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Submission to the Senate Standing Committee on
Finance and Public Administration

**Senate Inquiry into
Access to Legal Assistance Services**

30 April 2015

1. About Aboriginal Family Law Services (WA)

The Aboriginal Family Law Services (WA) is committed to being a leader in the provision of family violence legal services, support and education for Aboriginal people in Western Australia (WA) who have experienced, or, who are experiencing family and sexual violence. (**Please note:** The term Aboriginal is used herein to refer to both Aboriginal people wherever relevant.)

Funded by the Department of the Prime Minister and Cabinet (DPMC) under the national Family Violence Prevention Legal Service (FVPLS) Program, we are the largest FVPLS provider in Australia. The FVPLS program provides culturally secure specialist legal services in the area of family violence matters. It aims to 'prevent, reduce and respond to incidents of family violence and sexual assault' (Productivity Commission 2014, p 670). Fourteen services are funded nationally to provide these services to 31 rural and remote locations.

Services are delivered in six regions across WA covering the West Kimberley, East Kimberley, Gascoyne, Midwest, Goldfields, and Pilbara regions. Forty seven percent of the state's Aboriginal population resides in these regions (ABS 2011).

Offices are located in Broome, Carnarvon, Geraldton, Kalgoorlie, Kununurra, and Port Hedland. From these locations outreach services extend to over 30 remote townships and Aboriginal communities. The corporate services office located in Perth provides strategic and management support to all regional offices including finance, human resources, administration, quality assurance and compliance functions.

2. Introduction

The Aboriginal Family Law Services (WA) welcomes the opportunity to have input into the Senate Inquiry into Access into Legal Assistance Services. This submission has been prepared in collaboration with the following students from the University of Newcastle - Jasmin Towers, Hannah Vicary and Ryan Eckford.

This submission to the Senate Inquiry into Access to Legal Assistance services will address a, b, c and f of the Terms of Reference.

The greatest inhibitor to access to legal assistance services is largely attributed to a lack of awareness of the services available, financial strain, social, language barriers and prejudices held against the legal system (Legal Aid 2006, p. 3). It is also attributed to the historical, political and cultural differences between the legal system and the system's reluctance to give credibility to anecdotal and oral evidence predominately used by Aboriginal people (Legal Aid, 2006, p. 3).

The funding provided by the Commonwealth is insufficient to achieve the goals aimed for in the National Partnership Agreement on Legal Assistance Services (NPA). The provided funding whilst beneficial and crucial to operations, it is inadequate to achieve the desired outcome (Allen Consulting Group 2013).

The degree of violence within Indigenous communities is higher than that of non-Indigenous communities (Nous Group 2013, p. 16) therefore, the FVPLS support is paramount to the prevailing of justice for Aboriginal people, particularly those living in rural communities (Nous Group, 2013, p 33). There are also tailored FVPLS legal services that are beneficial to the

Aboriginal communities (Nous 2013, p. 62), this is further explained within Term of Reference c.

A survey of community members in several regions serviced by the Aboriginal Family Law Services (WA) was undertaken in the preparation of this submission in order to gauge whether legal assistance services in these regions are known and accessible. The second part of this survey was to gather community opinions the benefits of the Aboriginal Family Law Services (WA) as an FVPLS provider. A combination of community members who were known and unknown to the service were interviewed. A total of 25 surveys were performed across three regions. While the sample is small the information remains useful in the context of this submission.

Although statistics do exist; discussions on the adequacy of statistical and other information collected and made available by state, territory and Commonwealth governments regarding issues in Aboriginal and Torres Strait Islander justice are difficult due to severely outdated statistics with credibility lacking (Maddison 2012, p. 271), thus failure for any individual to obtain accurate data or to analyse this data is occurring making it difficult to highlight issues in this area of the inquiry.

It has been our experience that there are many areas needing reform within the domain of Aboriginal Australians access to legal services nationally and these will be explored within the above mentioned terms of references discussed below.

The Aboriginal Family Law Services (WA) would be pleased to provide further information additional to this submission if required. We also endorse the submission provided by the National Family Violence Prevention Legal Service Forum.

3. Background Information

In response to Australia's commitment to the Close the Gap campaign, originally beginning in 2007, the National Partnership Agreement (NPA) was developed as an agreement between the Commonwealth and the states and territories was established to support 'a holistic approach to the reform of the delivery of assistance services by legal aid commissions, community legal centres, Aboriginal legal services and family violence prevention legal services' (Council of Australian Governments n.d., p.2). Although the NPA outlines ambitious goals and strategies to achieve those goals, there are shortfalls in practicalities, especially funding, that are inadequate to achieve those goals and meet an unmet demand of legal assistance services available to Aboriginal people.

