



Aboriginal Family  
Violence Prevention  
& Legal Service Victoria  
**Standing Firm Against  
Family Violence**

---

# Submission to the Victoria Law Reform Commission Reference on Adoption

---

## Contents

Introduction .....	3
About FVPLS Victoria.....	4
Adoption and Child Protection .....	5
The Best Interests and Rights of the Child .....	8
Response to Consultation Paper Questions.....	9
Annexure A - Excerpts FVPLS Victoria Submission to Royal Commission into Family Violence .....	12
Annexure B - FVPLS Victoria Submission to Parliamentary Inquiry into the Children, Youth and Families Amendment (Restriction on the Making of Permanent Care Orders) Bill 2015.....	21
Annexure C - FVPLS Victoria Submission to Senate Inquiry into Out of Home Care .....	26

## Introduction

The Aboriginal Family Violence Prevention and Legal Service Victoria (**FVPLS Victoria**) welcomes the opportunity to provide this submission to the Victorian Law Reform Commission's reference on the *Adoption Act 1984 (Vic)*.

The following submission does not attempt to respond to every question of the Commission's Consultation Paper. Instead, this submission urges the Commission to consider a number of key issues of importance to Aboriginal victims/survivors of family violence, predominantly women and children. In summary, those issues are:

- The relationship between adoption, child protection and family violence, and the corresponding likelihood that easing the pathway from child protection to adoption will have a disproportionate impact on Aboriginal victims/survivors of family violence and exacerbate the already alarming Aboriginal child removal rates.

This is due to the vast over-representation of Aboriginal children within the Victorian child protection system<sup>1</sup> and the fact that family violence is one of the single biggest drivers of Aboriginal children into out of home care.<sup>2</sup>

- In light of the above, the critical need to ensure that the Adoption Act and its implementation fully considers and protects the cultural rights and needs of Aboriginal children and their families.

In addition to the comments contained in this submission, we refer the Commission to recent submissions made by FVPLS Victoria to a number of related inquiries including:

1. The Royal Commission into Family Violence – July 2015;<sup>3</sup>
2. Parliamentary Inquiry into the *Children, Youth and Families Amendment (Restriction on the Making of Permanent Care Orders) Bill 2015* – June 2015;<sup>4</sup> and
3. The Senate Inquiry into Out of Home Care – October 2014.<sup>5</sup>

---

<sup>1</sup> Aboriginal children are 12.3 times more likely to be on care and protection orders in comparison with non-Aboriginal children. Australian Institute of Health and Welfare, *Child Protection Australia 2014-15*, 2016, page 54, table 5.4 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554973>. Also 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>.

<sup>2</sup> Male perpetrated violence against women and children has been found to be the primary driver in up to 90% of Aboriginal children entering out of home care. Commission for Children and Young People, Annual report 2014-15, pp. 25. Available at: <http://www.cyp.vic.gov.au/downloads/annual-reports/CCYP-annual-report-2014-2015-without-financials.pdf>

<sup>3</sup> Available at:

<http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>

<sup>4</sup> Available at:

<http://www.fvpls.org/images/files/FVPLS%20Victoria%20Submission%20to%20the%20Inquiry%20into%20the%20Children,%20Youth%20and%20Families%20Amendment.pdf>

<sup>5</sup> Available at:

<http://www.fvpls.org/images/files/FVPLS%20Victoria%20Submission%20to%20the%20Inquiry%20into%20the%20Children,%20Youth%20and%20Families%20Amendment.pdf>

## About FVPLS Victoria

Established over 14 years ago, FVPLS Victoria is an Aboriginal Community Controlled Organisation which provides culturally safe and holistic assistance to Aboriginal and Torres Strait Islander<sup>6</sup> victims/survivors of family violence and sexual assault. FVPLS Victoria provides frontline legal assistance and early intervention/prevention, including through providing community legal education to the Aboriginal community, the legal, Aboriginal and domestic violence sectors.

With support from philanthropic sources, FVPLS Victoria also 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 children who are victims/survivors of family violence. FVPLS Victoria is not gender specific, however at last count 93% of our clients were Aboriginal women and their children.

In 2015-16, FVPLS Victoria's services impacted more than 6,000 people across Victoria.

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.

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, social and emotional wellbeing, 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 is one of FVPLS Victoria's core legal service areas. Through our child protection clients (typically Aboriginal mothers), we receive daily insight into the experiences and barriers faced by Aboriginal families whose children may soon become the

---

<sup>6</sup> Hereafter referred to as 'Aboriginal'.

subject of adoption applications following recent child protection law reforms as discussed below. As such, the present review of the Adoption Act is of supreme importance to upholding the rights of our client base and to the Aboriginal community at large.

