



Aboriginal Family Violence Prevention
& Legal Service Victoria

FVPLS Victoria

Submission to the Release of the
Productivity Commission's

Draft Report

Access to Justice Arrangements

May 2014

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Introduction

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) welcomes the opportunity to respond to the Productivity Commission's (the Commission) Inquiry into Access to Justice Arrangements Draft Report.

FVPLS Victoria fully endorses the response of the National Aboriginal Family Violence Prevention Legal Services Forum (National FVPLS Forum).

FVPLS Victoria would be pleased to provide further information in addition to this submission if required, and would be pleased to appear before the Commission in a hearing.

FVPLS Victoria

FVPLS Victoria is a legal service that provides ongoing casework, legal advice and referral to Aboriginal and Torres Strait Islander¹ victims/survivors of family violence and sexual assault. The areas of law in which we assist include family violence intervention orders, child protection, family law, victims' compensation applications, and other legal problems related to family violence.

FVPLS Victoria receives funding from various sources including the Commonwealth Government, the State Government of Victoria, Victoria Legal Aid, the Legal Services Board, and philanthropic trusts. Our head office is located in Collingwood and we have three regional offices in Bairnsdale, Mildura and Warrnambool.

OVERALL RESPONSE TO CHAPTER 22

Assistance for Aboriginal and Torres Strait Islander People

FVPLS Victoria appreciates the Commission's recognition of the ongoing need for Aboriginal specific legal services.

Early Intervention and Prevention

FVPLS Victoria is disappointed that the Commission's Draft Report takes the view that 'there are few examples of early intervention being employed by FVPLS'.² This is despite the original submission of FVPLS Victoria which discusses at length the early intervention and prevention program Sisters Day Out®. It should also be noted it is disappointing that there has been no recognition of the early intervention and prevention activities of the National FVPLS Program. The Commission also does not reference that \$4.5 million over four years was removed from the National FVPLS Program's early intervention and prevention activities in 2012.

¹ Hereafter 'Aboriginal'.

² Productivity Commission, Access to Justice Arrangements: Draft Report, April 2014, 684.

In addition to a long history and reputation of running Sisters Day Out workshops (information on this program is available on page 13 of FVPLS Victoria's original submission, and is also attached in the Annexure to this document), FVPLS Victoria also delivers the Dilly Bag program and the Sisters Serenity Retreat program. Please see explanations of these programs in the Annexure to this document.

INFORMATION REQUEST 5.1

The Commission seeks feedback on the likely effectiveness and efficiency of extending the use of legal health checks to those groups identified as least likely to recognise problems that have a legal dimension. More vulnerable groups include people with a disability, sole parents, homeless people, public housing tenants, migrants and people dependent on income support.

Where greater use of legal health checks is deemed appropriate, information is sought on who should have responsibility for administering the checks. What role should non-legal agencies that have regular contact with disadvantaged clients play? Do these organisations need to be funded separately to undertake legal health checks?

The many barriers that prevent Aboriginal people accessing justice are well documented. Australia's Aboriginal populations are a group of people least likely to recognise the legal nature of problems they are grappling with and/or to seek legal assistance. Aboriginal people also continue to experience reluctance and distrust in the Australian legal system due to the impact of historically racist government policy (such as the Stolen Generations) and current day adverse experiences of the justice system (through for example the overrepresentation of Aboriginal families in child protection and criminal jurisdictions). Our Sisters Day Out program is a positive way for FVPLS Victoria to build trust and confidence in both Aboriginal organisations and mainstream organisations. In this way, FVPLS Victoria takes the services to the women who are less likely to walk through our door.

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.

We point the Commission to the two case studies included as an Annexure in our original submission to this Inquiry. It is worth noting that both of these clients discussed in the case studies accessed our service after involvement with an Aboriginal-specific and culturally safe program or service provider. A single contact point, an idea also put forward in the Review of the National Partnership Agreement on Legal Assistance Services Draft Report, is severely

misaligned with the needs of Aboriginal clients and is likely to provide a disincentive for Aboriginal victims/survivors of violence to seek legal help. We point the Commission to the Secretariat of National Aboriginal and Islander Child Care's report Integrated Service Delivery for Aboriginal and Torres Strait Islander Children and Families, which clearly states that:

*"...while integrated systems seek to ensure access to multiple services through single access points, they are most accessible where there are multiple entry points into the integrated service system, with 'no wrong doors.'"*³

We believe that this understanding can also be applied in a legal setting, particularly in a setting assisting Aboriginal victims/survivors of family violence.

