



Aboriginal Family Violence Prevention & Legal Service Victoria

17th March 2010

Standing Committee on Aboriginal and Torres Strait
Islander Affairs
PO Box 6021
Parliament House
Canberra 2600

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BY: ATSIA

Dear Committee,

Inquiry into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system

We refer to the above Inquiry and appreciate the opportunity given to the Aboriginal Family Violence Prevention and Legal Service Victoria ('FVPLS Victoria') to make this late submission.

Introduction

a) FVPLS Victoria

FVPLS Victoria is one of 31 FVPLS units funded by the commonwealth Attorney Generals Department to provide legal and associated support services to Aboriginal and Torres Strait Islander ('ATSI') victims/survivors of family violence and sexual assault and to parents/carers of ATSI children in rural and remote Australia.

The Commonwealth, through the national FVPLS program funds FVPLS Victoria services in Mildura, Gippsland and Barwon South West. Alternative support through Victoria Legal Aid, Department of Justice Victoria and the Legal Services Board funds legal services in metropolitan Melbourne and other rural Victoria to June 30 2010. The Department of Human Services Victoria, through its family violence homelessness program has recently funded FVPLS Victoria for two paralegal support positions to be based in the Collingwood office. Philanthropic funding currently supports program co-ordination and short term policy work. Victoria police also funds a short term Koori family violence police protocols project based at FVPLS Victoria.

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The main areas of FVPLS Victoria legal assistance is family violence (intervention orders), family law mainly involving child disputes, child protection and victim's assistance. Approximately 90% of FVPLS Victoria's client group are women and children.

FVPLS Victoria supports the comments made in the submission of the Wirringa Baiya Aboriginal Women's Legal Centre Inc. with respect to the relationship between the 'high incidence of violence experienced by Indigenous women and young people and its relationship with the high level of involvement of Indigenous young people in the criminal justice system.'

b) Key statistics

Some key statistics in relation to family violence are detailed in the Australian government Productivity Commission report - Overcoming Indigenous Disadvantage: Key Indicators 2009 as follows,

- Indigenous females sought Supported Accommodation Assistance Program assistance in 2006-07 to escape family violence at the rate of 45.0 per 1000 population compared with 3.3 per 1000 population for non-Indigenous females (table 4A.11.32).
- Indigenous children accompanying SAAP clients escaping family violence attended a SAAP agency at a rate of 569 per 10 000 Indigenous children, while for non-Indigenous children it was 66 per 10 000 (table 4A.11.31).
- Police data indicates that in Victoria, in 2007-08:
for Indigenous females, the rate of domestic violence related assault was five times as high as the rate for non-Indigenous females (table 4A.11.61) (this is likely to be an underestimate due to underreporting and failure to identify Aboriginality).
- 41 out of every 1000 Indigenous children were on care and protection orders, compared to 5 per 1000 non-Indigenous children at 30 June 2008 (table 4.10.1).
- In Victoria Aboriginal children are 12.9 times more likely than non Aboriginal children to be on care and protection order
- From 1999-2000 to 2007-08:
the rate of Indigenous children on care and protection orders increased from 19.9 per 1000 children to 41.0 per 1000 children — for non-Indigenous children the rate increased from 3.3 per 1000 children to 5.3 per 1000 children (table 4A.10.9).
- Indigenous juveniles were 28 times as likely to be detained as non-Indigenous juveniles at 30 June 2007. The Indigenous juvenile detention rate increased by 27 per cent between 2001 and 2007 (figure 4.12.5).

The Australian Institute of Health and Welfare also published statistics in Child Protection Australia 2007-2008 recording that 977 Aboriginal and Torres Strait Islander children in Victoria were on care and protection orders as at 30 June 2008. This was an

increase in 354 children from 2007.¹ Over the same period there was an increase of 34 children in out-of-home care to 660.²

The long term impact of racist and discriminatory treatment of ATSI people contributes to the high levels of family and community violence. It is also acknowledged that women and children are in the vast majority as victims of family violence.³ This submission is based on the premise that by strengthening supports and prevention/education activity for ATSI young people and adults (mainly women) experiencing family violence and sexual assault, a significant contribution will be made to reducing the levels of Aboriginal and Torres Strait Islander young people involved in the criminal justice system. In line with FVPLS Victoria's focus on law and justice issues this submission looks at:

- Effective ways to strengthen family violence and sexual assault legal services for ATSI young people and adults experiencing family violence and sexual assault.
- The need for dedicated counselling and support services for young people experiencing family violence and sexual assault.
- The role of culturally appropriate legal education to young people about family violence and sexual assault and their legal rights.
- The need for improved mental health services for ATSI young people.
- The established relationship between children on care and protection orders and children in the juvenile justice system and improving outcomes for ATSI children in the child protection system as a critical prevention tool.
- Strengthening victims assistance law and process for ATSI young people who are victims of crime.

c) Closing the Gap

The commonwealth government's Closing the Gap policy lacks necessary inclusion of law and justice issues which must be integrated with broader social policy and program development. For example, the failure to acknowledge the strong connection between health and well being for ATSI women and children or the increasing imprisonment rates of ATSI women and young people with the need for improved legal awareness and prevention activity with respect to family violence and sexual assault and strengthened culturally accessible legal and associated services is extremely problematic. The lack of properly resourced national and state and territory ATSI law and justice policy forums to link with other key ATSI peak bodies is further evidence of this failure to effectively integrate key law and justice issues in social inclusion policy.

¹Child Protection Australia 2006-2007 Child Welfare series no. 43 Cat .no. CWS 31.Canberra AIHW P50

² See 6 P63

³ The Victorian Family Violence Database Measuring Family Violence in Victoria 1999 – 2008 indicates as a key finding that over 90 percent of Indigenous victims of family violence in 2007-2008 were female.

d) Human Rights issues

There are a number of human rights instruments and comments by human rights committees with respect to violence against ATSI women and access to legal services which must be noted.

a) Declaration on the Rights of Indigenous Peoples

In 2009 Australia endorsed The United Nations *Declaration on the Rights of Indigenous Peoples 2007* which is a welcome development. The Declaration sets out standards and principles for the treatment of Indigenous peoples which signatory governments commit to.

Article 22

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

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

The United Nations Human Rights Committee's 2009 report on Australia's compliance with the *International Covenant on Civil and Political Rights* expresses concern at the high levels of violence against Aboriginal and Torres Strait Islander women and calls for strengthened efforts toward its elimination.⁴ The report states,

... The Committee is particularly concerned at the higher number of reports of violence against indigenous women in proportion to reports of violence against non-indigenous women. (Articles 2, 3, 7 and 26) (Paragraph 17)

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

...The State party should take effective measures to ensure equality in access to justice, by providing adequate services to assist marginalized and disadvantaged people, including indigenous people and aliens. The State party should provide adequate funding

⁴ CCPR/C/AUS/CO/5, Concluding Observations of the Human Rights Committee Australia Ninety-fifth session Geneva Advanced unedited version 2 April 2009, para 17.

for Aboriginal and Torres Strait Islander legal aid, including interpreter services.
(Paragraph 25)

Terms of reference addressed-

- **The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system.**
 - **The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.**
 - **Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system.**
1. It is evident that the impact of family violence and sexual assault, family breakdown and child protection intervention contribute to the high levels of involvement of ATSI young people in the criminal justice system. The role and effectiveness of services provided through the FVPLS program, is clearly critical in supporting young people and family members impacted by family violence, in working with communities to reduce violence and to thereby assist in stemming rising juvenile offending rates. Children are impacted by family violence and sexual assault both as primary victims and through witnessing or being present when violence between adults occurs.
 2. It appears from the list of submissions to this Inquiry on the Committee website that no FVPLS unit has to date made a submission. This is no doubt directly related to the fact that the national FVPLS Program receives no funding at all for policy development or law reform activity and has no peak body or secretariat to support the units or their work. The legal system has been used as a tool of oppression against ATSI people – systemic change to strengthen culturally appropriate approaches and to improve accessibility is the key to on the ground change.

The restricting of the FVPLS program by the commonwealth to fragmented rural and remote locations not only narrows service delivery areas – it significantly weakens the capacity of the FVPLS program as a whole. Other key ATSI services (for example health and criminal justice services) are funded to urban, rural and remote communities, are also funded for critical policy and law reform capacity and a number have peak bodies or secretariats at state and territory and national levels to support services and to rigorously pursue systemic change.

