



Aboriginal Family Violence Prevention  
& Legal Service Victoria

**FVPLS Victoria**

Submission to the Senate Community  
Affairs References Committee

**Out of Home Care**

**October 2014**

COLLINGWOOD  
Level 3,  
70–80 Wellington Street,  
Collingwood 3066

MILDURA  
161a Lime Avenue,  
Mildura 3500  
PO Box 10059  
Mildura 3502

WARRNAMBOOL  
135–137 Kepler Street,  
Warrnambool 3280  
PO Box 404  
Warrnambool 3280

BAIRNSDALE  
210b Main Street,  
Bairnsdale 3875  
PO Box 1281  
Bairnsdale 3875

# Submission to Senate Inquiry into Out of Home Care

## Introduction

The Aboriginal Family Violence Prevention and Legal Service Victoria (**FVPLS Victoria**) welcomes the opportunity to respond to the Senate Community Affairs References Committee Inquiry into Out Of Home Care.

FVPLS Victoria fully endorses the response of the National Aboriginal Family Violence Prevention Legal Services Forum (**National Forum**) to which it has contributed and makes the following comments as an addition to that submission.

FVPLS Victoria also refers readers to its Policy Paper Series June 2010, which includes:

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

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

## About FVPLS Victoria

Established over 12 years ago, FVPLS Victoria provides legal assistance, casework, counselling and court support to Aboriginal adults and children who are victim/survivors of family violence. FVPLS Victoria lawyers provide legal assistance in the areas of family violence law, child protection, family law and victims of crime assistance through a holistic, wrap-around service delivery model that recognises and seeks to address a multitude of interrelated issues that our clients face. FVPLS Victoria also provide culturally safe community legal education and early intervention/prevention activities.

Each of these activities (legal services, community legal education and early intervention/prevention) bring our staff into daily contact with clients directly involved with or otherwise impacted by the child protection and out-of-home care system in Victoria. In addition to legal advice and representation on child protection matters, FVPLS Victoria regularly supports child protection agencies to understand their obligations to Aboriginal and Torres Strait Islander children, better identify what's needed for reunification with a parent or appropriate kinship care placements and/or to implement other strategies to ensure Aboriginal and Torres Strait Islander children have opportunities to maintain connections to their community and culture. Many of our clients attend FVPLS Victoria on a family violence or other civil law matter, at which point we also identify a need for support with their child protection matters.

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<sup>1</sup> These policy papers were made possible through funding initially provided by the Legal Services Board Grants Program and then later also by a grant from The Felton Bequest managed by ANZ Trustees. They are available online at <http://www.fvpls.org/Policy-and-Law-Reform.php>.

FVPLS Victoria have also held a number of specific regional community forums on child protection which provide an opportunity for Aboriginal community members to express their views and concerns regarding child protection and out-of-home care.

More than 90% of FVPLS Victoria clients are Aboriginal women and children. Family violence is complex and the issues our clients face are complex. In 2013-14 FVPLS Victoria's holistic service activities impacted on more than 4000 people. We provided legal services to over 500 clients (with more than 800 children), and delivered community legal education, early intervention and prevention activities to almost 1700 community members and over 1000 mainstream services staff.

In addition to the comments made in the National Forum submission, FVPLS Victoria submits the following:

**A. Drivers of the increase in the number of children placed in out-of-home care, types of care that are increasing and demographics of the children in care**

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Aboriginal children are significantly over-represented in the child protection system in Victoria. Victoria's Aboriginal out-of-home care rate is amongst the highest of jurisdictions nationally<sup>2</sup> and is markedly higher than international comparators.<sup>3</sup> The rate of Aboriginal child removal in Victoria is higher than at any time since white settlement.<sup>4</sup>

Compared with non-Aboriginal children, Aboriginal children in Victoria are:

- 9.4 times as likely to be the subject of substantiated child abuse and neglect, compared to a national average of 7.9 times more likely;<sup>5</sup>
- 15.7 times (16) more likely to be in out-of-home care, compared to a national average of 10.6 times more likely;<sup>6</sup>
- 15.6 times (16) more likely to be on care and protection orders, compared to a national average of 10 times more likely;<sup>7</sup> and
- 16 per cent of Aboriginal children and young people are on care and protection orders in Victoria (despite only comprising 1.2 per cent of the population).<sup>8</sup>

As noted in the National Forum submission, the rate of Aboriginal children in out-of-home care is increasing at disproportionate rates. In Victoria, the rate of increase is 9.5 per cent per

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<sup>2</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012–13*, Table 5.4, p 52.

<sup>3</sup> October 2014 Update to *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 3; See also Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, Sept 2014, p.37.

<sup>4</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012–13*, Table 4.4 p 41.

