

# **Aboriginal Family Violence Prevention and Legal Service Victoria**

## **(‘FVPLS Victoria’)**

### **Submission to the Victorian Law Reform Commission**

#### **Protecting Victoria’s Vulnerable Children Inquiry**

**29th April 2011**

#### **Introduction**

As the key state-wide legal service for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault, **FVPLS Victoria** is primarily concerned with advancing legal rights and broader safety and well being outcomes for this client group in its child protection and other legal services. Consistent with Victorian Aboriginal and Torres Strait Islander family violence data with respect to victims, about 90 per cent of FVPLS Victoria’s clients are women and children. Aboriginal and Torres Strait Islander children continue to be vastly overrepresented in the child protection and juvenile justice systems in Victoria. Family violence is a significant contributing factor to child protection notifications and family violence rates in the Aboriginal and Torres Strait Islander community in Victoria (and nationally) are disproportionately high. FVPLS Victoria is well aware of the importance of family violence prevention strategy through culturally appropriate early intervention and education programs and well resourced and integrated legal and support services to improve family and community safety.

This submission is specifically focused upon the experiences of Aboriginal and Torres Strait Islander children and families within the child protection system in Victoria. FVPLS Victoria’s major concern, informed by on the ground experience in legal service provision is to ensure:

- greater protection and advancement of legal rights for Aboriginal and Torres Strait Islander children and families in the child protection system, particularly victims of family violence and sexual assault (FVPLS Victoria strenuously opposes any diminution of judicial oversight)

- improved access to culturally appropriate services for Aboriginal and Torres Strait Islander children and adults impacted by family violence including legal services, counselling services, cultural identity/healing programs, community legal education/early intervention programs, and proper resourcing of an enhanced integrated support system for Aboriginal and Torres Strait Islander children and families involved in the child protection system, preferably independent to organisations with statutory child protection roles e.g. Victorian Aboriginal Child Care Agency (VACCA)
- guaranteed access to culturally appropriate legal assistance for Aboriginal and Torres Strait Islander children and families in ALL child protection decision making processes/meetings both in and out of court
- enforcement of legislative and procedural provisions specific to Aboriginal and Torres Strait Islander children and further strengthening of culturally appropriate legislation, practice and procedure in the Children’s Court, throughout the Department of Human Services (DHS), and across the entire child protection and early intervention system including culturally appropriate alternative dispute resolution process
- a process of independent and transparent oversight with respect to the protection and advancement of legal rights and well being of Aboriginal and Torres Strait Islander children and families in the child protection system in Victoria along with capacity for systemic advocacy

#### **Comments about the VLRC review process**

With respect to this reference to the Victorian Law Reform Commission, FVPLS Victoria is concerned that the Attorney General did not initiate a Koori terms of reference for this inquiry. Nor has the Attorney General made specific mention of the vast overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system or of the need to ensure dedicated attention to this issue in considering various reform options. It is a serious oversight.

FVPLS Victoria is also concerned that consultation with the Koori community about this review has been limited. While it is our understanding from the presentation given at the Aboriginal Justice Forum that

further consultations will take place throughout the course of this review, it must be understood that it will take time to fully engage with the Koori community in Victoria about these substantial issues and to reach a preferred position as to how best to strengthen culturally appropriate processes and outcomes for Koori children. Enhancing collaboration with the Koori community improves relationship building between community and the Government and strengthens the Governments' commitment to improving disadvantage within these communities. Any reforms to the child protection system must be consistent with and support the directions which emerge from this project. Additional legislative reform is required to further advance the rights and best interests of Koori children.

### **FVPLS Victoria**

FVPLS Victoria is one of fourteen Family Violence Prevention and Legal Service (FVPLS) units funded by the Commonwealth Attorney General's Department to provide legal and associated support services to Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault and to parents/carers of Aboriginal and Torres Strait Islander children in thirty-one rural and remote locations across Australia. FVPLS Victoria was incorporated in October 2002. The FVPLS national program commenced in recognition of the gap in access to legal services for Aboriginal and Torres Strait Islander victims of family violence - predominantly women and children. The Aboriginal Legal Services with their primary focus on criminal law, corrections and oversight of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), are often conflicted and not the appropriate service for women and children impacted by family violence and sexual assault. FVPLS Victoria is urging significant strategic strengthening of legal and associated services for Aboriginal and Torres Strait Islander women and children nationally. Serious ongoing inequities in access to justice continue.

The Commonwealth, through the national FVPLS program funds FVPLS Victoria services in Mildura, Gippsland and Barwon South West where offices and permanent staff are based. Alternative funding has been secured to provide services in metropolitan Melbourne (where over 50 per cent of the Victorian Koori community reside) and other rural Victoria. FVPLS Victoria has entered into a three year agreement with Victoria Legal Aid (VLA) for the secondment of a family lawyer and employment of a family violence solicitor. The funding agreement will expire 30 June 2013. The Department of Justice provides funding for the employment of a child protection solicitor until 30 September 2011. The Legal

Services Board provides a grant to fund the FVPLS Victoria Family Violence Community Legal Education Project which extends to 1 October 2012. Whilst the VLA positions may be extended there is no prospect of Department of Justice extending funding for the child protection position and government support is being urgently sought for this critical work to continue. FVPLS Victoria is currently in the process of lobbying for and indentifying funding support from the state government to continue this position in the short term. However, ongoing funding for this work through either the state or Commonwealth government must be secured.

The Commonwealth FVPLS program funds paralegal support positions to work alongside lawyers in the regional offices. Given the complexity of our clients' legal problems combined with significant disadvantage and trauma, these positions are critical in ensuring that clients engage and sustain the legal process. FVPLS Victoria has entered into a DHS Indigenous Housing Agreement that enables the employment of two paralegal support workers to be based in the Melbourne office. The funding agreement will expire 30 June 2012. These positions will support the Melbourne child protection solicitor in the event that ongoing funding is secured.

No law reform or policy funding is provided to the national FVPLS program. National and state and territory capacity for systemic advocacy on law and justice issues for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault and Aboriginal and Torres Strait Islander women and children is limited. FVPLS Victoria has secured a three year funding agreement with the William Buckland Foundation, extended to August 2013 for law reform and policy work.

A Commonwealth funded community legal education position is split between Barwon South West and Gippsland. A program co-ordination position is funded through the Ross Trust. The CEO and finance positions are partly funded by the Commonwealth. Aboriginal project workers are also employed to deliver the 'Sisters Day Out' cultural program of well being workshops across Victoria. Over 3,700 Koori women have accessed these workshops since 2007 which combine well being activity with legal information and advice, concluding with a yarning circle. These cultural workshops have proven highly successful in accessing women who would not seek legal assistance in a more conventional way.

### **Legal assistance issues**

The major areas of FVPLS Victoria legal assistance in accordance with funding guidelines are family violence (intervention orders), family law mainly involving child disputes, child protection and victim's

assistance. As mentioned above, approximately 90 per cent of FVPLS Victoria's client group is women and children. The regional solicitors and the dedicated child protection solicitor based in the Collingwood office all provide child protection legal assistance to victims/survivors of family violence and sexual assault. FVPLS Victoria lawyers attend Aboriginal Family Decision Making (AFDM) and Best Interest Planning meetings wherever possible, recognizing the often significant disempowerment of clients in these meetings, the far reaching nature of decisions made and failure of DHS to accord procedural fairness and to adhere to law and procedure specified for Aboriginal and Torres Strait Islander children. The Aboriginal Child Specialist Advice and Support Service ('ACSASS') role is not to advocate for any party but to advise DHS on the best interests of the Aboriginal and Torres Strait Islander child. There is further reference to this program later.

The demand for child protection legal assistance at FVPLS Victoria has increased with our capacity to provide these services. FVPLS Victoria is of the view that Aboriginal and Torres Strait Islander children and families must have the option to access legal assistance through dedicated Aboriginal and Torres Strait Islander legal services where cultural issues and holistic service provision are at the forefront of advocacy. The capacity to deal with related legal issues including family violence intervention orders, family law and victim's assistance within a context of mental ill health, drug and alcohol use, lack of housing and complex trauma is essential. The notion that lawyers are confined to an 'adversarial' approach is extremely troubling to FVPLS Victoria and without foundation. Whilst rigorous pursuit of legal rights of children and adults is critical, including for example to ensure that decisions and proposals with significant implication are supported by evidence and appropriate to the particular circumstance, community lawyers are experts in broad ranging advocacy for clients which incorporates accessible and understandable advice, negotiation, engagement when appropriate with dispute resolution processes and an holistic approach to service provision which takes into account the full range of issues and disadvantage our clients are experiencing. To assert that the lawyers role in child protection is purely adversarial, or that 'adversarial' is automatically at odds with the best interests of the child is simply wrong and appears extremely self serving on the part of those making the assertion.

### **Relevant statistics**

Aboriginal and Torres Strait Islander children in Victoria are 12.5 times more likely to be on care and protection orders than non-Aboriginal and Torres Strait Islander children.<sup>1</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 per cent 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

The Australian Institute of Health and Welfare also published statistics in Child Protection Australia 2008-2009 recording that 825 Aboriginal and Torres Strait Islander children in Victoria were on care and protection orders as at 30 June 2009.<sup>2</sup> Over the same period there was an increase of 74 children in out-of-home care.<sup>3</sup> (these figures are likely to be lower than actual due to data identification gaps).

