

# NATIONAL FAMILY VIOLENCE PREVENTION LEGAL SERVICES

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

## National FVPLS Forum response to Productivity Commission Access to Justice Arrangements Review Draft Report

The National Family Violence Prevention Legal Services Forum (National FVPLS Forum) welcomes the opportunity to respond to the Draft Report of the Review of Access to Justice Arrangements conducted by The Productivity Commission.

The primary function of Family Violence Prevention Legal Services (FVPLSs) is to provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander<sup>1</sup> adults and children who are victim/survivors of family violence. FVPLSs have adopted holistic, wrap-around service delivery models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face.

Aboriginal people are significantly overrepresented as victim/survivors of family violence. Historical and current institutionalised and individualised racism and discrimination have left Aboriginal community members reluctant to engage with the legal system or to seek mainstream legal assistance. The 2004 *Senate Report on Legal Aid and Access to Justice* identified that Aboriginal women remain chronically disadvantaged in terms of their access to legal services, awareness and exercise of their legal rights and domestic violence support.

The FVPLS program provides holistic, culturally safe legal services to approximately 5000 clients annually in 31 rural and remote locations across Australia. The importance of the FVPLS program delivering legal services, particularly to Aboriginal women, has been acknowledged in multiple reports. The 2004 *Legal Aid and Access to Justice Report* recommended that 'the Government allocate sufficient funding to... Indigenous Family Violence Prevention Legal Services to enable adequate provision of effective legal services for Indigenous women in family law and family violence matters...'<sup>2</sup> The 2005 *Indigenous Law and Justice Inquiry* acknowledged the wide role of FVPLSs in responding to family violence, and emphasised the importance of FVPLSs as legal service providers, stating that "the Committee is not suggesting that FVPLSs withdraw from providing services such as counselling for victims of family violence but rather that the focus of these organisations as providers of legal services be affirmed and acknowledged in their funding and required outputs."<sup>3</sup>

In December 2013 the FVPLS program was transferred from the responsibility of the Attorney-General's Department (AGD) to the Department of Prime Minister and Cabinet (PM&C). The National Forum is concerned that the change of departmental responsibility may be due to a demonstrated lack of understanding of the FVPLS program. We are a legal assistance service that is underpinned by a holistic service model. Departmental transfer from AGD may challenge continued collaboration between legal assistance services, potentially reducing the effectiveness of the National Forum's membership of the Australian Legal Assistance Forum (ALAF). Many FVPLS units are also accredited members of the National Association of Community Legal Centres (NACLC) and therefore have common governance practices and processes and involvement in a

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<sup>1</sup> hereafter Aboriginal

<sup>2</sup> Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, 2004 at 5.135.

<sup>3</sup> Joint Committee of Public Accounts and Audit, *Inquiry into Indigenous Law and Justice*, 2005 at 32.

continual quality improvement program. FVPLSs are important, experienced and specialist legal assistance service providers delivering critical services to highly disadvantaged Australians with complex, multiple legal and socio-legal needs. As identified by the Commission, “Legal assistance services are essential for the operation of the civil justice system. The four legal assistance providers — legal aid commissions (LACs), community legal centres (CLCs), Aboriginal and Torres Strait Islander legal services (ATSILS) and family violence prevention legal services (FVPLS) — have different and specialised but complementary roles in the legal assistance landscape.”

The FVPLS programs are aligned with numerous national priority policies including the Access to Justice Principles, Closing the Gap, National Indigenous Law and Justice Framework and the National Plan to Reduce Violence against Women and their Children. The National FVPLS Forum members consider our services to be essentially specialised, unique and critical to securing the rights of our community members to live in safety. We endorse the Commission finding that there is a continued and ongoing need for our specialist services.

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

The 2009 Senate *Access to Justice* report<sup>4</sup> found that Aboriginal people's access to justice is compromised by a lack of properly funded Aboriginal legal services and noted that people living in regional, rural and remote areas were particularly disadvantaged. However, people living in urban areas also experience challenges with policy decisions to restrict FVPLS services to rural and remote areas leading to urban Aboriginal people being ‘in effect abandoned to mainstream services, without adequately addressing issues of access, flexibility and relevance.’<sup>5</sup>

As identified in Draft Finding 22.1 there is a continued ongoing need for Aboriginal specific legal services. The National FVPLS Forum members deliver an extensive range of legal and socio-legal services to our clients within a framework of culturally safe practices. The fundamental importance of cultural safety in effective service provision to vulnerable clients cannot be emphasised enough. It speaks to the access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness. Cultural safety is a complex concept which is understood differently depending on the individual or service provider. FVPLSs conceptualise cultural safety as the creation of an environment where Aboriginal people feel safe and draw strength in their identity, culture and community. Cultural safety extends beyond cultural awareness and cultural competence and incorporates self-determination into the provision of services.