## Adoption and Child Protection

Recent reforms to child protection law introduced by the *Children, Youth & Families (Permanent Care & other Matters) Amendment Act 2014* (**'the Recent Child Protection Reforms'**) came into force in March 2016. These Recent Child Protection Reforms make it easier for children involved in the child protection system to be adopted - indeed, many in the legal profession argue this was a specific and central intention of the reforms. They do so by:

- introducing strict timeframes (a maximum cumulative 24 months) for families to regain the care of their children before the children must become the subject of permanent care arrangements, including adoption<sup>7</sup>; and
- introducing a new set of 'permanency objectives' which place adoption above 'permanent care' or 'long-term care' within the hierarchy of available court orders.<sup>8</sup>

FVPLS Victoria is deeply concerned that the Recent Child Protection Reforms will have an adverse and disproportionate impact on Aboriginal children and upon Aboriginal family violence victims/survivors – predominantly mothers. Aboriginal children in Victoria are 12.9 times more likely to be on care and protection orders in comparison with non-Aboriginal children.<sup>9</sup> Our children are also 12.3 times more likely to be in out-of-home care.<sup>10</sup> The rate of Aboriginal child removal is now higher than at any time since white settlement.

This alarming over-representation is being driven by family violence with recent data indicating family violence is the leading cause of Aboriginal children being removed from their families and entering the out of home care system. Preliminary findings from *Taskforce 1000* undertaken by the Victorian Commissioner for Aboriginal Children and Young People indicate that men's violence against women and children is the primary driver in up to 90% of Aboriginal children entering out of home care. In other words, family violence is both a feature and a cause of the removal of almost every Aboriginal child

---

<sup>7</sup> See *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), s 27 (which inserts a new section 287A into the principal Act) and s 34 (which inserts a new section 297A into the principal Act). See also newly inserted sections 276A, 167(3) and (4).

<sup>8</sup> See sections 97 and 167(c).

<sup>9</sup> Australian Institute of Health and Welfare, *Child Protection Australia 2014-15*, 2016, page 54, table 5.4 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554973>. Also 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>.

<sup>10</sup> Australian Institute of Health and Welfare, *Child Protection Australia 2014-15*, 2016, page 44, table 4.4 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554973>.

currently in care in Victoria. Legal analysis of the adoption and child protection nexus must therefore be undertaken using a family violence lens.

The Recent Child Protection Reforms unfortunately do not adequately take into account the reality and dynamics of family violence underlying the incidence of Aboriginal child protection involvement. The new child protection laws trigger a potential adoption for children in out of home care whose parents have not been able to resume the care of their child within a cumulative 12 or, in exceptional circumstances, 24 months. This belies an unrealistic and punitive approach to family violence victims dealing with deep-seated, often intergenerational, trauma which cannot be resolved quickly in accordance with arbitrary and abbreviated timelines.

Intensive and long-term supports are needed for Aboriginal women to deal with family violence victimization and achieve stability such that they can safely resume the care of their children. Lengthy waiting lists, delayed referral to services, mistrust in the system, systemic racism, lack of emergency and stable affordable housing, and high demand for under-resourced culturally safe support options are common features experienced by our clients.

In our submission to the Victorian Parliamentary Inquiry into the Recent Child Protection Reforms we wrote:

*“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.”*

For further detail on our concerns, please see our submission to the Parliamentary Inquiry into the *Children, Youth and Families Amendment (Restriction on the Making of Permanent*

*Care Orders) Bill 2015*,<sup>11</sup> as well as pages 15-17, and 53-57 of our submission to the Royal Commission into Family Violence.<sup>12</sup>

The Recent Child Protection Reforms were modelled on New South Wales legislation which promoted adoption as the first option to achieve permanency of placement. However, it is important to note that following community consultation, the New South Wales legislation included an exception for Aboriginal children. For Aboriginal children, the escalating stages of permanency were reversed such that ‘care to secretary’ orders are preferred over adoption.<sup>13</sup> Such an amendment in Victoria would be an important step towards addressing the dire situation of Aboriginal child removal in Victorian communities, by ensuring the Government remains accountable for the removal and out of home care of Aboriginal children.

This is especially so, given increased adoption of Aboriginal children may have the unexpected consequence of fracturing existing, safe and secure placements with Aboriginal kin. FVPLS Victoria has assisted clients who have taken on the primary care of their young relatives and would be simply unable to do so without the financial support provided by the Department of Health and Human Services (‘DHHS’) through the child protection system.

Upon adoption, the DHHS would cease to have any responsibility or oversight for the children and their carers would be left unsupported. This is particularly onerous in the Aboriginal community where carers are statistically more likely to experience financial hardship and/or have multiple family and caring obligations. This is compounded by the reality that Aboriginal children in care are more likely to experience disabilities, learning difficulties or have experienced trauma such as exposure to family violence, necessitating a high level of long term support.

In light of the Recent Child Protection Reforms, the Adoption Act must contain safeguards to ensure that adoption does not become too “easy” an option for the DHHS and further increase the vast power imbalance that Aboriginal victim/survivors of family violence are subject to when faced with child protection authorities/the State.

FVPLS Victoria respectfully requests that the Commission have regard to the findings and recommendations of *Taskforce 1000* undertaken by the Victorian Commissioner for Aboriginal Children and Young People. In addition, it must be noted that the Children’s Commission has been tasked with undertaking an inquiry into the operation of the Recent Child Protection Reforms. This review commenced on 1 September 2016 and is due to be completed by March 2017. We respectfully request that the Victorian Law Reform Commission have regard to the Children’s Commission’s final report and recommendations prior to finalising this review to ensure that amendments to the Adoption Act appropriately take into account the emerging legal landscape and adverse implications concerning the potential flow of cases from child protection to adoption.