The Australian Government Productivity Commission – Overcoming Indigenous Disadvantage – Key Indicators 2009 provides the most recent national statistics in relation to law and justice outcomes for Aboriginal and Torres Strait Islanders. 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 2007-08, 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 2007-08
- 41.0 out of every 1000 Indigenous children were on care and protection orders,

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<sup>1</sup> Australian Institute of Health and Welfare 2010 Child Protection Australia 2008-2009 Child Welfare series no. 47Cat .no. CWS 35.Canberra AIHW P35.

<sup>2</sup> Ibid. p51.

<sup>3</sup> Ibid. P46

compared to 5.3 per 1000 non-Indigenous children at 30 June 2008

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 2007-08:

- 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
- 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 it was 66 per 10 000
- Police data indicates that in Victoria, in 2007-08: for Indigenous females, the rate of domestic violence related assault was five times as high as the rate for non-Indigenous females (this is likely to be an underestimate due to underreporting and failure to identify Aboriginality)

With respect to imprisonment of Aboriginal and Torres Strait Islander people and young people the following statistics are detailed in the Australian government Productivity Commission report - *Overcoming Indigenous Disadvantage: Key Indicators 2009*:

- Nationally on 30 June 2007, the rate of Indigenous females in juvenile detention was 24.4 times higher than the rate of non-Indigenous females in juvenile detention.
- Indigenous juveniles were 28 times as likely to be detained as non-Indigenous juveniles at 30 June 2007. The Indigenous juvenile detention rate increased by 27 per cent between 2001 and 2007
- There were 432 Indigenous juveniles in detention and 310 non-Indigenous juveniles in detention at 30 June 2007. The number of Indigenous juveniles in detention increased from 261 in 2001 (a 65 per cent increase 2001 to 2007) while the number of non –

Indigenous juveniles in detention increased from 306 on 30 June 2001 (a 1.3 per cent increase 2001 – 2007)

### **A Summary of FVPLS Victoria Concerns**

Major concerns of FVPLS Victoria with the child protection system include the following:

- Strengthening of dedicated family violence legal services, dedicated Aboriginal and Torres Strait Islander community-based organisations, early intervention community education and cultural programs are key preventative strategies to reduce the risk of abuse and neglect occurring in Aboriginal and Torres Strait Islander communities
- the overrepresentation of Aboriginal and Torres Strait Islander children in the system is massive and in conjunction with a raft of culturally appropriate measures, requires high level judicial oversight
- Family violence is a significant factor in child protection interventions - lessons have been learned in other jurisdictions that effective judicial/court oversight and legal representation to protect the rights of family violence victims (who are mainly women and children and often disempowered) is imperative
- There is a punitive approach taken by support services to women who experience family violence in cases where child protection intervention results. Aboriginal and Torres Strait Islander women victims are often being re-victimized by an unhelpful, blaming approach, rather than being supported to deal with and understand the broad-ranging impacts of violence
- weighty human rights issues involving protection and removal of children are at stake which demand consideration of complex, often highly conflicted family dynamics, in which integrity of legal principles and rights must provide a solid and constant framework
- DHS is consistently under resourced and prone to cutting corners including with respect to according natural justice and procedural fairness in out of court arrangements
- Uniform and mandatory cultural awareness training among service providers is essential to address at-risk Aboriginal and Torres Strait Islander children in the child protection system

- existing principles for Aboriginal and Torres Strait Islander children in law and process are not being adequately applied – e.g. convening of AFDM’s, preparation of cultural plans, application of Aboriginal Child Placement principle, respect for Aboriginal and Torres Strait Islander culture
- power differentials as between DHS and Aboriginal and Torres Strait Islander families is massive and mistrust of authority by the Aboriginal and Torres Strait Islander community entrenched as a result of systemic racism and discrimination
- removal of Aboriginal and Torres Strait Islander children today resonates with stolen generation policy and long term trauma of the Aboriginal and Torres Strait Islander community which has resulted. Oversight of arrangements and decisions for Aboriginal and Torres Strait Islander children must sit within a judicial framework
- that there is inadequate therapeutic and other support provided by DHS to Aboriginal and Torres Strait Islander children – especially where children are impacted by family violence and other trauma
- that the *Children Youth and Families Act (2005)* and DHS policy contains specific provisions with respect to cases involving Aboriginal and Torres Strait Islander children which are not being properly implemented. Additional funding and resources are needed to support Aboriginal and Torres Strait Islander community-based organisations that specialize in helping victims within these communities
- that the role of the ACSASS program delivered through VACCA and the Mildura Aboriginal Corporation needs to be made clearer to the Aboriginal and Torres Strait Islander community and that whilst respecting privacy, greater transparency is required with respect to advice given to DHS by ACSASS workers
- that there is inadequate independent oversight of the situation of Aboriginal and Torres Strait Islander children in the child protection system or independent systemic advocacy

## QUESTIONS

The comments by FVPLS Victoria are based on the experiences of lawyers in acting for Aboriginal and Torres Strait Islander families in the child protection legal process.

## **1. The factors that increase the risk of abuse and neglect occurring, and effective preventive strategies**

### **1.1.1 What are the key preventive strategies for reducing risk factors at a whole of community or population level**

Strengthening of dedicated family violence legal services, early intervention community education and cultural awareness programs as delivered by FVPLS Victoria are areas where funding support services can have a significant preventative function for reducing risk factors at a whole of community or population level.

#### **Strengthening of Dedicated Family Violence Legal Services**

FVPLS Victoria is of the view that Aboriginal and Torres Strait Islander children and families must have the option to access legal assistance through Aboriginal and Torres Strait Islander legal services where cultural issues and holistic service provision are at the forefront of advocacy. The capacity to deal with related legal issues including family violence intervention orders, family law and victim's assistance within a context of mental illness, drug and alcohol use, lack of housing and complex trauma is essential. Dedicated Aboriginal and Torres Strait Islander legal services are best equipped to deal appropriately with cultural issues and to advocate for necessary systemic change. Past policies of removal of Aboriginal and Torres Strait Islander children continue to impact significantly on the Aboriginal and Torres Strait Islander community, especially in circumstances where DHS child protection intervenes.

Aboriginal and Torres Strait Islander children and families, particularly those impacted by family violence, have experienced poor outcomes in the child protection system as a result of inadequate access to legal representation at the early stage of DHS intervention and in 'out of court' processes. Reaching these clients at an early stage is a primary concern of FVPLS Victoria.

#### **Early Intervention Community Education Programs**

Education aimed at ensuring early access to legal assistance is a key strategy in improving outcomes to which FVPLS Victoria is committed. Providing culturally appropriate community legal education focused on child protection issues and family violence to the community and support workers is critical. FVPLS Victoria considers culturally appropriate community legal education to be targeted outreach to Aboriginal and Torres Strait Islander audiences that is

sensitive to historical and present challenges in Aboriginal and Torres Strait Islander communities. The understanding of cultural nuances is critical to effectively reaching Aboriginal and Torres Strait Islander communities. In the experience of FVPLS Victoria victims of family violence within these communities approach our services late in the process and long after family violence has occurred. FVPLS Victoria is committed to early intervention to reach victims at earlier stages in the process. 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 in urban areas.

### **Strengthening of Programs that are culturally sensitive**

Since 2007 FVPLS Victoria has delivered the highly successful and well attended Sisters Day Out wellbeing program for Aboriginal and Torres Strait Islander women across Victoria with the assistance of Commonwealth (FAHCSIA) and state government funding. The workshops are delivered by Aboriginal women and incorporate culture, well being through pampering activity, legal education on family violence and the options available to victims, legal assistance and counseling. By building awareness and providing assistance, we believe these workshops are critical to attacking the underlying issues that contribute to family violence, facilitate early legal intervention and ultimately reduce the risk factors at a whole of community or population level. FVPLS Victoria also conducts two to three child protection workshops in Melbourne each year which are well attended by a range of workers. VLA child protection lawyers present at the workshop.

#### **1.1.2 What strategies should be given priority in relation to immediate, medium and longer term priorities?**

- **Immediate priority** should be given to strengthening legal and associated services for Aboriginal and Torres Strait Islander women and children who are victims of family violence. Serious ongoing inequities in access to justice continue in Victoria and nationally. Supporting services such as FVPLS Victoria that ensure early access to legal access for women and children in Aboriginal

and Torres Strait Islander communities is critical to bridging the gap of access to justice.

- **Medium priority** should be given to other support services in relation to family violence including services that provide support for drug abuse, counselling and access to housing. Priority should also be given to the expansion of early family violence prevention and educational programs such as the Sister's Day Out program provided by FVPLS Victoria.
- **Longer term priority** should be given to ensure that support services are able to work towards attacking the underlying systemic issues of family violence. Mandatory training for service providers in identifying family violence and providing referrals to legal services such as FVPLS Victoria is essential. By taking this approach they will be able to work towards greater protection and prevention of future family violence.

### **1.1.3 What are the most cost-effective strategies for reducing the incidence of child abuse in our community?**

The most cost-effective strategy to reduce the incidence of child abuse in our community is to strengthen dedicated family violence legal services programs dedicated to early prevention and community legal education (as discussed above).

The Sister's Day Out workshops led by FVPLS Victoria have attracted over 3,700 Koori participants since the program was created in 2007. These workshops can attract up to 200 Koori women per workshop and an increasing number of women are attending the workshops and accessing legal advice. These workshops assist in early family violence prevention by sending the message that family violence is unacceptable and making women aware of the many legal options available to them.