The National FVPLS Forum is concerned with sections of the Productivity Commission’s Draft Report which downplay FVPLSs community legal education programs and early intervention and prevention activities. This important aspect of our services has not been sufficiently understood by the Commission – see point 5, ‘preventing issues from evolving into bigger problems’ in the National FVPLS Forum original submission to the Access to Justice Arrangements Inquiry and section 7 of FVPLS Victoria’s original submission for more information. The FVPLS member

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<sup>4</sup> Legal and Constitutional Affairs References Committee, *Access to Justice*, 2009 at 147.

<sup>5</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights Commission, *Social Justice Report*, 2006.

services provide legal education to Aboriginal communities and also to government agencies, mainstream service providers, legal aid commissions and diverse organisations. For example, FVPLS services have long identified the need for culturally safe education in Aboriginal communities about the Family Court and its operation, and the different purposes of the Family Court/Federal Magistrates' Court/Family Division of the Children's Court which are not widely understood.

Early intervention and prevention programs do not replace the need for community legal education programs. The Aboriginal and Torres Strait Islander Social Justice Commissioner has isolated human rights education in Aboriginal communities as a key hurdle to successfully addressing violence and abuse in Aboriginal communities. FVPLSs recognise this and aim to offer community legal education as geographically broad-ranging and as often as possible. For example, FVPLS Victoria offers Koori Women's Legal Clinics located in housing commission apartments and other specific areas with high populations of Aboriginal people. The National FVPLS Forum would also like to emphasise the Commonwealth Government's diversion of funding from FVPLSs national early intervention and prevention efforts. This is despite numerous reports' findings for the need and cost-saving value of early intervention and prevention programs, and the importance of community control in Aboriginal affairs, compared to top-down approaches which prove unsuccessful.

In 2002–03 in Australia, the total cost of domestic violence to victims, perpetrators, friends and families, communities, government and the private sector was estimated to be in excess of \$8b.<sup>6</sup> In 2008–09, the total cost of all violence against women and their children (including non-domestic violence) was estimated to have cost the Australian economy \$13.6b and, if no action were to be taken to address the problem, will cost \$15.6b in 2021–22<sup>7</sup>. This includes costs associated with:

- pain, suffering and premature mortality (which accounts for almost half of all associated costs);
- provision of health services;
- the impact on employment and productivity;
- replacing damaged property, defaulting on personal debts and moving;
- exposure to domestic violence among children, child protection services;
- the response of the criminal justice system, support services and prevention programs; and
- victim compensation and financial support from a range of sources.<sup>8</sup>

A comparably small investment in FVPLSs has the potential to increase progress towards achieving government policies on closing the gap on Aboriginal disadvantage including:

- The overrepresentation of children in the child protection system, particularly the out of home care system;
- The decreased participation, retention and school completion rates;
- Unemployment rate and welfare dependency;
- The high incarceration rates for both men and women;
- Reduced health outcomes including maternal health; and
- Insecure and inadequate housing.

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<sup>6</sup> Access Economics, *The cost of domestic violence to the Australian economy*, 2004.

<sup>7</sup> KPMG Management Consulting, *The cost of violence against women and their children*, 2009

<sup>8</sup> KPMG Management Consulting, *The cost of violence against women and their children*, 2009

The National FVPLS Forum endorses the Commission findings

- That there is an ongoing need for specialist Aboriginal legal services
- Aboriginal specific ADR service development should be further explored
- Collaboratively developed FVPLS program evaluation framework and performance indicators are welcomed

The National FVPLS Forum is concerned that:

- The transfer of FVPLS to PM&C risks fragmenting legal assistance service provision
- The development of single point access will not improve access to justice for our clients
- ATSILs and FVPLSs cannot be amalgamated

## NFVPLSF addressing specific draft recommendations, findings, information responses

### **DRAFT RECOMMENDATION 5.1**

*All states and territories should rationalise existing services to establish a widely recognised single contact point for legal assistance and referral. The service should be responsible for providing telephone and web-based legal information, and should have the capacity to provide basic advice for more straightforward matters and to refer clients to other appropriate legal services. The LawAccess model in NSW provides a working template. Single-entry point information and referral services should be funded by state and territory governments in partnership with the Commonwealth. The legal professions in each state and territory should also contribute to the development of these services. Efforts should be made to reduce costs by encouraging greater co-operation between jurisdictions.*

National FVPLS Forum members assert that single contact points and interfaces are not the appropriate mechanisms to effectively increase access to justice for our specific clients. There are a number of identified reasons why establishing a single contact point for legal assistance and referral would not be suitable for Aboriginal clients generally and FVPLS clients specifically. The complex nature of family violence and the responses and capacity of its survivors in turn mean that community engagement and outreach are essential components of identifying legal needs, ensuring community access to service and effective, holistic service delivery. Sometimes it is simply unsafe for our clients to use the phone to discuss family violence matters.

