

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ANTI-DISCRIMINATION LIST**

Application under section 83 of the Equal Opportunity Act 1995 (Vic)

ABORIGINAL FAMILY VIOLENCE PREVENTION & LEGAL SERVICE (VICTORIA)

Applicant

AFFIDAVIT OF ANTOINETTE CHRISTIAN WINTER BRAYBROOK

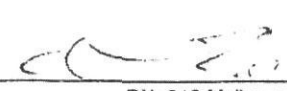
I. ANTOINETTE CHRISTIAN WINTER BRAYBROOK of

Make oath and say:

A. Personal background

- 1 I am the Chief Executive Officer of the Aboriginal Family Violence Prevention & Legal Service Victoria (**FVPLS Victoria**). I have held this position since November 2002. In this position, I am responsible for management of FVPLS Victoria's activities and resources under the direction of the Board of Directors. I represent FVPLS Victoria on state and national Indigenous and mainstream forums (some of which are gender specific) relevant to the work of FVPLS Victoria and am actively involved in community education, law reform and policy development to advance the situation of Aboriginal and Torres Strait Islander (**ATSI**) victims/survivors of family violence and sexual assault.
- 2 I obtained a law degree in 2000 from Deakin University and was admitted to practice in Victoria in 2004. I served as a Judge's associate in 2001 whilst completing my articles through the College of Law NSW. From 2001 I was the Executive Officer of the regional Aboriginal Justice Advisory Committee, Grampians, and left this position to establish FVPLS Victoria in late 2002. Prior to obtaining my law degree I was employed in the Koori Services Unit at Northern Melbourne Institute TAFE.
- 3 I make this affidavit from my own knowledge save where otherwise indicated. Wherever I depose to matters based on information provided to me by others I believe that information to be true and correct.

Filed on behalf of the Applicant, FVPLS by:
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B. Background to FVPLS

4 FVPLS Victoria was incorporated in October 2002. It is an ATSI community controlled organisation based in Melbourne that also provides outreach services to regional Victoria. FVPLS Victoria is responsive to the diverse and unique needs of Victorian ATSI Communities.

5 FVPLS Victoria was established as part of the National Family Violence Prevention and Legal Services Program. The Aboriginal & Torres Strait Islander Services (ATSIS) (an Executive Agency of the Commonwealth Government appointed to administer programs which were previously the responsibility of ATSIC) initially funded 13 Family Violence Prevention Legal Services to provide 'services to victims of family violence and sexual assault and where appropriate to work with the families and communities affected by it'.

6 Recognition of a lack of dedicated services for ATSI victims/survivors of family violence and sexual assault was a significant factor in the establishment of the FVPLS program. Experts in the field have identified that ATSI victims/survivors of family violence are reluctant to access other available ATSI legal services. This is partly due to conflicts of interest which may arise as a result of the significant criminal defence practices of other services. ATSI women and children are also reluctant to approach and speak with the other, typically male dominated, ATSI legal services.

7 Management of the FVPLS funding program has now transferred to the Commonwealth Attorney-General's Department and 31 FVPLS units have been established across Australia.

8 As well as funding from the Commonwealth Attorney-General's Department through the FVPLS program, FVPLS Victoria also receives funding from a number of other sources including Victoria Legal Aid, Department of Justice Victoria and other project grants.

9 FVPLS Victoria has received endorsement from the Australian Tax Office as a deductible gift recipient under sub-division 30-BA of the Income Tax Assessment Act 1997 on the basis that FVPLS Victoria is a public benevolent institution.

C. Principles and objectives of FVPLS

8 The following is extracted from the FVPLS Victoria constitution.

3 (1) *The objects of the Association are:*

(a) *to provide assistance to victims of family violence;*

(b) to reduce the incidence of violence and abuse in communities through community education and advocacy;

(c) to increase the recognition of the problem of violence and abuse in communities through community education and advocacy; and

(d) to facilitate long-term solutions to violence and abuse in communities.

(e) operate and maintain a Gift Fund entitled "Aboriginal and Torres Strait Islander Corporation Family Violence Prevention and Legal Service (Victoria)" in accordance with requirements of the Australia Taxation Office.

