



NATIONAL
FAMILY VIOLENCE PREVENTION
AND LEGAL SERVICES
FORUM

Submission for the Independent Review of
the National Legal Assistance Partnership
Agreement (NLAP)
October 2023



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Summary of Recommendations

Recommendation 1: *The Commonwealth Government should undertake to work with the National FVPLS Forum (PEAK for FVPLS) to in the first 6 months of 2024, about whether the FVPLS Program will continue to be administered by NIAA, or will form part of a new ILAP, or a separate national partnership agreement, or some other mechanism to ensure that core ongoing program funding is secured prior 2025.*

Recommendation 2: *The upcoming 2025-2030 NLAP should be amended to record the commitment of the Commonwealth Government and the States and Territories to the Closing the Gap National Agreement, including the Priority Reforms (this should occur regardless of whether the FVPLS Program forms part of NLAP).*

Recommendation 3: *If the FVPLS sector is to be administered as part of NLAP after 1 July 2025, FVPLS funding should be 'quarantined' and the Indigenous Legal Assistance Partnership (ILAP) should be re-established in consultation with the National FVPLS Forum, to minimise service disruption and ensure transparency in the funding provided to deliver services to First Nations people.*

Recommendation 4: *In preparation for the May 2024 budget, the AGD, DSS and NIAA, in consultation with the National FVPLS Forum, should develop an inter-departmental funding proposal to enable the FVPLS sector to expand both their expert legal and non-legal services, programs and research aimed at addressing family violence affecting First Nations people (the administration of this funding would be subject to the outcome of Recommendation 1 above).*

Recommendation 5: *The Commonwealth should urgently undertake negotiations with individual jurisdictions over the course of 2024 to develop whole-of-government funding proposals that will ensure that the FVPLS sector is able to continue to provide legal and non-legal services, (ensuring the integrity of the model is preserved), programs and research aimed at addressing family violence affecting First Nations people (the administration of this funding would be subject to the outcome of Recommendation 1 above).*

Recommendation 6: *The upcoming NLAP Agreement should be amended to note the practice specialisation of the FVPLS Program as the preferred provider of discreet First Nations people family violence prevention services and legal representation, separately from services provided to alleged perpetrators of violence.*

Recommendation 7: *The national Peak bodies of each of the legal assistance sectors should develop Memoranda of Understanding that set-out the unique specialisations of each of the legal assistance sectors, to guide the activities of their respective members and minimise duplication of services and competition for funding.*

Introduction: The FVPLS Program

1. The National Family Violence Prevention and Legal Services Forum (National FVPLS Forum) welcomes the independent review of the National Legal Assistance Partnership (NLAP). Although not currently administered within NLAP, the FVPLS Program are administered community-controlled services and is one of the four legal assistance sectors in Australia, alongside Legal Aid, Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services.
2. This submission is provided to inform potential improvements to the provision of legal assistance to First Nations people affected by family violence. Given the extensive field consultations undertaken by the NLAP Review, this submission will focus on national strategic policy issues rather than focussing on detailed operational matters.
3. The National FVPLS Forum was established in 2012 and is the national Peak body representing FVPLS agencies operating around Australia. The FVPLS Program is unique in Australia. Established by the Commonwealth Government in 1998 (as a program of the former Aboriginal and Torres Strait Islander Commission), the purpose of the FVPLS Program has been described as providing:¹ *“...Indigenous victims of family violence access to services which allow them to pursue their human rights to equal protection of the law, which could otherwise be unavailable without FVPLS.”* The FVPLS sector was established to address the high rates of domestic and family violence experienced by Aboriginal and Torres Strait Islander women and children; the conflict that arises when services support both the offender and the victim; and the access to justice, to address the barriers for women and children.
4. The National FVPLS Forum and FVPLS agencies address a complex range of policy and service delivery issues associated with family violence affecting First Nations people including (but not limited to) legislative and court reform; police responses to family violence; court and judicial practices; preventing unnecessary child removals; under-reporting and misidentification of women who use resistive violence; culturally-safe service models; rural and remote service provision; increasing rates of incarceration and the homicide and disappearances of First Nations women (which exceed the number of First Nations deaths in custody since 2000) and more.
5. Over past decades, FVPLS staff have delivered essential front-line services to countless numbers of First Nations people, while the National FVPLS Forum has repeatedly exposed the many injustices and human rights abuses faced by First Nations women, children and others affected by family violence.
6. FVPLS agencies have a unique model of service delivery and are the only services in Australia that deliver a combination of both legal and non-legal family violence prevention services and programs, solely to First Nations people. It is important to note that this unique model are not solely legal services, but rather they provide a suite of legal and non-legal family violence services and programs focussed on Prevention, Early Intervention, Crisis Response and Recovery.
7. Sixteen organisations are currently funded to deliver FVPLS services across a vast geographical area in Australia where more than 50% of Aboriginal and Torres Strait Islander people live, including in areas of high need in rural, remote and very remote communities. More than 90% of FVPLS clients are First