The specific nature of family violence prevention activities and diverse community contexts will continue to require targeted and specialised frontline interface approaches, such as outreach and face-to-face techniques which are evidence-based approaches to increasing Aboriginal community access to justice services. FVPLS offer holistic legal and socio-legal services including legal advice, representation, case-work, referral, community engagement, CLE and group activities.

Additionally, the members of the National FVPLS Forum consider systemic reliance on web-based and telephone access will further disadvantage members of regional and remote communities where access to telephones and computers are limited. In communities such as Kalumburu, WA, for example, there is no mobile phone coverage at all and one public pay phone. Low literacy and language skills are barriers to using a telephone or web-based interface even if available. Face to face contact can eliminate many barriers of low literacy and English language skills. There are also issues of cost and access to 1300/1800 numbers for those with access to a mobile phone but no calling credit. Telephone and web-based service reliance can create further communication barriers through the use of technology, which in turn can increase client frustrations and isolation. Our clients want face-to-face services. LawAccess is a complementary service, not a replacement or a substitute, and can increase the referral roundabout with limited knowledge of local or culturally specific services.

A 'service' providing telephone and web-based legal information may also not be considered 'local' and may struggle to develop trust relationships with potential clients. Aboriginal survivors of family violence have engaged with FVPLSs based on client perception of high-quality, culturally safe service delivery. To address the complex needs and nature of family violence matters FVPLSs have developed the essential community trust in our services and staff that is required to increase the safety and well-being of our clients. Although outreach models can be resource intensive FVPLSs strive to minimise expenditure and provide cost innovations through sharing activities like travel and venue hire with other agencies.

In the expert opinion of FVPLSs, community engagement and outreach are far more effective in addressing our clients' needs due to nature of family violence and a highly diverse and disadvantaged client group which continue to need targeted and specialised approaches. A single contact point for legal services is not an appropriate way to increase access to justice for Aboriginal people, particularly survivors of family violence.

**DRAFT RECOMMENDATION 17.1**

*Courts should extend their use of telephone conferences and online technologies for the purpose of procedural or uncontentious hearings where appropriate, and examine whether there should be a presumption in favour of telephone hearings or use of online court facilities (where available) for certain types of matters or litigants.*

The National FVPLS Forum agrees with this recommendation with reservations. If the legal matter is simple and straightforward there can be benefits from utilising the convenience afforded by technology. AFLS Kalgoorlie reports the court currently uses audio and video links to good effect, accommodating parties not able to attend court in person. Challenges exist where the technological access is not available thereby possibly creating another barrier to accessing justice. Ironically, the more remote the location, the greater economic and access benefits from utilising technology and the worse the available facilities are. Telephone and internet facilities would need to be upgraded both in remote communities and regional courts. Whilst complications of scheduling and distance may make telephone or online hearings more convenient for parties, appearing in court can be most effective for our clients, allowing for better communication (i.e. non-verbal cues etc). Where technologies are used it is even more critical that clients are appropriately represented as using the telephone can create an additional communication barrier, re-traumatise clients and impose more barriers to accessing services due to limited telephone and internet facilities. Generally it would not be appropriate in family violence/ child protection matters for there to be a presumption of telephone/online hearings.

**DRAFT RECOMMENDATION 21.2**

*The Commonwealth and state and territory governments should ensure that the eligibility test for legal assistance services reflect priority groups as set out in the National Partnership Agreement on Legal Assistance Services and take into account: the circumstances of the applicant; the impact of the legal problem on the applicants life (including their liberty, personal safety, health and ability to meet the basic needs of life); the prospect of success and the appropriateness of spending limited public legal aid funds.*

Eligibility for FVPLS services is currently inclusive and recognises that family violence and related socio-legal services requirements are complex, individualised and highly contextual. Government policy regarding who should be eligible for legal assistance services needs to be flexible enough for services to be able to use them in practice to effectively deliver legal assistance to disadvantaged Australians, particularly victim/survivors of family violence.

The National FVPLS Forum members agree that legal assistance service priorities should take into account the capacity and circumstances of the applicant and the impact of the legal problem. However it is challenging for FVPLSs to define 'prospect of success' in circumstances of family violence – keeping Aboriginal women and children safe is a core government responsibility. Services should have the flexibility to determine locally responsive and relevant service eligibility criteria to address local socio-legal needs. Eligibility tests that restrict legal assistance to survivors

of family violence in need are unacceptable to the National FVPLS Forum members. Any eligibility tests considered should reflect the needs of the priority groups which must include Aboriginal victim-survivors of family violence. It is the position of the National FVPLS Forum that all clients of FVPLS services should be automatically eligible for legal assistance services.