---

<sup>11</sup> Available at:

<http://www.fvpls.org/images/files/FVPLS%20Victoria%20Submission%20to%20the%20Inquiry%20into%20the%20Children,%20Youth%20and%20Families%20Amendment.pdf>

<sup>12</sup> Available at:

<http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>

<sup>13</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 10A.

## The Best Interests and Rights of the Child

FVPLS Victoria is strongly of the view that the Adoption Act should contain specific provisions concerning Aboriginal children. We submit that the Adoption Act should impose compulsory considerations which the Court must take into account when determining the best interests of Aboriginal children coming before the Court. Specifically, the Adoption Act should incorporate guidance and safeguards to ensure the cultural rights and needs of Aboriginal children are included within the concept of the best interests of the child. The Act should incorporate specific provisions to this end, ensuring that cultural rights are given due weight in the Court's determination of best interests, and giving the Court the power to call evidence on the cultural background, needs and considerations of the child before it.

Options to achieve this end could include:

- Insertion of a statutory obligation on the Court to follow the Aboriginal Child Placement Principle<sup>14</sup>;
- Insertion of a statutory obligation on the Court to consider international human rights principles concerning the rights of Aboriginal children as contained within the United Nations Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, and the Victorian Charter of Human Rights;
- Insertion of provisions similar to those contained within the Family Law Act<sup>15</sup> and a statutory obligation that the applicant – most often DHHS – must file a report with the Court addressing these provisions;
- The creation of a Cultural Plan by the Applicant (typically, DHHS) which must be filed with the adoption application. Guidelines setting out what must be included in a compliant Cultural Plan would also be important to ensure that the document is a living document that grows with the child and provides concrete and actionable steps for how the child will maintain a close and ongoing connection to culture, identity and community;
- A mechanism for family and kin to be consulted about the adoption application prior to a final determination being made. This would be important to ensure that all reasonable enquiries and efforts are made to place Aboriginal children with kin and/or in placements that allow the child to maintain a deep and ongoing connection to their culture and identity. An example of such a mechanism would be the Aboriginal Family Led Decision Making process within the child protection system, however it must be noted that FVPLS Victoria has observed significant problems with compliance with this process including lengthy delays of in excess of one year which undermine the capacity of the process to achieve its aims of identifying potential Aboriginal and or kinship carers, and ensure family members are able to participate in decision making and influence plans to support the ongoing cultural connections of the child;
- A mechanism for ensuring the Court consults with Aboriginal Elders and respected people as part of the judicial decision-making process. Implementation of this mechanism should be undertaken in consultation with an Aboriginal Community

---

<sup>14</sup> See *Children, Youth and Families Act 2005* (Vic), s 13.

<sup>15</sup> See *Family Law Act 1975* (Cth), ss 60CC(h) and 60B(3).

Controlled Organisation, like FVPLS Victoria. Further consideration and consultation is required to determine the most appropriate way for this consultation to occur, however, possible options include consultation through a Koori Court structure or through employment of Aboriginal positions akin to the role of Aboriginal Family Consultants within the Family Court of Australia; and

- Ensuring that Aboriginal families have access to timely and culturally safe legal assistance so parents and children can understand and access their rights and options and be supported to hold the system to account in protection of the cultural needs of Aboriginal children.

There is sadly far too little research literature available about the long-term spiritual, social and emotional impacts on Aboriginal children removed from their culture. However, we encourage the Victorian Law Reform Commission to have regard to those previous reports that do exist concerning the devastating impact of cultural dislocation for Aboriginal children removed from their families and communities.<sup>16</sup> FVPLS Victoria stresses the importance of Aboriginal children in care being supported to maintain and explore their cultural rights and identity to their fullest potential.

## Response to Consultation Paper Questions

With respect to the questions posed in chapter four of the Commission's Consultation Paper, we provide the following brief responses:

**Question 17. Should there be a positive duty on the Secretary of DHHS to make reasonable inquiries as to whether a child to be placed for adoption is an Aboriginal or Torres Strait Islander child? If yes, what type of inquiry might be reasonable?**

Yes. All reasonable steps should be taken to identify whether or not a child is Aboriginal. This should include consultation with appropriate Aboriginal services and organisations within the child's region. In circumstances where the child has been involved in the child protection system prior to being placed for adoption, there are mandated processes which, if followed, *should* mean that the child's Aboriginality has been identified.

However, our clients' experiences and reports to the Commissioner for Aboriginal Children and Young People indicate that Aboriginal identification processes are far from failsafe and children and parents' Aboriginality can be missed. Consequently, we recommend that the Adoption Act mandate a fresh inquiry into the child's Aboriginality be commenced upon the child being placed for adoption to ensure that no Aboriginal child falls through the gaps.

---

<sup>16</sup> See for example: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing them Home*, 1997 available at [http://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](http://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf); Child Safety Commissioner, *'It is the story of all of us: Learning from Aboriginal communities about supporting family connection'*, State of Victoria 2011, 6. Healing Foundation, *Our Children, Our Dreaming: A Call for a More Just Approach For Aboriginal and Torres Strait Islander Children and Families*, 2013.