### **1.1.2 Do the current strategies need to be modified to accommodate the needs of Victoria's Aboriginal communities, diverse cultural groups, and children and families at risk in urban and regional contexts?**

Yes. In the experience of FVPLS Victoria, support services need to be more supportive as opposed to punitive towards Aboriginal and Torres Strait Islander children and families at risk in both the urban and regional contexts. Participants in project consultations and FVPLS Victoria community forums indicated a widespread view that there needs to be a different approach to women who experience family violence in cases where child protection intervention results. There was a strong sense that women victims are often being re-victimized by an unhelpful, blaming approach, rather than being supported to deal with and understand the broad-ranging impacts of violence. In the view of 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 family violence.

Careful screening with respect to family violence and safety issues at the earliest time throughout the process is imperative. The Victorian Government Indigenous Affairs Report indicates that family violence is present in 64 per cent of child protection cases where Aboriginal and Torres Strait Islander children are involved. It also notes that family violence is the single biggest risk factor for substantiations of Aboriginal and Torres Strait Islander child abuse in Victoria.<sup>4</sup> Many of these victims have had limited access to legal services and have been able to gain access through programs such as Sisters Day Out.

#### **FVPLS Victoria Case Study**

Child Protection became involved with a family when one of the parents (who is Aboriginal) was briefly hospitalised. DHS is required to seek consultation from a Lakidjeka worker when they receive a notification about concerns for the safety of an Aboriginal child. They failed to do this.

The parent found the protective worker who was initially involved “overly critical and condescending” and the protective worker described the parent as “very defensive and hostile”. The parent distrusted and was terrified of Child Protection because of their family’s own experience of forced removal of children. After several negative interactions with the allocated worker the parent requested a new worker, however the request was refused by DHS.

Because of the poor relationship between the DHS worker and the parent, DHS claimed they were unable to investigate effectively and moved towards seeking an Interim Protection Order in relation to

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<sup>4</sup> The Victorian Government Indigenous Affairs Report 2007-2008.

the children.

FVPLS Victoria was able to advocate for the matter to be transferred to a new protective worker, and to ensure that Lakidjeka were involved. The lawyer attended a pre-hearing conference with the parent where a constructive discussion took place.

**2 Strategies to enhance early identification of, and intervention targeted at, children and families at risk including the role of adult, universal and primary services. This should include consideration of ways to strengthen the capability of those organization involved.**

**2.1 What is the appropriate role of adult, primary and universal services in responding to the needs of children and families at risk of child abuse and neglect? Please provide comment in relation to any of the services listed below or any additional services that you regard as relevant to this Term of Reference.**

**2.1.1 Universal and primary children’s services such as general medical practitioners, antenatal services, maternal and child health services, local playgroups, early childhood education and care services, primary schools, secondary schools , and telephone and internet based services for children and young people seeking information and support.**

Uniform training in the appropriate methods for screening for family violence and safety concerns for universal and primary children’s services is imperative. FVPLS Victoria supports the Common Risk Assessment Framework (CRAF) and is also supportive of initiatives to make this training available to all workers in the field of child protection.

In the experience of FVPLS Victoria, universal and primary children’s service providers (particularly hospital workers) have not been trained in how to work with family violence victims or methods of screening for family violence that encourage disclosure of family violence or child abuse occurrences. Not only do these service providers fail identify family violence, they do not prioritise family violence as a key issue in child abuse.

Moreover, FVPLS Victoria supports the establishment of a Koori specific component to CRAF training that ensures all child protection workers are culturally aware. Early intervention and prevention support is critical to reducing the numbers of Aboriginal and Torres Strait Islander

children in the child protection system. In submissions with respect to procedures for family law dispute resolution (FVPLS Victoria CEO Antoinette Braybrook sits on the National Family Law reference group) FVPLS Victoria has consistently raised concerns regarding the high levels of family violence in the Aboriginal and Torres Strait Islander community and barriers to disclosure.

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.

**2.1.2 Targeted child and/or family services such as enhanced maternal and child health services, children’s disability services, specialist medical services, child and adolescent mental health services, family support services, family relationship counselling services and Aboriginal managed health and social services.**

The establishment of procedural safeguards for uniform training in the appropriate methods for screening with respect to family violence, safety and other issues as previously detailed is essential for these services (as discussed above).

Cultural awareness training to overcome the barriers to disclosure of family violence and child abuse for Aboriginal and Torres Strait Islander victims for the services mentioned (outside of Aboriginal managed health and social services) is needed.

**2.1.3 Specialist adult focused services in the field of drug and alcohol treatment, domestic violence, mental health, disability, homelessness, financial counselling, problem gambling, correctional services, refugee resettlement and migrant services.**

Multiple factors contribute 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.

The limited number of Aboriginal and Torres Strait Islander counsellors and psychologists in Victoria highlights the necessity for cultural awareness of non-Aboriginal and Torres Strait Islander counsellors and also of the need for alternative culturally appropriate healing services. In the experience of FVPLS Victoria, Aboriginal and Torres Strait Islander people are more likely to engage with and sustain counselling processes where there is a demonstrated understanding of their culture and an approach that allows victims/survivors to choose the type of counselling with which they are most comfortable. Given the complexity of issues faced by Aboriginal and Torres Strait Islander victims/survivors, culturally aware counsellors and psychologists and culturally appropriate counselling or healing are critical.

Flexibility in relation to time, counseling venue and inability to attend on a given day also emerged from the consultations as key issues around successful counseling/healing options. FVPLS Victoria currently outsources counseling services to private counselors/psychologists. This model requires significant client support and follow-up from FVPLS Victoria paralegal staff. Funded through a Mental Health Council grant, cultural awareness workshops are provided by FVPLS Victoria in the Gippsland and Barwon South West regions, involving local counselors and psychologists. Feedback on these workshops has been very positive—many participants commented that they wished they had been able to participate in this type of program many years earlier.

The Commonwealth's narrow approach of limiting funding to service only rural and remote locations is an entirely deficient approach to the highly complex and broadly impacting issue of family violence and sexual assault experienced by Aboriginal and Torres Strait Islander women. Additional resources and funding are required to service metropolitan Melbourne and other regional areas.

The main barriers to Aboriginal and Torres Strait Islander victims/survivors of domestic violence accessing counseling assistance include:

- a critical lack of counseling options in rural areas in particular;
- a lack of culturally appropriate counselors/psychologists in all areas;
- waiting lists;
- a lack of options for culturally appropriate crisis counseling;

- inadequate funding/support for alternative therapies such as art therapy, narrative
- therapy and cultural group work;
- the need for completely separate services for victims of violence which perpetrators will not also attend (several people consulted mentioned the difficulty for victims of men/perpetrators being present at Healing Centres);
- and the more practical issues of inadequate access to transport and child care

Greater awareness is also needed of the professional ethical tensions that arise through seeking to incorporate counseling services into what are primarily legal practices. There are variations in ethical obligations amongst the states and territories (e.g. mandatory reporting between professional and ethical paradigms). However, this is a central issue to the success of the holistic service delivery model which requires appropriate recognition, leadership and support.

FVPLS Victoria has adopted a unique model of having a paralegal support worker alongside a lawyer. It has proven to be highly successful in providing more holistic services and broader client support. The paralegal support worker provides critical support such as linking clients to appropriate services, scheduling appointments and ensuring clients have access to transport to attend appointments. Also, paralegal support workers attached to legal services are in a unique position to provide intensive court support for clients of the services. In the experience of FVPLS Victoria's paralegal support workers, this support model enables clients to feel more empowered during the course of legal processes.

## **2.2 How might the capacity of such services and the capability of organisations providing those services be enhanced to fulfil this role?**

See above in 2.1.3.

### **2.4 What are the most cost-effective strategies to enhance early identification of, and intervention targeted at, children and families at risk?**

Cultural awareness training led by Aboriginal and Torres Strait Islander community-based organisations (such as the training provided by FVPLS Victoria mentioned above) is a cost-effective strategy to enhance early identification and intervention targeted at, children and families at risk. In addition, ensuring service providers establish legal safeguards and appropriate screening for family violence and safety concerns is cost-effective and essential.

- 3. The quality, structure, role and functioning of: family services; statutory child protection services, including reporting, assessment, investigation procedures and responses; and out-of-home care, including permanency planning and transitions; and what improvements may be made to better protect the best interests of children and support better outcomes for children and families.**

#### **FVPLS Victoria Case Study**

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.

Without FVPLS Victoria's intervention, Lakidjeka ACSASS would have been completely ignored by DHS and the children's lawyer

**3.1 Over recent years Victoria has been developing an increasingly integrated service delivery approach to the support of vulnerable children and families. From a systems perspective what are the strengths and weaknesses of this approach? How should any identified weaknesses be addressed?**

As a result of a more integrated service delivery approach, family violence reporting to DHS Child Protection through family violence support services has become more frequent, thus also

impeding holistic 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.

A clear weakness of the integrated service delivery approach is it is based on a system of informal referrals. There is a pressing need for a more comprehensive system that acutely engages clients with the variety of services available.

**3.2 Providing a quality service to vulnerable children and their families is depending on having a skilled workforce. What are the strengths and weaknesses of current workforce arrangements eg working conditions, training and career paths? How might any weaknesses be addressed?**

DHS is consistently under resourced with inadequate funding dedicated to the training and retention of child protection workers. As a result, DHS workers cannot handle their heavy case loads and the needs of the most vulnerable children are not being met. Often the work is outsourced to agencies with workers who are not adequately trained to deal with the needs of Aboriginal and Torres Strait Islander victims. Uniform protocols and guidelines which require mandatory training on family violence and cultural awareness would provide more consistency within these organisations.