¹ Family Violence Prevention Legal Services – Research and Needs Analysis Report Commonwealth Attorney-General’s Department, 16 July 2013, NOUS Group, page 48.

Nations women and children victims / survivors of family violence. The majority of FVPLS staff are First Nations people, which anchors cultural competency in the FVPLS network, deepens engagement with First Nations clients and communities, and assists Government achieve its goals of increasing Aboriginal and Torres Strait Islander employment and to build trust in communities that can achieve greater access to support by First Nation families.

1) Administrative arrangements for the FVPLS Program

8. The FVPLS Program is administered by the National Indigenous Australians Agency (NIAA). In 2021, without consultation with the National FVPLS Forum, the former Commonwealth Government announced that the FVPLS sector would form part of NLAP. Subsequently, the Australian Government indicated that a decision regarding this transition would not be made until after the NLAP Review was completed.
9. The Commonwealth Government has otherwise provided little information to the National FVPLS as a basis to fully assess the benefits of the FVPLS sector forming part of NLAP. Notably, the FVPLS sector has been subject to numerous administrative changes in the past, including in 2003, 2004, 2006, 2014 and 2019. Each administrative change has caused significant service disruption, in what is an already challenging service-delivery context assisting vulnerable First Nations women and children affected by family violence, often in isolated geographic locations.
10. There are undoubtedly potential benefits for the FVPLS Program to be included in a national partnership agreement, so that Commonwealth, State and Territory funding and reporting requirements can be rationalised, agreed and secure. Inclusion in a new ILAP would also provide FVPLS agencies better access to some funding that may not currently be provided (e.g. for family law and other matters). A national partnership agreement is also to be preferred to the lack of public transparency and accountability often associated with funding that is unilaterally provided by Commonwealth Government departments to State or Territory governments to address family violence affecting First Nations people, as discussed in Section 7 of this submission.
11. However, there are significant concerns about whether the NLAP (or an ILAP) will be too narrowly focussed on legal assistance and will excise the funding needed to provide the non-legal services and programs that are an essential feature of the FVPLS model (discussed further in Section 5 below). In this regard, how will the Commonwealth Government remove the funding and policy silos that exist between its departments responsible for women's safety, legal assistance and First Nations policy? The same issues undoubtedly arise within NLAP for the jurisdictions, and these matters are discussed in Sections 6 and 7 of this submission.
12. Therefore, and noting the lack of information provided to the FVPLS sector about the proposed inclusion in NLAP, a central question arises as to whether a new ILAP can be designed in such a way as to provide the most effective administrative arrangement for the FVPLS sector to deliver legal and non-legal services and programs that reduce family violence affecting First Nations people, or whether this is best achieved through a separate national partnership agreement, or some other mechanism.
13. Government is urged to work in genuine partnership with the National FVPLS Forum in decisions effecting the administration of the FVPLS Program, to reflect the commitments of the Closing the Gap National Agreement and to ensure continuity of services to First Nations people.