4. Response to Terms of Reference

a) The extent to which Aboriginal Australians have access to legal assistance services

There exist a number of inhibitors to access to legal assistance to legal assistance services for Aboriginal Australians. These include the lack of awareness, social, economic implications and prejudices held against the legal system. With specific regard to prejudices against the legal system, the historic context of colonisation cannot be overlooked in this discussion and its recurring impacts on Aboriginal people and communities.

Referring to barriers restricting Aboriginal people from accessing legal assistance services the following can be, but is not limited to: previous unpleasant experiences, lack of awareness, lack of confidence in the legal system, failure of recognition in the Australian legal system of Aboriginal cultures and traditions, lack of available childcare, the location of such services, physical disability, education, lack of internet access, income, and language (Legal Aid 2006, p. 3).

It is these barriers that Aboriginal people must overcome to receive the legal support they need and are entitled to. Participants in the survey were asked if they knew of legal assistance services in their local area. The results in Table 1 may assume either the theses services are in these areas, or the participants are aware that these services exist in these areas.

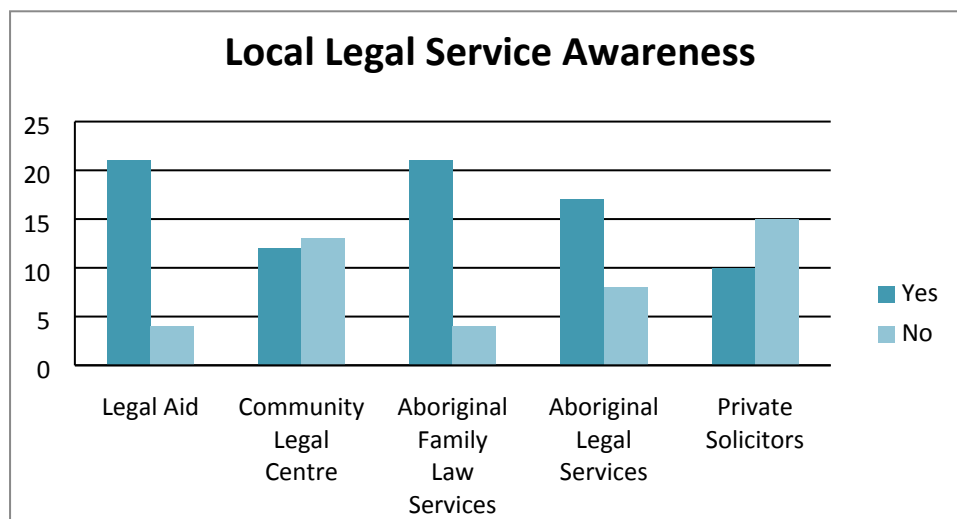


Table 1: Responses to question: "Tick box below of the type of services in your area" indicating awareness as well as actual services in participants' local area

According to the Australian Bureau of Statistics 2011 census one third of Aboriginal households do not have internet access (ABS 2011). Sixty-three percent did admit to having access to the internet within their homes however that leaves 37 percent without immediate access to online legal services or a method of finding out about them and therefore contacting and having access to them. Access to technology in regional and remote areas is also problematic, with some remote communities relying on a singular pay phone as their link to the "outside world".

Income is another factor that is commonly the reason Indigenous individuals go without legal services. This is not just due to legal cost because there are many free services available, but also without regular and substantial income the basic need to accessing and taking advantage of said services is difficult. Only 13 percent of Aboriginal people reported an income of over \$1000 per week in the 2011 census according to the ABS with 55 percent reporting that their weekly household income sits between \$200 and \$799 per week potentially due to around 51 percent of the Indigenous community participating in the labour workforce and unemployment rates sitting at around 17 percent (ABS 2011). When taking into account the fact that on average Aboriginal households have 3.3 people living within that dwelling, often more and that Indigenous households are twice as likely than non-Indigenous households to have four or more dependent children living in them (ABS 2011), it is clear that incomes of this measure are not adequate to then add the costs of accessing legal services.

The majority of participants in the survey had used a legal assistance service previously, such as the Aboriginal Family Law Services (WA), Legal Aid of WA, or the Aboriginal Legal Service of WA. These free or subsidised services fortunately exist to assist with a variety of matters, for those without the capacity to pay, and provide service options to those who may be conflicted out of one service (i.e. conflict of interests). Almost half of those who used the legal service also made use of the non-legal client support services on offer. In the case of the Aboriginal Family Law Services (WA) this may have been to assist with the various co-occurring issues which accompany family and domestic violence such as emergency housing, financial assistance and schooling.

