Aboriginal Family Violence Prevention
& Legal Service Victoria

FVPLS Victoria

Submission to the Inquiry
Into the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015*

June 2015

Introduction

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) welcomes the opportunity to provide a submission to the Legal and Social Issues Committee in the Inquiry into the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015.*

In addition to the comments contained in this submission, we refer the Committee to our recent submissions[1] to a number of related inquiries including:

- The Senate Inquiry into Out of Home Care – October 2014;
- The Senate Inquiry into Access to Legal Services and Aboriginal and Torres Strait Islander Experiences of Law Enforcement and Justice Services – May 2015; and
- Family Law Council reference on Families with Complex Needs and the Interaction of the Family Law and Child Protection Systems – May 2015.

We also refer the Committee to FVPLS Victoria's Policy Paper Series June 2010[2] which includes:

- Paper 1: Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault and women and children;
- Paper 2: Strengthening on-the-ground service provision for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault in Victoria;
- Paper 3: Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault.

About FVPLS Victoria

Established over 12 years ago, FVPLS Victoria is an Aboriginal Community Controlled Organisation who provide culturally safe and holistic, frontline legal assistance to Aboriginal and Torres Strait Islander[3] victims/survivors of family violence and sexual assault. FVPLS Victoria also provides early intervention/prevention and community legal education to the Aboriginal community, the legal, Aboriginal and domestic violence sector. In addition, with support from philanthropic sources, FVPLS Victoria undertakes policy and law reform work to identify systemic issues in need of reform and advocate for strengthened law and justice outcomes for Aboriginal victims/survivors of family violence and sexual assault.

FVPLS Victoria is open to Aboriginal men, women and children who have experienced or are at risk of family violence or sexual assault, as well as non-Aboriginal carers of Aboriginal

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[1] All available at www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions
[2] Available at www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions
[3] Hereafter referred to as 'Aboriginal'.

children who are victims/survivors of family violence. FVPLS Victoria is not gender specific, however at last count 93% of our clients were women.

FVPLS Victoria's legal services include advice, court representation and ongoing casework in the areas of:

- child protection;
- family violence intervention orders;
- family law;
- victims of crime assistance; and
- where resources permit, other civil law matters connected with a client's experience of family violence such as: police complaints, housing, centrelink, child support and infringement matters.

Child protection is one of FVPLS Victoria's core legal service areas.

FVPLS Victoria has a holistic, intensive client service model where each client is assisted by a lawyer and paralegal support worker to address the multitude of interrelated legal and non-legal issues our clients face. FVPLS Victoria's paralegal support workers, many of whom are Aboriginal women, provide additional emotional support, court support and referral to ensure the client is linked into culturally safe counselling and support services to address the underlying social issues giving rise to the client's legal problem and experience of family violence. This may include for example assistance with housing, drug and alcohol misuse, mental health, parenting, financial and other supports.

As an Aboriginal Community Controlled Organisation, FVPLS Victoria is directed by an Aboriginal Board and has a range of systems and policies in place to ensure we provide culturally safe services in direct response to community need.

Child Protection and Aboriginal Children

Aboriginal and Torres Strait Islander children are vastly over-represented in the child protection system. Victorian Aboriginal children are 12.3 times more likely to be on care and protection orders in comparison with non-Aboriginal children.[4] They are also 11.8 times more likely to be in out-of-home care. [5] These are some of the highest rates in the

[4] Australian Institute of Health and Welfare, *Child Protection Australia 2013-14*, 2015, page 51, table 5.4 available at http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859. Previous AIHW reports stated that Aboriginal children were 16 times more likely to be in out of care and 16 times more likely to be on care and protection orders than other children in Victoria. The change to '12 times' does not represent a decrease in the comparative rates, but simply a change in statistical methodology by the AIHW including the use of updated population figures. The actual number of Aboriginal children in out-of-home care in Victoria has steadily increased, including having increased by 42% in the twelve months to 30 June 2014. See: Productivity Commission, *Report on Government Services*, 2015, page 15.13 and Australian Institute of Health and Welfare, *Child Protection Australia 2012–13*, Table 5.4, page 52 available at http://www.aihw.gov.au/publication-detail/?id=60129547965