3 (2) *The Association will seek to advance these objects by:*

(a) addressing the causal effects of family violence and the extreme disadvantage of Aboriginal and Torres Strait Islander People;

(b) working towards the elimination of family violence and the effects of family violence in the lives of Aboriginal and Torres Strait Islander People and to particularly empower Aboriginal and Torres Strait Islander People to live in families and communities free from family violence;

(c) promoting awareness, understanding and acknowledgment of the issues of family violence;

(d) providing legal advice, representation, referral and other related support services to Aboriginal and Torres Strait Islander victims of family violence;

(e) coordinating with, seeking to improve the accessibility of, and increasing the effectiveness of, other legal and related support services working to assist Aboriginal and Torres Strait Islander victims of family violence;

(f) liaising and coordinating with key agencies, including State and Federal bodies, to ensure the availability of culturally appropriate service provision to Aboriginal and Torres Strait Islander victims of family violence; and

(g) *promoting and undertaking community education and awareness initiatives, and relevant research.*

D. Services

- 9 Through offices in Melbourne, Bairnsdale, Warrnambool and Mildura, FVPLS Victoria engages in legal assistance, counselling, information and referral, community legal education, policy development and law reform for Indigenous victims/survivors of family violence and sexual assault and for non-ATSI carers of ATSI children. In accordance with national FVPLS operational guidelines the service does not assist perpetrators.
- 10 The vast majority of clients of FVPLS Victoria are women and children. The number of clients seeking assistance in 2008-09 from FVPLS Victoria totalled 263 women, 25 men and 12 children. In the six months to 31 December 2009, the total was 187 women, 14 men and 8 children.
- 11 FVPLS has a number of clearly defined service delivery priorities under the National Family Violence Prevention Legal Services Program Operational Framework 2009. These are as follows:-
- Provide a safe, culturally sensitive environment
 - Legal assistance, advice, casework and court support
 - Information, support and referral
 - Counselling
 - Sexual assault services
 - Child protection
 - Community promotion
- 12 The Family Violence Prevention Legal Services Policy Manual also guides service provision. The following is included in relation to accessibility and cultural accessibility: *All policies, procedures, training and recruitment will reflect the organisation's commitment to provide an accessible and culturally sensitive service. This will include helping, where possible, to address any barriers to accessing services, such as language, remoteness and cultural background.*

D1. Legal services

- 13 Legal assistance is provided through employment of lawyers and paralegal support workers in the areas of family violence law, family law, child protection and victim's assistance in accordance with operational guidelines.
- 14 The Victorian Aboriginal Legal Service is the other ATSI legal service in Victoria. The Aboriginal and Torres Strait Islander Legal Services ('ATSILS') funded across Australia have had a significant focus on criminal defence work.
- 15 Whilst VALS and the other ATSILS also provide civil and family law services, conflicts of interest arise in family violence and sexual assault cases as a result of the significant criminal defence practices of these services.
- 16 The independence of FVPLS Victoria as an organisation dedicated to supporting ATSI victims/survivors has been a key factor in gaining the trust of ATSI women and encouraged them to seek legal and associated supports for themselves and their children. I believe that FVPLS Victoria has contributed to the safety of ATSI women and children in the state since its commencement. There is no ATSI women's specific legal service in Victoria at the present time, however as detailed, the vast majority of FVPLS Victoria clients are women and children.

D2. Community programs

- 17 The Sisters Day Out program and Sisters Serenity Retreats developed by FVPLS Victoria are currently the primary community education and community development projects undertaken by the service. As at 31 December 2009, approximately 2000 women across Victoria have participated in 36 workshops and 74 women attended four camps which involve wellbeing and pampering as well provision of community legal education, and access to legal advice. The cultural aspects of the Sisters Day Out workshops, and involvement of elders, are integral to strengthening the role Koori women have in relation to family and community. The workshops build on self-esteem and identity, which reinforce women's entitlement to feel safe and secure in their roles as nurturers and leaders in the community.
- 18 FVPLS Victoria through its broader community engagement also provides education and guidance to the non Indigenous community. FVPLS Victoria has in the past and will again this year engage in cultural awareness workshops for mainstream agencies and individuals working with our service and our client group. Two ATSI women with

expertise in cultural awareness training are engaged by FVPLS Victoria to carry out this work.

19 FVPLS Victoria seeks to ensure ongoing law reform and policy development capacity, although the service is not currently funded by government for this activity. Many of the reference groups and committees relevant to this work are open to ATSI participants only. Mainstream service providers regularly seek FVPLS Victoria input in relation to cultural and ATSI accessibility issues. In the 2008-09 financial year, FVPLS Victoria had representation on a range of committees. These include but are not limited to:

- Department of Planning and Community Development Statewide Advisory Committee to Prevent Sexual Assault
- Federation of Community Legal Centres Violence Against Women & Children Working Group
- Flat Out – Post Release support service for Women and their children
- Law Institute of Victoria Children and Youth Issues Committee
- North-West Melbourne Regional Aboriginal Justice Advisory Committee
- Ngwala Willumbong Board of Directors
- Northern Melbourne Institute of TAFE Council
- Victorian Indigenous Family Violence Partnerships Forum
- Victorian Aboriginal Justice Forum

