginal woman. Need to think carefully about where support person is best based. Maybe not with police because of problems with women going to police. **Aboriginal victim/survivor***

*... victims need support at initial phase ... on-call workers ... immediate support response ... to ensure they don't fall through the loops in terms of support and referrals. **Aboriginal support worker***

*... Crisis response for victim with police would help ... be there early to support victim ... options are important ... offer Indigenous interventions and mainstream options ... informed choice re. type of intervention ... without options you are forcing people into accessing one or the other which is not appropriate. **Key statewide Indigenous service***

*... Safety is the most important issue ... need support person at crisis point. **Aboriginal support worker***

### **Proposal 57 (Also see Paper 2, Section 7)**

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after-hours support) who experience family violence and sexual assault, and that this review incorporates Victoria Police. The review must incorporate statewide and local processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

Also noteworthy here is the recommendation of the Victorian Law Reform Commission in its 2006 *Review of Family Violence Laws: Report*:

...26. *The Indigenous Family Violence Partnerships Forum should consider the possibility of providing an Indigenous victim support scheme that is available to offer support when the police are called to a family violence incident*

## 6.11 Police communication about prosecution following report

**There was overwhelming feedback from participants that police do not follow up adequately with victims, and that it is very difficult to get information from police about the progress of a prosecution against an offender even though this is of critical importance to victims.** (Detectives were reported as being better at fulfilling this role.) Project participants felt that police are dismissive of the need for women to be informed about prosecution processes and fail to understand the stress and trauma caused by not knowing or understanding what is happening with one's case.

Comments on this issue included:

*... The police were very difficult to contact and communicate with ... police officer always on leave. He spoke to me in a very patronising way. Didn't speak to me with respect. He didn't talk in a way that I really understood what was going on. **Aboriginal victim/survivor***

*... It was more me ringing them. I had to keep chasing the particular police officer because nobody else could tell me what was going on ... it was his case. Found that very stressful. **Aboriginal victim/survivor***

*... The reason I want to know what is happening is that it is a step forward for closure ... to see that they have paid for what they have done. Thinking and wondering what is going on is unsettling ... knowing makes it easier to deal with and relieves the stress. **Aboriginal victim/survivor***

*... I was happy with the end result ... not happy that it was hard to make contact with police for follow up ... to find out what was going on. There was no one at the station to support me and keep me up to date with progress. I was proactive about finding what was going on myself. I didn't feel I was taken seriously by police. It's like something drastic has to happen to be taken seriously by the police. **Aboriginal victim/survivor***

*... Police don't follow up with victims ... some victims want to know police are concerned for them. **Aboriginal support worker***

*... Police have not followed up since incident ... don't know what they are doing. **Aboriginal victim/survivor***

*... is a big problem with communication. **Aboriginal victim/survivor***

Participant suggestions about improving communication with police included:

*... They should have explained better what was going to happen. **Aboriginal victim/survivor***

*... They should have kept in contact with me about what was going on. **Aboriginal victim/survivor***

*... Language is an issue generally ... explaining what is happening in a way which is understood.*

**Aboriginal support worker**

*... It's important to know that the system is working and that I can feel safe. Knowing what is going on through the police is about safety and reassurance. It eases the threat of family violence happening again. When the police officer for my case was not there ... no one else was there at the station to help me. I rang to find out about the conviction. They should have contacted me. **Aboriginal victim/survivor***

*... It's important to let women know the police process right from the start ... what the steps are and who everyone is. Different police sections involved once statement made. I thought that once I saw SOCA unit that would be it. Then the detective came and saw me. Need information about this right from the start. **Aboriginal victim/survivor***

*... Women want to know about the case where the offender is prosecuted ... what is happening at a point in time ... women are afraid of what is happening ... e.g. if offender is caught women fear repercussions that day/night ... creates stress not knowing. **Key statewide Indigenous service***

### **Proposal 58**

That Victoria Police carry out a comprehensive review of its communication with victims of crime with the aim of implementing a system which is effective and supportive of victims. The current system in which information is only available from police informants or sergeants where a matter is urgent—particularly given the varying shifts and roles of officers—is completely inadequate and seriously undermines the confidence of victims in the police process. A victims liaison process should be implemented across the state.

## **6.12 Police complaint and feedback processes**

Police complaint and feedback procedures need to be strengthened and made more accessible for ATSI people. At a recent Aboriginal Justice Forum, police from the Ethical Standards Department reported that they received very few complaints with respect to police services, including responses to family violence. They also reported that, at a forum in rural Victoria, once they opened the topic for discussion there were many complaints from ATSI community members present about Victoria Police responses to family violence. Ethical Standards is currently engaging with the Koori community with respect to the complaints process, which is a welcome development. More work is needed to develop processes that encourage ATSI people who are impacted by family violence and