DRAFT RECOMMENDATION 10.1

Restrictions on the use of legal representation in tribunals should be more rigorously applied. Guidelines should be developed to ensure that their application is consistent. Tribunals should be required to report on the frequency with which parties are granted leave to have legal representation.

In consideration of the extreme disadvantage of Aboriginal victims/survivors of family violence and sexual abuse and the many barriers they experience in attempting to access justice, legal representation is critical for the Aboriginal clients of FVPLS Victoria, in courts, tribunals and other dispute resolution forums. FVPLS Victoria represents a sizeable proportion of Aboriginal applicants accessing the Koori List at the Victims of Crime Assistance Tribunal (VOCAT) in Victoria (106 applicants of the 471 applications where a legal representative was recorded as acting for the applicant).⁴ Restricting access to legal representation in tribunals should not be a policy recommended by the Commission where it affects Aboriginal victims/survivors of family violence navigating the legal system.

DRAFT RECOMMENDATION 11.1

Courts should apply the following elements of the Federal Court's Fast Track model more broadly:

- *the abolition of formal pleadings*
- *a focus on early identification of the real issues in dispute*
- *more tightly controlling the number of pre-trial appearances*
- *requiring strict observance of time limits.*

FVPLS Victoria has some reservations in regards to this recommendation. Our service sees merit in these elements being applied in family violence intervention order matters, however, there are concerns that implementation of these measures in child protection and family law matters may limit access to justice and avenues for negotiation and resolution by consent.

³ Secretariat of National Aboriginal and Islander Child Care, Integrated Service Delivery for Aboriginal and Torres Strait Islander Children and Families, March 2012, 8.

⁴ Victims of Crime Assistance Tribunal, Koori VOCAT List Pilot: Review and Recommendations, VOCAT, February 2010, 43.

INFORMATION REQUEST 14.3

How widespread are problems around conflicts of interest for providers offering unbundled services? Do provisions that deal with conflicts of interest need to be refined so as not to prevent people benefitting from discrete, one-off forms of advice from assistance services and if so, how might this best be done?

FVPLS Victoria maintains that a relaxing of conflict of interest provisions is not appropriate for the FVPLS program model. FVPLS Victoria undertakes conflict checks before providing legal services of any kind (advice or case work) to clients who approach our service. Organisations like FVPLS Victoria must already be alert to and have policies in place to manage community perceptions of conflict. FVPLS Victoria is known within the Aboriginal community as working only with victims/survivors of family violence, not with perpetrators and this is stipulated in our funding agreement from the Commonwealth Government.

It has been our experience that women who have experienced family violence are more likely to access legal services when they are assured that neither the perpetrator nor anyone connected to the perpetrator will also be accessing the service. Concern about safety, family, and community backlash requires confidentiality and trust in the service. In small Aboriginal communities, there are often people from different families and cultural groups. Clients can sometimes perceive conflicts with our service acting for people from other cultural groups, even where no legal conflict exists. We have developed appropriate policies for managing these types of non-legal conflicts, in a way that maintains communities' trust in the service.

FVPLS Victoria's response to the Australian Solicitors' Conduct Rules and Commentary Law Council of Australia Consultation outlines our organisational position in relation to this information request in more detail.

DRAFT RECOMMENDATION 16.1

The Commonwealth and state and territory governments should increase cost recovery in civil courts by charging court fees that reflect the cost of providing the service for which the fee is charged, except:

- *in cases concerning personal safety or the protection of children*
- *for matters that seek to clarify an untested or uncertain area of law — or are otherwise of significant public benefit — where the court considers that charging court fees would unduly suppress the litigation.*

Fee waivers and reductions should be used to address accessibility issues for financially disadvantaged litigants.

FVPLS Victoria encourages the Commission to recommend that 'cases concerning personal safety or the protection of children' should encompass child protection matters, family law matters and family violence matters.