**DRAFT FINDING 22.1**

*Specialised legal assistance services for Aboriginal and Torres Strait Islander people remain justified.*

The National FVPLS Forum members wholeheartedly concur with Draft Finding 22.1.

The National FVPLSs Forum members consider funding stability and resource investment is required to enable FVPLSs to continue to deliver its essential legal services. Our critical services address the rights to legal access for Aboriginal victim/survivors of family violence, improve the progress towards national policy priorities and increase the safety and security of our clients. Managing and delivering such crucial services within an operational environment of funding uncertainty has considerable impacts, driving energy towards organisational sustainability rather than focussing on increasing the safety of our clients, achieving outcomes, impacts and service excellence.

As James Anaya, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous people stated "Enhancing indigenous self-determination is conducive to successful practical outcomes; studies have shown that Indigenous peoples who effectively manage their own affairs tend to fare better across a range of indicators than those who do not."<sup>9</sup>

**DRAFT RECOMMENDATION 22.1**

*The Commonwealth Government should:*

- *establish service delivery targets (as currently apply to Aboriginal and Torres Strait Islander legal services (ATSILS)) within service plans for family violence prevention legal services (FVPLS)*
- *develop and implement robust benchmarks with ATSILS and FVPLS to better measure performance.*

*These agreed benchmarks should be a consideration in framing the administrative data collection for ATSILS and FVPLS.*

The National FVPLS Forum recommends that an appropriate and specific evaluation framework is developed in collaboration with its members to ensure the production of valid, consistent, reliable measures of FVPLS programs' efficiency, efficacy and impacts. We would welcome the development of an effective outcomes-based approach identifying the complex nature of working with Aboriginal families impacted on by family violence and the variable potential outcomes developed throughout the processes of holistic and person-centred legal service delivery.

Indicators of success determined whilst working with victims/survivors of family violence may not be able to be effectively measured utilising a common legal assistance services evaluation framework template. The National FVPLSs Forum welcomes the development of collaboratively developed and meaningful performance indicators. FVPLSs have been subjected to review after review in recent years (including the Allens Consulting Report, the NOUS Report, The Review of the

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<sup>9</sup> UN Human Rights Council, Twenty-First Session, Agenda Item 3, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, page 9

NPA on Legal Assistance Services, the Senate Inquiry, and this Commission) commonly determining there is an ongoing need for our specialist services, a need to provide secure sustainable funding and a need to develop an effective evaluation framework in consultation with FVPLSs to address concerns around data collection and performance measurement. During this time government and services could have collaboratively developed targets and benchmarks that were realistic and funded appropriately. The National FVPLS Forum would welcome the development of effective client-centred holistic service delivery and the appropriate investment in funding models which enable services to address complex socio-legal needs. We would also welcome recognition that the delivery of Aboriginal Family Violence Prevention Legal Services is a unique and valuable specialisation and skill set.

It is the experience of FVPLSs that the legal issues experienced by our clients are generally complex, involve a number of areas of law and the clients themselves are experiencing multiple layers of trauma. There is further evidence of this in the recent Legal Australia-Wide Survey (LAW Survey) undertaken by the Law and Justice Foundation of NSW, which found that Aboriginal people had significantly increased prevalence of multiple legal problems. The LAW survey also stated that Aboriginal people had lower levels of finalising their legal problems, compared with non-Aboriginal people. It is our experience that this is likely due to the complex natures of the issues experienced, the interaction of a number of inter-connected legal issues, difficulties maintaining engagement with the system, not receiving sufficient legal and non-legal support and the underlying social disadvantage and trauma experienced by many clients. The LAW survey concluded that given their disadvantage and tendency to experience multiple legal problems, Aboriginal people are likely to benefit from a more holistic or client-focused approach to their problems.

In the first 10 years of the FVPLS national program, no national data or reporting system was provided. After significant lobbying, FVPLS Victoria was finally granted access to CLSIS in 2009. More resources are required to assist FVPLS administrators of the CLSIS database to make data collection more meaningful from the service provider's perspective and to ensure the reliability of service data across FVPLS services. Work is currently being done by National FVPLS Forum members to ensure consistent data entry from service providers. Setting appropriate service delivery targets (outputs and outcomes, using quantitative and qualitative measures) will strengthen service delivery by ensuring regular self-assessment in line with funding body evaluation and review. With collaboratively developed clear goals and targets, services can successfully achieve agreed outcomes. Targets must be able to measure quality, complexity and holistic services provided including non-legal services and specifically take into account the dynamics of family violence. Targets must be negotiated depending on the individual circumstance of the service i.e. geographic distances to cover (ie remote FVPLS units). Establishing service delivery targets should be a collaborative process with FVPLSs to create benchmarks and targets which are realistic and achievable and acknowledge the difficulties of our service provision as well as the importance of providing community education and engagement strategies to address the socio-legal needs of our clients and their communities. ATSIILS and FVPLS performance measures should clearly be separate given the differences in the nature of our legal service provision and the specific needs of our client group.