[5] Australian Institute of Health and Welfare, *Child Protection Australia 2013-14*, 2015, page 41, table 4.4 available at http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859.

country and the rate of Aboriginal child removal in Victoria is now higher than at any time since white settlement.[6]

The rate of child protection intervention and removal in Aboriginal families is increasing at an alarming pace. In Victoria, between 2006-7 and 2013-14, the number of Aboriginal children admitted to care and protection orders in Victoria increased by 85 per cent.[7] (By way of comparison, the number of non-Aboriginal children admitted to care and protection orders increased by only 38% during the same period.[8]) The number of Victorian Aboriginal children removed from their families and placed into out of home care increased by 98% between 2006-07 and 2013-14.[9] For non-Aboriginal children the increase was just 45 per cent.[10] Across Australia, Aboriginal and Torres Strait Islander Children now account for almost 35% of all children in care despite comprising only 4.4% of the nation's child population.[11]

Recent findings from *Taskforce 1000* – a project commenced by the Commissioner for Aboriginal Children and Young People in 2014 - indicate that men's violence against women is a primary driver in up to 95% of Aboriginal children entering out-of-home care.[12] In other words, family violence is a leading cause of removal for almost every Aboriginal child in statutory care in this state.

These statistics come as no surprise to organisations like FVPLS Victoria working with Aboriginal victims/survivors of family violence at a grassroots level. Between June 2013 and June 2014, our lawyers saw a 66% increase in child protection cases. This again allows conclusions to be drawn about the increasing rates of Aboriginal families facing child protection intervention and the link between family violence victimisation and child removal.

As further illustration of the direct link between family violence and child protection involvement in Aboriginal families, it must be noted that the increases in Aboriginal children being placed on care and protection orders or into out-of-home care from 2006-7 onwards correspond roughly with the introduction of legislation in Victoria to better

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[6] Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, Sept 2014, page.37 available at http://www.ccyp.vic.gov.au/downloads/annual-reports/ccyp-annual-report-2014.pdf

[7] Productivity Commission, *Report on government services: Volume F Community Services*, 2014,, Table 15A.6 available at http://www.pc.gov.au/__data/assets/pdf_file/0017/132362/rogs-2014-volumef-community-services.pdf.

[8] Productivity Commission, *Report on government services: Volume F Community Services*, 2014,, Table 15A.6 available at http://www.pc.gov.au/__data/assets/pdf_file/0017/132362/rogs-2014-volumef-community-services.pdf

[9] Productivity Commission, *Report on government services: Volume F Community Services*, 2014,, Table 15A.19 available at http://www.pc.gov.au/__data/assets/pdf_file/0017/132362/rogs-2014-volumef-community-services.pdf

[10] Productivity Commission, *Report on government services: Volume F Community Services*, 2014,, Table 15A.19 available at http://www.pc.gov.au/__data/assets/pdf_file/0017/132362/rogs-2014-volumef-community-services.pdf

[11] Productivity Commission , Report on Government Services, 2015, page 15.13.

[12] Personal correspondence. See also *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care* – October 2014 Update, a joint submission from the Commissioner for Aboriginal Children and Young People and Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 3; and Commission for Aboriginal Children and Young People - Papers submitted to Aboriginal Justice Forum October 2014.

identify and address the impacts of family violence on children who witness it.[13] In 2013-14 in Victoria, 62% of Aboriginal children had substantiations for emotional abuse (including exposure to family violence), compared to just over 7% for neglect.[14]

FVPLS Victoria recognises the evidence about the adverse impacts of witnessing violence on children. We also note however that there are additional profound harms caused by children being removed from their families, especially the non-violent parent (typically mother). Such harms include:

- Harms incurred to Aboriginal children and their communities through intergenerational child removal;
- Harms incurred to children within the out of home care system including subsequent pathways through juvenile justice and adult prison systems and increased risk of abuse in residential facilities; and
- Systemic barriers and failures to implement legislative and other obligations aimed at protecting the cultural rights of Aboriginal children such as the Aboriginal Child Placement Principle, the convening of Aboriginal Family Led Decision Making meetings, the implementation of Cultural Plans and other failures of courts and child protection services to understand and apply their obligations.