<b>FVPLS Victoria Case Study</b>
<i>A nine-year old boy was abandoned in a Coburg park at night by his carers. The DHS workers who abandoned the boy could face criminal charges pending a police investigation, the Government claims. Shadow Minister for Child Safety Luck Donnellan said the case showed major flaws within the system. ‘This is completely unacceptable. Our most vulnerable children need the best care and support but the system has failed,’ he said. The nine-year-old apparently didn’t want to leave the lake when it was time to leave, Mitchell said, and DHS workers were</i>

*instructed by their supervisor to leave him there. Police called the DHS unit involved but a worker told officers they were knocking off and police should take him home. Mr Donnellan called on the Government to speed up the judicial review into child protection and employ more child protection workers on the front line.”<sup>5</sup>*

FVPLS Victoria is of the view that the above case study is indicative of inadequate training of service providers, particularly in circumstances where the work has been outsourced to external agencies. Dedicated Aboriginal and Torres Strait Islander community-based organisations are better suited to meet the needs of Aboriginal and Torres Strait Islander children who are over-represented within the child protection system. Additional resources and funding should be given to these organisations to compensate for weaknesses within DHS.

#### **a. Family Services**

### **3.3 What are the strengths and weaknesses of current services designed to assist families who are at risk of becoming involved in the statutory child protection system (for example ChildFIRST)?**

There is a clear demand for a wider range of services to provide parenting courses. The accessibility of these services is imperative for our clients as Aboriginal and Torres Strait Islander children are vastly overrepresented in the child protection system in Victoria. Aboriginal and Torres Strait Islander Children are 12.9 times more likely to be on care and protection orders than non-Aboriginal and Torres Strait Islander children.<sup>6</sup> It is imperative that funding and resources be made available for Koori community-based organisations to provide culturally appropriate parenting courses for the Aboriginal and Torres Strait Islander community.

In the experience of our clients there are a number of barriers to parents gaining access to these courses. To attend the parenting courses often require the children to be in the parents' custody, the out-of-home care age requirements are restrictive for younger parents, the timing of courses is irregular and courses are often subject matter specific. Parents may have difficulty

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<sup>5</sup> “DHS leave nine-year-old boy alone at Coburg Lake late at night” *The Herald Sun* 31 March 2011.

<sup>6</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.

accessing a course that will fit their specific needs based on what is being offered at that time of year.

The services used by our client base include Parent Plan, ParentZone, Maternal Child Health Services, Tweddle, Queen Elizabeth Centre, Parenting and Skills Development Services, Aboriginal Health Services, Aboriginal Co-Op, counselling services and services offered by local councils.

FVPLS Victoria supports additional training for workers within foster care to address the needs of Aboriginal and Torres Strait Islander children with high risk behaviours, particularly in residential support units and foster care placements. The failure to support children at this critical time in their life is highly detrimental to children in care and often perpetuates family violence in the future. This is especially important when cases are pending in court for up to two years without a final order.

FVPLS Victoria also supports strengthening cultural awareness training and education for DHS child support workers. Sections 12, 13 & 14 of the *Children, Youth and Families Act (2005)* (see appendix B) require recognition of Aboriginal decision-making principles and whenever possible, placing children with family, extended families or within close proximity to their family and community. In the experience of FVPLS Victoria solicitors, child protection workers frequently make assessments that separate siblings and place children in out-of-home care. This should be a measure of last resort. It runs contrary to the legislative requirements within the Aboriginal Child Placement Principle which place emphasis on families remaining together when possible (see appendix B).

Greater cultural awareness training as well as training that encourages child protection workers to comply with the requirements of the *Act* has potential to improve long-term outcomes for Aboriginal and Torres Strait Islander children.

**3.3.1 How might the identified weaknesses be best addressed? Are there places where some of these services work more effectively than elsewhere? What appear to be the conditions associated with this and how might these conditions be replicated elsewhere in the State?**

Strengthening support services by providing additional funding and resources will contribute to greater outcomes with Aboriginal and Torres Strait Islander children. Moreover, there needs to be greater assurances of confidentiality by VACCA/ Lakidjeka workers. FVPLS Victoria has noted a general mistrust within the Aboriginal and Torres Strait Islander community of VACCA workers providing assistance and thus a general hesitancy to engage with them. Once that trust is re-established we believe VACCA/Lakidjeka workers will be able to more effectively perform their jobs.

It is also essential that VACCA provide outreach within the communities to make them aware of the resources available to them and the supportive services they provide. In the experience of FVPLS Victoria's clients, Aboriginal and Torres Strait Islander families do not understand the role of Lakidjeka/ACSASS in the child protection process. Community education and awareness about the role of Lakidjeka/ACSASS, and VACCA more broadly, is thus urgently needed and must be prioritised.

### **3.3.2 Is the overall structure of such services appropriate for the role they are designed to perform? If not, why and what changes should be considered?**

No. Additional resources and funding are required to ensure that these services are able to effectively perform the roles they are designed to perform. In the experience of FVPLS Victoria solicitors, child protection workers do not have the capacity to assist with Aboriginal and Torres Strait Islander children's needs. Given the high turnover rate of child protection workers within DHS, often three to four workers will be assigned to a single matter over the one to two year period it takes to obtain a final order. Inevitably each child protection worker will have their own approach and this will often result in inconsistent determinations and unfair outcomes for Aboriginal and Torres Strait Islander children. Initiatives that ensure more consistency in the event a new child protection worker is assigned to an ongoing matter are essential.

Moreover, it is the experience of FVPLS Victoria that VACCA as a body funded by DHS programs, prioritises its obligations to comply with DHS protocols and meet their mandatory requirements. As a result, VACCA/ Lakidjeka workers do not necessarily prioritise the unique needs and concerns of Aboriginal and Torres Strait Islander children. This is highly problematic given the

over-representation of Aboriginal and Torres Strait Islander children in the child protection system.

FVPLS Victoria recommends the following changes:

- Consideration should be given to the development of best practice guidelines that require services to identify family violence in child protection notifications and interventions
- A range of culturally appropriate dispute resolution processes (DRP) pre and post court should be available to meet the varied circumstances and urgency of particular child protection cases. Family violence and safety issues of the parties must inform whether DRP is appropriate as in the family law system where the best interests of the child is also paramount and where family violence exemptions apply. DRP 's will not be suitable in all circumstances
- Empowerment of family members, safeguarding of legal rights, and ensuring no party is under duress in decision making must be a priority through guaranteed legal representation and judicial oversight of certain decisions including out of home care
- A Koori List within the Children's Court would facilitate improved judicial oversight of arrangements for Aboriginal and Torres Strait Islander children. DRP for Aboriginal and Torres Strait Islander children in the Children's Court (Family Division) may adopt some of the current Koori Court processes. The current Koori Court model is not transferable to contested hearings. Trials involving Aboriginal and Torres Strait Islander children can however be made more culturally responsive

### **3.3.3 Do the current services accommodate the needs of vulnerable children and families from diverse ethnic and cultural backgrounds?**

No. Dedicated culturally appropriate counseling/support for Aboriginal and Torres Strait Islander children who have experienced family violence is lacking in both urban and regional areas. Sexual assault counseling for Aboriginal and Torres Strait Islander children is generally more

readily available from sexual assault–specific services, although in regional areas travel distances are often prohibitive for those who do not have easy access to transport. Counseling services for children who are impacted by other family violence is also limited in urban and regional areas.

Through consultation, FVPLS Victoria has gathered that greater emphasis on supporting children who have experienced family violence or sexual assault and the need for more Aboriginal and Torres Strait Islander and mainstream support options is critical. The lack of case management services for Aboriginal and Torres Strait Islander children who have experienced family violence was raised by a number of project participants as a serious gap. If dedicated services are to be provided, they must be in locations where conflict of interest—for example, with child protection functions—does not arise.

#### **3.3.4 Are there particular services that best meet the needs of vulnerable Aboriginal children and families?**

The introduction of the unique Aboriginal Child Specialist Advice and Support Services 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. In addition, it is clear these services are heavily underfunded to adequately meet the needs of Aboriginal and Torres Strait Islander women and children.

Providing Aboriginal and Torres Strait Islander parents with the necessary parenting skill base is critical to early prevention of family violence and child abuse. In the experience of FVPLS Victoria, mainstream services such as Family First and ChildFIRST are effective in assisting the furtherance of voluntary agreement families. In addition, Parenting Assessment and Skill Development Services (PASDS) are extremely beneficial to our clients to provide intensive in home support and on-going teaching skills. The 10 day parenting courses offered by the Queen Elizabeth Centre are particularly helpful to our clients as it is an excellent opportunity to be with staff to gain assistance and provide basic parenting skills.

However, FVPLS Victoria strongly supports additional funding and resources of culturally appropriate courses. Subject to additional funding, FVPLS Victoria is of the view that Koori community-based organisations are better suited to provide these courses.

Our greatest concern with mainstream services is that they need to be more flexible in their intake criteria for Aboriginal and Torres Strait Islander families as well as with their scheduling (as discussed above in 3.3). Consideration should be given to providing classes that are specifically tailored towards Aboriginal and Torres Strait Islander families. In the absence of classes being specifically tailored towards Aboriginal and Torres Strait Islander families, cultural awareness training for the services providers is essential to adequately meet the needs and concerns of Aboriginal and Torres Strait Islander families in mainstream services.

Further, if an individual does not meet the criteria or wants to independently seek assistance it is unclear whether they can receive this training if they are unable to afford it. These considerations are essential given the over-representation of Aboriginal and Torres Strait Islander children in the child protection system.