<sup>5</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012–13*, Table 3.5, p 26

<sup>6</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012–13*, Table 5.4, p 52.

<sup>7</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012–13*, Table 4.4 p 41.

<sup>8</sup> Department of Premier and Cabinet, *Report of the Protecting Victoria's Vulnerable Children Inquiry 2012*, Victorian Government, Volume 1, p xxvi

annum compared with 5.3 per cent for non-Aboriginal children.<sup>9</sup> Between 2001 and 2010, the number of Aboriginal children in out-of-home care in Victoria increased by 80 per cent.<sup>10</sup>

The table below outlines the rates of Aboriginal children in out-of-home care in Victoria in contrast to other states and territories in Australia.

Children in out-of-home care by number and number per 1,000 children aged 0-17 and Indigenous status, states and territories, 30 June 2013 <sup>11</sup>								
Number of children					Number per 1,000 children			
State / territory	Indigenous	Non-Indigenous	Unknown	All children	Indigenous	Non-Indigenous	All children	Rate ratio Indigenous/non-Indigenous
NSW	6,203	11,214	5	17,422	86	7.2	10.4	11.8
<b>Vic</b>	<b>1,087</b>	<b>5,442</b>	<b>13</b>	<b>6,542</b>	<b>70</b>	<b>4.4</b>	<b>5.2</b>	<b>15.7</b>
Qld	3,195	4,884	57	8,136	44	4.7	7.3	9.4
WA	1,678	1,721	26	3,425	53	3.3	5.9	16.1
SA	788	1,835	34	2,657	61	5.3	7.4	11.5
Tas	243	803	21	1,067	26	7.3	9.3	3.9
ACT	140	399	19	558	71	5.1	6.6	14
NT	618	124	0	742	22	3.4	11.7	6.6
Total	13,952	26,422	175	40,549	57	5.4	7.8	10.6

Without effective action and resourcing, we anticipate that the rate of Aboriginal children in out-of-home care will continue to increase.

The distinctive age profile of the Aboriginal population in Victoria may have an impact on Aboriginal communities' and child protection system's capacity to support the increasing number of children in need. ABS data from 2012 shows that, in Victoria, more than half of the Aboriginal population is under 25 years of age, and more than 36 per cent are aged 14 years or under.<sup>12</sup>

FVPLS Victoria endorse the National Forum Submission regarding the primary drivers for the increasingly high rates of Aboriginal children in out-of-home care. We make the following additional comments in relation to some of those drivers and their impact on the ground in Victoria specifically.

<sup>9</sup> Commission for Children and Young People, Annual Report 2013-14, Victorian Government, Sept 2014, p.37.

<sup>10</sup> Melanie Schwartz, Fiona Allison, Chris Cunneen (2013) *The civil and family law needs of Indigenous people in Victoria*, 40.

<sup>11</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012-13*, p 52.

<sup>12</sup> Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, Sept 2014, p.33

## Family Violence

The Victorian Commissioner for Aboriginal Children and Young People, Andrew Jackomos (the Commissioner), has reported that “[f]amily violence is one of the largest drivers of children and young people to out-of-home care”.<sup>13</sup>

In Victoria, one in three Aboriginal people have a relative who is a victim, or a witness to an act of interpersonal violence on a daily basis.<sup>14</sup> Police data for 2011-12 in Victoria shows that the rate of domestic violence related assault was five times as high for Aboriginal women as for non-Aboriginal women and that Aboriginal people were 6.5 times more likely to report being a victim of family violence related offences than non-Aboriginal people.<sup>15</sup> Between 2006-07 and 2012-13, the number of Family Incident Reports where the affected family member identified as Aboriginal almost tripled.<sup>16</sup>

This data is understood to be an underestimate due to unique barriers to reporting for Aboriginal victims/survivors and failures to identify or record the victim’s Aboriginality.

Victorian government statistics from 2007-08 state that family violence is present in 64 per cent of Victorian child protection cases involving Aboriginal children.<sup>17</sup> However, the preliminary work of the Commissioner’s Taskforce 1000 (discussed under response to term of reference G below) indicates the true rate is far higher, with family violence identified as a driver in well over 90 per cent of Aboriginal children entering out of home care.<sup>18</sup>

For example, of the 88 children and young people reviewed for the Inner Gippsland area, 86 had family violence present in their families. All of these families had substance misuse, which is discussed further below.<sup>19</sup>

Given the nature of our service, FVPLS Victoria’s lawyers see first-hand the role of family violence as a root cause of child protection intervention. In 2013-14, there was a 66 per cent increase in FVPLS child protection casework for victims/survivors of family violence compared to the previous year.

There are significant intergenerational impacts. Many of our clients are young mothers who have grown up through the child protection system, vulnerable to victimisation and abuse, experienced family violence as young adults and are now having their own children removed.