2) *Recommendation 1: The Commonwealth Government should undertake to work with the National FVPLS Forum (PEAK for FVPLS) to in the first 6 months of 2024, about whether the FVPLS Program will continue to be administered by NIAA, or will form part of a new ILAP, or a separate national partnership agreement, or some other mechanism to ensure that the program funding is secured prior 2025***Closing the Gap National Agreement and the Priority Reforms**

14. The Australian Government has acknowledged the severe and disproportionate violence experienced by First Nations women compared other Australians, as shown by the following summary published in 2022 in the *Draft National Plan to End Violence against Women and Children 2022-2032* (page 42):
- First Nations women report 3.1 times the rate of violence compared to other women in Australia.
 - 3 in 5 First Nations women have experienced physical or sexual abuse by a male intimate partner.
 - Aboriginal and Torres Strait Islander women are almost 11 times more likely to die due to assault.
 - Hospitalisation rates from family violence are 32 times higher for First Nations women.
 - Intimate partner violence contributes 10.9% of the burden of disease for Aboriginal and Torres Strait Islander women aged between 18 and 44, which is higher than any other health risk factor including alcohol or tobacco use and obesity and is 6.3 times higher than other women in Australia.
 - Family violence against women is the “*leading reason for the disproportionately high numbers of Aboriginal and Torres Strait Islander children removed from their families*”, and two-thirds of First Nations adults who experience family violence share a home with a child.

15. The National Agreement for Closing the Gap seeks to address the severe inequity faced by many of Australia’s First Nations people, including in relation to family violence, and in particular, in 2020, all Australian governments committed to achieving Target 13 of the Closing the Gap:

Target 13 Closing the Gap: *By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%, as progress towards zero.*

16. The work of the FVPLS sector also focusses on preventing the unnecessary removal of First Nations children from their families, and in this regard, Target 12 is also relevant to the work of the sector:

Target 12 Closing the Gap: *By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent.*

17. The disproportionate rates of violence affecting First Nations women and children in Australia should be understood as illustrating an unqualified failure of successive governments to adequately invest in the services and programs necessary to address this issue, or to reform the administrative and legislative arrangements that worsen this abuse.

18. The Closing the Gap National Agreement evidences the commitment by all governments to addressing the historically inadequate funding provided to community-controlled organisations, and this obligation to provide dedicated, reliable and consistent funding to this sector is reflected in Priority Reform Two, which states:

Priority Reform Two: Building the community-controlled sector

Outcome: There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country.

Target: Increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations.

19. The National Agreement notes that the elements of strong community-controlled sectors are:
1. Sustained capacity building and investment.
 2. A dedicated and identified Aboriginal and Torres Strait Islander workforce.
 3. Community-controlled organisations are supported by a Peak Body, which has strong governance and policy development and influencing capacity.
 4. Community-controlled organisations have a dedicated, reliable and consistent funding model designed to suit the types of services required by communities.
20. To date, governments are yet to fulfill their commitment to Priority Reform Two by providing adequate funding to community-controlled organisations in the FVPLS sector, and as a consequence, the abuses suffered by First Nations women and children continue unabated, and have worsened in some locations, because of a lack of access to specialised front-line FVPLS services, thereby perpetuating what has been described by some as the “...‘misery fest’ of disadvantage facing Aboriginal and Torres Strait Islanders” caused by repeated failings in Australia’s political and policy decision-making (Professor Marcia Langton AO, Canberra press conference on the Voice to Parliament, 23 March 2023).


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Recommendation 3: If the FVPLS sector is to be administered as part of NLAP after 1 July 2025, FVPLS funding should be ‘quarantined’ and the Indigenous Legal Assistance Partnership (ILAP) should be re-established in consultation with the National FVPLS Forum, to minimise service disruption and ensure transparency in the funding provided to deliver services to First Nations people.