**INFORMATION REQUEST 22.1**

*The Commission seeks views on the most appropriate model for engagement between governments and Indigenous-specific legal assistance services. Practical examples of successful models and the lessons from implementation are also sought.*

Regardless of engagement model, service delivery targets should be incorporated into service plans for FVPLSs and benchmarking activities should be undertaken, however these activities should include meaningful consultation with all FVPLS providers. Targets should be reviewed annually, with direct links to the National Plan to Reduce Violence against Women and Children, the Closing the Gap strategy, and other strategic mechanisms relevant to each jurisdiction such as State/Territory plans to reduce violence against women and children.

Joint venture models may be of benefit in some circumstances, however we would not consider this an across the board solution. Increased efficiencies and access to required expertise may be assumed, however these gains need to be balanced with potential loss of cultural relevance. For an Aboriginal corporation it may not be possible to attract and retain clients where a joint venture with a mainstream organisation dilutes the corporation's ability to respond to cultural issues, or spends its resources coaching the mainstream organisation to work more effectively with Aboriginal people. This may detract from service provision if not allowed for in the funding agreement. Flexibility in operational spending is required for purchase on contracts arrangements. It is a reasonable expectation for services to manage their budgets internally to take account for changes of priorities and circumstances. This is currently possible with block funding arrangements.

Appropriate funding models will depend on the requirements of the funding contract and the objectives that the services are to achieve, which should be developed in consultation with National FVPLS Forum members. For example, if services include legal advice and representation, CLE and early intervention then the organisation may tender for these services under a purchase of service contract arrangement. However if counselling and therapeutic services are also required it may be suitable to enter into a joint venture with an appropriate organisation who has this area of speciality. To this end, the engagement model will depend on the outcomes of the service delivery targets and benchmarking activities.

The National FVPLS Forum members would like to identify that there is a potential incompatibility of target-based funding models and models of legal services that manage the clients' needs holistically rather than as an individual legal issue. Specific legal advice targets tied directly to funding would restrict the FVPLS services from providing additional client support and other culturally safe, holistic practices. Cross-sectorial holistic service planning should be encouraged instead of developing restrictive and specific legal outcome target-based funding allocations. Funding models should also take into account major activities to which services such as FVPLSs are "expected" to contribute. Flexibility for additional funding in the event of a major initiative such as the Royal Commission into Institutional Responses to Child Sexual Abuse should be considered at the outset of contract arrangements.

**DRAFT RECOMMENDATION 22.2**

*The Commonwealth Government should allocate funding for both Aboriginal and Torres Strait Islander legal services and family violence prevention legal services in accordance with differences in need and service costs across geographic areas.*

The National FVPLS Forum members consider that geography should not be a barrier to accessing justice. Discrimination via geography is unacceptable and this includes urban areas. While it is true that costs to deliver services are significantly higher in remote areas, this should not come at the cost of obscuring urban issues. The National FVPLS Forum members seek increased flexibility for members' organisations to determine suitable outreach locations; this is essential as communities grow and change. Geographic considerations and community needs variances have specific and increased impacts on remote communities where access to a service is dependent not on the individual's legal need but whether their specific location fits with the geographically restricted terms of current funding agreements. There are also a number of very high needs rural and remote areas that are not among the 31 locations that are serviced by FVPLSs, including but not limited to the Torres Strait, Shepparton in Victoria, Halls Creek in WA and the Anangu Pitjantjatjara communities in South Australia. Where FVPLSs have been able to secure additional funding to fill service gaps, the funding is often uncertain and short term. We also have a query here about how need is identified. The Indigenous Legal Needs Report released in 2013, for instance, had some fundamental flaws in methodology and did not include family violence as a category of legal need.

National FVPLS Forum members acknowledge that there are a range of service delivery considerations to take into account to determine 'value for money' - small FVPLS providers are effective in their community despite comparatively larger administrative costs. Strategic encouragement and investment in service collaboration models would allow inter-agency support without threat of overlap or service 'competition'. Regionalised service delivery can provide "local-level" organisational support without amalgamation. Mainstream organisations are frequently funded to work with Aboriginal people in regional and remote areas where they are not considered "local", thereby impeding effectiveness of community outcomes. Amalgamation of services could make the market "thinner" for those already limited in their choice of services in regional and remote areas. Amalgamation of services will not increase access to services, where potential clients can be conflicted out of receiving any service at all, due to reduced options in regional and remote areas.