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<sup>13</sup> October 2014 Update to *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations; See also Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, Sept 2014, p.36

<sup>14</sup> Department for Victorian Communities, *The Victorian Indigenous Family Violence Taskforce: Final Report*, December 2003, p 4

<sup>15</sup> Koori Justice Unit, Department of Justice Indigenous Family Violence Regional Action Group and Regional Aboriginal Justice Advisory Committee Joint Workshop, March 2013.

<sup>16</sup> October 2014 Update to *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 3

<sup>17</sup> Department of Planning and Community Development, *The Victorian Government Indigenous Affairs Report 2007/2008*, p 47

<sup>18</sup> October 2014 Update to *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 3

<sup>19</sup> Taskforce 1000 Presentation to DHS Reform Information Session for Aboriginal Community Controlled Organisation's on 1 September 2014.

Women are also significantly more likely to experience poverty than men,<sup>20</sup> which is a recognised driver of both family violence and out-of-home care.

There are also clear links between out-of-home care, juvenile justice and adult prison systems (see below).<sup>21</sup> Aboriginal women are the fastest growing prison population. Given 80% of Aboriginal women in prison are mothers to dependent children,<sup>22</sup> this increase impacts very directly on the number of placements in out-of-home care. There are multiple entrenched barriers for women seeking reunification with their children on their release. This increases the likelihood these placements will be extended/long term, even after their mothers are available to care for them, and the likelihood that these children will themselves end up in the prison system.

While Victoria has seen an increasing amount of methamphetamine (ICE) addiction with a range of adverse social impacts, including child removal, our clients' experiences indicate that family violence is often an underlying factor for ICE use. As outlined in the National Forum submission, many women use drugs and alcohol as a way to cope with their experience of family violence. Anecdotal reports also suggest that ICE or other drugs may increase the regularity and severity of family violence. Our lawyers see and hear daily of existing family violence being exacerbated by alcohol and/or drug abuse and of clients self-medicating with alcohol and drugs in an attempt to cope with family violence-related trauma.

In our legal practice, we have also seen an increasing number of children placed in out-of-home care – and residential care in particular – as a result of being victims or as perpetrators of sexually abusive behaviour who may be a risk to themselves or other children in their home or care placement. In some cases it appears that DHS are reluctant to intervene and wait for children to offend, at which point they become the responsibility of juvenile justice. Early, specialised and tailored treatment and support for families and kinship carers is fundamental for these children to ensure they avoid further escalating abuse and/or offending.

The link between family violence and out-of-home care is supported by the Commissioner for Aboriginal Children and Young People, Andrew Jackomos, who has stated that he is committed to ensuring “a stronger focus on family violence in the coming year” including the pending evaluation of the 10-year Victorian Indigenous Family Violence Strategy.<sup>23</sup>

#### Limited resourcing for targeted support services to address unmet legal need

Aboriginal victim/survivors of family violence face enormous barriers to understanding and accessing their legal rights. In addition, given the history of Aboriginal child removal, Aboriginal parents may be less likely to understand the Department's protective concerns or be comfortable working cooperatively with the Department to resolve those concerns.

Without appropriate legal and non-legal assistance to help them negotiate the demands of this system, this situation sadly increases the likelihood of child protection intervention escalating to removal and out-of-home care placement.

Focus group discussions and stakeholders interviews for the Indigenous Legal Needs Project in Victoria found that:

- a lack of community understanding of the way the legal dimensions of child protection work and what rights parents have in the system;

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<sup>20</sup> Australian Council of Social Service, *Poverty in Australia 2014*, 2014, p 10

<sup>21</sup> Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, Sept 2014, p 6.

<sup>22</sup> Behrendt, L., Cunneen, C. & Liebesman, T, *Indigenous legal relations in Australia*, Melbourne, Oxford University Press, 2009.

<sup>23</sup> Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, Sept 2014, p 36.

- the reluctance of parents to engage with Department of Human Services (DHS) due to mistrust and feelings of disempowerment;
- complaints of poor DHS practice due to shortages of staff and a lack of cultural competence among DHS workers and others working in child protection;
- the failure of DHS to fulfil its statutory requirements, particularly in relation cultural plans;
- allegations that DHS were obtaining consent to orders from parents without true consent and, in some cases, through threats of permanent removal of children if consent is withheld;
- the use of consent orders as a mechanism for avoiding fulfilment of statutory requirements, particularly in relation to consultation and Aboriginal Family Decision Making;
- the failure of courts to scrutinise consent orders or to ensure statutory requirements were met, including formulating and implementing cultural plans and abiding by the Aboriginal Child Placement Principle; and
- lack of access to legal aid funding for some stages of the child protection process, such as in appeals to Victorian Civil and Administrative Tribunal (VCAT) or in Aboriginal Family Decision Making meetings, where a range of concessions may be made by the family without receiving proper legal advice or representation.<sup>24</sup>

Processes to ensure earlier access to legal assistance and information about rights are critical to address the significant knowledge and power differentials between Aboriginal families and DHS. The prevalence and complexity of family violence also demands dedicated legal and associated supports for adult victims and children from culturally safe specialists such as FVPLS Victoria.