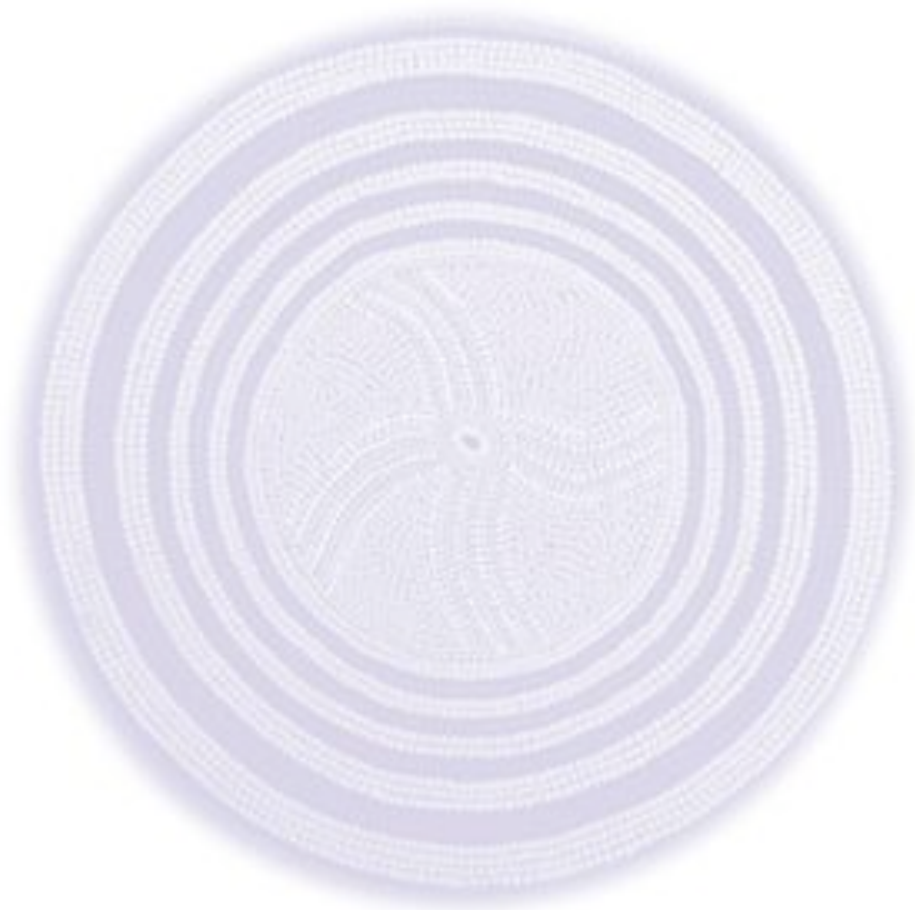
sexual assault in particular to have the confidence to complain about police responses where appropriate.

*... where ATSI victims/survivors have poor contact with police they are unlikely to do anything about it ... i.e. make a formal complaint themselves. Often the crisis happening takes priority and people are too exhausted to follow up. People are also cynical about giving feedback or making a complaint ... that it won't be taken seriously or won't make any difference ... A dedicated and simple process for ATSI people to provide feedback about police responses which was encouraged and supported would be a positive step. **Non-ATSI lawyer***

*... because there are so many concerns raised at Aboriginal Justice Forum community meetings this initiative is welcomed, but it is essential that more work be done in communities to promote the complaints process. **Aboriginal Justice Forum member***

### **Proposal 59**

That police complaint processes for ATSI people be strengthened and made more accessible, and that community awareness raising about these procedures occur.



# Section 7: Restorative justice

## 7.1 Introduction

Limited restorative justice approaches have been incorporated within the criminal justice system in Victoria, mainly in relation to youth offending. Discussion and research is underway with respect to the possible extension of restorative justice into other areas of the justice system.

Improving Aboriginal and Torres Strait Islander accessibility and culturally appropriate approaches within the law and justice system for victims/survivors and ATSI women and children is critical. However, FVPLS Victoria urges caution in extending restorative justice processes to family violence and sexual assault offences. Implementation of other systemic measures to address barriers should be prioritised.

## 7.2 Victorian Parliament Law Reform Committee Inquiry into Alternative Dispute Resolution and Restorative Justice May 2009

The Victorian Parliament Law Reform Committee in May 2009 published the report *Inquiry into Alternative Dispute Resolution and Restorative Justice*.

The report explains that there is no universally accepted definition of restorative justice. It refers to a United Nations document which details the basic principles as:

*... Restorative process means any process in which the victim and offender, and, where appropriate any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator...* (p. 190)

The report dedicates a section to the appropriateness of extending restorative justice principles into the areas of family violence and sexual assault and specifically for the Aboriginal and Torres Strait Islander community (p. 331). It notes that most restorative justice approaches are used alongside more traditional criminal justice processes (p. 331).

In discussing the appropriateness of restorative justice for sexual and family violence offences generally, concerns raised include:

- the danger of re-victimising the victim
- the risk that it will be seen as a soft option by both the offender and the general community
- that restorative justice will reprivatise gendered violence
- the risk of second-rate justice which offers little protection for women experiencing family violence (p. 328).

Positive aspects to extending restorative justice to family violence in the ATSI community are detailed as:

- empowerment of local communities
- addressing underlying causes of family violence
- recognising that family violence affects all members of the family
- displaying community disapproval of violence
- repairing relationships between the victim and offender and the offender and the community
- addressing issues with traditional criminal justice responses to family violence (p. 331).

The Committee draws the following conclusions:

*...The Committee notes the sensitivities and conflicting evidence about using restorative justice processes for family violence and sexual offences.*

*...The Committee also notes that there is evidence that restorative justice responses have the potential to provide significant benefits as one part of a broader strategy to respond to family violence in the Indigenous community. However, again the Committee does not feel that there is sufficient evidence to make concrete recommendations about this issue. The Committee believes that there is a need for further research in relation to the use of restorative justice responses to family violence in the Indigenous community. The Committee emphasises that any restorative justice approaches would only be one part of a comprehensive strategy to respond to these issues. (p. 333)*

It is important to recognise that sexual assault is a significant family violence crime which is also highly underreported. Any discussions about extending restorative justice approaches to family violence must acknowledge and address the unique and complex nature of sexual assault crimes, particularly with respect to victim impact.

The Committee's discrete recommendations (below) with respect to sexual offences and family violence offences give recognition to the unique nature of sexual assault. The high levels of underreporting of sexual offences in the ATSI community should be kept in mind in developing all family violence approaches.

***... Recommendation 72: Restorative justice to sexual offences***

*The Victorian Government should undertake further research into whether, and if so, how restorative justice processes might be effectively and appropriately applied to sexual offences in Victoria.*

***...Recommendation 73: Restorative justice responses to family violence***

*The Victorian Government should undertake further research into whether, and if so, how, restorative justice processes might be effectively and appropriately applied to family violence offences in Victoria, including in relation to family violence in the Indigenous community. (p. 333)*



### 7.3 Feedback from project consultations

The Victorian Parliament Law Reform Committee report includes reference to a view submitted to its inquiry that ATSI women generally support restorative justice approaches to family violence.<sup>24</sup> However, discussions with Aboriginal and Torres Strait Islander women through the project consultations conducted for this report have not supported that general contention—indeed, the comments presented below indicate far more complexity. The project consultations specifically included discussions with a small group of ATSI women to ensure that the voices and experiences of ATSI women, alongside FVPLS Victoria’s on-the-ground experience, inform this discussion.