3. In addition, by restricting dedicated ATSI family violence and sexual assault services to rural and remote locations, a very significant proportion of ATSI children and families are excluded from the benefit of these services. In Victoria for example about 48% of the ATSI community reside in metropolitan Melbourne. The commonwealth government takes the view that mainstream services in urban areas can adequately service ATSI communities and that funding FVPLS services to these locations is low priority. This policy is seriously flawed and for as long as it continues, outcomes for ATSI young people and adults impacted by family violence and sexual assault will remain poor.

FVPLS Victoria has secured alternative funding to support services in the urban area – however the funding is for 12 month periods and there is no collaboration between the commonwealth and state governments. As the key ATSI service for victims of family violence and sexual assault in the state, these funding challenges are significant and divert much and time and energy from core service provision.

4. ATSI people including young people experiencing or impacted by family violence or sexual assault must have the option to access an ATSI dedicated service in a culturally safe environment. Additionally, the independence of the FVPLS program from the Aboriginal Legal Services who's predominant area of work is crime and who are the primary services for ATSI perpetrators of family violence and sexual assault, has been important for FVPLS Victoria in gaining the trust of ATSI women and victims of violence to seek assistance. Also fundamental to this issue is the fact that culturally strong community programs reach community that would not otherwise engage with legal services. The FVPLS Victoria Sister's Day Out well being workshop program has accessed over 2000 Koori women (including many young women) in Victoria – programs such as this cannot be delivered by mainstream organisations. This is not a criticism of mainstream services but rather a matter of respect for ATSI culture, principles of self determination and proven effective community engagement.
5. Approximately 90% of FVPLS Victoria's client group in 2008-2009 were women. Victorian statistics indicate 90% of Indigenous family violence victims in Victoria for 2007-2008 were women.⁵ It follows that by enhancing legal and associated services for ATSI women experiencing violence that outcomes for children of these women will also be strengthened. FVPLS Victoria seeks consideration by the commonwealth of introducing a national ATSI women's legal program. The Senate Legal and Constitutional Reference Committee in it's Access to Justice Report of December 2009 has commented that access to a national ATSI women's legal program may be a more strategic way to provide legal services to ATSI women. The report states the following,

... the wealth of material available to the committee indicates that Indigenous women are not getting adequate legal assistance to afford them access to justice.

⁵ Measuring Family Violence in Victoria Victorian Family Violence Database 1999-2008p17

...The committee notes that a dedicated Indigenous women's legal service might better provide for that need, as well as relieve pressures on other legal assistance service providers and the Australian justice system.⁶

For its part, FVPLS Victoria supports this proposal. An ATSI Women's Legal Service for Victoria could subsume the FVPLS program funding as well as the Indigenous Women's Program funding currently administered through the Community Legal Centre program. (Victoria has not had access to any IWP funding since 2001). The ATSI Women's Legal Service Victoria could involve a collaborative commonwealth/state funding arrangement. Services could be provided to women and children (with the exception of young male offenders who for reasons of conflict would be more effectively referred to an ALS or other service as appropriate). An ATSI women's legal service would enable a broader range of legal services for women and children to be provided beyond family violence and sexual assault – for example financial, consumer, Centrelink/welfare, criminal and imprisonment issues.

6. It is noted that the report of the commonwealth Access to Justice Taskforce, 'A Strategic Framework for Access to Justice in the Federal Civil Justice System' September 2009, includes a recommendation that the Commonwealth should consider options for improving access to culturally appropriate legal assistance services for family and civil law matters for Indigenous Australians. (Recommendation 11.4). Entrenched disputes about ATSI children which involve family violence and or sexual assault are often not appropriate for out of court resolution and are being dealt with in the Family Court or Federal Magistrates Court. This is another area where more culturally appropriate processes and strengthened legal representation is likely to improve outcomes for ATSI children. FVPLS Victoria is of the view that a national ATSI women's legal program would provide a strategic framework to significantly enhance family law services to ATSI people nationally, particularly to women and children experiencing family violence. Victoria Legal Aid is in the process of formalising FVPLS Victoria's capacity through its family lawyers to be independent child representatives for ATSI children in the Family Court. This has come about because FVPLS Victoria has broadened its service in Victoria to respond to community need, beyond the narrow confines of current commonwealth funding policy for ATSI women and children.