The legal needs identified in this project are consistent with the findings of FVPLS Victoria's research into unmet legal need among Victorian Aboriginal women. FVPLS Victoria research is collected through conducting surveys at our early intervention and prevention activities, such as Sisters Day Out events which are attended by high numbers of Aboriginal women across the state. In 2013-14, 53 per cent of participants who had experienced a family violence-related legal issue (including a child protection issue) did not receive any legal assistance to deal with that issue.

It is important to note that DHS areas with well-established Aboriginal Community Controlled Organisations (ACCOs) are "characterised by falling rates of Aboriginal children entering out of home care, clearly pointing to the potential benefits of a stronger role for ACCOs in preventing admissions and supporting earlier reunification."<sup>25</sup>

Tailored and culturally safe services such as FVPLS Victoria are best placed to build trust with Aboriginal families and increase the likelihood of Aboriginal families remaining engaged and working cooperatively with DHS to address protective concerns, ensure the safety of their children and reduce the escalating out-of-home care rates for Aboriginal children.

### Lack of compliance with Statutory Obligations towards Aboriginal children

While child protection legislation in Victoria imposes a range of specific obligations on DHS in regard to the best interests of Aboriginal children, including those in out-of-home care, these provisions are not consistently being met.

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<sup>24</sup> Melanie Schwartz, Fiona Allison, Chris Cunneen, Indigenous Legal Needs Project, *The civil and family law needs of Indigenous people in Victoria: Report of the Australian Indigenous Legal Needs Project*, The Cairns Institute, 2013, p 9

<sup>25</sup> October 2014 Update to *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 4

Legal representation for parents is crucial in ensuring that DHS meets its statutory obligations to Aboriginal children. FVPLS Victoria has received reports about the following practices towards unrepresented families:

- Failure to comply with existing law and procedure designed for Aboriginal children including, for example, delays and failures to -
  - apply the Aboriginal Child Placement principle
  - convene Aboriginal Family-led Decision Making meetings
  - prepare and implement Cultural Support Plans
  - respect Aboriginal and Torres Strait Islander cultures;
- DHS assessing proposed kinship carers as “unsuitable” but not explaining why or allowing families any right of reply;
- DHS making negative judgments of parents on the basis that their extended family members are known to the Department;
- The fact that a new parent was themselves removed by the Department as a child being considered a ‘protective concern’ by the Department;
- A punitive approach taken to women who experience family violence who are re-victimised by an unhelpful, blaming approach, rather than being supported to deal with and understand the broad-ranging impacts of violence. This contributes to victims’ reluctance to seek help which can put them and their children at greater risk of harm and Departmental intervention;
- Children removed after their parent seeks assistance with respite care;
- Families feeling pressured to consent to the removal of their children due to the power imbalance between the Department and themselves and a lack of faith that the justice system will give Aboriginal parents a fair go;
- Families ‘set up to fail’ by the imposition of unrealistic timelines and unnecessarily onerous conditions;
- Grandparents taking on responsibility for caring for children and not receiving any supports;
- Siblings separated through placements with access between siblings not being prioritised;
- High staff turnover within DHS resulting in no connection between the child and allocated DHS caseworker and families being required to ‘start over’ every time the caseworker changes; and
- DHS using legal jargon which Aboriginal families do not understand.

Despite the Aboriginal Placement Principle, 65 per cent of Aboriginal children in out-of-home care in Victoria are in non-Aboriginal/kin placements.<sup>26</sup> Of those, a significant portion do not have any Cultural Support Plan in place, which is in breach of the *Children, Youth and Families Act 2005* (Vic).

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<sup>26</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012–13*, Table A32, p 102



In addition, Victorian legislation contains provisions for Aboriginal Family-led Decision Making meetings but there are often significant delays in these occurring. This significantly limits their effectiveness, procedural fairness and natural justice for Aboriginal families, and the ability of DHS to appropriately identify and assess potential kinship carers.

FVPLS Victoria's lawyers seek to attend these Aboriginal Family-led Decision Making meetings wherever possible, recognising the significant disempowerment of Aboriginal parents, the far reaching nature of decisions made and the frequent failure of DHS to accord procedural fairness and adhere to law and procedure designed for Aboriginal families. Despite this, lawyers are often unable to attend these meetings. This has serious implications for Aboriginal family members' ability to access their legal rights, to meaningfully participate in the meeting and to understand and comply with meeting outcomes.