Some limited discussion was had with project participants about the concept of restorative justice—either as an alternative to traditional sentencing processes or alongside it—involving community elders, which would potentially bring the victim and offender together. It is acknowledged that there are many models of restorative justice and the discussion was based on a loose concept as described above.

Most participants felt they would not want to face the perpetrator of the crimes undertaken against them, although several said they would like to have the option. Workers were concerned about the impact on victims of such meetings. Most were of the opinion that restorative justice approaches might be appropriate for youth offending or less serious crimes but not for family violence/sexual assault offences. Non-ATSI workers reinforced the importance of this being a matter for the ATSI community, but emphasised the importance of the views of victims and women being intensively sought out in a safe environment.

Comments on these matters included:

*... Would depend on the case ... I would not want to face the offender in either of my cases. ... Petty crimes etc. different ... OK ... Which elders sat in would be important too. Koori Court very good for youth ... because stops youth from more offending. **Aboriginal victim/survivor***

*... I wouldn't like to face the offender in a process like that. In our own community there is a lot of violence ... I think there is a need to step outside of that. **Aboriginal victim/survivor***

*... No wouldn't like that ... would feel uncomfortable about it ... about facing him. Having elders/respected people there would be good though ... to see them rip shreds off him. **Aboriginal victim/survivor***

*... No way I would want to do that. Details not wanting to get out ... private ... too hard. **Aboriginal victim/survivor***

*... Might be good for youth ... car theft, burgs etc. ... to get embarrassment from community but in terms of my case ... no because of power of family ... problem ... he would not have taken account of what elders said. Don't think it would be taken seriously enough ... are power issues to be looked at.*

<sup>24</sup> P. 332.

*Conflicts with elders. Normal criminal justice process safer and more confident in having it dealt with through that. Everyone is connected/related. **Aboriginal victim/survivor***

*... No ... I would prefer to go through mainstream ... don't like other people knowing my business. Small community makes it hard to keep private ... wouldn't want it to be out in community. **Aboriginal victim/survivor***

*... I disagree being separated in the family situation ... it's family violence in all communities and should be treated in the same way. Should stay as it is ... mainstream model. **Aboriginal victim/survivor***

*... Would like to be able to consider this as an option ... need to explore further. I would like to have a say about the process ... might be closure for victim to have a say in sentencing ... I would want to ensure counselling/programs for him ... want him to know I'm involved in the process ... may be some closure ... No woman would want to face offender. Option is the key ... to be given the opportunity to be involved. If can't face offender make alternatives e.g. remote facility. Key will be support person for women involved in that sort of process. **Aboriginal victim/survivor***

*... Worry about re-victimising women and putting victim and offender together in the same room. ... She would need a lot of support throughout the process. ... Motives of the victim would need to be clear ... the purpose in them taking that avenue ... important who decides whether women and men in right frame of mind for that ... My initial reaction is no. This is why remote witness facilities are made available. In some cases could be useful ... case-by-case scenario. Worry that it could bring emotion back to the surface for the victims that they may not even have considered. Having seen the emotional impacts of family violence upon women I worry about this ... If you haven't worked closely with victims of family violence ... you can't understand the psychological trauma and the way it affects people ... it has taken me a long time as a worker to understand how victims feel and the process of healing. **Aboriginal regional family violence worker***

*... Need to be careful about it ... not sure if workable ... depends on every situation ... lot of perpetrators are perpetrators for life ... some might want to participate ... but not sure ... Rape and sexual assault ... absolutely not ... not appropriate for these offences at all. **Aboriginal support worker***

*... In this context the suggestion that the focus should be on bringing families back together is misguided. Need to have worked in service delivery with victims/survivors to understand. People need to deal with individual/personal trauma before can be ready to consider other issues. **Aboriginal regional family violence support worker***

*... Very firm believer in restorative justice ... ownership ... offender giving power back to victim ... perpetrator and victim have common ground ... power shifts back to victim. ... Should be choice of victim ... perpetrator must own up to actions ... brings closure to part of his life too. Need to look at closer. **Aboriginal coordinator family violence service***

*... Restorative justice ... would be intimidating on a victim ... I don't think community circle would be appropriate to sentence ... Who are the elders in the circle? ... there are conflicts in rural areas ... we are all related ... bad enough having open court for these matters let alone having people in the community knowing your business ... especially with sexual assaults ... Elders who are strong and empowered may push for this but for less empowered community members not in same place of*

*strength, the process would be intimidating ... Are we putting women at risk of homicide? ... women who leave violent relationships much more likely to be killed. Better for her if police take responsibility for him being jailed ... not that victim has participated in the punishment or shaming process ... shaming him in the community may make him very angry and fuel retaliation on woman. **Aboriginal support worker***

*Men who beat up women are power trippers ... they don't want people to know about it ... they are gutless people ... if the community knows that degrades them ... mix that with alcohol and drugs and that makes women more at risk ... particularly if that person is respected in the community ... if it all comes out in community ... then the woman will cop it in retaliation. Better that police/prosecutors/courts take responsibility for punishment process. **Aboriginal support worker***

*... Many women would not want to face perpetrator ... needs to be her choice ... needs to be well supported in making that choice. ... Shame factor ... if elders there then perpetrator would be shamed which is a positive ... but woman may not want community to know the details. **Aboriginal support worker***

*... as long as it is not mandatory there are some good models. **Key statewide Indigenous service***