D3. Partnerships and Links

20 The FVPLS Victoria annual report 2008-09 lists the organisations with which FVPLS Victoria has established links and the committees and working groups the organisation is represented on in both metropolitan and regional areas. The following are a selection of key involvements and partnerships:-

- Victorian Aboriginal Justice Forum
- Regional Aboriginal Justice Advisory Committees (Melbourne, Grampians, Barwon South West, Loddon Mallee and Gippsland)
- Ngwala Willumbong (Drug and Alcohol Services) Board of Directors
- Elizabeth Hoffman House Aboriginal Women's Refuge

- Winja Ulpna – Aboriginal Women’s Alcohol and Drug Recovery Centre
- Women’s Domestic Violence Crisis Service
- Dhauwurd-Wurrung Elderly and Community Health Service
- Gunditjmara Aboriginal Co-operative
- Margaret Tucker Aboriginal Hostel
- Wanjana Lidj Family Preservation Program Morwell
- Ramahyuck District Aboriginal Corporation
- Regional Indigenous Family Violence Workers
- CASA House
- Sisters Inside Queensland
- Flat Out – Post Release Support for Women and Children
- Victims Support Agency
- Federation of Community Legal Centres

21 In addition to the Sisters Day Out workshops and Sisters Serenity Retreats detailed above the following are other significant projects currently being undertaken by FVPLS Victoria:

- Koori police protocols project – developing and trialling Koori specific police family violence protocols with three communities – North West Melbourne, Bairnsdale and Mildura. FVPLS Victoria is hopeful that the project will be rolled out across the state.
- Legal Services Board funded 10 month policy development/law reform project looking at strengthening service delivery, extending the Commonwealth FVPLS funding program to urban areas and addressing barriers to ATSI[sic] in the legal system relevant to FVPLS Victoria client group. Ongoing funding to ensure continuing policy development law reform capacity within the organisation is being sought.
- Legal Services major grant – to re-establish an urban presence for the FVPLS program through funding for a solicitor, paralegal support worker and counselling services for a 12 month period. Government funding to continue this program is

being sought. In recognition of the vast overrepresentation of ATSI children in the child protection system in Victoria the focus of the legal position will be child protection law and a submission for a child protection policy project has also been made.

- Community education workshops across Victoria relating to the new family violence laws and child protection.

E. Staff

E1. Current staff

22 FVPLS Victoria currently employs 24 full-time and part-time staff, all female, including eight Aboriginal employees. Position descriptions includes the following as a key selection criterion for all positions:

- A demonstrated knowledge and understanding of ATSI societies and cultures and the issues affecting these societies or a willingness to gain such awareness.
- A demonstrated ability to communicate effectively with and gain the confidence of Aboriginal and Torres Strait Islander people, particularly women, in areas of extreme personal and cultural sensitivity.

For most other positions, the following is stipulated as an additional key selection criterion:

- Demonstrated awareness of the issues affecting ATSI people including family violence, sexual assault, family law, and care and protection of children.

E2. Why the positions are best performed by ATSI women

23 The position of CEO of FVPLS Victoria would be best performed by an ATSI woman for reasons of trust and respect within the ATSI community. The CEO, with the Board leads the organisation in all of its activities and issues of culture are fundamental. Non ATSI staff defer to the CEO on all cultural issues. Given that the vast majority of FVPLS Victoria clients are ATSI women and children and that many women make initial contact directly with the CEO for assistance and referral it is also fundamental to the effectiveness of the service that the CEO is a woman. It is my belief that if the CEO was a male, ATSI women would not access the service and other women's services would be less open to engagement on sensitive women's issues. It would be difficult for a male

CEO to successfully engage with the women's services with which FVPLS Victoria has partnerships.