Currently, all Aboriginal children on a permanent care order or long-term guardianship order in Victoria are required by law to have a Cultural Support Plan in place.<sup>27</sup> However, in a 2009 audit of 194 cases required to have a cultural plan in place only 15 children (8%) had one.<sup>28</sup> This means that DHS was breaching the law and the rights of Aboriginal children in 92% of audited cases. Without a plan to support Aboriginal children's development of cultural identity, belonging and connection, they are at serious risk of cultural alienation which can have profoundly negative impacts on their development, identity, self-esteem and mental health.

The Secretary of DHS is responsible for monitoring compliance with Cultural Support Plans.<sup>29</sup> It is clear that there is a need for greater accountability in the Secretary's exercise of this responsibility in order to ensure the completion, integrity and compliance with Cultural Support Plans.

FVPLS Victoria commends Taskforce 1000 and the work of the Commission for Aboriginal Children and Young People which are important mechanisms to evaluate and improve Cultural Support Plans and compliance with statutory obligations concerning the rights of Aboriginal children in Victoria. Current findings from this taskforce confirm the experience of FVPLS Victoria. See below – especially term of reference G - for further information about this work.

In addition, FVPLS Victoria believes that access to specialised, culturally safe legal assistance and judicial oversight is crucial to ensure the rights of Aboriginal children are being protected and promoted in accordance with the law.

FVPLS Victoria is concerned that judicial oversight and opportunities to ensure accountability through legal representation will be curtailed as a result of recent legislative amendments contained in the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic) ('the Amendment Act'), as highlighted in the National Forum submission.

## **B. The outcomes for children in out-of-home care (including kinship care, foster care and residential care) versus staying in the home;**

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In Victoria, two thirds of Aboriginal children in the youth justice system have graduated from out-of-home care. In turn, two thirds of those in adult prisons have graduated from youth justice.<sup>30</sup> This pathway from out-of-home care to adult incarceration demonstrates the extent to

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<sup>27</sup> *Children, Youth and Families Act 2005* (Vic), s 176.

<sup>28</sup> Victorian Aboriginal Childcare Agency in the 2009 Ombudsman inquiry into child protection cited in Schwartz, M., Allison, F. and Cunneen, C (2013) *The Civil and Family Law Needs of Indigenous People in Victoria* Cairns: James Cook University, 79.

<sup>29</sup> *Children, Youth and Families Act 2005* (Vic), s 176(4).

<sup>30</sup> Commission for Children and Young People, Annual Report 2013-14, Victorian Government, Sept 2014, p 6

which the system is failing. It challenges claims at the individual and systemic level that Aboriginal children and young people perceived to be 'at risk' will be safer following removal.

The Aboriginal Child Placement Principle requires jurisdictions to prioritise the placement of Aboriginal and Torres Strait Islander children with kin and/or community in order to ensure their cultural connection and identity. In addition, as discussed above, Aboriginal children in Victoria who are removed from their families are required under legislation to have a Cultural Support Plan yet many do not – putting their wellbeing in jeopardy and leading to increased adverse long term impacts.

The Victorian Commissioner for Aboriginal Children and Young People with key Aboriginal and community service organisations have just released an October 2014 Update to their 2013 Plan for Aboriginal Children in Out of Home Care, which reports:

While the sad, shameful legacy of the Stolen Generation is well documented, there is now a clear risk of an emerging *Second Stolen Generation* of Victorian Aboriginal children and young people through placement decisions that do not take into account all potential Aboriginal kin and by the low priority given to the development and monitoring of plans to ensure that the culture and heritage of Aboriginal children in out of home care is recognised and nurtured. An Aboriginal child denied this is a victim of cultural abuse in care. For Aboriginal people identity and connection to family, community and culture through meaningful relationships and experiences is fundamental to wellbeing.<sup>31</sup>

Nationally, 68 per cent of Aboriginal children are placed with relatives/kin, other Aboriginal caregivers or in Indigenous residential care.<sup>32</sup> In Victoria however the rate was only 51 per cent,<sup>33</sup> which is down from 56 per cent in 2011-12.<sup>34</sup> Within these placements, 16 per cent were placed with non Aboriginal relative/kin. This means around 65 per cent of Aboriginal children in out-of-home care in Victoria in 2012-13 were not placed with Aboriginal carers, thus limiting their opportunities to maintain connections to their community and culture.

Aboriginal culture conceptualises family differently from western cultural understandings which prioritise the nuclear family unit. Children are the responsibility of the entire family rather than the biological family alone. This means that the removal of Aboriginal children to non-Aboriginal care arrangements profoundly affects children's broader family members, as well as their biological parents and of course the child.