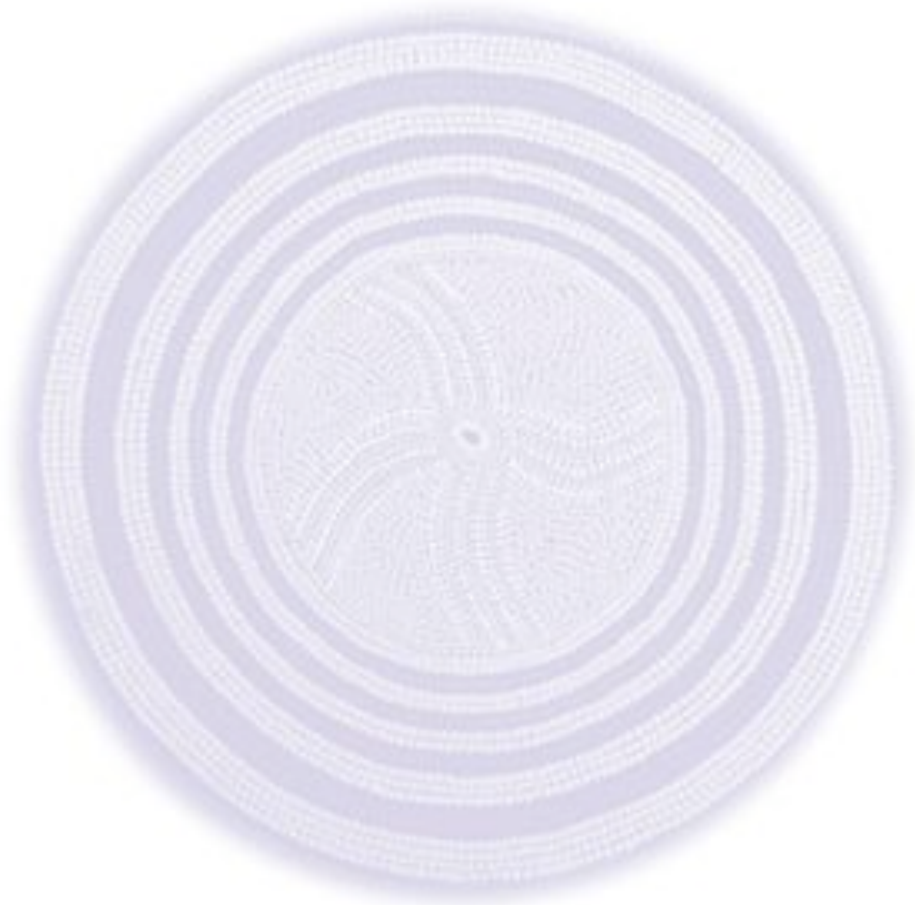
*... Aboriginal women need to be consulted about this ... Would not want to see any duress on victims to participate. **Non-ATSI lawyer***

*... Are very different models ... needs to be community decision ... must be locally, community based within which victims have a voice ... community must be informed of models proposed ... have input and be consulted every step of the way. **Non-ATSI lawyer***

## **Proposal 60**

Primarily concerned with the human rights, wellbeing and safety of Aboriginal and Torres Strait Islander victims of family violence and sexual assault, FVPLS Victoria urges extreme caution in any move to investigate the extension of restorative justice principles to crimes of family violence and sexual assault.

Any further research in relation to restorative justice approaches to family violence and sexual assault as proposed by the Victorian Parliament Law Reform Committee 2009 must involve in-depth consultation with ATSI victims/survivors of family violence and sexual assault and ATSI women as the majority of victims/survivors of these crimes. Any such consultations must be conducted in safe and confidential settings to ensure open and candid discussion.



# PROPOSALS

## ***Section 1: Aboriginal and Torres Strait Islander accessibility and the family law system***

### *Family dispute resolution*

#### **Proposal 1**

That ATSI people be provided with the option to access family law assistance through an ATSI or mainstream legal organisation prior to FDR screening.

That introduction of ATSI consultants be considered to support intake and risk management screening.

That all ATSI people undertaking FDR have the option to access legal assistance from an ATSI or mainstream legal organisation throughout the FDR process.

That FDR processes be culturally appropriate and all FRC staff access cultural awareness training incorporating family violence and gender issues.

### *A dedicated ATSI accessibility/family law project*

#### **Proposal 2**

That a dedicated project examining Aboriginal and Torres Strait Islander accessibility within the family law system occur, informed by Aboriginal and Torres Strait Islander people. A process for this should be developed and implemented as soon as possible. Previous relevant initiatives should inform discussion. The project should include:

- Access to family law legal assistance through Aboriginal Legal Services as the primary initial entry point to family law assistance.
- The role of Family Relationship Centres and Family Dispute Resolution for ATSI people—cultural accessibility, family violence issues and access to legal representation.
- The impact of the prevalence of family violence as a factor in family disputes involving ATSI children and cross-jurisdictional issues, particularly child protection and state family violence laws.
- Development of processes and services within the Family Court which are more culturally appropriate to Aboriginal and Torres Strait Islander people, which may include:
  - the development of a dedicated Aboriginal and Torres Strait Islander list for cases involving ATSI children

- Aboriginal and Torres Strait Islander family decision making/dispute resolution processes (with the prevalence of family violence informing such processes)
- the introduction of ATSI consultants to advise the Family Court in decision making and to possibly conduct court ordered dispute resolution.
- strengthening of cultural awareness of Family Court staff including external report writers
- ATSI liaison or support roles within the court
- improved community engagement between the ATSI community and the Family Court.

#### *ATSI Family Court Advisory Committees*

### **Proposal 3**

That the Family Court develop processes at national, state and territory levels to receive ongoing advice in relation to Aboriginal and Torres Strait Islander accessibility generally (keeping in mind that Aboriginal and Torres Strait Islander communities are diverse, and that accessibility measures and requirements are likely to differ according to the location). Advisory committees at national and state/territory levels are likely to be required.

#### *ATSI support roles*

### **Proposal 4**

That the Family Courts in states and territories employ ATSI Liaison Officers and other ATSI staff.

That the importance of paralegal support workers in the FVPLS program and Aboriginal Legal Services more generally be acknowledged through a commitment to ongoing funding.