**INFORMATION REQUEST 22.2**

*The Commission seeks feedback on how the funds determined in draft recommendation 22.2 should be distributed across providers and how the relatively small scale of some providers affects the efficiency and effectiveness of services. Would there be benefits from further amalgamation of services and if so, how might this process be brought about?*

The National FVPLS Forum has concerns regarding the risks presented by the consideration of amalgamation of services. FVPLSs were developed in response to the recognition that Aboriginal victim/survivors of family violence have specific legal needs that could not be met effectively through other legal assistance provision, including ATSILs. Our clients are often conflicted out of having access to ATSILs. As recognised by this Commission the need to build trust between Indigenous communities and legal assistance providers warrants longer-term models of engagement. This may require a small scale presence in a regional/remote community. If small

services are amalgamated with service provision run from a larger regional centre this can create barriers to accessing justice and prevent FVPLS organisations from creating community trust and building strong client relationships, which are the foundations of our successful service delivery. While centralising administration and business support may save governments money there is always the potential that this will come at the risk of local community participation and control in services, essential in producing sustainable impacts and access to justice.

The National FVPLS Forum members are opposed to a comprehensive open tender process for FVPLS services without significant recognition of the importance of maintaining cultural safety and local community participation and control as priorities. Larger organisations may have the capacity and resources to develop articulate tender submissions, however without the local trust required to effectively engage with their communities they are unlikely to be able to deliver genuinely effective outcomes.

National FVPLS Forum recommends funding levels to all FVPLS providers are reinstated to previous funding levels before the 2013/14 budgetary cuts, at a minimum, until new secure funding models have been developed. The onus is on the government (Commonwealth and State) to work with services to develop appropriate service targets and benchmarking activities to gain a more accurate measure of individual FVPLS service effectiveness and value for money. From these activities the government will be able to determine and measure unit costs, applying this formula in future contract arrangements. If benchmarking shows that a FVPLS service is underperforming, efforts should be made to build that service's capacity to reach the required targets. Geography should not be a determining factor for assistance for Aboriginal people experiencing family violence. Focus should be on removing regional disadvantage and ensuring that all Aboriginal people have access to appropriate services.

As already mentioned, the amalgamation of services should be considered only after it can be evidenced that in doing so does not negatively impact potential clients' choice of services and their being conflicted out of receiving any service (that is, viable alternatives must be available), for instance amalgamation of FVPLSs with NATSILS is not appropriate. Community consultation is critical to the discussion of amalgamation of services, 'local solutions to local concerns' and 'nothing about us without us' should be the underpinning foundation of decisions related to Australia's most disadvantaged communities having appropriate access to justice.

The National FVPLS Forum welcomes the review of funding arrangements that identify the appropriate level of resourcing required to deliver and develop essential services that meet multiple policy objectives. This would include addressing issues regarding the recruitment and retention of solicitors, which are due in part to insecure inadequate FVPLS funding arrangements (i.e. only able to offer short-term contracts and limited remuneration), contributing to high staff turnover and loss of expertise. Further investment is needed to meet the legal needs of disadvantaged Australians and increase access to justice. The FVPLS program nationally is low cost government expenditure targeting the needs of Aboriginal victim/survivors of family violence. Funding arrangements should value FVPLS service provision in the context of the enormous costs of family violence to the Australian economy and the added socio-economic value provided by keeping Aboriginal family violence victim-survivors safe. Family violence has pervasive and disruptive impacts on all aspects of a person's life, and the life of their family. Continued and expanded investment in the FVPLS program is a commitment to overcoming Aboriginal disadvantage from the perspective of community safety, access to justice and human rights.

**DRAFT FINDING 22.2**

*The policies of state and territory governments can impact significantly on demand for services provided by Aboriginal and Torres Strait Islander legal services and family violence prevention legal services. Given these services are funded by the Commonwealth Government, there are poor incentives for state and territory governments to consider the ramifications of their policy changes on demand for these Commonwealth funded services.*

The National FVPLS Forum members consider state and territory governments should provide additional funds to FVPLSs to provide assistance to clients with state based legislation. We welcome additional funding to fill service gaps and create better resources for high need areas, assuming this approach does not facilitate opportunities for contention about Federal/State/Territory government accountabilities. The National FVPLS Forum members would welcome opportunities to engage in state-wide planning of service priorities, we are already active members in a variety of state-wide services networks and forums. We assert that each state should have a culturally specific strategic plan which engages all service providers and government in the planning of service priorities and delivery. This would assist to ensure alignment between broader policy statements and service delivery for those working in partnership with the FVPLS providers. This strategic plan would further provide direction about consistent service quality standards expected whilst working with Aboriginal women, men and children. The safety of vulnerable Aboriginal community members should be a service delivery priority of each State and Territory as well as the Commonwealth.