Given the established connection between high levels of violence experienced by ATSI women and children and high levels of involvement of ATSI young people in the criminal justice system, the strengthening of family violence and sexual assault legal and associated support services for ATSI women and children is critical.

⁶ Senate Legal and Constitutional Affairs References Committee Access to Justice December 2009 paras 8.129 and 8.130

The Family Violence Prevention and Legal Services Program must be significantly strengthened and expanded to urban locations. FVPLS Victoria supports the introduction of an ATSI women's legal program for Victoria as a more strategic approach to legal service provision for ATSI women and children and in which commonwealth and state government strike a collaborative funding arrangement. Consideration of a national ATSI women's legal program should occur in consultation with ATSI women nationally.

7. A national ATSI women's legal program would also provide a base for national and state and territory law reform and policy development for ATSI women and children, with a national peak body focussed upon national law and justice issues and with services in the states and territories hosting respective law reform/policy development activity with locally based input. Again it is reiterated that this is the view of the FVPLS Victoria.

Policy and law reform capacity with respect to broad ranging family violence and sexual assault issues for ATSI women and children must be funded within the FVPLS program, together with a peak body. Alternatively, a national ATSI women's legal program focussing on law and justice issues for ATSI women and children could host law reform and policy development capacity at national and state and territory levels.

8. FVPLS Victoria through its experience in service delivery in Victoria is concerned at the lack of services targeted to support ATSI children impacted by family violence and sexual assault and to engage in prevention activity.
9. There is growing recognition of the impact of family violence upon children – reflected in provisions in the Family Violence Protection Act introduced in Victoria in 2008. It is apparent however that support services, legal services and prevention/education activity for young people are not sufficiently funded through government.
10. Services such as FVPLS Victoria or an ATSI women's legal program must incorporate specialist legal programs for ATSI children – both in terms of direct service provision and in legal education/prevention activity. The capacity to act as independent child representatives for ATSI children in family law proceedings is one example of this – child protection legal services are discussed further below. Dedicated training programs for lawyers and others working with young people experiencing family violence and sexual assault in the legal system ought be developed.

ATSI legal services must incorporate dedicated services for ATSI young people impacted by family violence and sexual assault. Specific training within the

justice system for those working with young people experiencing family violence and sexual assault should be developed.

11. When working with children and adults impacted by family violence and sexual assault, holistic service delivery is essential. It is important that the client's practical difficulties such as housing, income, counselling, mental health, drug and alcohol issues are being attended to if there is any hope of sustained engagement with the legal system. The role of paralegal support workers, working alongside lawyers and linking with necessary ATSI and mainstream services is essential. These positions should be funded in all ATSI legal services. FVPLS Victoria's experience with the paralegal model is very positive.

ATSI legal services working with young people must be funded for holistic service delivery models which include paralegal positions.

12. Delivering family violence and sexual assault education to young people requires a well resourced, holistically based program. FVPLS Victoria psychologists some time ago commenced a schools program and found extremely intense follow up support services were required. FVPLS Victoria has been reluctant to engage in school education or intense education with young people about their legal rights in this area without being adequately resourced for follow up counselling and support. The commonwealth funds FVPLS Victoria for one community legal education position divided between Gippsland and Barwon South West. The service is not funded for counselling services outside the three commonwealth funded regions. With the necessary resources FVPLS Victoria would welcome the opportunity to develop a schools program for ATSI children about legal rights and safety.

Funding for development of education/prevention/legal rights programs for ATSI young people about family violence, sexual assault and community safety must be prioritised.

13. FVPLS Victoria has had difficulty at times in locating culturally appropriate counselling/support services for children impacted by violence. Where children are sexually assaulted referrals are made to the Gatehouse Centre at Royal Children's Hospital Melbourne or to regional Centres Against Sexual Assault but there is no such direct referral point for children impacted by family violence not involving sexual assault – and certainly not an ATSI specific service. (There are also recent reports of young people in Victoria on waiting lists for sexual assault counselling).⁷ A specialist service is required, which is independent of agencies which are part of the child protection system. For example the Victorian Aboriginal Childcare Agency in Victoria provides services to Koori children and families in Victoria but also provides advice to the Department of Human Services when it receives a notification about a Koori child at risk. Given VACCA's role in the child protection system in Victoria it is the view of FVPLS

⁷ The Age Friday March 12 2010

Victoria that therapeutic support services for ATSI children impacted by violence must be available independently to ensure families access the service for assistance and to also ensure there is no actual or perceived conflict of interest in the service's role.