#### *Cultural awareness training*

### **Proposal 5**

That ongoing cultural awareness and family violence training for all family consultants (internal and external) conducting family dispute resolution and preparing family reports be implemented. That a process within the court whereby specialist Aboriginal and Torres Strait Islander cultural advice is available also be established (possibly through the introduction of Aboriginal and Torres Strait Islander consultants).

That high-level ongoing ATSI cultural awareness training be provided for the judiciary which involves connection with local ATSI communities (as has previously occurred).

That ongoing ATSI cultural awareness training for all Family Court staff and stakeholders be implemented which is led and informed by local ATSI communities, thus reflecting diversity in each of the states and territories.

### *Family Court child care arrangements*

#### **Proposal 6**

That available child care facilities at the Family Court be strengthened.

### *Court accessibility for rural/regional areas*

#### **Proposal 7**

That there be improved accessibility to Family Court and Federal Magistrates' Court services in rural areas.

### *Family violence*

#### **Proposal 8**

That reforms to family law legislation and procedure be implemented to ensure strengthened responses to family violence and to ensuring children's safety. That particular issues for ATSI children and families be specifically considered in all proposed reforms.

### *Child contact centres*

#### **Proposal 9**

In relation to Child Contact Centres:

- That there be increased availability of and resourcing for child contact centres for both changeover and supervision of visits, including for non-court-ordered arrangements.
- That, in consultation with ATSI communities, consideration be given to the establishment of dedicated ATSI child contact centres/services for contact changeover and supervisions as an option available where ATSI children are involved.

### *Family law legal services*

#### **Proposal 10**

In relation to Legal Services:

- That family law services for Aboriginal and Torres Strait Islanders be strengthened Australia wide.
- That either the national FVPLS program be strengthened through increased resourcing to all communities (including urban) and further resourced to ensure family law expertise in the

support of ATSI victims/survivors of family violence and sexual assault (mainly women and children), or this be implemented through the introduction of a national ATSI women's legal program (see Paper 1, Recommendations 4 and 8).

- That in funding ATSI family law legal services, the more resource-intensive and long-term nature of the work be factored in as well as the clear benefit of paralegal support roles.
- That high-level and ongoing cultural awareness training for Independent Children's Lawyers be implemented. That lawyers from Aboriginal Legal Services including the FVPLS program be included on ICL panels.
- That cultural awareness training be provided through continuing professional development programs for other legal practitioners including counsel working in the family law jurisdiction.
- That Legal Aid family law guidelines be reviewed to strengthen access to justice for ATSI people, particularly women and children experiencing family violence. For more detail on this subject see Paper 2 Section 6 Victoria Legal Aid.

### *Community education*

#### **Proposal 11**

- That a program to improve awareness within the ATSI community about the role of the Family Court be established. (It is noted that the implementation of more culturally appropriate family law and Family Court processes would dramatically assist this.)
- That pamphlets and other information be produced by the Family Court directed specifically at ATSI clients. This information would refer to the right of ATSI children to maintain their connection with their culture and to any ATSI-specific processes that the Family Court adopts.
- That a program of community education for Aboriginal and Torres Strait Islander communities about the Family Court and family law be carried out in conjunction with cultural awareness training for the judiciary and Family Court staff when visiting ATSI communities. (Within the Family Court this could be facilitated by Aboriginal and Torres Strait Islander Liaison Officers.)
- That legal service providers ensure improved community education for the ATSI community about family law, and funding for innovative education projects should be extended.



## **Section 2: Child protection**

### *Family violence*

#### **Proposal 12**

That research be undertaken with respect to the impact of family violence upon child protection notifications and interventions, incorporating an analysis of the most effective and supportive intervention for victims within the process.

That consideration be given to development of best practice guidelines for DHS where family violence is identified as a factor in child protection notifications and interventions.

That as far as possible integrated and culturally appropriate processes inform developments within the Children's Court (Family Division), the Magistrates' Courts and the Family Court in responding to family violence involving ATSI children and families.

That, in introducing greater reliance on alternative dispute resolution into the Children's Court Family Division, stringent family violence and safety screening processes be introduced as well as guaranteed legal representation throughout.

(ATSI community consultation must be integral to all reviews relating to ATSI children and families.)

### *Legal services*

#### **Proposal 13**

That the government review funding for the provision of Aboriginal and Torres Strait Islander legal services in the area of child protection in Victoria.

Given the prevalence of family violence as a factor in child protection interventions for ATSI children in Victoria, that ongoing dedicated child protection legal capacity at FVPLS Victoria be funded.

That provisions which require DHS to refer ATSI families for legal assistance at the earliest time be implemented.

#### **Proposal 14**

That Victoria Legal Aid review its grant guidelines and procedures with a view to strengthening access to justice for Aboriginals and Torres Strait Islanders in the Children's Court (Family Division) by:

- a) broadening assistance available in the area of child protection to Best Interest Case Plan meetings and Aboriginal Family Decision Making meetings which occur as part of, but outside of, the court process, including for lawyers representing children
- b) broadening assistance available for the review of DHS administrative decisions

- c) specifically including in the guidelines a provision for assistance to be granted to challenge orders made where there has been a failure to comply with the principles of decision making for ATSI children
- d) ensuring that Aboriginal Legal Services including FVPLS Victoria are available to ATSI children and families through adequate support and resourcing of those services together with refined referral protocols.

### **Proposal 15**

That legal practitioners working in the Children's Court (Family Division), including Victoria Legal Aid, Department of Human Services and private practitioners, receive ongoing and targeted Aboriginal and Torres Strait Islander cultural awareness training.

*Community knowledge/awareness about the child protection legal system*

### **Proposal 16**

That, either in conjunction with a community education program by VACCA about the ACSASS program or separately, further community education programs be delivered to the ATSI community and key workers about the child protection legal process in Victoria and the specific rights stipulated for cases involving ATSI children. Funding must be made available for this.

