

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 SHELLEY FRANCES BURCHFIELD

I, **SHELLEY FRANCES BURCHFIELD** of
the State of Victoria, solicitor/policy development worker,

Make oath and say:

Personal background

- 1 Since May 2008 I have been employed in policy development positions with the Aboriginal Family Violence Prevention & Legal Service (**FVPLS Victoria**). Prior to this I was the principal solicitor at FVPLS Victoria from March 2004 to April 2008. In this position, I was responsible for the legal practice of FVPLS Victoria which included the supervision of employee solicitors and oversight of compliance with all professional requirements of the legal practice. With the CEO I was responsible for development and delivery of both direct legal services and community legal education. I also contributed to law reform and policy development initiatives relevant to the work of FVPLS Victoria.
- 2 I am a registered Migration Agent and between 2004 and 2009 was employed part time as the women's legal advocate at the Asylum Seeker Resource Centre in West Melbourne, a position funded by the Victorian Women's Trust. In this position I provided legal assistance to women seeking asylum in Australia, particularly with claims of gender based persecution within an international human rights context. I also made submission to government with respect to development of Gender Guidelines in the refugee determination process. I continue this work on a voluntary basis.
- 3 I have been employed in the community legal sector for about 16 years. During this time a large portion of my legal work has been with and for women victims/survivors of family violence and sexual assault. I have also been involved in significant litigation and law reform work relating to the Victorian Prison system. Between 1997 and 2007 I was a

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member of the management committee of Flat Out, an agency which provides pre and post release housing and general support to women and their children who have experienced imprisonment.

- 4 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.

The United Nations Declaration on the Rights of Indigenous Peoples

- 5 The United Nations Declaration on the Rights of Indigenous People 2007 at Article 22 states the following... ..

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 inclusion of Article 22 recognises and encourages special measures, such as is sought in this application to protect Indigenous women and children from violence and discrimination. It recognises the unique intersection between issues of race and gender which cannot be considered in isolation from each other in advancing the situation and safety of Indigenous women and children.

The Convention on the Elimination of All forms of Discrimination Against Women ('CEDAW')

- 6 The 2006 concluding comments of the CEDAW committee for Australia expressed concern at the ongoing inequalities suffered by Indigenous women, and recommended that Australia 'adopt and implement targeted measures, including temporary special measures... to improve indigenous women's enjoyment of their human rights in all sectors'.

Concluding Observations of the United Nations Human Rights Committee - Australia

April 2009

- 7 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 Indigenous women and calls for strengthened efforts toward its elimination. The Committee also urges measures to improve access to the justice system for Indigenous people and increased efforts 'for an effective consultation with indigenous peoples in decision-making in all areas having an impact on their rights'.

Priority areas of law

- 8 FVPLS Victoria provides legal assistance to Aboriginal and Torres Strait Islander (ATSI) victims/survivors of family violence and sexual assault in Victoria and to non ATSI parents or carers of Indigenous children. The service does not assist perpetrators.
- 9 FVPLS Victoria specialises in and provides services in relation to the following areas:
 - Family violence law incorporating intervention orders;
 - Sexual assault
 - Child protection;
 - Victims assistance; and
 - Family law (where it relates to family violence).
- 10 It is the role of the principal solicitor to provide legal assistance to clients of FVPLS Victoria in the areas listed in paragraph 7, to oversee the legal practice and to contribute to policy development and law reform activity.
- 11 Often clients who contact or are referred to FVPLS Victoria have multiple legal problems as a result of ongoing and past family violence. This requires FVPLS Victoria solicitors to assist with a number of legal issues simultaneously. For example, clients who have been victims of family violence where children were present, often require assistance with obtaining intervention orders against generally male perpetrators. This involves making applications at the relevant Magistrates Court for interim and final intervention orders generally in favour of mother and children. Where the Department of Human Services has been notified and commenced an application for a protection order in the Children's Court, FVPLS Victoria is also required to provide representation in this proceeding which may be lengthy dependant upon the nature and duration of orders made. If the parent victim of violence or the children are eligible, FVPLS Victoria will also make urgent victims assistance applications on their behalf, to assist with expenses and other support needs arising due to the violence. Often women and children are forced to flee from their home due to safety concerns and require urgent assistance in settling