Preliminary findings and themes emerging from Taskforce 1000 confirm that in order to improve outcomes for Aboriginal children and young people in out of home care you must take a more holistic look at their lives and the environment around them. Specific themes identified include:

- Intergenerational trauma driven by one or both parents and forebears association with child protection and out of home care.
- Past or present incarceration of one or both parents.
- Family Violence and Alcohol and Drug misuse as a primary driver of children entering care

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<sup>31</sup> October 2014 Update to *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 3

<sup>32</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012-13*, Table A32, p 102.

<sup>33</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2012-13*, Table A32, p 102.

<sup>34</sup> Australian Institute of Health and Welfare, *Child Protection in Australia 2011-12*, Table A25, p 81.

- Issues with separation from siblings, family and community for many years and a lack of coordination of sibling groups.
- Wellbeing of parents and limited support to enable them to parent in the future (family violence, alcohol and drugs, intergenerational; trauma, mental health, sexual abuse, incarceration).
- Lack of wrap around approach and services to the vulnerable child and family needs in many areas.
- Poor engagement of families and kin in decision making for their child through regular and systematic discussions.
- Limited involvement of Aboriginal workers in assisting with decision making and planning for Aboriginal children and the absence of an Aboriginal workforce in child protection.
- Impact of the selection of carers, limited placement options identified; lack of support for kinship carers and inadequate cultural training to non-Aboriginal carers.
- Lack of training and knowledge of cultural support plans and best practice, lack of and inadequate cultural support plans and cultural connectedness strategies.
- Adhoc approach to ensuring children have access to cultural connections and building relationships with other Aboriginal children.
- Barriers to permanent care.
- The lack of awareness by carers of children's entitlements.
- Limited response and opportunity for healing where there is high incidence of trauma experienced by children; including family violence, intergenerational sexual abuse, abuse and neglect.
- Barriers to reunification not sufficiently addressed; housing, trauma, intergenerational involvement with child protection, family conflict and grief through death.
- Not enough consistent focus on children's development, support for children with a disability, programs to assist children with learning difficulties and education plans and outcomes.
- Concerns with decisions of the children's court, as well as many children progressing to youth justice.
- Where there is strong connections to kin and community, a good working relationship between the local ACCO and department; there is better exchange of information, more response to family and child needs and better quality of outcomes for children.

These areas urgently need addressing through long term resourcing for and partnership with Aboriginal Community Controlled Organisations in order to achieve better outcomes for Aboriginal children in out of home care.<sup>35</sup>

### **C. Current models for out-of-home care, including kinship care, foster care and residential care;**

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See below for discussion of kinship carer requirements.

#### **Case Study Kinship Care:**

As part of FVPLS Victoria's prison outreach services, we were approached for help by Shelly<sup>i</sup> a young Aboriginal mother of three.

During Shelly's incarceration, she had proposed her grandmother as an alternative carer for the children but the Department:

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<sup>35</sup> October 2014 Update to *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, pp 5-6

- failed to complete a timely assessment of the grandmother;
- failed to abide by its statutory obligation to arrange an Aboriginal Family Decision-Making Conference (AFDM);
- placed Shelly’s children in the care of an unrelated, non-Aboriginal foster carer; and
- applied to the Court for final orders to continue this placement.

The grandmother had been unable to participate in the proceedings or advocate for DHS to speed up the process and comply with its statutory obligations because, as a grandmother, she was ineligible for a grant of aid under Victoria Legal Aid’s restrictive funding arrangements. The actions of the Department resulted in the children remaining in foster care, away from their family and culture, for almost 12 months. In contrast, if an AFDM had been held, it would have enabled Shelly, the grandmother and other relevant family members to participate in decisions about the children’s placement, cultural needs and ongoing care.

Shelly’s FVPLS Victoria lawyer took on the case and successfully advocated for an adjournment of the court proceedings for final orders so that an AFDM could take place. At the AFDM, FVPLS Victoria ensured that all relevant family were present and successfully resolved the matter by agreement.

Notwithstanding this success, Shelly’s children and their grandmother continue to face disadvantage as the financial and other supports provided by the Department to foster carers do not extend to grandparents taking responsibility for their children through kinship care placements.