3) Historical under-investment in FVPLS Program

21. The following systemic issues have contributed to the under-investment in the FVPLS sector over time:
- a. **Funding for FVPLS agencies is not based on legal need or the actual costs of providing services** (unlike other legal assistance providers).² This was a criticism of the Productivity Commission in 2014 that recommended Commonwealth funding for FVPLS providers should “be allocated according to models that reflect the relative costs of service provision and indicators of need given their priority clients and areas of law”. However, there has been no change to the FVPLS funding model since that time, and it is noted that the current NLAP review is re-visiting this issue.

² Productivity Commission Inquiry Report, *op.cit*, page 28.

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- b. **Data deficiencies** regarding the prevalence of family violence affecting First Nations people have contributed to an historical under-investment in FVPLS agencies, by obscuring the true extent of the needs of First Nations people. There is also a need to harmonise national data relating to family violence. Funding of approximately \$30M was allocated by the Department of Social Services (DSS) to the Australian Bureau of Statistics (ABS) in 2021 to study the prevalence of family violence affecting First Nations people, but it is understood that this research has not yet commenced, and to give effect to Priority Reform 4, it is submitted that the DSS and the ABS should be scoping, designing and implementing this research with the National FVPLS Forum. Finally, FVPLS agencies and the National FVPLS Forum (the National PEAK) should be funded to enhance data collection, analysis and reporting.
- c. **An historical lack of indexation** for FVPLS Program funding has worsened the inadequate resourcing of many FVPLS agencies and caused significant funding reductions in real terms, and this loss is even greater in rural and remote regions. The October 2022 Budget provided an indexation supplement to community organisations such as the FVPLS Program, however, this will not meet the real reductions in funding consequent to the historical lack of indexation.
- d. **Higher service delivery costs** adversely affect FVPLS agencies because of the increased costs of civil (compared to criminal) matters, as well as the higher costs for rural and remote service delivery. These issues are particularly acute with recent inflationary pressures in the Australian economy.
- e. **Inadequate funding for policy, data, HR and governance** combined with the urgent demands placed upon front-line service delivery, has prevented many FVPLS agencies (and other community organisations) from developing the organisational capacities necessary to effectively participate in grant and funding processes, to develop advanced data and evaluation capabilities, and to influence policy and reform relating to family violence.
- f. **Pay inequity for the FVPLS sector**: - competition for legal and non-legal staff is a particular challenge, especially given higher wages offered in other legal and government sectors. There is a need for FVPLS agencies to comprehensively improve salaries, conditions and role classifications to establish parity with key labour competitors, including Government and Legal Service Commissions.
- g. Short term funding has contributed to FVPLS services being unable to effectively plan for long term interventions, to retain staff who experience uncertainty and insecurity to long term employment and communities to provide commitment to communities that long term support is available.
- h. **Governments continue to invest in temporary projects and pilots and consultations** that fragment the family violence service sector, drain the expertise of established FVPLS services that are asked to contribute to these projects, and waste funds on the administrative costs of government project teams.

4) Additional funding required by the FVPLS Program

22. The urgent need for increased funding for FVPLS services and the National FVPLS Forum has been repeatedly identified over the past decade, including by the Productivity Commission in 2014³, the

³ Productivity Commission, "Access to Justice Arrangements: Productivity Commission Inquiry Report", 2014, p 63, Rec. 21.4.

Law Council in 2018⁴ and government-commissioned evaluations.⁵ While there have been modest increases in Commonwealth funding, in the 10 years between 2010-11 and 2020-21, real funding to the FVPLS sector fell by a CAGR⁶ of 2.9% on a per person basis, relative to population growth for Aboriginal and Torres Strait Islander people.⁷