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 rates of family violence in Aboriginal communities are high and continue to increase. The services of FVPLSs should not be limited to regional, rural and remote areas. Aboriginal women and children who live in urban areas must also be able to access culturally safe legal assistance for family violence-related matters. As Rashida Manjoo, United Nations Special Rapporteur on Violence Against Women has argued, geography is irrelevant to women escaping violence and trying to access support services.⁵

Contrary to the Commission's Draft Report which states 'disadvantaged groups such as Indigenous Australians are more highly concentrated' in regional, rural and remote areas,⁶ the 2006 Census found that 48% of Victoria's Indigenous population reside in major cities.⁷

In relation to the allocation of funding for legal assistance services, the Senate Legal and Constitutional References Committee found in its 2004 Inquiry into Legal Aid and Access to Justice Report that the Commonwealth Government should:

- 'either provide an adequate level of funding for legal assistance in matters arising under state/territory law against domestic violence and child abuse (which are clearly aligned with the Commonwealth family law legal aid priority of providing assistance to spouses and children who are the victims of domestic violence); or
- enhance the remedies currently available under Commonwealth law for domestic violence and child abuse and then ensure that adequate funding is provided to enable victims of domestic violence and child abuse to access those remedies.'⁸

⁵ FVPLS Victoria, *Standing Firm for Change: A Journey To Justice*, National Conference 2012: A summary of key themes and FVPLS Victoria recommendations, October 2013, 14.

⁶ Productivity Commission, *Access to Justice Arrangements: Draft Report*, April 2014, 675.

⁷ Australian Bureau of Statistics, *2006 Population Distribution, Aboriginal and Torres Strait Islander Australians 2006*, 4705.0 Latest Issue, 15 August 2007.

⁸ Senate Legal and Constitutional References Committee, *Inquiry into Legal Aid and Access to Justice Report*, June 2004, Recommendation 18, 4.72, 83.

Annexure

Sisters Day Out®

The Sisters Day Out program targets Aboriginal and Torres Strait Islander women in communities across Victoria for a day of pampering, relaxation and respite from life stressors. Each workshop includes a range of wellbeing activities such as hairdressing, massage, manicures and other forms of pampering that enhance and promote self-esteem. Dance and exercise activities establish a tone of supportive informality that unites women across generations.

Each workshop includes a presentation and general discussion about family violence issues. Women experiencing violence can privately consult FVPLS Victoria solicitors and/or counsellors during the day to exercise their right to feel safe and secure in their homes and community.

The workshop also provides an opportunity for local community agencies, both mainstream and Aboriginal specific, to set up information booths and engage participants in a relaxed and supportive environment. This interaction assists to break down some of the barriers that prevent Aboriginal and Torres Strait Islander women from accessing services. The day succeeds in strengthening and facilitating cultural and wider intergenerational family ties, while simultaneously educating people about what constitutes family violence and what help is available – from both mainstream agencies and Aboriginal-specific services.

Since the Sisters Day Out program was developed by FVPLS Victoria six years ago, 80 events have been delivered in 38 locations across Victoria with over 5,500 Aboriginal women attending the programs.

The government's commitment to effective prevention programs such as Sisters Day Out must be demonstrated through the provision of adequate and sustainable funding. It is strongly recommended that this resourcing is in addition to the adequate resourcing of legal services for victims/survivors of family violence, as funding for early intervention and prevention programs combating family violence should not occur in competition to funding for crisis response services.

The Dilly Bag Program

The Dilly Bag Workshop is a two day intensive personal development workshop. It assists Koori women to make choices in their own lives that will reduce vulnerability to family violence and enhance their capacity to take on a leadership role in their community regarding family violence prevention.

Based on cultural principles, Dilly Bag incorporates aspects of healing and provides a foundation of learning to identify each woman's strengths, unlock potential, reaffirm identity, strengthen self-esteem and overcome personal barriers. This involves exercising life choices at a personal, family and/or community level.

The Sisters Serenity Retreat

The Sisters Serenity Retreat (the Retreat) provides a sanctuary for up to 25 Koori women to have some respite from life stressors within a drug and alcohol free environment, while providing activities to strengthen resolve so that they can continue to make positive choices in their own lives and continue to lead the community on family violence prevention.

The Retreat takes place over three days at a culturally appropriate, safe and relaxing location with facilities for the participants to stay for two nights. The format for the Retreat is a series of workshops with physical and social activities such as self-defence, Koori art, horse riding, personal care, yarning circles, cultural sessions, general informal conversations and relaxation.

A FVPLS Victoria solicitor and a counsellor attend the Retreat and are available for discussions with individuals as required. The Retreat is also run by staff with specific training to support women to address related health, social and mental health issues. Other guest speakers also attend with a particular focus upon health and wellbeing including drug and alcohol workers, nutritionists and other relevant health professionals.