**Question 18: Should there be separate rules and guidelines that apply only to the adoption of Aboriginal and Torres Strait Islander children? If yes, is the child placement principle in the Adoption Act (section 50) an appropriate mechanism? If not what changes should be made?**

Yes, see discussion above.

It is also crucial to ensure that Aboriginal families, most particularly Aboriginal women who have experienced family violence, have access to culturally safe and timely legal assistance and are aware of their legal rights and options relating to the care of their children.

**Question 19: Should there be a requirement that in any adoption of an Aboriginal or Torres Strait Islander child the first preference is to place a child for adoption with Aboriginal or Torres Strait Islander extended family or relatives? If not, what should the order of preference be for placing Aboriginal and Torres Strait Islander children for adoption?**

Yes, see discussion above.

**Question 20 Should the Adoption Act require that adoption be considered for Aboriginal and Torres Strait Islander children only where there is no other appropriate alternative?**

Yes, adoption should be considered the option of last resort. We refer to our discussion above concerning the exception for Aboriginal children introduced within NSW child protection legislation.

In addition, as stated above, access to culturally safe legal assistance is critical to ensure Aboriginal families – especially victims/survivors of family violence – understand the adoption process, can make informed decisions and exercise their legal rights.

**Question 21. Should parents of Aboriginal and Torres Strait Islander children retain the ability, that parents of other children do not have, to put conditions on their consent to the adoption of their children? If not, what options should there be to protect the connection of Aboriginal and Torres Strait Islander children to country, kin, language and community?**

Yes. Safeguards, such as conditions, are important to ensure an ongoing onus on the part of the adoptive parents to support Aboriginal children to maintain and explore their culture, identity and retain connections to community. Without such conditions, Aboriginal children and families who were in the Child Protection system would, upon adoption, lose all recourse to the courts to enforce family contact, completion of cultural plans and compliance with cultural rights.

**Question 22 Should parents of Aboriginal and Torres Strait Islander children retain the ability, that parents of other children do not have, to put conditions on their consent to the adoption of their children? If not, what options should there be to protect the connection of Aboriginal and Torres Strait Islander children to country, kin, language and community?**

Yes. See answer to question 21.

# Annexure A

## Excerpts FVPLS Victoria Submission to Royal Commission into Family Violence

Full submission available at:

<http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>

It is important to note that the vast majority of family violence incidences go unreported and the true figures in each of these LGAs are therefore likely much higher. It is also important to note that without effective action and appropriate resourcing of services that support Aboriginal victims/survivors of family violence, these rates will likely increase given the high youth demographics and fast growth rate of the Aboriginal population. Increased public attention on family violence generated by growing media attention on the topic and the Royal Commission into Family Violence, are also driving up reporting rates.

We note also that Victorian Aboriginal population figures are also under-reported due to the level of mistrust and reluctance by many Aboriginal community members to identify as Aboriginal to authorities.

Increased, secure and long-term resourcing for culturally safe and specialist support services working with Aboriginal victims/survivors of family violence are sorely needed to stem the over-representation and increasing numbers of Aboriginal victims/survivors of family violence.

## **2. Impacts of Family Violence Against Aboriginal People**

Family violence has devastating impacts on Aboriginal women, children and communities as a whole. It is a leading contributor to Aboriginal child removal, women's incarceration, homelessness, poverty, poor physical and mental health, and drug and alcohol abuse as discussed in further detail below.

Economic modelling by KPMG shows that violence against women and their children cost the Australian economy \$13.6billion in the 2008-9 financial year.<sup>21</sup> Unless effective action is taken, the cost of violence against women and children is projected to increase to \$15.6billion in 2021-22.<sup>22</sup> The specific annual national cost of violence against Aboriginal women was projected to increase to \$2.2billion in the year 2021-22.<sup>23</sup> This does not include costs incurred in relation to children who witness violence, which were projected to reach \$1.6billion.<sup>24</sup> While a figure was not calculated for Aboriginal children, other data on Aboriginal family violence and children in child protection services shows very clearly these costs will be high, and grossly disproportionate relative to population

### **2.1. Family violence and child protection**

Family violence has been recognised as a key contributor to Aboriginal child removal for some time. However, it is only recently that data has come to light that illustrates the true extent of the relationship between family violence (specifically men's violence against women) and the removal of Aboriginal children in Victoria. In 2014, the Victorian Commissioner for Aboriginal Children and Young People commenced *Taskforce 1000* – a project to examine the case of each Aboriginal child in statutory out-of-home care in Victoria. Preliminary findings from the first 250 cases examined by *Taskforce 1000* indicate that men's violence against women was a primary driver in up

---

<sup>21</sup> National Council to Reduce Violence Against Women and their Children. (2009). *The Cost of Violence Against Women and Their Children*, page 9, available at:

[http://www.fahcsia.gov.au/sites/default/files/documents/05\\_2012/vawc\\_economic\\_report.pdf](http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf)

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

to 95% of Aboriginal children entering out-of-home care.<sup>25</sup> In other words, family violence is a leading cause of removal for almost every Aboriginal child in statutory care in this state.