23. Commonwealth funding for the FVPLS Program has remained vastly lower than the funding provided to the other legal assistance sectors in Australia (Legal Aid, Community Legal Centres and the Aboriginal and Torres Strait Islander Legal Services). So, while the National FVPLS Forum supports increased funding to all four legal assistance sectors, the lack of investment in the FVPLS sector is grossly inadequate to the scale and complexity of the family violence faced by First Nations people, and this has allowed the perpetuation of this abuse over generations.
24. It has been identified that FVPLS agencies around Australia require approximately \$40 million in additional annual funding to provide essential legal and non-legal front-line family violence prevention services, programs and supports to First Nations people, according to recent research by the National FVPLS Forum. This estimate is based on a place-based analysis in early 2023 by the National FVPLS Forum with individual FVPLS units in different locations around Australia and draws upon the unique knowledge and expertise of individual FVPLS units as to local community needs and expectations and the existing service-system and coverage in each location.
25. Half of this estimated funding is needed to expand the services and programs that FVPLS agencies provide to First Nations people within their current service areas, while the other half of this funding will allow these agencies to provide new services and programs to First Nations people that do not currently have access to specialised community-controlled family violence prevention services.
26. This additional funding would provide approximately 300 new FVPLS staff across Australia, including:
 - 128 non-legal staff for client support and early intervention and recovery services and programs.
 - 86 legal staff specialising in family violence and related jurisprudence.
 - 45 staff to support organisational governance, performance and corporate operations.
 - 14 court advocates (WA only)
 - Policy and capability development staff in the National FVPLS Forum

5) Combined legal and non-legal services and programs

27. Almost half these new positions would be non-legal positions, such as case managers, social workers, mental health officers, client support officers, intake and assessment officers, client support officers, program officers, community educators, community development officers, etc. This funding would also allow FVPLS agencies to employ legal personnel, to support a central function of the FVPLS sector as one of Australia's four legal assistance service sectors; while additional funding would assist to build sector capacity and capability in data management, HR, compliance, organisational governance etc.
28. Delivering non-legal services and programs, in combination with legal assistance, is an essential feature of the FVPLS service model. It is widely understood that many First Nations women do not

⁴ Law Council of Australia, "The Justice Project Final Report: Recommendations and Group Priorities", August 2018, p 4.

⁵ NOUS Group, *op.cit*, page 49.

⁶ Compound annual growth rate.

⁷ National Legal Assistance Partnership Review Issues Paper, August 2023, p.12.

report family violence or seek help because they fear losing their children, their housing, or their lives, and they distrust police, medical services and others seen to be in positions of authority. This delay in seeking help often exposes First Nations women, children and others to prolonged violence, more serious (and sometimes permanent) injuries or death, a greater likelihood of using resistive violence and therefore being misidentified as perpetrators, and a normalisation of violence, sometimes on an inter-generational basis for some First Nations families.

29. By combining legal and non-legal services and programs, and providing culturally safe, community-controlled services, FVPLS agencies provide multiple pathways to access support and are better able to assist First Nations women and children to develop the trust necessary to seek help sooner, which:
 - reduces the harm caused by prolonged family violence.
 - optimises the effectiveness of the legal assistance.
 - responds to the trauma and vulnerability of clients and communities and
 - prevents the normalisation of violence and inter-generational cycles of abuse.

6) Commonwealth Government silos

30. Pervasive departmental silos exist between Commonwealth Government portfolios that share responsibility for the safety of First Nations women and children, and particularly between the Department of Social Services (DSS), the Attorney-Generals' Department (AGD) and the National Indigenous Australians Agency (NIAA). These silos impede the provision of combining legal and non-legal services that are crucial to the effectiveness of family violence prevention services and programs.
31. For example, the FVPLS Program was administered by the AGD between 2006 and 2014, and during this time, funding for early intervention services was removed from the FVPLS Program. This illustrates the risk that non-legal services delivered by the sector may be denuded because of the focus of NLAP on the provision of legal services (to the exclusion of non-legal services). FVPLS agencies have also expressed concerns as to whether jurisdictional justice departments will fund non-legal family violence services that support the efficacy of legal service assistance.
32. Conversely, the DSS operates in a policy and funding silo that largely excludes the legal expertise and practice necessary to achieve the safety of women and children. This is evident from the development of the *Aboriginal and Torres Strait Islander specific Action Plan 2023 – 2025*, that was released by the DSS on 16 August 2023 (the First Nations Action Plan). On 25 November 2021, the former Government announced that this First Nations Action Plan would be the “...primary mechanism for implementing Closing the Gap Target 13” and would be developed over 2 years by “a 13-member Aboriginal and Torres Strait Islander Advisory Council” that the former Government established in July that year.
33. However, the DSS excluded from the Advisory Council representatives such as the National FVPLS Forum, with specialised legal expertise in family violence, and consequently, the Action Plan lacks an understanding of the legal practices and systems essential to addressing family violence.