Specialist support services for ATSI young people impacted by family violence are required at the crisis stage and for longer term support.

14. The lack of culturally appropriate mental health services for ATSI young people and young people generally was also raised in the Victorian Parliament Drugs and Crime Prevention Committee in its July 2009 report 'Inquiry into strategies to prevent high volume offending and recidivism by young people'. There is clearly a lack of mental health services for young people as victims and as offenders – it is the contention of FVPLS Victoria that the lack of mental health and other supports available to young people as victims, contributes to offending behaviour, possibly including self medication through drug use. It is tragic that mental health supports at the offending end of the equation are also clearly deficient.

The following statements are relevantly made in the report,

...According to some mental health professionals, including those who gave evidence to this

inquiry, adolescents and young people are worst off when it comes to accessing comprehensive services and treatment for mental health problems. Professor Patrick McGorry, a leading Australian expert in adolescent mental health, endorsed this view.

...The Centre for Adolescent Health also identified the issue of 'falling between the cracks' as

being particularly acute for young people in late adolescence.⁶⁸⁴ The problem is exacerbated

by a lack of outreach services for those young people who are both homeless and have substance abuse and mental health issues. According to Ms Terrie Stewart, Koori court Officer at Broadmeadows Magistrates' Court, this is particularly the case for Indigenous youth.

Greater attention to provision of culturally appropriate mental health services for ATSI young people is required, including in rural locations.

15. FVPLS Victoria is concerned to ensure that legislative provisions and services available for victims of crime in Victoria become more robust in the support available for children. The service has recently submitted to the Victorian government inquiry into victims compensation and highlighted the importance of ensuring effective intervention for children who experience family violence and sexual assault. Victims assistance and compensation programs must be positioned to provide both immediate and longer term assistance to young people and have processes in place which are tailored to young people and their experience as victims. Consideration ought also be given to

statutory victims compensation schemes having some follow up with the young person to track progress and support requirements as they age. It is noted that the development of a Koori List within the Victims of Crime Assistance Tribunal Victoria has been extremely positive and resulted in increased numbers of ATSI people accessing assistance.

16. FVPLS Victoria is particularly concerned that victims compensation rights are not being adequately pursued for ATSI children in state care. As adults, the circumstances of these crimes is often raised during discussions about other legal matters. In the meantime, many victims/survivors have progressed through the criminal justice and prison systems, often with drug or other substance abuse issues, and have not accessed their compensation rights with respect to the childhood victimisation. As a result they have missed out on the opportunity for funded support and recovery services.

FVPLS Victoria is concerned that there is still a systemic weakness in ensuring that children in state care are supported to pursue their rights and to access the full range of support that they are entitled to. This leads to the link between children in the child protection system and children who offend.

ATSI Children in state care must be supported to pursue their rights as victims of crime.

17. ATSI children are vastly overrepresented in the child protection system in Victoria and Australia wide. In Victoria ATSI children are 12.9 times more likely to be on care and protection orders than non ATSI children. Family violence is acknowledged as a significant factor in child protection notifications with respect to ATSI children.⁸ A report in the Melbourne Age newspaper on 14 March 2010 indicates that 42 per cent of children on youth justice orders are under child protection.⁹ (This figure is for all children). The Victorian Parliament Drugs and Crime Prevention Committee in its July 2009 report 'Inquiry into strategies to prevent high volume offending and recidivism by young people' states the following...