into emergency or transitional accommodation. Urgent crisis counselling is often also needed to reduce the immediate trauma of the victim/survivor. If child protection proceedings have not issued, family law assistance is often required to ensure arrangements for the children are secure and appropriate. In some instances, assistance is required with the division of matrimonial or defacto property following separation.

- 12 Unfortunately many clients assisted by FVPLS have a history of childhood abuse including sexual assault. This issue is often disclosed during discussions about current family violence issues. Referral to specialist counselling and support services normally follows and a further victim's assistance claim may be appropriate. In my experience the majority of perpetrators of these crimes are men.
- 13 FVPLS Victoria assists children who are victims/survivors of family violence and sexual assault. The children may be secondary victims of violence having witnessed assaults upon their parent (usually the mother) and have suffered trauma as a result. The children may also be primary victims of family violence or sexual assault and require referral to specialist children's counselling and support services.
- 14 FVPLS Victoria employs paralegal support workers, a community education worker, short term policy/project workers and administrative staff. Counselling services are currently outsourced.
- 15 The major community legal education program undertaken by FVPLS Victoria across the state is 'Sisters Day Out' comprising well being workshops for Koori women.

Skills required for the performance of the role

- 16 In providing legal services and undertaking other roles at FVPLS Victoria it is necessary to be aware of and sensitive to the broader issues of clients lives. Issues relating to homelessness, mental health, physical ill-health, drug or alcohol use and past trauma are prevalent and need to be addressed if progress is to be made in relation to legal issues. Traumatic life history resulting from family dislocation, stolen generation issues, racism and discrimination often contribute to a clients presenting situation. Damaging experiences with the justice system and white authority more generally mean there is a reluctance of victims/survivors to seek legal assistance through police, courts and lawyers.

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- 17 It is critical that ATSI solicitors are employed at FVPLS Victoria to attract and benefit FVPLS Victoria clients through engendering trust and understanding in relation to cultural issues.
- 18 Some clients of FVPLS Victoria express a preference to be assisted by a non ATSI solicitor for reasons of confidentiality however it is crucial that ATSI solicitors are also available to assist clients, to mentor non Indigenous staff and to lead FVPLS Victoria's contribution to improved ATSI accessibility and cultural sensitivity within the law and justice system.
- 19 ATSI staff are also needed to provide culturally appropriate community legal education to Indigenous and mainstream communities, to inform and lead law reform and policy development and to contribute to the overall development of FVPLS Victoria as an ATSI organisation.
- 20 During my period of employment as principal solicitor I undertook cultural awareness training and frequently consulted with ATSI staff and Board members about cultural issues. Whilst this goes some way to addressing issues of cultural sensitivity it does not equate with employment of ATSI staff.
- 21 Only ATSI staff can have meaningful input to some facets of the service. As a non ATSI principal solicitor at FVPLS Victoria there were issues of both a practical and policy nature where due to issues of culture and respect I was unable to input.
- 22 There are many key ATSI reference groups, forums and committees which are open only to Indigenous participants. Employment of non ATSI staff limits participation of FVPLS Victoria and hence reduces the effectiveness of the organisation and its ability to advance law and justice outcomes for ATSI women and children.
- 23 It is also important that positions of relative power are filled by ATSI staff to assist in dismantling systemic disadvantage, racism and discrimination. It is a source of great pride and inspiration to other ATSI women and clients of FVPLS Victoria that Antoinette Braybrook, an Aboriginal woman, is the CEO of FVPLS Victoria.
- 24 The majority of the clients of FVPLS Victoria are women and children and the majority of perpetrators are male as is consistent with statistics relating to family violence in the broader community.
- 25 Women who have been victims of family violence or sexual assault at the hands of a male perpetrator often will not, and cannot, speak to a male about these issues. I have



appeared in a matter where a male Magistrate hearing a victim's assistance application in the Koori list of VOCAT agreed that the application which related to sexual assault and required evidence from the applicant should be heard by a female Tribunal Member.