Case Study: Commonwealth Government policy silos regarding women's safety

The following examples from the First Nations Action Plan demonstrate a lack of relevant legal expertise necessary to address family violence:

- A stated Outcome of the Action Plan (p.46) is to “Uphold human and cultural rights and enhance understanding of legal rights, including through access to culturally safe and appropriate legal

assistance.” However, the report contains no plausible systemic strategy to achieve this Outcome and it fails to grapple with the levels of unmet demand for legal representation.

- The Action Plan proposes (p.56) to *“Promote trauma-informed and culturally safe response models ... through the criminal justice system...”* However, the report fails to identify any specific court processes, legislation or legal practice reforms, to achieve this and it fails to refer to significant criminal justice reviews that have been undertaken in some jurisdictions.
- The Action Plan contains no logical strategy to achieve a *“25 per cent reduction per year in female victims of intimate partner homicide”* (pp. 10-11 Outcomes Framework) and it displays little understanding of specialized research by death units, academics, coronial inquests and others.
- In the Outcomes Framework, the Plan suggests that: *“Service providers (i.e. police, courts, welfare workers, and shelters) to hold regular forums to identify service gaps...”*, which is an inadequate response to the complex and traumatic issue of intimate partner homicides.
- Almost half the initiatives in the Action Plan involve deferred actions (i.e. proposals to “Explore”, “Identify”, “Investigate”, “Promote”, “Seek to”, and/or ‘research’) which exposes an underlying inadequacy in the expertise and processes used to lead this work over the past 2 years.

34. How will the Commonwealth Government remove the portfolio silos that currently separate women’s safety policy (led by DSS), from legal assistance (led by AGD) and First Nations policy (led by NIAA)? This problem needs to be urgently addressed to ensure that the FVPLS sector is adequately funded to provide legal and non-legal services and programs to First Nations clients and communities – irrespective of whether the FVPLS sector becomes part of the NLAP or a new ILAP.

Recommendation 4: In preparation for the May 2024 budget, the AGD, DSS and NIAA, in consultation with the National FVPLS Forum, should develop an inter-departmental funding proposal to enable the FVPLS sector to expand legal and non-legal services, programs and research aimed at addressing family violence affecting First Nations people (the administration of this funding would be subject to the outcome of Recommendation 1 above).

7) Inter-jurisdictional coordination and accountability

35. Government’s stated rationale for the proposed transition of the FVPLS Program to NLAP is to *“...afford FVPLS providers’ access to state and territory legal assistance funding and improved support for data collection and reporting.”*
36. Although these expectations are subject to negotiations between the States and Territories, it is reasonable to expect that a national partnership agreement offers an opportunity for inter-jurisdictional funding and reporting arrangements between the Commonwealth, State and Territory governments as well as access to NLAP funding that may not be currently available to the FVPLS sector.
37. This is important, because there remain FVPLS agencies around Australia that receive no funding from the State and Territory jurisdictions in which they operate. This is despite the Productivity Commission’s finding (2014) that while the activities of FVPLS agencies primarily related to State and Territory laws, funding is almost exclusively from the Commonwealth, so that jurisdictional governments *“have little incentive”* to consider how their policies impact on the demand for FVPLS services. The Productivity Commission recommended that *“any additional Commonwealth funding for civil legal assistance services should be structured in such a way as to encourage funding participation by the states and territories”* and those jurisdictions should contribute to FVPLS funding.

38. Additionally, there is often a lack of public transparency and accountability in funding directly allocated by the Commonwealth to State or Territory governments to address family violence affecting First Nations people, which makes it difficult to trace these funds or assess what outcomes are achieved. The following example illustrates this lack of transparency, accountability and funding co-ordination.