As noted by the National FVPLS Forum:[15]

> *"Any assessment of the impacts on Aboriginal and Torres Strait Islander children of family violence must include an assessment of the impacts of our service responses and/or lack of service responses that can prevent these harms. This includes, in particular, failures to adequately resource security and protection for Aboriginal victims/survivors through culturally safe:*
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> - *holistic and specialised legal assistance to victims/survivors of family violence;*
> - *early intervention and prevention initiatives;*
> - *policy, law reform and advocacy;*
> - *access to safe and appropriate housing;*
> - *access to financial resources and/or independence; and*
> - *support for the self-determination of Aboriginal and Torres Strait Islander peoples including specifically self-determination of Aboriginal and Torres Strait Islander women.[16]"*

The extraordinary rates of contemporary Aboriginal child removal and child protection intervention in Aboriginal families acts as a significant deterrent for Aboriginal victims/survivors to disclose family violence and seek assistance from services. FVPLS

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[13] The *Children, Youth and Families Act* 2005 (Vic) identified children who have suffered, or are likely to suffer, emotional or psychological harm as in 'need of care and protection' and subject to mandatory reporting.

[14] Australian Institute of Health and Welfare, *Child Protection in Australia 2013–14*, Table A11, available at http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859.

[15] National FVPLS Forum, 2015, Submission to the Australian Human Rights Commission Examination of Children Affected by Family and Domestic Violence, p. 5, available at: http://www.nationalfvpls.org/images/files/NFVPLS_Submission_to_Examination_of_Children_affected_by_Family_and_Domestic_Violence.pdf

[16] See Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences* to Human Rights Council, 17th Session, United Nations General Assembly, 2 May 2011, p.20.

Victoria clients – predominantly Aboriginal women – regularly instruct our lawyers that their violent partners or family members make explicit threats to report them to child protection or have their children taken away from them if they go to the police. Barriers to support for Aboriginal victims/survivors of family violence pose serious and dangerous risks for the safety and wellbeing of victims/survivors and their children. FVPLS Victoria maintains that protection of Aboriginal children's safety and wellbeing (including physical, emotional, psychological, spiritual and cultural safety) will not be achieved by the current Bill or by the 2014 Amendments. Instead, what is needed is a suite of targeted, evidence-based processes to reduce family violence and family-violence driven child protection involvement in Aboriginal communities.[17] This includes strengthened commitment to and resourcing of culturally safe and targeted early intervention, prevention work (including community legal education) for Aboriginal communities, as well as increased investment in frontline legal services for Aboriginal victims/survivors of family violence.

Response to the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015*

FVPLS Victoria notes that the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015* ***("the Bill")*** seeks to rectify reforms made in 2014 pursuant to the *Children, Youth & Families (Permanent Care & other Matters) Amendment Act 2014* **('the 2014 amendments')**.

FVPLS Victoria has expressed deep concerns about the 2014 Amendments in a number of forums. We are profoundly concerned that the 2014 Amendments will have a disproportionate and devastating impact on Aboriginal children as the most vulnerable and over-represented cohort within the child protection system. We anticipate that the 2014 Amendments will fast-track the increased removal of Aboriginal children from their families and communities, compounding what is already being referred to as a 'new stolen generation'.

This will only serve to reinforce the existing barriers for Aboriginal victims/survivors of family violence terrified of disclosing family violence for fear of losing their children. This increased deterrent to Aboriginal victims/survivors reporting violence and seeking help will lead to reduced safety and protection of vulnerable Aboriginal children through:

- increasing the likelihood of victims/survivors and their children remaining in violent situations;
- compounding the already high Aboriginal out-of-home care rates;
- exacerbating Aboriginal children's cultural dislocation and associated emotional, psychological and spiritual harm; and
- contributing to the over-representation of Aboriginal children in the juvenile justice system.