**INFORMATION REQUEST 22.3**

*The Commission seeks feedback on whether the National Partnership Agreement on Legal Assistance Services should include state and territory government funding for Aboriginal and Torres Strait Islander legal services and family violence prevention legal services to provide a greater incentive for state and territory governments to consider the impact of changes in state or territory based policies on the demand for these services. Are there other ways this could be achieved? Where state and territory governments do not provide funding, or only provide limited funding, what role should they play in influencing service delivery and reporting requirements?*

The National FVPLS Forum members consider funding stability and resource investment is required to enable FVPLSs to continue to deliver essential services that have important impacts on national policy priorities and on the safety and well-being of our clients. The Family Violence Prevention Legal Services core business often relates to legal issues that are legislated by states – intervention or restraining orders, child protection and victim’s compensation. Given this, it would be appropriate for the states and territories to contribute to the funding of the services as they do with mainstream legal services. Clearly any policy changes made by State and Territory governments in these areas of law will have the potential to impact upon the work of the FVPLSs.

The National FVPLS Forum members agree that the NPA should include state and territory government funding for Aboriginal and Torres Strait Islander legal services, given the complexity of legislation (Commonwealth and state) and the significant work performed by FVPLSs in response to State based legislation and policies. There is also significant value to the states and territories of funding early intervention and prevention programs and community legal education to prevent the escalation of legal issues. Funding should be ongoing and stable to ensure organisational stability, maturity and excellence in service delivery, whether state or federally funded.

Reporting responsibility should be maintained by the Commonwealth government, as well as responsibility for disseminating information gathered to relevant state and territory bodies. Where state funding applies, states would be consulted at the service target formulation and benchmarking level (strategic and planning), with limited scope to influence service delivery and reporting outside of this. The Commonwealth government would manage this relationship and maintain service delivery and contractual oversight. The pre-existing relationship with the Commonwealth Government as primary funding entity is valued by FVPLS services. Moving to a model of state-based funding may fragment the FVPLS program; relying on state governments to prioritise Aboriginal affairs is high risk. The challenges presented by a Commonwealth/State partnership are that it can be used to avoid responsibility rather than take responsibility for preventing service and access to justice gaps.

**DRAFT RECOMMENDATION 22.3**

*While recognising there are significant challenges to addressing unmet need for Indigenous language interpreters, the Commonwealth and state and territory governments should agree and implement the proposed national framework for the provision of Aboriginal and Torres Strait Islander interpreters as part of the National Partnership Agreement on Remote Service Delivery.*

The National FVPLS Forum members agree with this recommendation. The framework should have provision for flexibility around how interpreters might be engaged by different services. Consideration around interpreters as employees versus contracted services should be given. Consultation with specific service providers should be sought.

**INFORMATION REQUEST 22.4**

*The Commission seeks information on the level of funding required to expand interpreter services to meet some or all of the gap in Indigenous interpreter services.*

There is a significant gap in accredited interpreter services for Aboriginal Australians.

FVLSAC reports there are no accredited Pitjantjatjara interpreters based in Ceduna or any of the far west communities. FVLSAC is required to fly an interpreter from Adelaide to provide services for workshops promoting the Royal Commission into Institutional Responses to Child Sexual Abuse. Of the interpreters that FVLSAC have looked into employing for this job the majority are not accredited. The use of unqualified interpreters carries significant risk and undermines the client's ability to access the legal system. Serious investment needs to be made into interpreter services to increase coverage of interpreters and to ensure that all interpreters are accredited.

**DRAFT RECOMMENDATION 8.1**

*Court and tribunal processes should continue to be reformed to facilitate the use of alternative dispute resolution in all appropriate cases in a way that seeks to encourage a match between the dispute and the form of alternative dispute resolution best suited to the needs of that dispute. These reforms should draw from evidence-based evaluations, where possible.*

*Indigenous Australians & Family Law Litigation: Indigenous Perspectives on Access to Justice 2011* identifies "A plausible explanation for the lack of utilisation of dispute resolution services is that such services are not accessible or culturally appropriate in responding to the needs of Indigenous people. These services are in most instances provided by non-indigenous agencies, many of which

are faith-based and many of which do not employ Indigenous staff, particularly Indigenous dispute resolution practitioners".<sup>10</sup>

The National FVPLS Forum members are concerned that use of ADR/FDR may not be the most appropriate service delivery model to address complex cases with histories of family violence. Previous FVPLS consultations with our clients regarding the use of Family Dispute Resolution (FDR) has identified that in many cases involving family violence FDR was inappropriate or contrary to the interests of our clients.