*The role of VACCA/LAKIDJEKA/ACSASS s.4.4*

### **Proposal 17**

That VACCA engage in broad community education about the role of its ACSASS program, in partnership with other ATSI community organisations in providing support and assistance in the child protection area.

That more detailed information be provided to ATSI family members at the commencement of child protection interventions to ensure clearer understanding of the ACSASS role.

### **Proposal 18**

That, in conjunction with ACSASS providers, the state government increase its support of the ACSASS program with a view to strengthening its capacity across Victoria.

### **Proposal 19**

That consideration be given as to whether ACSASS advice to DHS about an ATSI child should be formalised in writing and confidentially provided to the parties.

## **Proposal 20**

That the program of cultural awareness training for DHS child protection workers be reviewed and strengthened and that specific training about:

- Aboriginal decision making principles and other legislative provisions with respect to ATSI children and
- the impact of family violence upon ATSI victims/survivors in the child protection context be incorporated within this.

ATSI community organisations working in the area should be invited to present at this training.

That DHS workers also receive training with respect to the role of lawyers in Children's Court (Family Division) proceedings and the responsibility to actively include legal representatives in all communications with respect to the proceedings.

That processes to ensure early referrals for legal representation by DHS be implemented (see also Proposal 11).

With a view to greater transparency, understanding and effectiveness of its operations, that DHS conduct training for key legal and other stakeholders in the child protection system about its key internal processes.

That DHS provide reports and proposed Case Plans within reasonable timeframes (depending, of course, on the nature and urgency of the proceeding).

That DHS ensure that culturally appropriate supportive/therapeutic intervention is provided for ATSI children who are the subject of protection orders and who have experienced family violence or other trauma.

### *Aboriginal Family Decision Making meetings/dispute resolution processes*

## **Proposal 21**

That all child protection dispute resolution processes at the pre- and post-court stage involving ATSI children must:

- incorporate family violence and safety screening to ensure the process is appropriate
- guarantee the option of culturally appropriate legal representation throughout
- be culturally appropriate.

That, in consultation with the ATSI community, a review of the Aboriginal Family Decision Making process and legislative provisions occur. The relationship between AFDMs and other court dispute resolution processes for ATSI children must be clarified. Subject to the above safeguards,

consideration ought to be given to ensuring Aboriginal Family Decision Making meetings are more readily available prior to court intervention.

That appropriate resourcing by government support the development of ATSI-specific child protection legal processes and services, including through training of more ATSI convenors.

### *Conditions on Children's Court Orders and in Best Interest plans*

#### **Proposal 22**

That an ATSI-led review be conducted of the way in which support is provided to ATSI family members in child protection cases (including to meet conditions attached to court orders) with a view to better resourcing and coordinating this process. That the role of Aboriginal Family Decision Making meetings or Case Plan meetings be incorporated within this review.

Given the intensive support work required for ATSI victims/survivors involved in child protection legal proceedings, that dedicated culturally appropriate support positions be funded to complement child protection legal assistance.

### *Court process and the law*

#### **Proposal 23**

That, in consultation with the ATSI community, a review of Children's Court (Family Division) processes, legislation and procedure applicable to ATSI children in the child protection system in Victoria proceed (noting the current Koori-specific Children's Court (Family Division) project underway within the Department of Justice Victoria), incorporating consideration of:

- a review of court procedure with respect to ATSI children and families. Given the significant human rights at stake in Children's Court Family Division decisions, this review must acknowledge the requirement for a robust legal process that is culturally appropriate and addresses access to culturally appropriate legal and support services.
- culturally appropriate pre- and post-court dispute resolution processes for ATSI children, incorporating review of the Aboriginal Family Decision Making Meeting process (see proposal 21)
- the requirement of preparation of cultural plans in broader circumstances
- a review of the provision allowing a permanent care order to be made after a child has been in out-of-home care for at least six months or for periods that total at least six of the last 12 months
- jurisdiction for review of DHS Case Plans transferring from VCAT to the Children's Court
- regulation which improves the provision of information and reports by DHS and requires DHS to formally notify legal representatives of case events
- creation of an ATSI liaison position in the Children's Court (Family Division)
- the production of a Children's Court pamphlet setting out the specific law and procedure which applies to cases involving ATSI children in the Children's Court (Family Division)

- ongoing cultural awareness training for all Children’s Court staff, magistrates (and lawyers/counsel providing assistance through VLA grants)

trial of an ATSI-specific information/referral notice to be served with protection applications involving ATSI children.

*Placements and visits/improved supports for carers*

**Proposal 24**

That the arrangements for ATSI children in out-of-home care be strengthened through an ATSI-led review of:

- adherence to the Aboriginal child placement principle and location of suitable extended family placements
- parental access/visiting arrangements with respect to ATSI children on out-of-home care orders
- the support (financial and practical) provided to extended family who become carers
- oversight of ATSI children in out-of-home care incorporating:
  - enhanced scrutiny by the court at the time of extension of applications/orders
  - improved resourcing to community agencies for this oversight function
- the oversight of ATSI children placed in permanent care arrangements, including of cultural issues and implementation of cultural plans where appropriate.

*Complaints/oversight*

**Proposal 25**

That, in consultation with the ATSI community, consideration be given to the introduction of an independent oversight process to increase accountability in relation to the implementation of legislative and procedural provisions specified for Aboriginal and Torres Strait Islander children in Victoria. A systemic advocacy role may be incorporated within this role.

That a simplified and improved complaints process be implemented for ATSI families in relation to DHS Child Protection conduct to ensure speedier responses and enhanced accountability.

***Section 3: Family violence/intervention orders***

*After-hours and crisis supports*

**Proposal 26 (See Paper 2, Section 7)**

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after hours support) who experience family violence and sexual assault, and that this review incorporates the role of Victoria Police. The review must incorporate statewide and local

processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

### **Proposal 27 (See Paper 2, Section 7)**

That crisis legal referrals for ATSI victims/survivors be made at the earliest possible time to ensure improved legal outcomes.