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[17] For further detail, see FVPLS Victoria's submission to the Royal Commission into Family Violence available at: http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%2022Jun15.pdf

1. Reinstatement of s 276

FVPLS Victoria welcomes the Bill's proposed reinstatement of s276 of the *Children, Youth and Families Act.* This section is crucial in protecting the rights of vulnerable children and their families by ensuring that the Department of Health and Human Services ('the Department') has taken reasonable steps to provide services necessary in the best interests of the child. It is vital that the Department refer families and children to support services and that protection orders are pursued only when all other options have been explored. This is especially important in the case of family violence where therapeutic supports are pursued to assist the non-violent parent to safely care for their child.

While the decision to reinstate s276 is an important step, it is not – on its own - sufficient to rectify the detrimental impact that will undoubtedly be caused to Aboriginal children, families and communities by the remaining provisions of the 2014 Amendments which have been left intact by the Bill. Section 276 is just one aspect of the Court's capacity to consider the individual circumstances of each family coming before it and the extent to which the Department has provided – or failed to provide – the necessary services and supports in accordance with its legal obligations.

Further, without amending the operation of the new Family Reunification Orders and the arbitrary time limits inserted by the 2014 Amendments, the Court is *prohibited* from properly taking into account the steps the Department has or has not taken to provide services to a child and his or her family. Failures to provide services that could be of fundamental importance to the determination of what is in a child's best interest include, for example:

- a family being without an allocated Departmental caseworker for a number of months due to staff turn-over within the Department;
- delay by a caseworker to provide a referral to a necessary service (this could be due to a caseworker being under-resourced, inexperienced or on leave);
- long waiting lists for access to services (waiting lists for counsellors, parenting courses or drug and alcohol programs are routinely 3 to 6 months);
- failure to convene or delays in convening Aboriginal Family Led Decision Making (AFDMs) meetings, which leads to a delay in referral to culturally appropriate support services (our practitioners have seen cases where AFDMs have been delayed for up to a year and where the Department has sought orders for permanent out-of-home care in circumstance where no AFDM has been held or anticipated); and
- long waiting lists for public housing[18] where access to safe and secure housing is a pre-condition of the child returning to his or her family (in Victoria, our practitioners have seen cases where clients wait on public housing lists for up to one year).

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[18] There are currently 33,933 people on the Victorian public housing waiting list; 9,556 are eligible for 'early housing' due to urgent needs including unsafe housing as a result of family violence: Department of Health and Human Services, *Public Housing Waiting and Transfer List March 2015*.

Essentially, the 2014 Amendments impact parents and children in circumstances of extreme disadvantage where government has not, and does not, adequately resource support services to assist.

2. Failure to Rectify Other Adverse Aspects of the 2014 Amendments

FVPLS Victoria urges the repeal of a number of additional highly problematic aspects of the 2014 Amendments left intact by the Bill.

We are deeply concerned that these reforms will fast-track the increased removal of Aboriginal children into permanent out-of-home care in a number of ways:

- Firstly, by imposing a strict cumulative 12 month time limit in which parents must resolve protective concerns and regain care of their children before children are placed on permanent care orders;[19]
- Secondly, removing the Court's discretion to extend this timeframe by any more than a further 12 months and only in 'exceptional circumstances'[20] – it is unclear whether such evidence would be accepted, or indeed even possible to obtain, at the early stages of recovery from family violence victimisation and complex, intergenerational trauma, particularly where clients have had to wait significant periods to access under-resourced community services and receive reports (evidence) from those services;
- Thirdly, prioritising adoption over permanent care orders, thus removing Departmental responsibility and oversight including the capacity to require ongoing contact between children and their Aboriginal relatives;[21] and
- Finally, removing court scrutiny and the power to impose conditions for children on Family Reunification Orders, Care by Secretary Orders and permanent care orders[22] leaves parents without the ability to enforce the cultural rights of Aboriginal children in care, Departmental compliance or family contact.[23]

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[19] *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic), s 26 (which inserts a new section 287 into the principal Act) and s 27 (which inserts a new section 287A into the principal Act). See also newly inserted sections 276A and 167(3) and (4).

[20] *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic), s 34 (which inserts a new section 297A into the principal Act). See also the newly inserted sub-section 167(4)).

[21] *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic), s 97 (in particular the newly inserted section 167(1)(c)) which places adoption above permanent care or long-term care in the hierarchy of 'permanency objectives').