Aboriginal and Torres Strait Islander children are significantly over-represented among children in out-of-home care right across the country and Victoria has some of the highest rates in the country. 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.<sup>26</sup>

In Victoria, Australian Institute of Health and Welfare data shows that Aboriginal children are 16 times more likely to be on care and protection orders in comparison with non-Aboriginal children.<sup>27</sup> They are also 16 times more likely to be in out-of-home care.<sup>28</sup> The rate of Aboriginal child removal in Victoria is now higher than at any time since white settlement.<sup>29</sup>

The rate of Aboriginal child removal is increasing at an alarming pace and Victoria's removal rate is now increasing faster than any other State or Territory in Australia. In Victoria, the number of Aboriginal children removed from their families and placed in out of home care increased by 98% between 2007-08 and 2013-14.<sup>30</sup> For non-Aboriginal children the increase was just 45 per cent.<sup>31</sup> In just the twelve months to June 2014, there was a 42% increase in Victorian Aboriginal children in statutory care<sup>32</sup> - which was the highest increase in the country for that period.

---

<sup>25</sup> 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.

<sup>26</sup> Productivity Commission, *Report on Government Services* (2015) 15.13.

<sup>27</sup> 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>

<sup>28</sup> Australian Institute of Health and Welfare, *Child Protection Australia 2012–13*, Table 4.4 page 41 Available at <http://www.aihw.gov.au/publication-detail/?id=60129547965>. Please note: recent data from the Productivity Commission now states that the out-of-home care rate for Aboriginal children is 12 times that of non-Aboriginal children. This reflects changed statistical methodology, including the use of increased Aboriginal population figures. The actual number of Aboriginal children in out-of-home care in Victoria has continued to increase. See Productivity Commission, *Report on government services: Volume F Community Services*, 2015, Table 15A.20 available at <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volumef-chapter15.pdf>.

<sup>29</sup> Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, (2014) 37 available at <http://www.ccp.vic.gov.au/downloads/annual-reports/ccyp-annual-report-2014.pdf>

<sup>30</sup> Productivity Commission, *Report on government services: Volume F Community Services*, 2015, Table 15A.20 available at <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volumef-chapter15.pdf>

<sup>31</sup> Productivity Commission, *Report on government services: Volume F Community Services*, 2015, Table 15A.20 available at <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volumef-chapter15.pdf>

<sup>32</sup> Commissioner for Aboriginal Children and Young People, Open Letter in response to *2015 Report on Government Services*, 3 February 2015.

In 2011-12 there were around 1,000 Aboriginal children in out of home care in Victoria.<sup>33</sup> This was around one in eleven of all Victorian Aboriginal children.<sup>34</sup> By June this year there will be an estimated 1500 Aboriginal children in care.<sup>35</sup>

These statistics come as no surprise to organisations like FVPLS Victoria working with Aboriginal families at the grassroots. Between June 2013 and June 2014, our lawyers saw a 66% increase in child protection cases. This is a startling indication of the increasing rates of Aboriginal families facing child protection intervention and the link between family violence victimisation and child removal.

The extraordinary rates of contemporary Aboriginal child removal and child protection intervention in Aboriginal families act as a significant deterrent for Aboriginal victims/survivors to disclose family violence and seek assistance from services. FVPLS 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. In addition, our clients often report that they did not know that child protection intervention was a legal matter until their children got removed or the Department initiated a Protection Application in the Children’s Court. Some community members report explicitly being told by child protection workers that they do not need a lawyer.

In order to address these issues, a far greater investment is required for culturally targeted early intervention and prevention activities (including community legal education) and wrap-around responses (including legal) for Aboriginal victims/survivors of family violence. The value of community legal education and proactive legal advice and assistance for families involved in or at risk of child protection intervention cannot be under-estimated. Investing in support services at the front-end supports strengthened and resilient families and promotes healthy relationships, reducing the risk or escalation of child protection intervention as well as the resource requirements necessitated by greater intensity of child protection service involvement.

There is also a crucial need to reform the approach taken by child protective workers and the child protection system towards Aboriginal victims/survivors of family violence. This is needed to transform what is currently a punitive system that blames victims for exposing their children to violence, instead of one which strengthens perpetrator accountability and provides a therapeutic and supportive model that builds victims/survivors’ capacity to safely care for their children.

Our recommendations and commentary on Child Protection Authorities responses are discussed in further detail at pages 53 to 57 below.

---

<sup>33</sup> *Report of Government Services 2015*, Productivity Commission Table 15A.19; see also <http://www.ccyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf>

<sup>34</sup> *Report of Government Services 2012*, Productivity Commission Table 15A.17; see also <http://www.ccyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf>

<sup>35</sup> Commissioner for Aboriginal Children and Young People, Open Letter in response to *2015 Report on Government Services*, 3 February 2015.

2. Increased investment from both Federal and State Governments for frontline, culturally safe services for Aboriginal victims/survivors of family violence (including FVPLS Victoria);
3. Implement data collection training and system strengthening within Victoria Police to ensure appropriate collection of data on Aboriginality of victims/survivors and provision of appropriate referral pathways;
4. Undertake a review of the Police L17 Referral process to ensure that Aboriginal victims/survivors coming into contact with the police receive a referral to their local Aboriginal family violence service, including FVPLS Victoria where present in the region; and
5. Longer-term (5 yearly), increased funding from both Federal and State Governments to enable FVPLS Victoria to:
  - (a) meet demand for our specialist, culturally safe, frontline legal assistance services, including through expansion to state-wide coverage;
  - (b) continue and expand our highly successful, culturally targeted early intervention prevention programs and community legal education programs; and
  - (c) continue to provide high level policy advice and undertake advocacy and law reform activities to strengthen law and justice outcomes for Aboriginal victims/survivors of family violence.