**b. Statutory child protection services, including reporting, assessment, investigation procedures and responses;**

**3.4 What are the strengths and weaknesses of our current statutory child protection services in relation to responding to and assessing suspected child maltreatment?**

**3.4.1 How might the identified weaknesses be best addressed? If there are places where some statutory child protection services work more effectively than elsewhere, what appears to be the best conditions associated with this and how might these conditions be replicated elsewhere in the State?**

**3.4.2 Is the overall structure of statutory child protection services appropriate for the role they are designed to perform? If not, what changes should be considered?**

No, the overall structure of statutory child protection services is not appropriate for the role it is designed to perform. In the view of FVPLS Victoria, statutory child protection services generate outcomes that are often unpredictable and unfavourable for Aboriginal and Torres Strait

Islander families. This is partially due to inadequate funding, training and the high turn-over rate of workers within DHS. Due to deficiencies in statutory child protection services, FVPLS Victoria generally takes the approach that statutory child protection intervention should be a last resort.

In the experience of FVPLS solicitors, child protection workers do not have capacity to meet caseloads and cases are unassigned for extended periods of time (between 12 to 18 months). As a result of this gap, often DHS team leaders will oversee cases and will provide limited engagement and support to assist families with meeting the needs of the child.

The high turnover rate of child protection workers within DHS (as discussed above in section 3.3.2) is problematic. In the experience of FVPLS solicitors, during the course of DHS involvement several workers will be assigned to a single matter.

Initiatives to ensure greater consistency in the event a new child protection worker is assigned to an ongoing matter are essential. Statutory involvement cases allocate a different worker through each phase of the process. This includes during the intake, investigation, case management, reunification, non-reunification, interim orders, final orders and permanent care case planning phases. FVPLS Victoria proposes that a maximum of one to two workers be assigned to a single matter in order to work with the family to create a rapport, develop trust and ensure greater understanding of clients' needs.

FVPLS Victoria also supports creating a more established system of referrals (as discussed above).

**Changes to Consider:**

Additional resources and funding are required to ensure that a child protection worker is assigned to a case immediately, that they are adequately trained in dealing with children and families that are victims of family violence and that they have received cultural awareness training. With the high turn-over of child protection workers, there are clear inconsistencies in the level of training in dealing with Aboriginal and Torres Strait Islander families. In the experience of FVPLS Victoria, case workers may or may not have completed cultural awareness training. FVPLS Victoria proposes that all child protection workers be required to complete cultural awareness training.

FVPLS Victoria also proposes an Aboriginal advisory body oversee the steps taken to improve outcomes for Aboriginal and Torres Strait Islander Children. Alternatively, consideration should be given to regularly reporting to forums that act in the interest of Aboriginal and Torres Strait Islander community including the Aboriginal Justice Forum, the Indigenous Family Violence Partnership Forum and the Regional Aboriginal Justice Advisory Committees (RAJACs). This would increase the accountability of the child protection system and help ensure that outcomes for Aboriginal and Torres Strait Islander children are being appropriately tracked and monitored. This is especially important given the overrepresentation of Aboriginal and Torres Strait Islander Children in the child protection system.

FVPLS Victoria also proposes that additional resources and funding are necessary to enhance services that support families. This is particularly important within Aboriginal and Torres Strait Islander families and essential to avoid placement breakdown.

**3.4.3 What has been the impact of the Victorian system of mandatory reporting on the statutory child protection services? Have there been any unintended consequences from the introduction of the Victorian approach to mandatory reporting and, if so, how might these unintended consequences be effectively addressed?**

An unintended consequence of mandatory reporting is DHS will heavily scrutinize the reporting spouse. This has especially been the case where a spouse has sought an intervention order and is asking for the removal of their partner. In the experience of FVPLS Victoria's clients, support services need to be more supportive as opposed to punitive towards Aboriginal and Torres Strait Islander children and families at risk in both the urban and regional contexts. This punitive approach makes women victims feel as though they are being re-victimized by an unhelpful, blaming approach, rather than being supported to deal with and understand the broad-ranging impacts of violence. In the view of 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 family violence.

**3.5 What are the strengths and weaknesses of the range of our current out-of-home care services (including respite foster care, foster care of varying durations, kinship care,**

**permanent care and residential care), as well as the supports offered to children and young people leaving care?**

**3.5.1 How might any identified weaknesses be best addressed? If there are places where these services work more effectively than elsewhere, what appear to be the conditions associated with these successes and how might these conditions be replicated elsewhere in the State?**

It is the experience of FVPLS Victoria solicitors that when Aboriginal and Torres Strait Islander children are placed in out-of-home care they are generally unsupported – whether it be transitioning from one placement into another or reintegrating back into the family unit. Additional funding and resources are required to adequately address this issue.

It is also the experience of FVPLS Victoria solicitors that more often than not, Aboriginal and Torres Strait Islander siblings are intentionally separated from each other and placed in out-of-home care services. These decisions are often made with a general disregard for the guidelines of the Aboriginal Child Placement Principle (see appendix B) and are ultimately more detrimental to children.

It is essential to provide support services to Aboriginal and Torres Strait Islander children who leave out-of-home care to ensure stable placements and avoid potential family breakdowns. Additional support is necessary for all parties involved including parents, children and carers. Often children are placed back into their homes prematurely and family breakdowns occur when parents do not have the capacity or supports to ease the transition. While the child is a priority it is critical that the family as a whole is supported to prevent family breakdowns.

Greater funding for services that support Aboriginal and Torres Strait Islander children is critical as there is a direct correlation between children on care and protection orders and juvenile offending. Juvenile detention rates for Aboriginal and Torres Strait Islander young people are nationally very high. A report in the Melbourne Age newspaper on 14 March 2010 indicated that

42 per cent of children on youth justice orders are under child protection. (This figure is for all children).<sup>7</sup>

The Victorian Parliament Drugs and Crime Prevention Committee in its July 2009 report 'Inquiry not strategies to prevent high volume offending and recidivism by young people' states the following...

*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. 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.*

Improving child protection outcomes for Aboriginal and Torres Strait Islander children and ensuring provision of effective supports and interventions for Aboriginal and Torres Strait Islander children, families and carers is critical to address the underlying systemic issues of juvenile offending and high detention rates.

**3.5.3 What more might need to be done to meet the needs and improve the outcomes of children in out-of-home care and those leaving care regarding: Their education, health and mental needs; the needs of children from culturally and linguistically diverse background; and arrangements for developmentally appropriate contact between a child in out-of-home care and members of his or her family?**

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<sup>7</sup> "Foster Kids face bleak future" *The Sunday Age* 14 March 2010 p7.

In all areas mentioned FVPLS Victoria has generally found that greater resources and training are needed to meet the needs of Aboriginal and Torres Strait Islander children. The *Children Youth and Families Act* (2005) and DHS policy contain specific provisions with respect to cases involving Aboriginal and Torres Strait Islander children which are not being properly implemented. (see appendix B).

As detailed above, out-of-home carers are often provided with limited to no continuing support once placements are made. In the experience of FVPLS Victoria's clients, out-of-home carers receive inadequate support, particularly where extended Aboriginal and Torres Strait Islander family or relatives assume that role.

The arrangements for Aboriginal and Torres Strait Islander children in out-of-home care can be strengthened through an Aboriginal and Torres Strait Islander-led review of adherence to the Aboriginal Child Placement Principle and location of suitable extended family placements, the oversight of Aboriginal and Torres Strait Islander children placed in permanent care arrangements, including cultural issues and the implementation of cultural plans where appropriate, and support (financial and practical) provided to extended family who become carers. This is especially essential in the context of Aboriginal and Torres Strait Islander children who are placed with non-Aboriginal families. The *Act* mandates children to have a continued connection to their community (see appendix B).

Given that the *Act* requires further strengthening with respect to law and process for Aboriginal and Torres Strait Islander children, the creation and implementation of cultural plans should be required for Aboriginal and Torres Strait Islander children in more extended out-of-home care circumstances. The right to legal representation in all processes should be entrenched and there should be judicial oversight of out of court agreements.

According to the *Act*, it is preferable that children who are placed in out of home are kept together, particularly to comply with the *Act*. In the experience of FVPLS Victoria solicitors, more often than not, siblings are separated from each other and are largely unsupported after being isolated and placed in out-of-home care.

**3.5.4 How can the views of children and young people best inform decisions about their care?  
How can the views of those caring for children best inform decisions affecting the wellbeing of children in their care?**

To better inform decisions about Aboriginal and Torres Strait Islander children and their care, solicitors should be required to get instructions from all children within a family. Additionally, mandatory cultural awareness training for the solicitors who represent Aboriginal and Torres Strait Islander clients would greatly assist in cultural understanding of what decisions are in the best interest of the children involved. Perhaps a higher standard of representation for solicitors who represent Aboriginal and Torres Strait islander families would assist with greater representation of children and their interests.

**3.5.5 How can placement instability be reduced and the likelihood of successful reunification of children with their families where this is an appropriate goal, be maximised?**

See sections 3.5.1 & 3.5.3.

**3.5.6 How might children who cannot return home and who are eligible for permanent care, achieve this in a way that is timely? What are the post-placement supports required to enhance the success of permanent care placements?**

In the experience of FVPLS Victoria's solicitors, DHS does not capitalize on clear opportunities to provide stability for the child and to seek permanent care orders for children who have been placed in out-of-home care for at least six months of the last 12 months. This is often due to the overwhelming caseloads of child protection workers and their inability to attend to every matter within their caseload in a timely matter.