[22] Under the new regime, children subject to permanent care orders are only permitted to have contact with their parents "up to 4 times per year". This means that quarterly visits are the maximum allowed and there is no flexibility or capacity whatsoever to take into account the child and family's circumstances and the history, quality and regularity of contact prior to the making of the permanent care order. See *Chilren, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic), s 60 (*in particular the newly inserted section 321(1)(d)).

[23] We note that section 267 permits Court scrutiny *prior* to the making of the orders but does not allow for the Court to monitor the Department's provision of services once an order is in place. For example,

These changes will disproportionately impact Aboriginal children and families who are statistically more likely to experience complex trauma – such as family violence - that cannot be quickly resolved according to an abbreviated timeline. Further, the introduction of these changes, in the absence of any corresponding increase in funding to support services, will do little to address the systemic issues that result in the over-representation of Aboriginal children in the child protection system in the first place.

In addition, we predict the 2014 Amendments will damage the care, cultural connection and wellbeing of Aboriginal children by significantly reducing Departmental accountability towards Aboriginal children in care. For example, currently if the Department seeks to change a child's care placement, reduce parental or sibling access or permit a carer to relocate with a child, the Department must obtain a Court order and all parties to the matter must be notified and given the opportunity to appear at Court and make submissions. Under the new legislative reforms, the Department will be under no such obligation and can carry on its duties unchecked by court scrutiny or any external confirmation of the child's best interests.

FVPLS would like to particularly draw the attention of the Committee to the changes to Family Reunification Orders (set out in section 287 of the Bill), that set a cumulative time limit on out of home care at 12 months (and 24 months in exceptional circumstances), as these changes will have immediate consequences for many of our clients. The overrepresentation of Aboriginal people involved in the child protection system and as victims/survivors of family violence means that these legislative changes will have a disproportionate impact on Aboriginal children more broadly.

As noted above, as of June 2014, Aboriginal children were 12.3 times more likely to be in out of home care than non-Aboriginal children.[24] Projections suggest that by July 2015 this will equate to around 1500 Aboriginal children in out of home care across Victoria.[25] The practical consequence of the legislative changes will be that more Aboriginal children will be placed on long-term care orders, with the prospect of family reunification (when appropriate) diminished.

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under the 2014 Amendments, once a Family Reunification Order is made the Court has no role in determining or monitoring who will have custody of the child and the Department can move the child at any time. Care By Secretary Orders do not permit the Court to impose any conditions for contact, leaving the Department's decision making unfettered and un-monitored as to whether, when and for how long the child will have contact with family members. The Court's power to make Interim Accommodation Orders and broad discretion to impose conditions on such an order (s 262 of the Principal Act) is also a crucial method of monitoring progress and compliance by the Department with actions in the best interest of the child. For example, an Interim Accommodation Order with appropriate conditions and a court return date can ensure that the Department undertakes a timely assessment of a potential kinship carer, thus allowing for a child to be placed long-term in a stable and secure kinship placement that might otherwise not be identified or implemented.

[24] Australian Institute of Health and Welfare, *Child Protection Australia 2013-14*, 2015, page 51, table 5.4 available at http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859. Previous AIHW reports stated that Aboriginal children were 16 times more likely to be in out of care and 16 times more likely to be on care and protection orders than other children in Victoria. The change to '12 times' does not represent a decrease in the comparative rates, but simply a change in statistical methodology by the AIHW including the use of updated population figures. The actual number of Aboriginal children in out-of-home care in Victoria has steadily increased, including having increased by 42% in the twelve months to 30 June 2014. See: Productivity Commission, *Report on Government Services*, 2015, page 15.13.

[25] Commissioner for Aboriginal Children and Young People, Open Letter in response to *2015 Report on Government Services*, 3 February 2015. Available at http://www.ccyp.vic.gov.au/downloads/2015.02.03_ROGS%202015.pdf.