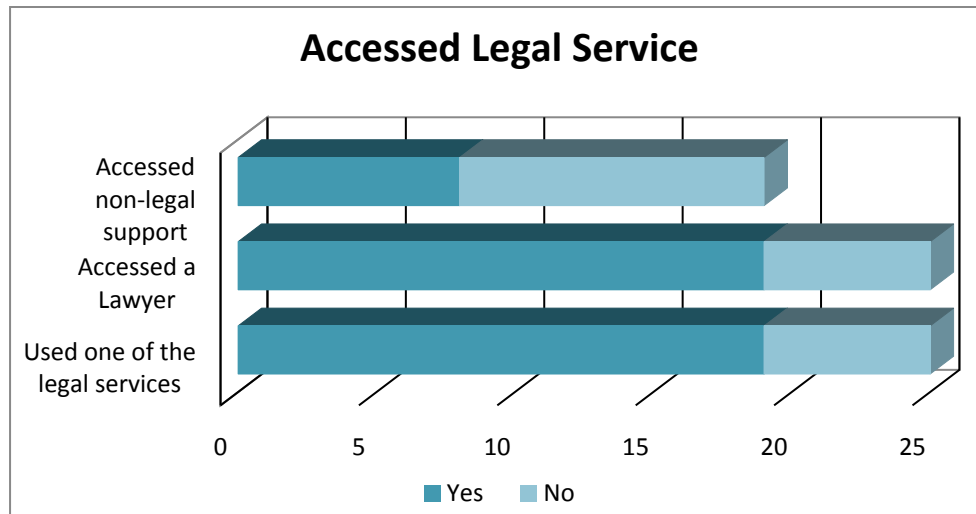


Table 2: Responses to questions about how many participants had used any of the services in their area and if they had seen a lawyer or a non-legal support worker

Language barrier is another issue with regard to Aboriginal Australians accessing legal services. Although it is not a widely problematic issue it does affect around 17 percent of the Indigenous community who reported in the 2011 census that they did not speak English at home and could not speak English well or in some cases, at all (ABS 2011). Without the ability to communicate with legal services or other English-speaking citizens this minority of Indigenous individuals would fail to seek legal services or even be aware of its existence and therefore their access is again difficult. In a survey undertaken in the preparation of this submission, it was discovered that the availability of interpreting services are problematic in one remote location where only one interpreter is available.

Cultural and Indigenous recognition within our legal system and constitution also forms part of the reasoning behind failure to access legal services for Aboriginal people. 'The Australian Constitution also expressly discriminated against Aboriginal peoples,' (Australian Human Rights Commission 2011) and fails to recognize their part in Australian history. Without such recognition, many Indigenous Australians chose not to seek the legal advice that is governed by laws that fail to admit the Aboriginal Australians part in this country's history and therefore fail to access the legal aid they potentially need.

The systemic discrimination experienced by Aboriginal people in Australia continues to affect the ways that individuals interact with the legal system as it does other systems such as child protection and justice systems. It is not surprising therefore that avoidance of the legal system exists, making education and awareness raising challenging, and all the more necessary. Further it is the system's responsibility - including governments, the judiciary, law enforcement, support services etc. - to ensure it is acting in a manner which is anti-

colonist, that is anti-discriminatory and inclusively at least to ensure barriers that exist have the opportunity to be broken down over time.

Educate women. [A] lot of our people out there, if they see white people they clam up. Seen lot of our women in domestic violence, lot look like rag dolls when they were beautiful once.
– Survey Participant

Client feels so good now it's finished. It's been weighing heavy on her for a long time but now she has finished telling it all she feels free (CIC Claim)
– Survey Participant (support person for client)

b) The adequacy of resources provided to Aboriginal legal assistance services by state, territory and Commonwealth governments

Currently the funding resources provided by the government are insufficient to effectively implement the policy and goals set out by the Commonwealth, state and territory governments outlined in the National Partnership Agreement on Legal Assistance Services (NPA). Despite significant government intervention, there is still an unmet demand for legal assistance services (Allen Consulting Group 2013, p. 7). It is suggested that the government provides greater clarity about the funding and services to be provided as well as clarity about what services are provided to whom. In doing so, it is also suggested that the government consult with Commonwealth, state and territories to agree on eligibility criteria for legal assistance to provide a consistent as possible across the country, while considering the different local circumstances and demands.

The divide between what constitutes a legal matter as a Commonwealth or state and territory responsibility has proven to be problematic as it undermines the quality that service providers provide to address a wide range of complex client's needs (Allen Consulting Group 2013, p. 17). It is suggested that the government focus less on the distinction between Commonwealth and state and territory matters and more focus on the entirety of the individual's legal needs (Allen Consulting Group 2013, p. 26).

The Western Australian state government currently provides funding to a FVPLS in the metropolitan area, however none to the regional and remote areas. The Aboriginal Family Law Services (WA) would appreciate a contribution from the state government given the work this service does to maintain state laws. Further it is our belief that the funding level provided to the metropolitan service is insufficient and consequently gaps in service exist.