In cases where it is obvious that reunification will never occur (due to ongoing protective concerns) and a stability plan has been completed, orders such as Custody to Secretary Orders and Guardianship orders are often extended for years. This further delays permanent care orders when the child is already placed with their permanent care family. In the experience of FVPLS Victoria's solicitors, reasons for these delays can be attributed to DHS wanting to ensure

that the placement is stable before applying for a permanent care order to avoid breakdowns that are potentially emotionally and psychologically damaging to a child.

On-going post-placement supports for Aboriginal and Torres Strait Islander children and carers are necessary to ensure successful permanent care placements (as discussed above in 3.5.3) and to avoid breakdowns. DHS should ensure that intensive supports are put in place to assist the whole family in nurturing the placement of such children.

FVPLS Victoria's solicitors have also noted clear delays in child protection workers complying with current legislation, specifically as it pertains to the restrictions on the making of a permanent care order in respect of an Aboriginal child. Under the current legislation, the Court may not make a permanent care order to place an Aboriginal child solely with a non-Aboriginal person unless the disposition report states that no suitable placement can be found with an Aboriginal person and DHS is satisfied that the order sought will accord with the Aboriginal Child Placement Principle.<sup>8</sup> This requires DHS to consult with an Aboriginal agency (being Lakidjeka within VACCA) to make a recommendation as to whether such a placement is appropriate and write a report for the Court.

In the experience of FVPLS Victoria's solicitors, often Lakidjeka workers have not completed the report or have not been consulted. Further delays are created when DHS has not completed a cultural plan in order to comply with legislation.

FVPLS Victoria's solicitors have also noted instances where a permanent care order is not sought due to the permanent carers not wanting DHS to withdraw involvement (or in the alternative, wanting ongoing support or financial support with carer payments).

FVPLS Victoria recommends greater support be given to Aboriginal and Torres Strait Islander community-based organisations because they are more supportive and attentive to the needs of Aboriginal and Torres Strait Islander children. We also recommend that financial support through other government agencies be organised prior to the permanent care order being made. This would ensure families are equipped with everything necessary to ensure success with the placement once DHS are no longer involved with the family.

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<sup>8</sup> *Children Youth & Families Act (2005)*, s12,13 &14.

**FVPLS Victoria Case Study**

T is a child who was in and out of non-Aboriginal foster care for a number of years. Until FVPLS Victoria became involved DHS claimed they were not aware T was Aboriginal and had failed to inform VACCA/Lakidjeka T was in out of home placement. T had been in a number of different placements during this time. After FVPLS Victoria became involved, T was placed in a Kinship placement (family placement) with a family member, Lakidjeka became aware and involved, T was able to attend support services and the family member will eventually seek permanent care of T.

**FVPLS Victoria Case Study**

An FVPLS client had been caring for their grandchild subject to an informal agreement. The child's parent advised DHS they wanted a friend to have the child. DHS agreed that this was appropriate despite the person not being Aboriginal and not being a relative. DHS convened an Aboriginal Family Decision Making Meeting at which the agreement for the child to be placed with this other person was drawn up as if there had been prior agreement. There was clear expectation that the grandparent would simply agree. The grandparent made contact with FVPLS Victoria – as there are no formal Children's Court proceedings on foot the case has been referred to the FVPLS Victoria family lawyer. The Aboriginal child placement principle clearly applies to this case. It is an example of out of court agreements where no legal representation is available producing inappropriate outcomes.

**3.5.7 What are the strengths and weaknesses of the current Victorian adoption legislative framework and practice for children who cannot return to the family home? Should Victorian legislation and practice reflect that in other jurisdictions?**

In the experience of FVPLS Victoria, the current legislative framework for adoption is expensive, cumbersome and onerous. It is our understanding that very few successful adoption applications are processed each year.

In the Children's Court only the Secretary of the Department of Human Services can apply for a permanent care order in relation to the people approved as suitable to have custody and guardianship of the child. However, the Family Court system provides the opportunity for persons other than the parents to file residence applications. Within Aboriginal and Torres Strait Islander communities this flexible provision is especially beneficial given that extended family and community members often play a role in raising children within the community. Consideration should be given to a more flexible standard of establishing potential guardians within the Children's Court, particularly as it relates to Aboriginal and Torres Strait Islander children.

#### **4. The interaction of departments and agencies, the courts and service providers and how can they better work together to support at-risk families and children**

FVPLS Victoria solicitors have noted a clear tension between the role VACCA has as a support agency and its role in advising DHS through the ACSASS program. In our experience clients become frustrated with VACCA workers who are providing support to them (for example, in access/visiting arrangements) that subsequently provide information or advice to DHS through the ACSASS role. This is problematic because in many cases this disclosure is adverse to their case and it may be disputed. This has implications for the future support relationship and for some Aboriginal and Torres Strait Islander women it reinforces negative views of the child protection system. Consideration should be given to alleviating these tensions to restore the confidence of Aboriginal and Torres Strait Islander communities in the child protection system and to better support at-risk families and children.

##### **4.1.1 Are current protocols and arrangements for inter-organisational collaboration in relation to at-risk children and families adequate, and how is the implementation of such protocols and arrangements best evaluated?**

In the experience of FVPLS Victoria, cross-agency discourse is very limited. It is clear that there is an improper system of referrals and that a more formalised system of referrals would enhance collaboration in relation to at-risk Aboriginal and Torres Strait Islander children and families.

There are currently no formal obligations on DHS to support or follow-up on court orders and make referrals for support services such as counselling or drug testing. This creates an unnecessary and unacceptable gap as people are in need of direction on where to obtain these services to comply with court orders. The Court should be able to make referrals or the onus should be placed on DHS to provide the referrals and better acquaint themselves with resources available.

#### **4.1.2 What needs to be done to improve the quality of collaboration at the levels of policy development and implementation, local and regional service planning and delivery, and direct service to individual children and families?**

In the experience of FVPLS Victoria's solicitors, each agency adheres to its respective protocols and ultimately, follows its own agenda. There are inherent clashes in the protocols of regional and local agencies and it often results in inconsistent service delivery to individual children and families. This is unacceptable, particularly when dealing with prospect of family breakdowns within Aboriginal and Torres Strait Islander families.

Consideration should be given to requiring the department heads of regional and local agencies to collaborate and determine how to best deal with these inherent clashes and make a determination as to which protocols should prevail.

As detailed above, when there is a general break down of communication between service providers and varying protocols on service delivery, often child protection workers are not trained in a consistent and uniform manner. Mandatory and uniform training of child protection workers is essential to ensuring more consistent results for Aboriginal and Torres Strait Islander families.

**4.1.3 Are there specific models of inter-professional, inter-organisational and/or inter-sectoral collaboration which have been shown to be effective or promising, and which may be worthy of replication? This may relate to two organisations (for example, child abuse issues in which both police and statutory child protection services need to collaborate in an investigation) or to a much broader service network.**

Within the Family Court jurisdiction is a Family Law Pathways network. This network provides an effective way for practitioners, judges, judicial officers and community reference groups to be more knowledgeable about each other. Solicitors within FVPLS Victoria participate in this program and find it to be very helpful to establish connections and aid in collaboration. Consideration should be given to a similar program Children's Court.

Consideration should also be given to funding collaborative projects that facilitate exchange programs between family violence workers and child protection workers. This would enhance understanding and help workers develop a less judgmental approach when dealing with family violence victims.

**4.1.4 How might professional education prepare service providers to work together more effectively across professional and organisational boundaries?**

Providing professional education would prepare service providers to work together more effectively across professional and organisational boundaries because it would help deliver more consistent outcomes for women and children in the child protection system. Uniform and mandatory cultural awareness training would also contribute to better outcomes for Aboriginal and Torres Strait Islander children who are currently in the child protection system. A lack of consistency in training for service providers (as detailed above) is clearly lacking and continues to be a critical over-sight.

**4.1.5 How might the current funding approach to support vulnerable children and families, which is often based on very specific service types and activities, be adapted so that resources are more effectively allocated and service delivery more integrated?**

Additional funding of specific Aboriginal and Torres Strait Islander community-based organisations which provide services and activities is essential as such services are required to provide adequate supports to Aboriginal and Torres Strait Islander families. Given the high turnover rate within DHS and clear inadequacies within the child protection system, supporting community-based organisations is essential to ensure retention of experienced workers who have an understanding of the specific needs of Aboriginal and Torres Strait Islander children and families.

Funding for the Children’s Court is necessary to make it more equipped to meet the high demand and ever growing child protection jurisdiction. FVPLS Victoria proposes funding be provided for a Koori Court within the Children’s Court, similar to what has already established in the criminal division, to better meet the needs of Aboriginal and Torres Strait Islander children and families by providing a culturally appropriate setting.

**5. The appropriate roles and responsibilities of government and non-government organisations in relation to Victoria’s child protection policy and systems**

**5.1.1 What is the most appropriate role for government and non-governmental organisations (both for-profit and not-for-profit) in relation to child protection?**

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. Moreover, strengthening of culturally appropriate legal support services such as FVPLS Victoria (as outlined above) is imperative for better outcomes for Aboriginal and Torres Strait Islander children.

**5.1.2 What roles currently performed by statutory organisations, if any, might be more effectively and efficiently performed by non-government organisations, and vice versa?**

The role of prosecuting DHS applications is currently performed by a statutory organisation - being DHS. This role could more effectively be performed by an independent statutory body. An independent statutory body could hold a function equivalent to the Office of Public Prosecutions (“OPP”) in criminal cases with a focus on prosecuting DHS applications before the Children’s Court.