Case Study: Commonwealth funding for 500 DFV workers

On 25 October 2022, the Department of Social Services (DSS) announced a FY22-23 Budget measure of “A total of 500 frontline service and community workers to support people experiencing family, domestic and sexual violence will be secured through \$169.4 million over 4 years from 2022-23 in Commonwealth funding.” DSS later advised the National FVPLS Forum that this funding would provide “60 Aboriginal and Torres Strait Islander workers to directly support First Nations people”, and that funding for these 500 DVFS workers was to be paid to the “...states to provide a fast and effective mechanism to leverage existing arrangements with frontline organisations”.


This approach was obviously wasteful. By diverting this funding to the States (instead of directly funding the FVPLS sector with at least some of the positions) DSS caused administrative costs to the Commonwealth and the States. It also imposed unnecessary cost on FVPLS units, that were expected to pursue separate negotiations with 8 different jurisdictions to access this funding, rather than working with the Commonwealth as a single point of negotiation and administration. The DSS has not provided information as to how many First Nations workers have been funded by the States under this initiative, or what non-government organisations received funding for these positions.

39. A national partnership agreement is to be preferred to the lack of public transparency and accountability associated with funding that is unilaterally provided by Commonwealth Government departments to State or Territory governments to address family violence affecting First Nations people, as discussed in Section 7 of this submission.
40. However, there is a need to better understand what funding, on a whole-of-government basis, will be contributed to a national agreement by each of the States and Territories, so that the benefits of the administrative change can be better understood. As also discussed in this submission, any national agreement arrangement needs to support the FVPLS Program model to continue to deliver both legal and non-legal services and programs to First Nations people affected by family violence, and should be subject to the outcome of Recommendation 1 of this submission).

Recommendation 5: The Commonwealth should undertake negotiations with individual jurisdictions over the course of 2024 to develop whole-of-government funding proposals that will ensure that the FVPLS sector is able to continue to provide legal and non-legal services (ensuring the integrity of the model is preserved), programs and research aimed at addressing family violence affecting First Nations people (the administration of this funding would be subject to the outcome of Recommendation 1 above).

8) Distinctions between the legal assistance sectors

41. There is an opportunity for a stronger differentiation between the unique specialisations of each of the legal assistance sectors. In particular, the FVPLS Program provides First Nations people discreet family violence prevention services and legal representation because of:

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- a) a recognition that services provided to First Nations people should be developed and delivered by community-controlled organisations; and
- b) the need to provide First Nations complainants of family violence legal representation and services that are separate to those provided to alleged perpetrators of violence.
42. As to a) above, this principle is reflected in the Priority Reforms of the National Agreement for Closing the Gap, and especially the obligation to ‘increase the amount of government funding’ to community-controlled organisations, as required by “*Priority Reform Two: Building the community-controlled sector*”, as discussed above. While there is a role for mainstream organisations to provide legal services and support to First Nations people who prefer an alternative service provider, community-controlled organisations should be recognised as the preferred providers of family violence prevention services and legal representation for First Nations people, and appropriately funded to fulfil this role.
43. In relation to b) above, legal conflict issues particularly restrict the access of First Nations women to community-controlled legal service providers such as ATSILS, because criminal justice processes mean that the accused is usually the first of the parties to contact available legal services, and ATSILS particularly prioritise the policy objective of reducing incarceration. This lack of access to legal services and other supports has potentially dangerous consequences for First Nations women and others experiencing family violence, because it increases the risk of harm or even death.
44. Conflict issues are also possible within Legal Aid and Community Legal Centres, if there are no FVPLS services available for First Nations people. It is also worth noting that First Nations women can be perpetrators, and are misidentified as the same, however, these are not a majority of cases, and FVPLS services often have practices to deal with such circumstances.
45. Some organisations have sought to create information barriers, in order that they can represent both the alleged perpetrators, as well as complainants, of family violence. However, the need for discreet family violence services has long been recognised for other reasons, including to provide reassurance and equity to First Nations women and children:
- “...if you have a service which is always seen as representing the perpetrator of a criminal offence, the victims of those offences are not going to feel comfortable going to that same service.”⁸*
46. In short, First Nations clients and communities hold perceptions about the legal services that are locally available, and the reassurance provided by offering a discreet family violence service (separate from the alleged perpetrator) is crucially important for First Nations women, who are far more likely to under-report family violence affecting them and family members.
47. There are also concerns that organisations using information barriers so as to represent both parties potentially impose on First Nations people a sub-standard level of legal representation and “...justice that no other group in Australia is expected to put up with... that is a terribly discriminatory basis upon