Gaps also exist in FVPLS provision in regional and remote areas and this is currently addressed by outreach services to communities by services such as the Aboriginal Family Law Services (WA) and community legal centres permanently based in regional centres. These services are often "still located a considerable distance from many clients, given the enormous areas services cover" and "likely to require greater resources given the substantial cost associated with its delivery" (Allison et al 2014, p. 17).

It is also suggested that more resources be allocated to intensive and complex cases. The Legal Australia-Wide Survey: Legal need in Australia (LAW) found that a small percentage (8.8 percent) of respondents account for 64.5 per cent of legal problems. The results of these statistics suggest that intensive assistance for the most disadvantaged may contribute to long-term system sustainability and successful resolution of legal problems services (Allen Consulting Group 2013, p. 9).

Services such as the FVPLS are best placed to provide such intensive assistance. As well as legal services, the FVPLS are staffed to provide client support services to ensure that Aboriginal people experiencing family and domestic violence and sexual assault receive holistic support. Post assessment, clients are connected to relevant specialist services in their local area. This ensures their multifaceted needs such as safety, housing, schooling, counselling, and financial assistance are met, not just the presenting legal matter.

As expressed in the Domestic Violence in Australia: Interim report (Finance and Public Administration References Committee 2015, p. 3) concerns have been raised about the

currents governments, “funding cuts to a broad range of services essential to supporting victims of domestic violence. These include over \$64 million in funding cuts to Australian legal services over four years, \$44 million in funding cuts to new shelters and emergency accommodation, \$21 million in cuts to housing and homelessness peak bodies, abolition of the National Rental Affordability Scheme and abolition of the National Housing Supply Council. The government has failed to guarantee funding under the National Partnership Agreement on Homelessness past 30 June 2015, placing crucial services at risk. There has been a \$240 million funding cut to the Department of Social Services grants program, which has affected the funding certainty of many frontline domestic violence organisations delivering crisis services and men’s behaviour change programs.”

On 23 March 2015, the Commonwealth announced its commitment to fund the National Partnership Agreement on Homelessness (NPAH) to the amount of \$230 million for two years to 30 June 2017, with funding priority given to frontline services focusing on women and children experiencing domestic and family violence, and homeless youth under 18. State and territory governments are required to match the Commonwealth’s financial commitment, as well as meet reporting requirement. Long-term arrangements however will be reviewed in the context of the Commonwealth Government’s current review of the federation arrangements. This suggests that in two years time there will be a repeat of the recent uncertainty and lack of focus to service and sector sustainability.

On 31 March 2015 the Community Legal Centre Association (WA) Inc. received confirmation from the WA Attorney-General that that the Commonwealth had decided to reverse its decision to withdraw funding as part of its 2013 MYEFO process. This meant the restoration of funding for the 2015-16 and 2016-17 financial years at current levels. This was the direct result of the lobbying efforts of the sector and stakeholders, unrelenting in their advocacy for those disadvantaged Australians requiring legal assistance.

In 2014, the FVPLS service providers were removed from the Attorney General Department (AGD) funding stream and placed under the remit of the Department for Prime Minister and Cabinet, without being provided the rationale for this move. Further, under the Indigenous Advancement Strategy (IAS) the 14 Aboriginal organisations that have historically provided the FVPLS program in rural and remote locations across Australia were required to apply through an open tender process for their funding from 2015.

The rationale for the IAS was to improve outcomes for Indigenous people and create flexible program structures (Australian Government 2014, pg. 3). Following the uncertainty created by the move from the AGD, the FVPLS were encouraged by the IAS application process whereby they were inspired by the rhetoric that stated that the new structure was created so that organisations could suggest new ways of working and opportunities existed to fill gaps in service delivery. Communication with DPMC ceased during the application period so clarity on this point was not available. Services with scarce resources, and during long periods of lobbying for the reinstatement of existing funding, expended more resources on extensive research and preparation of applications for funding for expanded services.

These came to naught as extra funding was not available and the funding granted to the FVPLS services was structured such that within 12 months there was the possibility of rationalisation of 9 of the 14 FVPLS services with potential for savings to the

Commonwealth. After strong lobbying from the National FVPLS Forum, the decision to extend the funding arrangements for the 9 FVPLS from 12 months to 3 year terms was granted. In practical terms, this means services are able to plan for the future, operationally and financially, and staff have some stability and tenure in their employment. Members of the National FVPLS Forum have observed that in the 16 year history of the FVPLS program, this is only the second 3 year funding contract provided by the Commonwealth (previously the Attorney-General's Department).

The administrative burden carried by the management and other staff over the last 12 months as a result of these processes in this service alone would seem to contradict the logic behind the IAS. It is intended to cut out the red tape and allow more resources for frontline services. Disappointingly the funding cuts, 12 month contracts (extensions, grants funding etc.), changes in contract arrangements (AGD to IAS), budget uncertainty, and funding and policy structures that change when a government changes all detract from frontline services.