That court processes with respect to the return of Family Violence Safety Notices ensure that the victim has had reasonable opportunity to access culturally appropriate legal assistance prior to applications being struck out or final determinations made.

#### *Legal services*

### **Proposal 28 (See Paper 1, Proposal 4 and Paper 2, Section 4)**

That state and Commonwealth governments collaborate to ensure funding of FVPLS units or ATSI women's legal services for rural, regional and urban communities and that funding be adequate to ensure integrated legal service provision for family violence law, family law, child protection and victims assistance.

#### *Support services*

### **Proposal 29**

That ATSI support workers be available to support ATSI victims/survivors of family violence and sexual assault in the court process. Appropriate models for this may vary according to local circumstances.

- ATSI victim support workers should be considered for some Magistrates' Courts to provide support with intervention orders, VOCAT, victim support in giving evidence in criminal prosecutions and family law cases where relevant.
- Paralegal positions must be attached to FVPLS Victoria and ATSI support workers funded for other key family violence services.
- Perpetrators responding to family violence intervention orders must have access to legal and support services.

#### *Victoria Police training*

### **Proposal 30**

That Victoria Police ensure ongoing training of its members in relation to the *Family Violence Protection Act 2008*.

## *Child care*

### **Proposal 31**

That consideration be given to the provision of assistance with child care arrangements for women applying for intervention orders who cannot make or cannot afford other arrangements—including where a court appearance is required at short notice.

## *Magistrates' Courts physical environment*

### **Proposal 32**

That the Victorian Government conduct a review of Magistrates' Courts in Victoria where family violence applications are heard with a view to improving safety and privacy arrangements for victims/applicants. Particular attention should be paid to rural courts where facilities are poor.

## *Culturally appropriate court process and procedure*

### **Proposal 33**

That the pilot Koori Family Violence list initiative within the Department of Justice Victoria address culturally appropriate court process and procedure with a view to improving ATSI accessibility of those arrangements in all relevant Magistrates' Courts in Victoria.

## *Interim intervention orders in small towns*

### **Proposal 34**

In small towns where court registries are open only on a part-time basis, that police have the ability to obtain interim intervention orders by telephone during business hours to avoid the victim having to travel to another town to obtain the interim order.

## *Police cultural awareness training*

### **Proposal 35 (Also see Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault)**

That there be a comprehensive review of ATSI cultural awareness training within Victoria Police (including police prosecutors) at the statewide and local levels which is informed by ATSI expertise to strengthen and broaden its scope.

Police training in responding to ATSI victims of family violence/sexual assault must combine ATSI cultural awareness within the family violence context. Barriers to ATSI victims/survivors seeking assistance from police in situations of family violence and sexual assault must be dealt with in detail, and strategies developed to address issues specific to breaches.

## *Koori family violence pilot project*

### **Proposal 36**

That the Koori family violence pilot project within the Department of Justice Victoria aim in the long term to strengthen family violence court and associated arrangements across Victoria, taking into account and adapting to local diversity. Attention to current arrangements within rural Magistrates' Courts must be incorporated as a priority.

## ***Section 4: Victims assistance***

### *Community awareness*

### **Proposal 37**

That community education about victims assistance rights continue in an ongoing way in the ATSI community in Victoria and that key stakeholders who provide services to victims/survivors of family violence and sexual assault collaborate in community legal education activities. That information targeted to support workers and the community about urgent interim assistance available through VOCAT be particularly highlighted.

### *Access to victims assistance*

### **Proposal 38**

That key agencies that provide services to ATSI victims/survivors of family violence and sexual assault review respective roles and referral procedures in the provision of advice and support to strengthen access to the victims assistance system.

### *Rights of adults to pursue crimes experienced in childhood*

### **Proposal 39**

That appropriate assistance be ensured for people who have experienced crimes against them as children but who, either through late disclosure, or lack of knowledge or means, have not had the opportunity to pursue legal remedies.

### *VOCAT legal services*

### **Proposal 40**

Given the complex nature of Koori List VOCAT applications, and the requirement for culturally and gender appropriate legal assistance for ATSI victims of family violence and sexual assault, that the state government ensure ongoing funding for VOCAT legal services at FVPLS Victoria, including for the Melbourne metropolitan area.



### *ATSI victim support role in Magistrates' Courts*

#### **Proposal 41 (See Proposal 20 in Paper 2, Section 14, and Paper 3, Section 3, Proposal 29)**

That ATSI Liaison Officers be introduced to support ATSI victims of crime in the Magistrates' Courts in crimes of family violence, VOCAT, and family law proceedings and as witnesses in criminal prosecutions.

*Video links*

#### **Proposal 42**

That VOCAT's use of video links for hearings be avoided. Where a video link is utilised, an appropriate location and provision for applicant support must be ensured.

*Thoughts on alternative hearing venues*

#### **Proposal 43**

That VOCAT consider providing options to applicants in the Koori List to have applications heard in locations in the community, ensuring that confidentiality is respected. Consideration must be given to the importance many VOCAT applicants attach to receiving acknowledgement within the formal court environment.

*Gender of Tribunal member*

#### **Proposal 44**

That VOCAT ask applicants in the Koori List whether they have a preference for a male or female Tribunal member.

*Interim awards following intervention order hearing*

#### **Proposal 45**

That VOCAT interim awards be more regularly made available at the conclusion of or on the same day as an intervention order made in favour of a family violence victim. Refinement of court procedure and education of practitioners and support workers are required.

*Counselling/healing*

#### **Proposal 46 (Also see proposals made in Paper 2, Section 9: Counselling services)**

That VOCAT acknowledge individual preferences for counselling/healing assistance and ensure that access to alternative therapies and culturally based healing processes are available and supported at both the interim and final order stages.

That VOCAT ensure that expenses are covered which facilitate an applicant's access to counsellors/psychologists, including child care and travel expenses.

That the Victims Support Agency and Victims Assistance and Counselling Programs implement processes to ensure strengthening of culturally appropriate counselling/healing options and continue to build links with ATSI organisations with a view to ensuring culturally accessible support options for ATSI victims/survivors.