This would greatly assist in the Court being more efficient and less adversarial. If the independent body had responsibility for prosecutions in child related matters, it would provide DHS with the opportunity to focus its attention to promoting the best interest of the child. Currently, protection applications are conducted by DHS staff that do not always adhere to legal advice. The creation of an independent statutory body would assist in any conflict between families and DHS.

If the independent body had a function equivalent to the OPP, it would reduce the conflicting nature evident in the role currently held by DHS, that being that DHS is responsible for assisting and prosecuting in child protection matters.

**5.1.3 What is the potential for non-government service providers to deal with some situations currently being notified to the statutory child protection services, and would it be appropriate (as is the case in Tasmania) for referrals to a service such as ChildFIRST to fulfil the legal responsibilities of mandated notifiers?**

The demand for child protection legal assistance at FVPLS Victoria has increased with our capacity to provide these services. As detailed above, FVPLS Victoria is of the view that Aboriginal and Torres Strait Islander children and families must have the option to access legal assistance through dedicated Aboriginal and Torres Strait Islander legal services where cultural issues and holistic service provision are at the forefront of advocacy. The capacity to deal with

related legal issues including family violence intervention orders, family law and victim's assistance within a context of mental ill health, drug and alcohol use, lack of housing and complex trauma is not only highly effective, it is essential. Dedicated Aboriginal and Torres Strait Islander legal services are best equipped to deal appropriately with cultural issues and to advocate for necessary systemic change.

**5.1.4 Is it necessary to strengthen the capability of organisations in the non-government sector to better equip them to work with vulnerable children and families and if so, how?**

Yes. The capabilities of the non-government sector can be strengthened by ensuring adequate funding and resources are provided to Aboriginal and Torres Strait Islander community-based organisations to support children and families coming into contact with the child protection system. It will ultimately build on the capacity to prevent vulnerability to children and families within these communities.

Strengthening the capability of community-based organisations in the non-government sector contributes to establishing a more effective relationship between the government and the community.

**5.1.5 What is the responsibility of the State to ensure that all organisations in the community which are engaged with children fulfil their duty of care to protect children from sexual abuse and other forms of maltreatment and how might that responsibility be exercised?**

It is the responsibility of the State as the funding source to ensure that programs and service delivery are being delivered effectively and fulfilling the duty of care to protect children from sexual abuse and other forms of maltreatment. This responsibility might best be exercised by providing funding and resourcing towards monitoring and evaluation systems to track outcomes. In addition, ongoing consultation with community and non-government organisations is critical to increase track systemic breakdowns and deficiencies in service delivery. Finally, it is critical that the State require that mandatory and uniform cultural

awareness and child protection training for organisations in the community that are engaged with children (as detailed above ).

**5.1.6 What are the strengths and weaknesses of current commonwealth and State roles and arrangements in protecting vulnerable children and young people, for example through income support family relationship centres, local early childhood initiatives such as “Communities for Children” ect? What should be done to enhance existing roles or address any weaknesses?**

The fourteen FVPLS units funded by the Commonwealth AGD only service thirty-one rural and remote communities across Australia. The Commonwealth maintains that resources are being appropriately targeted to rural and remote locations identified as high need, based on the presumption that urban areas offer a broader range of mainstream services which Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault (mainly women and children) can access. Services like FVPLS Victoria rely heavily on funding provided by the State of Victoria in light of the current restrictions placed on funding by the Commonwealth.

This narrow policy approach by the Commonwealth focuses on relative geographic disadvantage rather than on the development of strategic approaches to Aboriginal and Torres Strait Islander disadvantage as a whole. It is informed by misconceptions about the nature of urban Aboriginal communities and a narrow view of the purpose and value of Aboriginal and Torres Strait Islander community-controlled organisations. This approach also fails to acknowledge the wealth of evidence indicating that Aboriginal women are not accessing mainstream services for family violence/sexual assault issues.

FVPLS Victoria recognises the importance of appropriate funding for services in rural and remote locations. However, a funding approach that addresses disadvantage and the issue of family violence and sexual assault as a whole will be more likely to improve overall outcomes. The current policy has discriminatory impact and goes against the spirit of human rights instruments to which Australia is a party. Given that over 50 per cent of Victoria’s Aboriginal and Torres Strait Islander population reside outside our service area in metropolitan Melbourne, this one size fits all approach does not adequately address the urban disadvantage of Aboriginal and Torres Strait Islander communities.

## **6. Possible changes to the processes of the courts referencing the recent work of and options put forward by the Victorian Law Reform Commission**

### **6.1.1 What changes should be considered to enhance the likelihood that legal processes work in the best interests of vulnerable children in a timely way?**

Very few AFDM's are occurring due to lack of available convenors. Ensuring all relevant community members and extended family are available to meet at the same time is essential. FVPLS Victoria solicitors have noted a general unwillingness by DHS workers to convene meetings or ignorance by DHS workers that such meeting must be convened as per the legislation. It appears that Lakidjeka is not appropriately resourced to be involved in every case involving an Aboriginal child or attend AFDM's. The FVPLS Mildura reports that no AFDM has been convened for its child protection clients at all despite numerous requests. Regional variations are evident. In the event an AFDM is agreed to, it is taking lengthy periods to convene them thus reducing their effectiveness and usefulness.

FVPLS lawyers are attending AFDM's and are strongly of the view that legal representation is critical given significant power imbalances, family violence issues and the far reaching decisions being made in these meetings including placement of children in out of home care. FVPLS lawyers have provided examples where poor outcomes have resulted due to clients not having legal representation and also where undue pressure has been applied by family members present for particular outcomes. The presence of lawyers is required to empower clients and to ensure legal concepts are understood. FVPLS lawyers advise they adopt a back seat approach but intervene when necessary.

Victoria Legal Aid currently does not fund lawyers for children or lawyers for family members to attend AFDM's or Best Interest Planning Meetings. Given the breadth of issues discussed this is a significant gap.

### **6.1.2 Are specific legislative changes necessary? For example, in relation to a Protection Application by Safe Custody, should the current 24 hour time limit be extended and if so, what should be the maximum time limit?**

The current 24 hour time limit is appropriate and should not be extended. Any extension of this time frame could potentially be considered a breach of human rights and the treaties to which Australia is a party (see appendix A). In situations where children are taken into custody on the weekend, they can potentially be removed from their parents for a period of 48 hours or longer. The quicker that parties can bring the matter before the Court the better outcomes there will be for clients.

Given the prevalence of family violence within child protection notifications, it is imperative that the nature of family violence including power differentials, victimization of women and children, and safety risks be at the forefront of all considerations with respect to any reform of law and procedure. More proactive court screening and judicial oversight of family violence is likely to result.

## **7. Measures to enhance the government's ability to: plan for future demand for family services, statutory child protection services and out-of-home care; and ensure a workforce that delivers services of a high quality to children and families**

### **7.1.1 Is there sufficient research into child protection matters to support government's ability to plan for future child protection needs? If not, how might government encourage and support sufficient research in this area?**

Research into child protection matters should be ongoing in order to plan for future child protection needs. For research to be sufficient it requires time and financial assistance to be conducted accurately and thoroughly. In order for government to encourage and support sufficient research in this area an independent body could be funded involving experienced representatives from all aspects of the jurisdiction to provide input including representatives on behalf of Aboriginal and Torres Strait Islander children. The main issue is not how government might encourage and support efficient research in this area but what the government will do with efficient research. Funding, resources and ongoing training have always been issues identified in this area.

FVPLS Victoria also is of the view that it is essential that there be a dedicated project on Koori children in the child protection system. The need for greater research is evident based on the high numbers of Aboriginal and Torres Strait Islander children in the child protection system to date. Research targeted at the underlying systemic issues and preventative measures would assist the government plan for the future of child protection needs with Aboriginal and Torres Strait Islander communities.

**8. The oversight and transparency of the child protection, care and support system and whether changes are necessary in oversight, transparency, and/or regulation to achieve an increase in public confidence and improved outcomes for children.**

**8.1 There is currently a range of oversight processes involved in the child protection and care system (for example, Ministerial/Departmental inquiries into child deaths and serious injuries, internal organisational complaints procedures, and the statutory roles of the Ombudsman, the Victorian Auditor General, the Child Safety Commissioner and the Corner).**

**8.1.1 Are these processes appropriate or sufficient?**

**8.1.2 What exists in other jurisdictions which may be worth considering**

**8.1.3 What changes, if any, are required to improve oversight and transparency of child protection, care and support system? How would those changes contribute to improved outcomes for children?**

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 Aboriginal and Torres Strait Islander 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 system and procedures should be made available to the public so that they can have greater transparency. An explanation of the processes as well as an explanation for the basis for these procedures would contribute to greater transparency.

In addition, greater outreach by DHS into the community is essential to provide education regarding who they are and what services are available to them (as discussed above).

## **APPENDIX A**

### **Human Rights issues**

In reviewing child protection legislative arrangements human rights obligations must be considered. FVPLS Victoria endorses the comments in the submission of the Federation of Community Legal Centres ('FCLC') with respect to Human Rights instruments containing specific rights for the protection of children and families which include

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- Convention on the Rights of the Child (CROC)
- The Charter of Human Rights and Responsibilities Act 2006 ('the Victorian Charter') (particularly Sections 17 and 19)

These instruments deal specifically with protection of family unity, protection of children in their best interests, cultural rights and the right to a fair hearing (which includes procedural fairness, natural justice and the right to claim justice).