[Be] seen quicker. Need a VRO straight away not next day

– Survey Participant

This is a much needed service. DV is a key issue here and people need to know their rights to keep themselves and their kids safe and to know they have options.

– Survey Participant

c) The benefits provided to Aboriginal communities by Family Violence Prevention Legal Services

Family and domestic violence is a significant issue for Aboriginal communities across Australia. Statistically Aboriginal women fare much worse compared to non-Aboriginal women in relation to the prevalence and impact of family and domestic violence (AIHW 2006):

- Aboriginal women experience domestic violence more often and more severely than their non-Aboriginal counterparts do.
- There is a higher use of restraining orders compared to the non-Aboriginal population, with a higher level of violence in these situations.
- Aboriginal women are statistically more prone to hospitalization and death as a result of family and domestic violence (35 times and 10 times respectively).

In Western Australia, family and domestic violence incidents reported to the police have increased over the 5-year period from 2008 on average by almost 43 percent. All regions had an increase of greater than 30 percent. The region with the largest increase is the Kimberley, showing a 5-year increase of 79 percent in Domestic Violence Incident Reports (DVIR) that have been completed by police. These figures do not specify ethnicity, an issue raised separately Terms of Reference f. However, it is relevant to note that while Aboriginal people make up 3.1 percent of the Western Australian population, the Kimberley population is closer to 50 percent. It is reasonable to question how many of the reports made in the Kimberley relate to Aboriginal victims of family and domestic violence (CPFS 2014).

In that same 5-year span, hospitalizations related to family and domestic violence have increased for men and women by an average of almost 46 percent. Homicides have doubled. The number of perpetrators charged with assault and sexual assault has decreased by 19 percent and 29 percent respectively. The number of perpetrators charged with breaches of a restraining order, including police orders has increased by 45 percent (CPFS 2014).

Further ramifications of family and domestic violence on Aboriginal women and communities are visible through other indicators:

- Aboriginal people are overrepresented in the child protection system with Aboriginal children making up 51.5 percent of children in out of home care in WA (sourced from November 2014 CPFS figures);
- The percentage of Aboriginal compared to non-Aboriginal children in care by region (including metro) in WA varies from 20 percent (Peel) to 100 percent (East Kimberley) (sourced from November 2014 CPFS figures);
- Aboriginal people are overrepresented in the prison system, comprising 40 percent of the total prison population, with the adult female prisoner population over 50 percent (ABS 2014);
- Children who experience family violence or have been in care are more likely to use legal aid as adults (Productivity Commission 2014, p. 777).

Domestic and family violence is the key driver behind the overrepresentation of Aboriginal children in child protection. While there is limited data from WA to support this claim, the recent evidence from the Victorian Taskforce 1000 project – a review of the cases of the thousand or more Aboriginal children in care – has found that “well over ninety per cent of Aboriginal children entering care” have done so due to family violence (Victorian Aboriginal Community Controlled Organisations 2014, p. 3).

The Department for Child Protection and Family Support (CPFS) are unable to state how many children are in the CEO’s care due to family and domestic violence as they do not currently specifically capture and report on this data, however they estimate this to be between 70-90 percent. In their 2013-14 Annual Report they state that “Violence in the home, predominantly against women and children, is a major underlying factor in many child protection cases. Other common issues that lead to children being at risk of harm include parental drug and alcohol misuse, mental health issues and financial problems” (CPFS 2014, p. 10).

The Aboriginal Family Law Services (WA) works collaboratively with CPFS to ensure better outcomes for families and children in child protection matters. This includes involvement in Signs of Safety risk assessment meetings, Pre-Hearing Conferences, and court processes. This service works in a culturally secure manner and in doing so takes into account the impact of past policies on people’s attitudes today. It concerns itself with ensuring clients are informed about processes as much as possible and that participation in decision making is enhanced. All of this occurs in the context of the best interests of the child.

Whatever we say about the prevalence and impact of domestic violence in Australia, it is important to note that an estimated 90 percent goes unreported (Murray and Powell 2011, p. 59). A 2005 Aboriginal Affairs NSW report stated that in the last 12 months only 5 percent of women who had experienced violence from a current partner had reported the last incident to police. Further, underestimations may be due to reporting barriers unique to Aboriginal victims-survivors and failures to identify or record Aboriginality of victims.

The financial burden of family and domestic violence to the Australian community is well documented and estimated at \$13.6 billion in 2008-09. This is expected to rise and includes direct and indirect costs such as, the “direct costs to employers from absenteeism, staff turnover and lost productivity; the indirect costs are defined as employer tax share of public sector costs in the provision of services to victims and perpetrators of domestic violence; direct and opportunity costs to victims, perpetrators, family and friends; and the shared impact of domestic violence on the wider community, including inter-generational costs” (National Council to Reduce Violence Against Women and Their Children 2009, 4).