## 2. Child Protective Services

As outlined in the section on 'Family Violence and Child Protection' at pages 15 to 17 above, many Aboriginal victims/survivors do not disclose family violence for fear of having their children taken from them by child protective services. Sadly, this fear is entirely understandable given family violence is by far the leading contributor to child protection intervention and child removal in Aboriginal families, as discussed in further detail above.

In order to effectively address family violence in Aboriginal communities, it is therefore imperative that we address the disproportionate rates of Aboriginal child removal and the policies and practices of child protection services. FVPLS Victoria routinely hears from our clients and from the Aboriginal communities we serve about punitive approaches taken by child protective services towards Aboriginal victims/survivors and failures by child protective services to abide by their statutory obligations towards Aboriginal children and their families. This includes Child Protection workers responding to Aboriginal women as though they are to blame for being victims of family violence and making decisions about their capacity to care for their children on the basis of this misinformed view. This re-victimisation contributes to victims' reluctance to seek help which can contribute to victims/survivors' isolation and vulnerability putting them and their children at greater risk of family violence – and Departmental intervention.

The impact of these poor practices is compounded by a significant lack of awareness of legal rights and processes within Aboriginal communities. FVPLS Victoria reiterates the recommendation made in our submission to the Family Law Council reference on

Families With Complex Needs<sup>104</sup> that Victoria should implement a mandated and enforceable process for ensuring that FVPLS Victoria is immediately notified when an Aboriginal client comes into contact with child protection authorities and that the client is also immediately advised of the need to obtain independent legal advice at the earliest opportunity. Such a process would mirror the custody notification system which currently exists in the criminal law jurisdiction in Victoria and forms part of the response to the issue of Aboriginal deaths in custody and over-incarceration. Given the high and escalating rates of child removal among Victorian Aboriginal families – which new research indicates is driven almost entirely by family violence - we believe such a response is justified. Such a requirement, along with appropriate resourcing of FVPLSs to respond to demand, would be an important step in reducing the devastatingly high rates of child protection and child removal in Aboriginal families and, in turn, reducing one of the most significant deterrents to disclosing and addressing family violence among Aboriginal communities.

In addition, a fundamental attitudinal shift is required within the Department to reform the way the system responds to Aboriginal victims/survivors of family violence. Robust systems of accountability, monitoring and workforce development are required to transform the harmful responses that unrealistically apportion blame to victims/survivors for failing to act protectively and instead take a therapeutic approach that aims to support victims/survivors to safely care for their children. Workforce development must include wide-spread, compulsory training for all child protection workers in order to improve cultural respect and awareness along with family violence sensitivity training.

#### **Case Study – Kylie<sup>105</sup>**

Kylie is a 21 year old mother of two. Kylie grew up in residential care after being removed from her parents when she was an infant. Kylie’s grandmother was part of the stolen generation.

While still in state care as a teenager, Kylie became addicted to ice and alcohol and became pregnant at 16. Kylie began a relationship with Steve when she was 18 and had her second child with him when she was 19. During Kylie’s pregnancy, Steve became increasingly violent and regularly threatened Kylie that if she went to the police her kids would be taken away.

Due to Steve’s threats and past negative experiences, Kylie was extremely mistrustful of police, courts, lawyers and the Department.

An anonymous notification was made to the Department of Health and Human Services that there was suspected violence occurring in Kylie’s home that her children may be witnessing. When child protection workers came to Kylie’s house to investigate the situation, Kylie denied that Steve was violent. Kylie was scared of what might happen if she told the truth.

Kylie contacted FVPLS Victoria for advice only after the Department apprehended her children from daycare and lodged a protection application in the Children’s Court to remove them from Kylie’s care. The Department acknowledged that there was no

<sup>104</sup> Available at <http://www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions>

<sup>105</sup> Names and identifying details have been changed and multiple client stories amalgamated to protect the safety, privacy and confidentiality of our clients.

evidence the children had been physically harmed, but alleged that the children were at risk of emotional harm due to being present in a violent home.

Had Kylie been properly supported by the Department and referred to FVPLS Victoria earlier for proactive legal advice and information she could trust, Kylie would have been supported to take steps to protect herself from Steve's violence and create a safe and loving home for children.

### ***Recent and Current Reforms to Child Protection Laws***

Given the context outlined above, FVPLS Victoria, along with the Law Institute of Victoria and other stakeholders, is particularly concerned about recent legislative changes to Victoria's child protection laws which will have a disproportionate and devastating impact on Aboriginal families, increasing already high Aboriginal out-of-home care rates and exacerbating Aboriginal children's disconnection with culture, identity and family. This will only serve to reinforce the existing barriers for Aboriginal victims/survivors terrified of disclosing family violence for fear of losing their children.