- 26 Clients are referred to FVPLS Victoria in the main by other ATSI support workers or support workers employed in Indigenous organisations. These workers are women. All of the staff employed at Elizabeth Hoffman House the only ATSI refuge for women in Victoria are women. Other agencies that FVPLS Victoria has strong connection with, and refer to, including the Centre's Against Sexual Assault and the Domestic Violence Crisis Service and are staffed by or predominantly by women. This indicates acceptance amongst other community organisations working in this area that women who are victims of family violence/sexual assault prefer to be supported by women.
- 27 In many instances it is extremely difficult for ATSI women to disclose issues relating to family violence and sexual assault. FVPLS Victoria recognises this as a significant barrier to family violence prevention and seeks to actively support women to seek legal and other assistance to ensure their safety and well being. Where sensitive issues of sexual assault are to be discussed women will often not disclose to men or be open about the issues. All of the staff at FVPLS Victoria are currently women. I believe that this has encouraged women to seek assistance from the service about these sensitive issues. Confidentiality and trust is also of critical importance in this area. As a woman I believe I have been able to gain the trust of women victims/survivors so that they are comfortable in disclosing information not just about the crimes that have occurred against them but about their personal history, their health issues, their fears and their children. FVPLS Victoria and the FVPLS funding program generally favours a holistic approach to prevention of family violence and in service provision.
- 28 As FVPLS Victoria does not currently have any male staff employed, I cannot give evidence of FVPLS clients preferring female solicitors. All FVPLS Victoria clients are allocated female solicitors. I am aware that many community contacts with our organisation are made through our CEO Antoinette Braybrook an Aboriginal woman who then refers these clients to the FVPLS Victoria solicitors. I am also aware that all of the women clients I have assisted at FVPLS Victoria have requested female counsellors and have not wanted to see a male counsellor in relation to issues of family violence and/or sexual assault. Some women who prior to their contact with FVPLS Victoria were seeing

male workers were not aware of their right to ask for a woman and subsequently expressed that preference when given the choice.

- 29 The few adult males I have represented at FVPLS Victoria have expressed no reservation about being assisted by a female solicitor. One adult male survivor of child sexual abuse by another male expressed preference for a female solicitor and counsellor, although did successfully access a male counsellor.

Benefits to Clients - statistics

- 30 The most recent statistical report released in Victoria – ‘Measuring Family Violence in Victoria’ Victorian Family Violence Database Seven year trend analysis 1999 – 2008 details as a key finding that .. ‘the vast majority of Indigenous victims of family violence were female – increasing from 70 per cent to over 90 per cent in 2007-2008’. Now produced, shown to me and marked “SFB-1” is a copy of the relevant pages of the report.
- 31 Keeping in mind underreporting to police by ATSI victims of family violence and sexual assault, Victoria police statistics as detailed in the 2009 report by the Productivity Commission Steering Committee for the Review of Government Service Provision, ‘Overcoming Indigenous Disadvantage Key Indicators’ indicate the rate of domestic violence related assault for Indigenous women in Victoria as five times as high as the rate of the total female population. Now produced, shown to me and marked “SFB-2” is a copy of the relevant pages of the report.
- 32 VicHealth research detailed in its 2004 report ‘The Health costs of violence : measuring the burden of disease caused by intimate partner violence’ has shown that family violence is the most important driver of the burden of disease, disability and death for women under 45 in Victoria. Now produced, shown to me and marked “SFB-3” is a copy of the relevant pages of the report.
- 33 The consultative draft National Indigenous Law and Justice Strategy released by the Commonwealth Attorney General’s Department in 2007 states at p21 ...‘The levels of family violence in Indigenous communities remains unacceptably high....The victims of family violence are disproportionately women and children...The Australian Institute of Health and Welfare found that in 2003 Indigenous women were 28 times more likely than non - Indigenous women to be victims of family violence and other assaults.’ The report also states at pages 8 and 9... ‘Over 10 years ago Indigenous women were found to be the most legally disadvantaged group in Australia, according to an Australian Law Reform