For Aboriginal communities the prevalence and impact of family and domestic violence is understood in terms of loss of connection to family, culture and self. The development of a sense of belonging and self may be severely compromised when raised out of one’s own family. The circumstances of the removal, the quantity and quality of ongoing contact with parents and the ability to adapt to the new living situation will impact on the child’s development. The child’s ability to meet “normal” milestones will be challenged and almost certainly impaired by the trauma of the removal and any consequent placement shift – as well as from the predisposing circumstances of abuse and trauma. Traumas associated with

removal from family can include individual, cultural, community, family and economic (SNAICC 2014, p.13).

Childhood trauma and the resultant impact on development can lead to poorer outcomes in adulthood across all spheres – relationships, education, health (physical, cultural, spiritual), employment, and economic independence. “The absence of ongoing support can lead not only to poor outcomes in existing cases, but can contribute to an inter-generational perpetuation of the dynamics that lead to child removal” (Allison et al 2014, p. 188).

Creating the conditions whereby trauma can be healed for those who have already experienced family and domestic violence is crucial to preventing violence for the next generations. A focus of resources and sustained effort now is fundamental to breaking the cycle of violence, which leads to negative life outcomes experienced by so many Aboriginal men, women and children.

Benefits of Family Violence Prevention Legal Services

The benefits provided to Aboriginal communities by FVPLS are wide and ranging. The National FVPLS Forum provide certain benefits that help Aboriginal communities identify and address the areas of policy that need reform; participate with activities and national meetings; and facilitate secure and sustainable resources for their clients including Aboriginal Family Law Services (WA) (FVPLS 2012).

The FVPLS offers an unmatched support that combines practical support with legal services that is considerate of the Indigenous culture. As mentioned previously mentioned, providing a culturally secure service to clients who are interacting with the child protection system, and other mainstreams systems is crucial to the successful outcome of that interaction. It also provides outreach services to remote communities and provides services in communities that would otherwise have none (Nous Group 2013, p 33).

Table 3 outlines participants’ experience of the Aboriginal Family Law Service (WA) as a FVPLS provider. Note that those No responses under ‘Cultural and language needs considered’ included “Didn’t have needs”, “No – I speak good English” and “Dealt with legal matter only, not considered”.

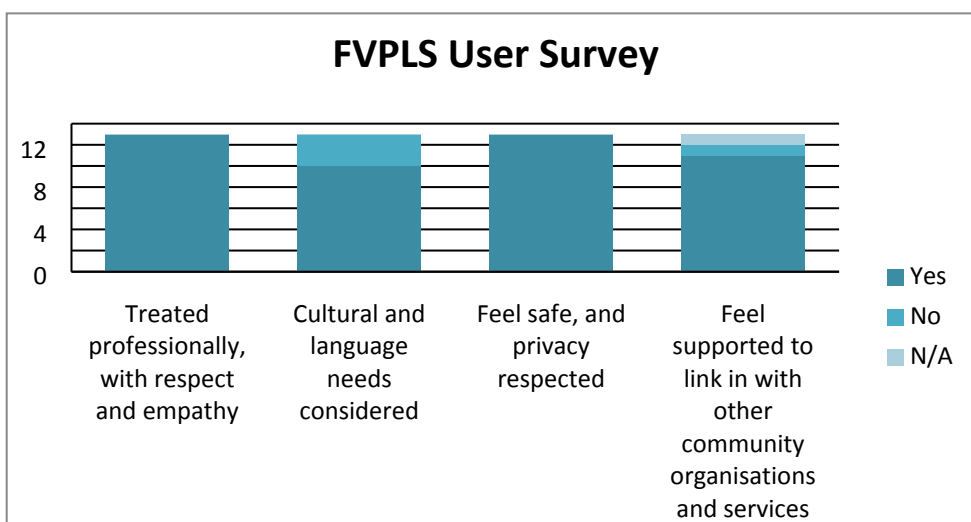


Table 3: Participants asked about their experience of their use of the Aboriginal Family Law Service (WA)

FVPLS are particularly beneficial to Aboriginal people as research has concluded that the prevalence of family violence and the degree of violence is higher in Indigenous communities (Nous Group 2013, p. 16).

A study conducted in the UK found that victim survivors who sought a Protection Order experienced a significant reduction in violence compared to those who exclusively sought police intervention. The study also concluded that providing that Indigenous communities are often complex and the removal of a victim or perpetrator is often inappropriate, the FVPLS supports applications ‘for orders that may allow a victim to remain living with their partner or family but, for example, exclude the perpetrator when they are under the influence of alcohol’ (Nous 2013, p. 62). There is great benefit to Indigenous communities for the tailored legal assistance provided by FVPLS.