Young people and out-of-home care

...In Victoria the Committee received evidence that there is a high percentage of young people in juvenile detention who have a history of family breakdown, disruption and/or removal from families into out-of-home care.⁸⁷ In a submission to this Inquiry, Professor Julian Bondy and Dr Marg Liddell said:

⁸ The Victorian Government Indigenous Affairs Report 2007/2008

⁹ Foster Kids face bleak future The Sunday Age 14 March 2010 p7

...An analysis of the current client profile in the youth justice system suggests that those that enter the system via correctional orders are the victims of significant trauma. Many are dual order clients having transitioned through the Child Protection system. This transition has not been particularly positive (see Liddell 2004) with many being the victims of chaotic family life, significant abuse, unstable placements, insecure attachment to family or significant others, and few positive life choices.

...Workers in the youth justice system have some difficulty interrupting the cycle of offending for many of these young people as their behaviours have become entrenched and the young people more difficult to engage...
Given the research by Lynch et al. (2003) (cited in the Discussion Paper) suggests that 91% of young people on care and protection orders progressed into the adult justice system, more attention needs to be given to the problems that face many children and young people who enter the Family Division of the Children's Court and progress into the child protection system.88 (emphasis added)

18. A child protection system which effectively responds to ATSI children and families is clearly a potential preventative mechanism in terms of children progressing on to criminal offending.

Following a report from the Victorian Ombudsman into the child protection system in Victoria, the Victorian government in late 2009 established a Ministerial Taskforce and made a reference to the Victorian Law Reform Commission ('VLRC') which is to report by June 2010. FVPLS Victoria is concerned that the reference to the VLRC made no specific mention of the overrepresentation of ATSI children in the child protection system in Victoria and the need for dedicated attention to this in the Inquiry.

With respect to the experience of ATSI children and families in the child protection legal system in Victoria FVPLS Victoria makes the following points which are also relevant to this inquiry but which are not exhaustive –

- ATSI victims of family violence have not been adequately pursuing legal rights in the child protection area, particularly in 'out of court arrangements', thus contributing to poor outcomes. FVPLS Victoria has experienced a lack of natural justice and procedural fairness accorded to ATSI families in out of court processes. Particular provisions for

ATSI children within child protection law and process have not been consistently implemented.

- The significant human rights at stake with respect to removal of children from parents and families, the dramatic power imbalance as between DHS and ATSI families and the very significant ATSI cultural issues, including the history of removal of ATSI children, demand rigorous judicial oversight of child protection procedures ensuring natural justice and procedural fairness, respect for culture and implementation of legislative provisions specifically directed to ATSI children.
- Culturally appropriate child protection legal services for ATSI children and families impacted by family violence and sexual assault must be available to ensure cultural issues are central to legal advocacy. (FVPLS Victoria has funded a dedicated child protection position in its Collingwood office through the Legal Services Board Victoria to June 2010. If this funding is not continued the service will have no capacity for these services in metropolitan Melbourne or rural Victoria not funded by the commonwealth).
- Culturally appropriate out of court dispute resolution or conferencing processes informed by the ATSI community must be strengthened, with access to culturally appropriate legal representation available at all stages.
- Improved communication processes between key agencies involved in child protection cases is required in the best interests of children.
- Strengthened culturally appropriate procedure for ATSI children and families informed by ATSI community is required in the Children's Court. The Children's Court Victoria is very receptive to this. A Victorian Department of Justice project focussed upon this is underway.
- Support and counselling services MUST be guaranteed for children on care and protection orders. FVPLS Victoria is aware of situations where this has not occurred – DHS has highlighted the trauma of children when removing them but then failed to arrange therapeutic intervention.
- Independent oversight of ATSI children in the child protection system must be implemented to ensure compliance with specific ATSI legislative and procedural provisions and to ensure system wide accountability including in both short and long term out of home care arrangements.

Given the link between high numbers of ATSI children on care and protection orders and juvenile offending, strengthening outcomes for ATSI children in the child protection system is a key to preventing/reducing juvenile offending.

It is critical that children placed in out of home care are provided with culturally appropriate therapeutic intervention and that there be strengthened oversight of out of home care arrangements.

19. With respect to imprisonment of ATSI people and young people the following statistics are detailed in the Australian government Productivity Commission report - Overcoming Indigenous Disadvantage: Key Indicators 2009,

- Nationally, on 30 June 2008, Indigenous females were 21.7 times more likely than non-Indigenous females to be in prison (figure 4.12.3).
- The imprisonment rate increased by 46 per cent for Indigenous women and by 27 per cent for Indigenous men between 2000 and 2008 (table 4A.12.7).
- Nationally on 30 June 2007, the rate of Indigenous females in juvenile detention was 24.4 times higher than the rate of non-Indigenous females in juvenile detention.
- Indigenous juveniles were 28 times as likely to be detained as non-Indigenous juveniles at 30 June 2007. The Indigenous juvenile detention rate increased by 27 per cent between 2001 and 2007 (figure 4.12.5).