'In all appropriate cases' requires further examination. Currently Aboriginal women are often not informed of their legal rights to bypass ADR processes where family violence is involved. Specialist training of both lawyers and court staff is required in family violence so that they can appropriately identify family violence and assess the risk to the client if they were to participate in the ADR process. FVPLSs seek to emphasise that providing legal assistance services to Aboriginal survivors of family violence is a highly specialised and complex skill set that has been developed in FVPLS through culturally specific and culturally safe processes. Cultural competency is necessary, overdue and welcomed in mainstream services however culturally safe approaches delivered through Aboriginal community controlled services which are managed by and accountable to their individual communities remain a critical component of effective service delivery models at FVPLSs.

**INFORMATION REQUEST 22.5**

*The Commission seeks information on the cost of a culturally appropriate Indigenous-specific alternative dispute resolution (including family dispute resolution) service(s), particularly in 'high need' areas. Views on the appropriate engagement model and governance arrangements are also sought.*

The National FVPLS Forum members support a greater government investment in culturally specific models of ADR. We support the collaborative development of culturally specific ADR to enable culturally safe practices to be developed for Aboriginal people accessing legal services, with reservations as expressed regarding inappropriate use of ADR in cases which involve histories of family violence. The financial information requested by the Commission is outside the expertise of our service although the data should be available to the Commission. Various models of Aboriginal specific ADR have been trialled, in the family law system particularly. The Family Court Registry in the Northern Territory employed Aboriginal Liaison Officers in a pilot program that did not receive ongoing funding. Anecdotal information at the time suggested that there was definite merit in the use of culturally appropriate mediation practices.

The National FVPLS Forum members consider that there is merit in persisting with models of culturally appropriate ADR. Many of our clients and their families do not relate to mainstream Family law or ADR services, but need assistance in resolving family law and parenting disputes in a culturally appropriate way. FVPLSs consider that there are likely to be a variety of models of ADR required given the diversity amongst the Aboriginal Communities in Australia. To be successful, such programs are likely to need significant flexibility and to be tailored to the needs of local communities.

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<sup>10</sup> Stephen Ralph *The Indigenous Australians & Family Law Litigation: Indigenous Perspectives on Access to Justice* 2011

**DRAFT RECOMMENDATION 22.4**

The Commonwealth Government should:

- undertake a cost-benefit analysis to inform the development of culturally tailored alternative dispute resolution (including family dispute resolution) services for Aboriginal and Torres Strait Islander people, particularly in high need areas
- subject to the relative size of the net benefit of such a service, fully fund these services
- encourage government and non-government providers of mainstream alternative dispute resolution services to adapt their services so that they are culturally appropriate for Aboriginal and Torres Strait Islander people (where cost-effective to do so).

The National FVPLS Forum reiterates its support for the collaborative development of culturally specific ADR to enable culturally safe practices to be developed for Aboriginal people accessing legal services, with reservations as expressed regarding inappropriate use of ADR in cases involving histories of family violence. Mainstream service provision of ADR/FDR has been identified as lacking cultural competency and community accountability. Any 'cost/benefit' analysis needs to carefully define 'cost' and 'benefit' from the perspective of those impacted on by the proposed changes. The National FVPLS Forum members consider ADR/FDR services should be developed and delivered through Aboriginal community controlled agencies to ensure positive community impacts of processes and decisions and culturally safe practices.

## About the National Aboriginal Family Violence Prevention Legal Services Forum

The National FVPLS Program was established in recognition of the gap in access to legal services for Aboriginal and Torres Strait Islander victims/survivors of family violence – predominantly Aboriginal women and children.

The Australian Government provides funding for the Family Violence Prevention Legal Services (FVPLSs). The primary function of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal adults and children who are victim/survivors of family violence, including sexual assault/abuse. FVPLSs can also provide community legal education and early intervention and prevention activities.

Members of the National Forum are those organisations in receipt of Commonwealth funding to deliver Family Violence Prevention Legal Services in 31 rural and remote locations across Australia:

- Aboriginal Family Legal Service Southern Queensland (Roma)
- Aboriginal Family Violence Prevention and Legal Service Victoria
- Central Australian Aboriginal Family Legal Unit (Alice Springs NT)
- Family Violence Legal Service Aboriginal Corporation (SA)
- Kempsey Family Violence Prevention Legal Service (NSW)
- Marninwarnitkurra Family Violence Prevention Unit WA (Fitzroy Crossing)
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Domestic and Family Violence Service
- Queensland Indigenous Family Violence Legal Service
- Southern Aboriginal Corporation Family Violence Prevention Legal Service (Albany WA)
- Thiyama-li Family Violence Service Inc. NSW (Moree)
- Warra-Warra Family Violence Prevention Legal Service (Broken Hill NSW)
- Western Australia Family Violence Legal Service (Perth)
- Yoorana Gunya Family Violence Healing Centre Aboriginal Corporation (Binaal Billa FVPLS, Forbes NSW)