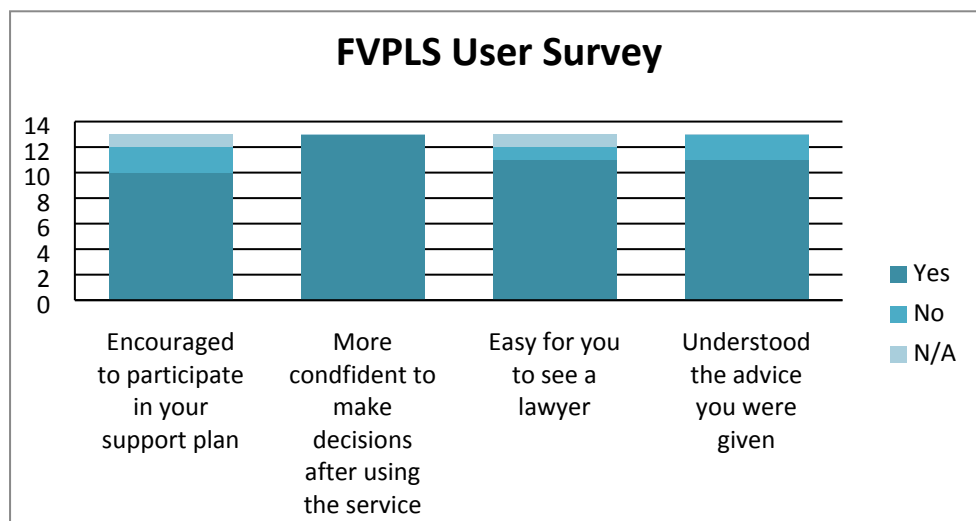


Table 4: Participants asked about their experience of their use of the Aboriginal Family Law Service (WA)

Table 4 demonstrates the particular strength of the FVPLS service to support clients feel more informed about their situation and more confident to make decisions after using the service. This rich and informative data can only be collected from a service user after they have received the service being provided.

The FVPLS services assist in a range of matters which relate to areas of law which are specialist in nature and address family and domestic violence for a vulnerable client group. The majority of clients for FVPLS services are women due to the nature of family and domestic violence. Where men present as victim-survivors of violence they are also provided assistance.

As an Aboriginal service provider a gender balanced view is given to the issue of family and domestic violence. In accordance with operational requirements perpetrators of family violence have not been provided a service, however the Aboriginal Family Law Services (WA) has designed and developed gender inclusive programs which due to their early intervention and prevention focus, can be aimed at the broader community.

FVPLS providers understand more holistically the issues and the solutions for its communities. We know the impacts the realities of violence and we know that it will take a truly collective effort to change people’s behaviours and attitudes to change the lives of our children and their mothers. In practical terms this means developing educational and awareness raising programs that includes boys and men, as well as girls and women.

Community legal education programs are also developed to supplement legal services to educate community members about issues they may be experiencing which they may not recognise as having a legal component. The escalation of minor issues into larger problems is a long recognised rationale for the delivery of legal education. Further FVPLS services also provide education and legal advice on civil matters which if not resolved may escalate to criminal matters.

An example of this is care and protection orders. As already discussed, over 50 percent of children in the care of the CEO in WA are Aboriginal. Removal from family can lead to a breakdown in family connections, a significant risk factor for juvenile offending, linked also to adult offending (Productivity Commission 2014, p. 783). Current figures see Aboriginal children imprisoned at a rate 58 times higher than non-Aboriginal children, making up 75-80 percent of the population at Banksia Hill Detention Centre (AIHW 2014, p. 11). Comparatively the WA detention rate for children is 30 percent higher than for the Northern Territory. Further, 80 percent of adult prisoners have been incarcerated previously (ABS 2014).

It would follow then that assisting families at the front end to ensure children are given the best chance they can at remaining connected to their families - provided their families are capable of providing the appropriate care for them – meaning that less investment is required at the back end. The social investment movement (also known as justice reinvestment) being recommended across the country needs to be taken up by all Australian governments as a way forward out of the Aboriginal affairs stasis. The redirection of policy, effort, and funds away from tertiary services towards earlier intervention and prevention is required to stem the growing numbers of Aboriginal people lost to the statistics of overrepresentation. This is a solution requiring a commitment to an approach that over time will be less costly not only financially, but also ethically and politically.

It would be great to have more resources put into educating people on their rights and options before they need to see the service.

– Survey Participant

Need to educate clients about limitation dates for criminal injuries. Put out fliers at NAIDOC week. Educate women about domestic violence, people are suiciding etc.

– Survey Participant

f) The adequacy of statistical and other information currently collected and made available by state, territory and Commonwealth governments regarding issues in Aboriginal justice

The adequacy of statistical and other information that is currently collected and made available by state, territory and Commonwealth governments regarding issues in Aboriginal justice is lacking due to lack of comprehensive and up to date statistics. Furthermore recent research has found that much of the statistical data collected from Aboriginal communities for the purpose of policy making is not given as much credibility attributed to their qualitative, not quantitative sources: 'the more qualitative sources of data to which they have contributed, including evidence to public inquiries, are often ignored or diminished' (Maddison 2012, p. 271).