20. The majority of ATSI women in prison indicate that they are survivors of family violence or sexual assault. In a survey of ATSI women prisoners in NSW, 70% of respondent prisoners indicated that they had been sexually assaulted or suffered other types of abuse as children; 44% reported that they had been sexually assaulted as adults.¹⁰ FVPLS Victoria experience in service provision over the past 6 years also reflects this situation. Many women have not previously dealt with sexual assaults which occurred in their childhood, although they have been in state care and later in state institutions. Family dislocation, homelessness, drug use, financial problems lead to offending and in some cases to incarceration. Effective earlier intervention is key.

21. The Social Justice Commissioners Report - Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities – Key Issues 2006 states the following

... *There is a consistent pattern indicating that incarcerated Indigenous women have been victims of assault and sexual assault at some time in their lives. Indigenous women are also significantly over represented as victims of violent crime. (p13)*

... *Links must be drawn and holistic models developed and supported which address the connections between culture, drug use, alcohol use, separation from family, violence,*

¹⁰ Rowena Lawrie, 'Speak Out Speak Strong – Researching the Needs of Aboriginal Women in Custody', (2003) Australian Indigenous Law Review, 29.

poverty, spiritual needs, housing, health, boredom, race discrimination and gender discrimination. (p13)

22. Strengthening of legal and support services in the community for women and children who experience family violence and sexual assault crimes through earlier intervention and prevention activity, must be a priority. Culturally strong sexual assault education/prevention programs for young ATSI women are particularly important.
23. Provision of culturally appropriate services and advocacy for young women detainees, is also critical. It is noted that an ATSI women's legal service program would be positioned to provide a more holistic service for young ATSI women who are detained and to advocate on imprisonment issues. Also relevant is the fact that many Youth Justice Centres and prisons are located in urban areas, where FVPLS units are not located.
24. It is well established that providing counselling/healing to women in prison or detention for past assaults and trauma they have experienced is problematic. The prison/justice centre environment is not appropriate or conducive to healing. Alternatives to incarceration where women can access healing in a supportive community environment is likely to be much more effective. This said, women and men in prison/detention must also have access to culturally appropriate supports as the prison environment often compounds and adds layers to existing trauma.
25. It is noted that the Victorian government is currently looking at options for programs to divert ATSI women from prison which is extremely positive.

Given the large proportion of ATSI women in prison who have experienced sexual assault as young women, combined with the growing rate of imprisonment of ATSI women and young women, strengthened support services and prevention/education initiatives for young women with respect to sexual assault and family violence are required. Effective intervention is required as early as possible.

Prison/detention diversionary programs which incorporate culturally strong support services must be prioritised.

26. Finally it is noted that the Victorian Parliamentary Committee refers to the importance of the voices of young people themselves contributing to policy development in this area. The report states the following,

...The need for young people's voices to be heard

Another issue that has been brought to the attention of the Inquiry is the need to have local research undertaken that draws from the experiences of young people themselves,

particularly young people from marginalised backgrounds such as Indigenous or homeless youth.

...A submission from Professor Julian Bondy and Dr Marg Liddell at RMIT states that much more research needs to be undertaken that tracks the progression of young people through the criminal justice system. They also believe that whilst statistical data is important, equally relevant is qualitative data, particularly drawn from the experiences of young offenders themselves and especially that pertaining to the lives of young women.⁷¹⁴

FVPLS Victoria supports input from ATSI young people and adults, including young women informing developments about these issues. Adults can explain their experiences as young people and provide insight as to what may have better assisted and supported them as young people. Such consultation must however be carefully guided by the ATSI community.

It is noted that the Victorian Indigenous Youth Advisory Council provides a voice for ATSI youth in Victoria and has a position on the Victorian Aboriginal Justice Forum.

We would be happy to further discuss any matters raised herein.