FVPLS Victoria specifically endorses the comments of FCLC with respect to the obligation on DHS as a public authority under S38 of the Victorian Charter to act compatibly and give proper consideration to human rights contained in the Charter. There are many instances where DHS is not acting compatibly with the Charter in out of court child protection procedures and there is a lack of effective independent oversight of this. Enhanced judicial/court involvement and oversight in 'out of court' meetings, procedure and agreements is required to ensure improved compliance with the terms of the Charter. There is also a clear obligation upon DHS within the provisions in S17 of the Charter to provide necessary resources to advance the safety and well being of children and family unity. In the experience of FVPLS Victoria this is seriously lacking.

The UN Committee on the Rights of the Child made the following relevant concluding comments for Australia in 2005:

*37. The Committee notes with concern the considerable increase in the number of children in out-of-home care in recent years as well as the over-representation of indigenous children in out-of-home care. Furthermore, the Committee is concerned about:*

- (a) The lack of stability and security of children placed in alternative care;*
- (b) The difficulties for children in maintaining contact with their families;*
- (c) The inadequate medical care, e.g. physical, dental and mental health services.*

*38. The Committee recommends that the State party take measures to strengthen the current programmes of family support, eg by targeting the most vulnerable families, in order to reduce the number of children placed in out-of-home care. It further recommends that the State party:*

- (a) Strengthen its support for foster care, e.g. by improving equal access to adequate medical care by children in foster care;*
- (b) Strengthen supervision of foster care and establish regular review of this kind of placement with a view to reuniting the child with his/her natural family;*
- (c) Promote and facilitate the maintenance of contact of the child in foster care with his/her natural family*

*39. The Committee also recommends that the State party maximize its efforts, within a set time period, to reduce the significant number of indigenous children placed in out-of-home care, inter alia by strengthening its support for indigenous families. It further recommends that the State party fully implement the Indigenous Child Placement Principle and intensify its cooperation with indigenous community leaders and communities to find suitable solutions for indigenous children in need of alternative care within indigenous families.*

#### ***Violence, Abuse, Neglect and Maltreatment***

*42. While the Committee notes with appreciation the State party's activities and measures addressing this problem, including two programmes seeking to reduce family violence in indigenous communities, it shares the State party's concern that child abuse remains a major problem for Australian society, affecting children's physical and mental health as well as their educational and employment opportunities. The Committee is further concerned at the exposure of children to a high level of domestic violence.*

*43. In light of article 19 of the Convention, the Committee recommends that the State party:*

*(a) Continue to take measures to prevent and combat child abuse and violence against children and strengthen measures to encourage reporting of instances of child abuse;*

*(b) Adequately investigate and prosecute reported cases of abuse and violence;*

*(c) Ensure that all victims of violence have access to counselling and assistance with recovery and social reintegration;*

*(d) Provide adequate protection to child victims of abuse;*

*(e) Strengthen measures to address the root causes of violence within the family, paying special attention to the marginalized and disadvantaged groups.*

### ***Children Belonging to Indigenous Groups***

*75. Despite the numerous measures taken by the State party's authorities, including the Indigenous Child Care Support Programme, the Committee remains concerned about the overall situation of indigenous Australians, especially with regard to their health, education, housing, employment and standard of living.*

*76. The Committee notes that the Aboriginal and Torres Strait Islander Commission (ATSIC), a key policy adviser to the Government and its agencies on indigenous affairs, had been abolished and replaced by a ministerial task force.*

*77. The Committee recommends that the State party strengthen its efforts to continue developing and implementing -in consultation with the indigenous communities – policies and programmes aimed at ensuring equal access for indigenous children to culturally appropriate services, including social and health services and education. The Committee further recommends that an evaluation of the new arrangements for the administration of indigenous affairs take place soon in order to assess whether the abolition of ATSIC has been in the best interests of indigenous children.<sup>9</sup>*

- **The United Nations Declaration on the Rights of Indigenous Peoples 2007**

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<sup>9</sup> Fortieth Session of the Committee of the Rights of the Child CRC/C/15/Add.268 20 October 2005

The Declaration was finally endorsed by Australia in 2009. The Declaration is not legally binding, however it sets out standards and principles for the treatment of Indigenous peoples which signatory governments commit to.

*Article 18*

*Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions.*

*Article 22*

*1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.*

*2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.*

*Article 23*

*Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.*

- **International Covenant on Civil and Political Rights**

The United Nations Human Rights Committee's 2009 report on Australia's compliance with the Covenant expressed concern at the high levels of violence against Aboriginal and Torres Strait Islander women and called for strengthened efforts toward its elimination.<sup>10</sup> The Committee urged measures to improve access to the justice system for Indigenous people.<sup>11</sup>

At paragraph 17 it is stated...

*... The Committee is particularly concerned at the higher number of reports of violence against indigenous women in proportion to reports of violence against non-indigenous women. (Articles 2, 3, 7 and 26)*

*...The Committee notes with concern the lack of adequate access to justice for marginalized and disadvantaged groups, including indigenous peoples and aliens. (Art.2 and 14)*

*...The State party should take effective measures to ensure equality in access to justice, by providing adequate services to assist marginalized and disadvantaged people, including indigenous people and aliens. The State party should provide adequate funding for Aboriginal and Torres Strait Islander legal aid, including interpreter services.*

- **United Nations Declaration on the Elimination of Violence Against Women 1993** (noting that family violence is a gendered crime and that the safety of women has a significant impact on the safety of children)

The preamble to this declaration states the following...

*... Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that*

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<sup>10</sup> CCPR/C/AUS/CO/5, Concluding Observations of the Human Rights Committee Australia Ninety-fifth session Geneva Advanced unedited version 2 April 2009, para 17.

<sup>11</sup> Ibid, para 25.

*violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,*

*...Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,*

In relation to law and justice issues Article 4 of the Declaration is key.

*...Article 4*

*...States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should...*

*... (f) 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;*

*...(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;*

*... (l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;*

Given the prevalence of family violence within child protection notifications and its gendered nature, the provisions of this Declaration must also be heeded in any reform to legislative or procedural arrangements.

## **APPENDIX B**

### *Children Youth & Families Act (2005)*

Section 12 of the *Act* requires the Secretary or a community service, but not the Court, to consider particular principles when making a decision about an Aboriginal child in recognition of the principle of Aboriginal self-management and self-determination. There are three broad principles:

- Members of the child's Aboriginal community and other respected Aboriginal people should be given an opportunity, where relevant, to contribute their views.
- For a decision in relation to placement of an Aboriginal child and for all significant decisions, a meeting convened by an approved Aboriginal convenor should be held and, where possible, attended by the child, the child's parents and extended family, and other appropriate members of the Aboriginal community as determined by the child's parents. This process is known as Aboriginal Family Decision Making (AFDM).
- For out-of-home care decisions, except voluntary child care agreements, an Aboriginal agency must be consulted and the Aboriginal Child Placement Principle must be applied.

The Aboriginal Child Placement Principle in section 13 of the *Act* 2005 is not limited to the Secretary and community services, but has broad application under the *Act*. If it is in an Aboriginal child's best interests to be placed in out-of-home care, the following must be considered:

- the advice of the relevant Aboriginal agency, except if the decision concerns a voluntary child care agreement
- the criteria set out in section 13(2) and the principles in section 14.

Both the section 13(2) criteria and the section 14 principles emphasise the need to ensure that the child maintains the closest possible connection to his or her Aboriginal family, community and culture if placement within the child's Aboriginal extended family is not possible.

Section 12 of the *Act* provides:

- (1)(a) in making a decision or taking an action in relation to an Aboriginal child, an opportunity should be given, where relevant, to members of

the Aboriginal community to which the child belongs and other respected Aboriginal persons to contribute their views;

- (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-
  - (i) the child; and
  - (ii) the child's parent; and
  - (iii) members of the extended family of the child; and
  - (iv) other appropriate members of the Aboriginal community as determined by the child's parent;
- (c) in making a decision to place an Aboriginal child in out of home care, an Aboriginal agency must first be consulted and the Aboriginal Child Placement Principle must be applied.

The criteria in **section 13** of the Act provide:

- (2)(a) as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;
- (b) if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed with-
  - (i) an Aboriginal family from the local community and within close geographical proximity to the child's natural family;
  - (ii) an Aboriginal family from another Aboriginal community;
  - (iii) as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;
- (c) any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.

**Section 14 of the Act** provides:

Self-identification and expressed wishes of child

- (1) In determining where a child is to be placed, account is to be taken of whether the child identifies as Aboriginal and the expressed wishes of the child.

Child with parents from different Aboriginal communities

- (2) If a child has parents from different Aboriginal communities, the order of

placement set out in sections 13(2)(b)(i) and 13(2)(b)(ii) applies but consideration should also be given to the child's own sense of belonging.

(3) If a child with parents from different Aboriginal communities is placed with one parent's family or community, arrangements must be made to ensure that the child has the opportunity for continuing contact with his or her other parent's family, community and culture.

Child with one Aboriginal parent and one non-Aboriginal parent

(4) If a child has one Aboriginal parent and one non-Aboriginal parent, the child must be placed with the parent with whom it is in the best interests of the child to be placed.

Placement of child in care of a non-Aboriginal person

(5) If an Aboriginal child is placed with a person who is not within an Aboriginal family or community, arrangements must be made to ensure that the child has the opportunity for continuing contact with his or her Aboriginal family, community and culture.