The *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic)* was passed in September 2014 and is due to commence by no later than March 2016. FVPLS Victoria predicts that these changes 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 window in which parents must resolve protective concerns and regain care of their children before children are placed on permanent care orders;
- Secondly, by removing the Court's discretion to extend this timeframe by any more than a further 12 months in 'exceptional circumstances' – it is unclear whether recovering from family violence victimisation and complex, potentially intergenerational trauma, would constitute 'exceptional circumstances' for the purposes of this provision;
- 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; and
- Finally, removing court scrutiny of children on permanent care orders leaving parents without the ability to enforce the cultural rights of Aboriginal children in care, Departmental compliance or family contact.

On 28 May 2015, a Bill was introduced into Victorian parliament<sup>106</sup> which reinstates one provision (section 267) from the previous Act. This is only one aspect of the Court's discretionary power and FVPLS Victoria maintains that further repeal is necessary and that any substantive amendments at this stage would be premature in light of this Royal Commission and the current work and unfolding findings of Taskforce 1000, the Commissioner for Aboriginal Children and Young People's current investigation which is illustrating the profound link between family violence and Aboriginal child removal in Victoria.

FVPLS Victoria is deeply concerned that the 2014 reforms (left intact by the 2015 Bill) will disproportionately impact Aboriginal children and families who are statistically

---

<sup>106</sup> *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015 (Vic)*.

more likely to experience complex trauma – such as family violence - that cannot be quickly resolved according to an abbreviated timeline.

In addition, we are concerned these legislative changes will damage the care, cultural connection and wellbeing of Aboriginal children by significantly reducing Departmental accountability towards Aboriginal children in care.<sup>107</sup> Given significant existing failings by the Department to meet its 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.<sup>108</sup> This indicates the Department was breaching the rights of Aboriginal children in 92% of cases.

Without urgent and effective action, these serious Departmental failings and escalating levels of child removal will continue to spark fear in Aboriginal communities of another stolen generation - compounding existing barriers to Aboriginal victims/survivors of family violence reporting violence and seeking assistance for themselves and their children.

### ***Recommendations***

1. Implement strengthened, regular and systematic training for all child protection workers to ensure culturally appropriate and therapeutic responses for Aboriginal victims/survivors of family violence;
2. Strengthened accountability mechanisms within child protection agencies to protect and promote the cultural rights of Aboriginal children and to increase Departmental compliance with statutory obligations towards Aboriginal children and families.
3. Investment in culturally safe and targeted strategies to reduce family violence-driven child protection intervention in Aboriginal families including:
  - a. Increased investment in community legal education and frontline legal assistance services delivered by FVPLS Victoria, and other specialist services, to increase the Aboriginal communities' awareness of their legal rights and understanding of the child protection system;
  - b. Implementation and concomitant resourcing of the recommendations made by *Taskforce 1000*;

---

<sup>107</sup> For further detail see FVPLS Victoria's submission to the Senate Inquiry into Access to Legal Services and to the Victorian Legal and Social Issues Committee's Inquiry into the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015* (Vic). Both available at: <http://www.fvpls.org/Policy-and-Law-Reform.php#PolicyPapersSubmissions>

<sup>108</sup> 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](http://www.dhs.vic.gov.au/_data/assets/word_doc/0012/898878/Information-about-cultural-support-plans-for-child-protection-clients.doc).

- c. Improved referral pathways to ensure Aboriginal victims/survivors in contact with the Department can access early, proactive legal advice and representation; and
  - d. Strengthened cultural awareness and family violence sensitisation training for child protection workers developed in partnership and consultation with the Aboriginal community and specialist, Aboriginal organisations with expertise in child protection and family violence including FVPLS Victoria.
4. Implementation of a Child Protection Notification Referral System for Aboriginal families which ensures that upon a child protection notification being received for an Aboriginal family the primary parent is immediately referred to FVPLS Victoria (or another appropriate legal assistance provider where required) and informed of the importance of obtaining independent legal advice at the earliest opportunity – such a system should be developed in consultation with FVPLS Victoria and other Aboriginal Community-Controlled organisations.
  5. Repeal of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic).
  6. Any further substantive reforms to the *Children, Youth and Families Act*:
    - a. be postponed to allow implementation of relevant recommendations from this Royal Commission into Family Violence;
    - b. implement relevant recommendations from *Taskforce 1000* and be developed in consultation with the Victorian Commissioner for Aboriginal Children and Young People;
    - c. follow for comprehensive community consultation over a reasonable timeframe to allow for meaningful input from the legal sector, Aboriginal Community Controlled Organisations, specialist family violence and children’s services; and
    - d. allow for review and consultation with the sector on exposure drafts.

### 3. Courts

#### ***Insufficient safety and facilities in Magistrates Courts***

Safety at Magistrates’ Courts in family violence intervention order matters is a serious and systemic issue. Most Magistrates Courts in Victoria have only one entrance and one waiting room. This means that unless victims/survivors have sufficiently specialised lawyers able to make alternative arrangements, they are forced to wait – potentially for hours - in cramped public waiting areas alongside their abusers. This exposes victims/survivors to significant danger and re-traumatisation.