⁸ Top End Women’s Legal Service, Transcript, 21 July 2004, p.31, Access of Indigenous Australians to Law and Justice Services, Joint Committee of Public Accounts and Audit, Commonwealth of Australia, Canberra, June 2005, page 32

which to be providing legal services...".⁹ In short, women in Australia are not asked to attend the same legal service as their alleged perpetrator of family violence, and such an expectation should not be placed upon First Nations people.

48. The use of Memoranda of Understanding at the individual service level has been utilised to delineate different service specialisations between legal assistance providers, to lesser and greater degrees of effectiveness. However, these have not been adopted systemically, as could be the case if they were developed between the national Peak bodies that represent each of legal assistance sectors.


Recommendation 6: The upcoming NLAP Agreement should be amended to note the practice specialisation of the FVPLS Program as the preferred provider of discreet First Nations people family violence prevention services and legal representation, separately from services provided to alleged perpetrators of violence.

Recommendation 7: The national Peak bodies of each of the legal assistance sectors should develop Memoranda of Understanding that set-out the unique specialisations of each of the legal assistance sectors, to guide the activities of their respective members and minimise duplication of services and competition for funding.

9) Role of the National FVPLS Forum as a national Peak body

49. The National Forum for Family Violence Prevention Legal Services (the National Forum), established in 2012, is the national peak body for community controlled Family Violence Prevention Legal Services (FVPLS) organisations around Australia. Australia's 16 FVPLSs operate at 31 sites across Australia providing legal and other holistic and culturally safe services to First Nations people, largely women, who are experiencing, or at risk of, family violence.
50. The Forum is the National Peak Body for family violence affecting First Nations people. A peak body is a representative non-government organisation that provides information dissemination services, membership support, coordination, advocacy and representation, relevant research, policy and sector development services for its members and other interested parties (Australian Health and Community Services).
51. The National Forum's purpose is to reduce family violence affecting First Nations people. It is a member of the Coalition of Peaks and works with its FVPLS members, communities, governments and other partners to raise awareness about family violence affecting First Nations people, and to strongly advocate for culturally safe legal and other holistic responses.
52. The National FVPLS Forum provides members the opportunity to join a community of practice with other FVPLS providers to build relationships within the FVPLS sector, share information, practices and learnings.
53. The National FVPLS Forum has the ability to influence policy and advocate for increased funding to sustain the sector and to improve justice for First Nations women and children affected by family violence.
54. The objectives of The NVPLS Forum include the following:

⁹ Many Rivers Aboriginal Legal Service, Transcript, 13 July 2004, pp. 50-1, Access of Indigenous Australians to Law and Justice Services, Joint Committee of Public Accounts and Audit, Commonwealth of Australia, Canberra, June 2005, page 27

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- Capacity Building: Support and enhance capacity of the FVPLS to provide high quality services that deliver results for clients and communities.
 - Advocacy for the FVPLS sector
 - Coordinate and facilitate communication, information sharing and relationship building between FVPLS services
 - Develop policy positions that identify areas of FVPLS work in need of reform make recommendations for change
 - Be a conduit to/with government on issues relevant to Domestic and Family Violence sector, FVPLS programs and their operations
 - Engage with key stakeholders including through participation in activities and national meetings that will benefit and promote the National FVPLS positions
 - Facilitate a coordinated approach to building a secure and sustainable resource base that meets the needs of the FVPLS and their clients.