<sup>1</sup> Names and details have been changed in accordance with FVPLS Victoria policies in order to de-identify client information and protect confidentiality

#### **D. Current cost of Australia’s approach to care and protection**

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The Report on Government Services 2014 shows that the real expenditure in Victoria for 2012-13 is:

- \$198.5 million for child protection services (or \$156 per child in the resident population aged 0-17 years)
- \$372.5 million for out-of-home care services (or \$294 per child in the resident population aged 0-17 years)

This compares to expenditure on \$66.8 million on intensive family support services of and \$97.9 million on intensive family support services.<sup>36</sup>

#### **F. What are the supports available for relative/kinship care, foster care and residential care?**

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In Victoria, there is significantly less support available for kinship carers as opposed to foster carers. FVPLS Victoria supports the view of the Commission for Children and Young People that “the disparity in the reimbursement rates for kinship carers, in comparison to foster carers, is not justified and puts placements at risk.”<sup>37</sup>

<sup>36</sup> Steering Committee for the Review of Government Service Provision, *Report on Government Services 2014*, Productivity Commission, Canberra, Volume F Community Services, Table 15A.1

<sup>37</sup> Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, Sept 2014, p 6

FVPLS Victoria recommends that culturally safe and sufficiently accessible support is increased for Aboriginal kinship carers, such as parenting and relationship support, respite and crisis support, emotional support and financial support.

In addition, FVPLS Victoria notes that additional support is required to ensure access to justice for potential, formal and informal kinship carers, such as grandparents. In January 2013, Victoria Legal Aid introduced new criteria which severely restricts third parties from receiving grants of aid for legal representation in child protection matters. VLA's correspondence states that '[f]unding in child protection matters will only be provided to children and people defined as parents (...) except where the Court forms the view that the (third) party's participation in the proceedings with legal representation is critical to the Court's ability to make a decision that is in the child's best interests'.<sup>38</sup>

Despite the introduction of these eligibility guidelines FVPLS Victoria continues to argue for the involvement of key relatives in children's lives where appropriate and endeavours to assist grandparents and other family members required to appear as self-represented litigants.

### **G. Best practice in out-of-home care in Australia and internationally**

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Victoria is the first jurisdiction to have a Commissioner for Aboriginal Children and Young People. This role has considerable practical and symbolic value and should be considered in other jurisdictions. Commissioner Jackomos is currently implementing *Taskforce 1000* which sets out to investigate the cases of each of the approximately 1000 Aboriginal children in the child protection system in Victoria. This investigation will then form the basis for recommendations about improving outcomes for Aboriginal children and young people in care. The findings will also inform future responses to the over-representation of Aboriginal children in the care and protection system including the National Standards for out-of-home care and the *Victoria's Vulnerable Children – Our Shared Responsibility Strategy 2013-2022*. The work of the Taskforce has informed a suite of relevant recommendations in a joint submission to the Department regarding the needs of Aboriginal children in out of home care.<sup>39</sup>

### **H. Consultation with individuals, families and communities affected by removal of children from the home**

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We refer to our response to term of reference A above. In particular we reiterate our concerns that DHS is consistently under-resourced and prone to cutting corners including with respect to according natural justice and procedural fairness to parents and family members of children in out-of-home care.

FVPLS Victoria, as an Aboriginal community controlled legal service, is in a unique position to facilitate consultation and communication between DHS and Aboriginal families. In addition, FVPLS is well placed to advise the court of the need for contact and consultation with family members including through Aboriginal Family Decision-Making Conferences and Cultural Support Plans. Without the option for families to access culturally safe services such as FVPLSs, the extended kinship network of Aboriginal families and the cultural rights of Aboriginal children are too often overlooked.

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<sup>38</sup> Victoria Legal Aid, *Financial Sustainability: Changes to Eligibility Guidelines 2013*, 11 December 2012, 2, emphasis added.

<sup>39</sup> October 2014 Update to *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 3

In Victoria, DHS has an established Aboriginal Services Roundtable, through which a select of peak Aboriginal agencies provide strategic advice to the Department and Secretary in relation to its role in Victorian Aboriginal communities. FVPLS Victoria has made several attempts but is not currently included on this forum, despite its direct role providing legal assistance to women and children as well as its specialist expertise in relation to family violence as a key contributor to Victoria's escalating rates of Aboriginal children in the child protection system. The Victorian Commissioner for Aboriginal Children and Young People fully endorses the involvement of FVPLS Victoria and has proposed this to the Roundtable. FVPLS Victoria urges for this arrangement to be reviewed and recognition of its role and expertise provided through membership of the Roundtable.

## **I. Extent of children in out-of-home care remaining connected to their family of origin**

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We refer to our response to term of reference A above. In particular, we repeat our concern about the serious lack of Cultural Support Plans for Aboriginal children in out-of-home care, despite the Department's statutory obligations.

We are also concerned about potential amendments to the *Children, Youth and Families Act 2005* (Vic) (not yet in force). DHS has shown an overwhelming inability to cope with current Cultural Support Plan requirements and FVPLS Victoria is seriously concerned about its ability to meet any current or new requirements under this Act. Even in the minority of cases where DHS has complied with its current requirement to prepare a Cultural Support Plan, the plans produced are often woefully inadequate. For example, in one instance FVPLS Victoria assisted a client whose child had a Cultural Support Plan which consisted primarily of information about famous Aboriginal people from the relevant Aboriginal community, without regard to whether there was any existing or potential relationship between this child and the individuals named. It was general information that could have been taken from a source such as Wikipedia and contained no detail at all about concrete or personalised steps to be taken to maintain the child's cultural connection.