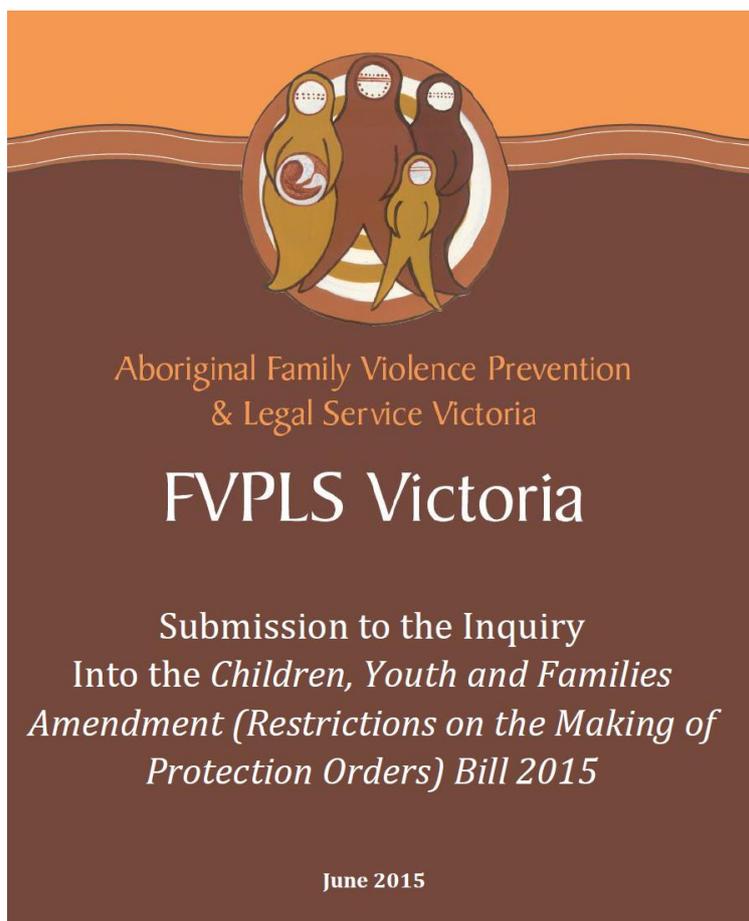
By way of example, the family violence intervention order lists at Dandenong Magistrates Court are becoming increasingly busy. At times there are as many as 70 matters listed on the one day meaning individual litigants may need to wait at Court for

# Annexure B

## FVPLS Victoria Submission to Parliamentary Inquiry into the Children, Youth and Families Amendment (Restriction on the Making of Permanent Care Orders) Bill 2015

Electronic document available at:

<http://www.fvpls.org/images/files/FVPLS%20Victoria%20Submission%20to%20the%20Inquiry%20into%20the%20Children,%20Youth%20and%20Families%20Amendment.pdf>



## 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.<sup>4</sup> They are also 11.8 times more likely to be in out-of-home care.<sup>5</sup> These are some of the highest rates in the

---

<sup>4</sup> 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>

<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> (By way of comparison, the number of non-Aboriginal children admitted to care and protection orders increased by only 38% during the same period.<sup>8</sup>) 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.<sup>9</sup> For non-Aboriginal children the increase was just 45 per cent.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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

---

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

<sup>7</sup> 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](http://www.pc.gov.au/data/assets/pdf_file/0017/132362/rogs-2014-volumef-community-services.pdf).

<sup>8</sup> 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](http://www.pc.gov.au/data/assets/pdf_file/0017/132362/rogs-2014-volumef-community-services.pdf)

<sup>9</sup> 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](http://www.pc.gov.au/data/assets/pdf_file/0017/132362/rogs-2014-volumef-community-services.pdf)

<sup>10</sup> 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](http://www.pc.gov.au/data/assets/pdf_file/0017/132362/rogs-2014-volumef-community-services.pdf)

<sup>11</sup> Productivity Commission, *Report on Government Services, 2015*, page 15.13.

<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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:<sup>15</sup>

*“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:*

- *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.<sup>16</sup>”*

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

---

<sup>13</sup> 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.

<sup>14</sup> 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>.

<sup>15</sup> 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](http://www.nationalfvpls.org/images/files/NFVPLS_Submission_to_Examination_of_Children_affected_by_Family_and_Domestic_Violence.pdf)

<sup>16</sup> See Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences* to Human Rights Council, 17<sup>th</sup> 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.<sup>17</sup> 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.

---

<sup>17</sup> 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>

# Annexure C

## FVPLS Victoria Submission to Senate Inquiry into Out of Home Care

Full submission available at:

<http://www.fvpls.org/images/files/FVPLS%20Victoria%20Submission%20to%20the%20Senate%20Inquiry%20into%20Out%20of%20Home%20Care.pdf>



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

Freecall: 1800 105 303 Phone: 03 9244 3333 Fax: 03 9416 0147 Web: [www.fvpls.org](http://www.fvpls.org) Email: [information@fvpls.org](mailto:information@fvpls.org)

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**

---

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

---

<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.

State / territory	Number of children				Number per 1,000 children			
	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
<b>Total</b>	<b>13,952</b>	<b>26,422</b>	<b>175</b>	<b>40,549</b>	<b>57</b>	<b>5.4</b>	<b>7.8</b>	<b>10.6</b>

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.

---

<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;

---

<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.

<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)*.

---

<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;**

---

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

---

<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

---

<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>