### *Speedier VOCAT process*

#### **Proposal 47**

That processes be implemented to ensure a generally speedier resolution of VOCAT applications which may include:

- additional Koori List Tribunal members/decision makers
- clarification with respect to obtaining necessary evidence as between the applicant/representative and VOCAT, noting in particular that obtaining police material through FOI is causing significant delay
- early disclosure by VOCAT of evidence adverse to the applicant
- additional directions hearings or mentions including by telephone to monitor issues that cause delay
- clarifying the interaction between the criminal prosecution and VOCAT process
- strengthening of the S33 determination without hearing process.

### *Koori List guidelines*

#### **Proposal 48**

That VOCAT consider developing guidelines for the Koori List to provide direction to applicants and legal practitioners and to assist the Tribunal in its decision making. Issues covered under S52 and S54 of the Act, offender notification, culturally appropriate counselling healing/options, VOCAT hearing options, provision of culturally informative support material and children's applications should be included in the guidelines.

### *Children's applications including children under care and protection orders*

#### **Proposal 49**

A dedicated review of victims assistance processes and VOCAT applications on behalf of children should occur. Specific guidelines may be required.

This review must urgently examine the situation of children who are under care and protection orders to ensure that their rights as victims are being pursued in a timely manner.

## *Review of assistance and procedure for crimes of family violence and sexual assault*

### **Proposal 50**

That a review of victims assistance legislation and VOCAT procedure occur with respect to crimes of family violence and sexual assault. This review should incorporate analysis of victims assistance schemes in other states and territories with respect to legislation and procedure as well as levels of financial assistance.

Within the review, particular attention should be given to the assistance available to adults who disclose crimes of sexual assault and family violence committed against them as children with a view to extending special financial assistance to these cases and to ensuring that the rights of children under state care orders are pursued in a timely manner.

VOCAT guidelines should be developed for applications relating to crimes of family violence and sexual assault and which incorporate or separately provide guidance on applications for young people.

Consideration of the particular issues raised in this discussion paper should inform both legislative and procedural reform and the introduction of any guidelines.

### *Review of Special Financial Assistance*

### **Proposal 51**

That the state government again review the levels and availability of special financial assistance under the Victims of Crime Assistance Act with a view to strengthening the assistance available. Flexible options for payment should be incorporated.

### *The 'exceptional circumstances' requirement for expenses to assist with recovery*

### **Proposal 52**

That consideration be given to removing, or at least limiting, the requirement to show 'exceptional circumstances' to obtain expenses to assist with recovery.

### *Strengthening procedure*

### **Proposal 53**

That a review of VOCAT Koori List procedure be undertaken which includes the following matters:

- directions hearings
- client support issues
- VOCAT letters to applicants
- related victim applications

- medical assessments/reports
- involvement of Koori elders where the applicant consents.

### ***Section 5: The experience of ATSI victims/survivors as witnesses***

#### **Proposal 54**

That Victoria Police/prosecutors inform victims of their right to seek remote witness options and actively pursue this option if it is the victim's preference.

That ATSI victims/survivors who are required to give court evidence about a crime of family violence or sexual assault have the option to access specialist ATSI victim/witness support workers and culturally appropriate debriefing.

### ***Section 6: Police responses to ATSI victims/survivors of family violence and sexual assault***

#### *SOCAU*

#### **Proposal 55**

That all police SOCA Units be resourced to carry through with prosecutions in relation to sexual assault offences as soon as possible, and that the significance of sexual assault within family violence be recognised within Victoria Police Koori-specific and general policy and procedure.

That funding be continued for the Koori Family Violence Police Protocols Project.

#### **Also see Proposal 35, Section 3, repeated below:**

That there be a comprehensive review of ATSI cultural awareness training within Victoria Police (including police prosecutors) at the statewide and local levels which is informed by ATSI expertise to strengthen and broaden its scope.

Police training in responding to ATSI victims of family violence/sexual assault must combine ATSI cultural awareness within the family violence context. Barriers to ATSI victims/survivors seeking assistance from police in situations of family violence and sexual assault must be dealt with in detail, and strategies developed to address issues specific to breaches.

#### *Women officers*

#### **Proposal 56**

That Victoria Police ensure that women police officers are available to attend to women victims of family violence and sexual assault, including in the taking of statements and in the follow-up liaison with women victims about prosecution matters.

### *After-hours and crisis supports*

#### **Proposal 57 (Also see Paper 2, Section 7)**

That a review be conducted of the particular crisis support requirements of ATSI women and children (including after-hours support) who experience family violence and sexual assault, and that this review incorporates Victoria Police. The review must incorporate statewide and local processes and take into account local ATSI diversities. Pilot programs to provide Koori-specific crisis responses must be considered.

### *Communication with victims*

#### **Proposal 58**

That Victoria Police carry out a comprehensive review of its communication with victims of crime with the aim of implementing a system which is effective and supportive of victims. The current system in which information is only available from police informants or sergeants where a matter is urgent—particularly given the varying shifts and roles of officers—is completely inadequate and seriously undermines the confidence of victims in the police process. A victims liaison process should be implemented across the state.

### *Complaint/feedback processes*

#### **Proposal 59**

That police complaint processes for ATSI people be strengthened and made more accessible, and that community awareness raising about these procedures occur.

### ***Section 7: Restorative justice***

#### **Proposal 60**

Primarily concerned with the human rights, wellbeing and safety of Aboriginal and Torres Strait Islander victims of family violence and sexual assault, FVPLS Victoria urges extreme caution in any move to investigate the extension of restorative justice principles to crimes of family violence and sexual assault.

Any further research in relation to restorative justice approaches to family violence and sexual assault as proposed by the Victorian Parliament Law Reform Committee 2009 must involve in-depth consultation with ATSI victims/survivors of family violence and sexual assault and ATSI women as the majority of victims/survivors of these crimes. Any such consultations must be conducted in safe and confidential settings to ensure open and candid discussion.