In FVPLS Victoria's experience, Interim Accommodation Orders (which are severely curtailed in the 2014 Amendments and cannot be made in circumstances where a permanent or long-term order could alternatively be made) are crucial interim measures to secure placement while protective issues of crisis or instability are resolved. Given the evidence that the majority of Aboriginal child protection involvement is as a result of family violence, Interim Accommodation Orders are a perfectly appropriate temporary measure to be used during the transition to safety as steps are put in place to support the non-violent partner to safely exit a violent relationship or environment, and resume appropriate care of her (or his) child. Fast-tracking the children of family violence victims into permanent out of home care not only punishes victims and exacerbates trauma for children, it also rules out the possibility of intensive, therapeutic interventions that would lead to family reunification, healing and stability for children within the family unit. This approach also pre-empts critical findings yet to be made through current, comprehensive inquiries. The Federal Government is currently undertaking a Royal Commission into Institutional Responses to Child Sexual Abuse. This Royal Commission is of direct relevance to the protection of children in out of home care, the findings of which are not yet available. In addition, the Victorian Royal Commission into Family Violence will call on the State Government and a number of agencies and support services to deliver hands on experience of victims of family violence and the appropriate recommendations for future prevention and better service and government responses. At this stage the Royal Commission into Family Violence has not produced findings. It must be acknowledged that there are learnings in respect of both Royal Commissions and the discrete yet far-reaching effects of this area of law.

The 2014 Amendments are even more concerning when they are considered in light of the significant lack of compliance by the Department with substantive protections for Aboriginal children contained within the *Children, Youth and Families Act* (namely, the Aboriginal Child Placement Principles set out in section 13 and the Decision Making Principles for Aboriginal Children set out in section 12). Given the significant existing failings by the Department to meet these statutory obligations towards Aboriginal children, we are concerned that a removal of court scrutiny will exacerbate the cultural dislocation of Aboriginal children in out-of-home care.

By way of example of current *Departmental failings*, a 2013 audit of 194 cases found that only 8% of Aboriginal children *required by law* to have a cultural plan in place had one.[26] This indicates the Department was breaching the rights of Aboriginal children in 92% of cases.

Of those children who do have cultural plans in place FVPLS Victoria has observed that the quality of those plans is often poor and incapable of generating meaningful connection to and enjoyment of culture and identity for Aboriginal children. For example, cultural plans have been sighted which simply recite information such as the geographical boundaries of the child's traditional country or a list of famous Aboriginal people but fail to set out actual steps to be taken to allow the child to interact with peers, community and cultural events. Other plans may state a child attend a NAIDOC event once a year but provide no ongoing or regular connection, learning or engagement with culture and community. Such plans are wholly inadequate and must be strengthened.

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[26] Department of Human Service, Information about cultural support plans for child protection clients, 2013, page 2, available at http://www.dhs.vic.gov.au/__data/assets/word_doc/0012/898878/Information-about-cultural-support-plans-for-child-protection-clients.doc.

The 2014 Amendments expand the types of orders which necessitate a Cultural Plan, meaning the Department will be required to adopt and comply with a significantly increased number of Cultural Plans for a significantly increased cohort of Aboriginal children. The Amendments also mean that Cultural Plans will now be required at an earlier date, making delays in AFDMs and appropriate engagement with and identification of Aboriginal relatives even more important. This will also necessitate greater vigilance in ensuring that Cultural Plans are updated appropriately and grow with the child. Given current failings in regard to Cultural Plans, the new requirements must be accompanied by increased investment in resources and training for the Department, as well as significantly increased resourcing and early referral to culturally safe and specialist legal assistance services for families of Aboriginal children, especially family violence victims/survivors.

Further, there is evidence of a failure to convene Aboriginal Family Led Decision Making meetings or AFDMs. Under section 12 of the Victorian *Children, Youth and Families Act*, the *Department is required* to implement a set of decision-making principles that involve Aboriginal family in decisions related to the care and placement of Aboriginal children. The Department has elected through its internal policy to do this through convening AFDMs. If convened early, AFDMs can be highly effective in identifying appropriate kinship carers and ensuring extended Aboriginal family can participate in important decisions about the care, placement, wellbeing and cultural connection of Aboriginal children. However, FVPLS Victoria have seen cases where children unnecessarily languish in out-of-home care placements with un-related, non-Aboriginal carers – in some cases for years – because the Department failed to organise an AFDM to prevent this.