Data related to the prevalence and impact of any policy related to Aboriginal people in WA to date tends to be piecemeal and is not evidence based. This has resulted in unreliable data that does not clearly state the issues that impact on Aboriginal communities. Therefore, strategies being developed to address issues impacting on Aboriginal people at best can only be tentative and exploratory in nature. There is an urgent need for all organizations working in the Aboriginal arena, be they government or non-government to collect accurate data related to any programs and services provided in order to determine strategies to be employed.

Aboriginality needs to be recorded by all services if we are to monitor, evaluate and improve policies and services to Aboriginal people. We currently understand there are some major government and non-government agencies who opt not to ask their clients for this information, as they believe that it may not be relevant to the service they deliver. While this may be the case on the face of it, if we do not understand the use of services – whether under or over use – by Aboriginal people we may not be providing the most appropriate or accessible services possible.

There needs to be more statistical information that is current in regard to Aboriginal justice. The development of ANROWS is a step towards a cohesive collection of research in the area of family and domestic violence and may be used as model for other streams such as youth and drug and alcohol issues to centralise data and research. An issue for the Aboriginal Family Law Services (WA) also is to understand the context under which its data set via the Indigenous Advancement Strategy is used to report against the outcomes of the National Plan to Reduce Violence Against Women and Their Children 2010-22. The joining up of national databases and the fine tuning of state government databases such as CPFS is preferred to better inform the sector and stakeholders of progress. The Closing the Gap strategy may be a model for this also as it reports regularly to high level outcomes.

According to Law and Justice Statistics from the Australian Bureau of Statistics, in regard to Aboriginal people aged 15 and over, and by where they lived, in terms of remoteness, only 20.2 percent of Aboriginal people in the major cities had used legal services during the previous 12 month period. This is compared with only 16.5 percent in regional areas, and 15.6 percent in remote areas of Aboriginal people aged 15 and over that had used legal services during the previous 12 month period (ABS 2008).

During the last five years, 19.4 percent of Aboriginal people aged 15 and over had been arrested in remote areas, compared with 14 percent in major cities and 13.2 percent in regional areas. In terms of incarcerations, 5.2 percent of Aboriginal people aged 15 and over that were incarcerated came from remote areas, compared with 2.8 percent in regional areas and 2.4 percent in major cities (ABS 2008).

According to the same statistics Aboriginal people aged 15 and over, there were a high percentage of people from this demographic group who were victims of physical and/or threatened violence over that previous 12 month period. Across Australia, 23.2 percent of Aboriginal people aged 15 and over were victims of physical and/or threatened violence across that 12 month period. In the major cities, 24.5 percent of Aboriginal people aged 15 and over were victims of physical and/or threatened violence across those 12 months, compared with 23.4 percent in regional areas and 21.3 percent in remote areas (ABS 2008).

However, these statistics are from 2008, and while it may give a good guide of what might be happening in regard to Aboriginal people, more updated statistical information is required to give the exact picture of what is happening in regard to law and justice among Aboriginal people.

Overall, the adequacy currently of the statistics in regard to the issue of Aboriginal justice needs to be updated to inform policy and provide accurate information. Services such as the FVPLS and other legal assistance services require ongoing resources to ensure they are able to access and contribute to this policy. As direct observers of the impact of policy and legislation on our communities it is only right that we continue to feed this back through opportunities such as this inquiry.

4. Conclusion

In conclusion, legal assistance services provided by Aboriginal Family Law Services (WA) and supported by Family Violence Protection Legal Services is invaluable to the Aboriginal community. Aboriginal Family Law Services (WA) will continue to provide a high quality legal service to its communities across WA, in a culturally secure manner.

Common barriers to accessing legal assistance services include the barriers of language, prejudice and lack of awareness of the services available. Research included in this report found that Aboriginal communities would benefit from early intervention programs to prevent family and sexual violence that is concentrated in intensive and complex cases and would contribute to long-term system sustainability and resolution. Access to services appears to be aided by choice of service according to eligibility (i.e. civil or criminal matter) and not restricted by being “conflicted” out of a service.

It is recommended that the government increases funding, and also includes a clear outline of who is entitled to legal assistance and how the funding will be distributed to achieve the goals outlined in the NPA. Furthermore, statistics collected by the government is outdated and needs to be the forefront of the agenda to ensure the accuracy of statistics for further development in the community.

Finally, the FVPLS is particularly beneficial to Aboriginal and Torres Strait Island peoples as it provides a unique approach to legal assistance that considers practical approaches in a culturally specific context.

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