- 24 ATSI women are unlikely to fully disclose detail about violence and/or sexual assaults against them by men to male solicitors. FVPLS Victoria must have female solicitors employed to ensure that women feel comfortable to disclose these crimes against them. Often the nature of the legal process means that the offending needs to be described in some detail and the outcome of some cases relies on this full disclosure. It is relevant that most perpetrators are male and that for some women, particularly where the crime against them is recent, working closely with a male may further traumatise them and certainly inhibit comfort and disclosure. Organisations referring women who are victims/survivors of family violence or sexual assault will give women choices as to referral. Referrals are far less likely to an organisation where assistance from a female solicitor is not available.
- 25 ATSI solicitors will have understanding of community and family dynamics and in the area of family violence law would be in a position to talk these important issues through with clients as an integral part of the legal advice given. ATSI solicitors would also be in a position to provide cultural expertise in relation to policy development and law reform activity and gain ATSI and mainstream community respect and support for proposed change.
- 26 Paralegal support workers work very closely with lawyers and often are the support people in legal interviews and during court proceedings. Women victims/survivors will be best supported by women in these roles. Paralegal support workers may be involved with other aspects of the client's life such as health, housing and counselling referrals. Many of these referrals will be to women's organisations and will involve issues of gender and cultural sensitivity.
- 27 FVPLS Victoria receives funding for counselling which is currently outsourced. Clients are given choices about the gender of counsellors and it is my understanding through feedback from FVPLS Victoria staff that women counsellors are preferred. Should FVPLS Victoria move to a position of again employing in house counsellors/psychologists at least one of those counsellors would need to be a woman to ensure our client group accessed these support services. Solicitors often refer clients to counsellors to assist in documenting crimes against them including assaults and sexual assaults. It is noted that the Victoria police SOCAU units have female staff available to

receive reports and take statements from women victims of these crimes for these same reasons.

- 28 Community education and community development positions require good communication with and knowledge of community. ATSI workers in these positions would be best placed to determine culturally appropriate means of delivering information as well as ensuring that the content is respectful of culture. Trust is also a key factor in community engagement.
- 29 Policy development and law reform positions require ATSI input as much of the work relates to the needs of ATSI clients and issues of ATSI accessibility and cultural sensitivity. As previously mentioned, some key reference groups relating to policy development are open only to ATSI representatives or ATSI women and unless an ATSI woman is employed FVPLS Victoria is excluded from participation. It is also the case that mainstream committees working in these areas regularly seek input on ATSI cultural issues.

F. Benefits to clients

- 30 The fact that direct contact is often first made with the FVPLS Victoria CEO by ATSI women seeking legal assistance indicates that she has an ATSI woman is trusted to provide information and make referral. Other referrals come from ATSI workers at Elizabeth Hoffman House, the Aboriginal women's refuge, where initial contact has been made. This demonstrates that access to services through ATSI staff and networks is the most common and most effective means for ATSI victims/survivors to gain assistance. In addition the Sisters Day Out and Sisters Serenity Retreats have received an overwhelming response from community. They are run by respected ATSI women contracted by FVPSL Victoria with assistance from FVPLS Victoria CEO and the ATSI community education worker. Women have attended in huge numbers and have also opened up about personal issues at these events. I believe that this is attributable to the facilitation and development of these events by ATSI women with great community respect, networks and experience in their field.
- 31 It is difficult to locate ATSI counsellors/psychologists and our outsourced counsellors are currently non - ATSI. FVPLS Victoria is aware that some clients have found the mainstream counselling model unhelpful. It is also a concern to FVPLS Victoria that non ATSI counsellors/psychologists may lack cultural sensitivity and understanding. Many

clients, in addition to current difficulties, remain traumatised by the impact of a history of racist and discriminatory mistreatment and abuse. FVPLS Victoria in 2009 seeks to focus upon development of the counselling program to ensure it is culturally accessible and involves alternative ATSI healing options. This project will be best informed by an ATSI worker.

G. Benefits to members of the public

32 As there is no dedicated legal service for ATSI women in Victoria as in some other states, FVPLS Victoria must take a leading role in supporting and improving the safety of ATSI women and children who are, in any event, our predominant client group. We know that ATSI women are reluctant to access mainstream legal services. Damaging experiences with the justice system and authority as a result of systemic racism and discrimination continues to impact upon the ATSI community. In addition, ATSI women have been particularly disadvantaged by a lack of dedicated legal and support services and whilst some progress is being made, there is a significant way to go. Family violence and sexual assault rates against ATSI women and children remain high. Special measures are required to address past failures to pay attention to the plight of ATSI women and to ensure the best possible services are available to improve their safety and well being.

33 I refer to the concluding comments of the Committee on the Elimination of Discrimination against Women for Australia in 2006. At paragraph 31 the Committee recommends 'targeted measures, including temporary special measures...to improve indigenous women's enjoyment of their human rights in all sectors...The United Nations Declaration on the Rights of Indigenous Peoples at article 22 urges...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.'

Sworn at: _____)

In the State of Victoria, this 31 day of MARCH 2010

_____)

ANTOINETTE CHRISTIAN WINTER BRAYBROOK

Before me: _____)

SHALLEY BURKHFIELD

An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004