We note that in response to concerns expressed by FVPLS Victoria and others about the 2014 Amendments prioritizing adoption over other forms of care, the Department's response was that the mere availability of adoption by legislation would not result in actual adoption. That is, the Department would maintain a policy and practice not to invoke the section.[27] Relying on legislation becoming dormant rather than taking steps to rectify identified problems is a slippery slope. The Department's proposed approach forces vulnerable families - including Aboriginal families and their children - to rely on a Departmental caseworker or judge *not* to invoke legislative provisions they are entitled to utilize, with no guarantees. There are fundamental dangers in legislative reform with such far-reaching impacts being expected to simply lie dormant.

3. Community Consultation

FVPLS Victoria notes the very short consultation period allowed for this inquiry. Given the seriousness of the 2014 Amendments – which we understand represent the most radical reforms to Victoria's Child Protection laws in 25 years - we are disappointed that further time was not allowed for meaningful consultation on this Bill.

Consultation with the legal sector and the Aboriginal and broader community is especially important, given the lack of consultation that took place when the 2014 Amendments were introduced. We note that the Department of Health and Human Services have expressly admitted that there was no community consultation process on the 2014 Amendments and

[27] 26 May 2015, Meeting between DoHHS, LIV members, FVPLS Victoria.

that this was at the behest of the previous Government. It is unfortunate that the current government has not availed themselves of the opportunity to correct this serious error of judgement through an open, transparent and meaningful consultation process on the present Bill.

We further note that there has been no opportunity provided to review the evidence cited by the Department as the driver and justification for these reforms. We understand that the 2014 Amendments were initially described as a means of implementing the *Cummins Report*, however they go far outside what that report recommended and in some instances contradict the report's recommendations. In addition, the Department has stated that the evidence base for the 2014 Amendments was a study of 1000 children in the system. However, despite requests being made that study has not been named or revealed. We note that at a meeting on 26 May 2015, in response to concerns expressed by FVPLS Victoria and others, the Department indicated that the stated goal of the study was to determine 'what would secure permanency' – not what would secure the child's best interests, stability or wellbeing overall.

4. Further Amendments and Recommendations

FVPLS Victoria maintains that further repeal and reinstatement is necessary to address the remaining problems with the 2014 Amendments, as outlined in section two above. Outside of reinstating former provisions to 'undo' the harms of the 2014 Amendments, however, it is our view that any further substantive amendments to the *Children, Youth and Families Act* would be premature in light of the current Royal Commission into Family Violence and the current work and ongoing findings of *Taskforce 1000* - the Commissioner for Aboriginal Children and Young People's continuing investigation which is illustrating the profound link between family violence and Aboriginal child removal in Victoria and the profound failings by the Department in relation to Aboriginal children.

Given the inextricable link between family violence and child protection intervention in Aboriginal families, we recommend a further review of the *Children, Youth and Families Act* take place upon the publication of final recommendations by the Royal Commission into Family Violence and *Taskforce 1000.*

We further recommend that at that time, meaningful consultation take place with the legal sector and community, including Aboriginal legal service providers, Aboriginal Community-Controlled Organisations and the Aboriginal community more broadly. Consultation must also allow for review and comment on exposure drafts of any proposed legislative reforms and the basis for those reforms – including evidence, research reports and other sources. Robust, open and transparent consultation is essential to ensure that the child protection system is able to effectively and appropriately protect vulnerable children in accordance with the rule of law and the cultural rights of Aboriginal children and their families.

Finally, we note that the Minister, the Honourable Jenny Mikakos MP, has indicated that a review into the 2014 Amendments will be held six months after the commencement of the legislation. However, in discussions with the Department they have indicated that while the Minister may say this it is their view that such a review is unlikely to occur. This uncertainty is of concern. In addition, it is concerning that even if a review is to commence six months after the amendments take operation such a review could reasonably be expected to take between six and twelve months meaning that there will be some twelve to

eighteen months in which the 2014 Amendments will be having potentially devastating impacts on hundreds of children and families. The Government is urged to review the legislative amendments now in light of the extensive commentary and criticism provided by the legal profession.