### **Case Study: Cultural Support Plans:<sup>40</sup>**

FVPLS Victoria was assisting the mother of an infant in relation to a child protection notification arising from family violence.

During the provision of legal advice on this matter it was disclosed that the client had two other teenage children on Permanent Care Orders with non-related, non-Aboriginal carers. Due to the behavioural problems of one teenager in her foster care setting, the Permanent Care Order for this child was revoked. The effect of this was that the teenage siblings were split, and one of the children was placed into residential care.

For two months FVPLS Victoria had been attempting to access both children's Cultural Support Plans, without success. This failure to provide the requested Cultural Support Plans begged the question of whether they have been completed – and also reviewed - in accordance with the Department's obligations.

FVPLS Victoria insisted the Department comply immediately with its statutory obligation to provide Cultural Support Plans that would address the cultural rights of these Aboriginal children. This should have occurred when the children were first taken into care.

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<sup>40</sup> Names and details have been changed in accordance with FVPLS Victoria policies in order to de-identify client information and protect confidentiality.

If children in out-of-home care are to have any chance of remaining meaningfully connected to their family and culture, they must have an adequate Cultural Support Plan that provides a concrete plan of action to give the child every opportunity to learn, absorb and live their culture, including through participation in daily cultural life with their peers and their community. Such a plan can only be produced through true consultation and partnership with members of the child's Aboriginal community.

## **II. Best practice solutions for supporting children in vulnerable family situations including early intervention.**

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Drawing on our 12 years of experience working with Aboriginal families impacted by child protection intervention, FVPLS Victoria recommends the following:

1. Strengthening and appropriate resourcing of culturally safe services (including legal services) for Aboriginal families involved in or at risk of child protection, with targeted resourcing for Aboriginal victim/survivors of family violence;
2. Appropriate resourcing of culturally safe and tailored early intervention and prevention activities which can improve access to services and raise understanding and awareness of legal rights in relation to child protection;
3. Uniform and mandatory cultural awareness training among DHS and service providers to address at risk Aboriginal children and ensure compliance with statutory obligations towards Aboriginal children including the Aboriginal Child Placement Principle, Cultural Support Plans and Aboriginal Family-led Decision-making Meetings;
4. Increased support, including therapeutic and financial support, for kinship carers;
5. Appropriate independent monitoring of Aboriginal children in the out-of-home care system, including through judicial oversight, ongoing systemic reviews by the Commissioner for Aboriginal Children and Young People, involvement of FVPLS Victoria in the DHS Aboriginal Services Roundtable and access to justice and culturally safe legal representation for Aboriginal children;
6. Increased training and resourcing to ensure that relevant, quality and appropriate Cultural Support Plans are routinely prepared and complied with and that they are living documents reviewed to grow with the child and ongoing meaningful consultation with Aboriginal families and communities.

We also offer in-principle support to the work and recommendations of Taskforce 1000 in its work with ACCOs and Community Service organisations with specialist expertise in supporting Aboriginal children in out of home care. This includes in particular:

1. Establish an Victorian Aboriginal Child Forum (ACF), comprising community and government, to develop a partnership agreement between community, government and agencies to provide policy direction, program development and monitor the implementation and accountability of outcomes for Aboriginal children and young people in out of home care.
2. Develop an approach and create a comprehensive outcomes framework to address the cultural needs and rights of Aboriginal children and young people in out of home care.
3. Build the life skills and cultural identity of Aboriginal children and young people in out of home care in readiness for leaving care to ensure successful transition to independence.

4. With commitment across departments and the community sector, build the capacity of Aboriginal families, communities and ACCOs to care for their children and young people and to reduce the number of Aboriginal children in out of home care.
5. Place all Aboriginal children and young people in out of home care under the authority, care and case management of an ACCO.
6. Ensure every Aboriginal child and family, regardless of where they live in Victoria, has full access to a continuum of prevention, early intervention and placement services delivered through the ACCO sector.
7. Better support Aboriginal and non-Aboriginal carers to provide in culturally competent placements and maintain and grow the pool of Aboriginal carers.
8. Ensure compliance with the *Children, Youth and Families Act 2005* as it relates to Aboriginal children and young people and make recommendations to strengthen the Act.<sup>41</sup>

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<sup>41</sup> See in particular October 2014 Update to *Koorie Kids: Growing Strong in their Culture: Five year Plan for Aboriginal Children in Out of Home Care*, a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, p 8