Commission report. Despite many improvements, such as the introduction of specific legal services for Indigenous women, significant disadvantages still exist...Lack of attention to their distinct needs may marginalise Indigenous women, and entrenches inequalities in service delivery. Services to Indigenous women need to be targeted, culturally sensitive and more work needs to be done on assessing unmet need.' Now produced, shown to me and marked "SFB-4" is a copy of relevant pages of the report.

- 34 A 2004 Victorian report – From Shame to Pride Access to Sexual Assault Services for Indigenous People - A Partnership Project between Elizabeth Hoffman House and CASA House identified and documented key issues in relation to sexual assault in ATSI communities. Gaps and barriers preventing ATSI people from accessing sexual assault services are documented in the report as including lack of ATSI specific service options for victims and lack of ATSI staff based at mainstream sexual assault services. A literature review within the report also referred to research indicating the vast majority of ATSI rape victims as Indigenous women and vast underreporting of sexual assault by ATSI women. Now produced, shown to me and marked "SFB-5" is a copy of the relevant pages of the report.
- 35 The Australian Law Reform Commission in its 1994 report 'Equality Before the Law: Justice for Women' dealt with the issue of access to justice and legal services for Indigenous women informed by submissions of Aboriginal and Torres Strait Islander women and organisations . The report stated ... Of all the identifiable groups of women whose concerns have been presented to the Commission, Aboriginal and Torres Strait Islander women are least well served by the legal system.' In acknowledging issues of cultural and gender sensitivity for Indigenous women the report went on to conclude... 'It is essential that measures to increase indigenous women's access to justice begin by giving status to women.' This requires that women determine the nature of the service and control the delivery of the service'. Now produced, shown to me and marked "SFB-6" is a copy of the relevant pages of the report.
- 36 In relation to legal service provision for ATSI women the following comments pertinent to this application are made by the Aboriginal and Torres Strait Islander Social Justice Commissioner, in the Social Justice Report 2004 (2005)

... 'The lack of attention to the distinct needs of Indigenous women marginalises them and entrenches inequalities in service delivery. It can lead to intersectional discrimination'. The report goes on to quote the Social Justice Report 2003 as follows,



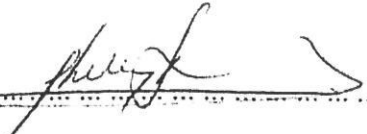
... 'Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender... The unique dimensions of violence against Aboriginal women are a result of complex factors and socio-historical and contemporary experiences and must be considered when attempting to provide solutions that are relevant to the specific situations and needs of Aboriginal women. Solutions to problems, no matter how well-intentioned, can create further problems for subordinated groups within a society, particularly when the 'solutions' are based in a systemic structure that has functioned abusively on the subordinated group.' Now produced, shown to me and marked "SFB-7" is a copy of the relevant pages of the report.

37 It is my view that special measures are required which address the high levels of family violence and sexual assault against ATSI women and children. Funding of dedicated legal and support services for ATSI victims/survivors of family violence and sexual assault (the majority being women and children) is relatively recent and developed in recognition of a significant gap resulting in inferior legal and associated services for ATSI women and children. The Commonwealth Attorney General's Department in late 2007 has itself acknowledged that 'significant disadvantage' remains for ATSI women.

38 Whilst not a women specific service, FVPLS Victoria is the key ATSI organisation providing legal and associated supports to ATSI victims/survivors of family violence and sexual assault in this State, the vast majority of whom are women and children. There is no dedicated legal service for ATSI women in Victoria. FVPLS Victoria must position itself to engender optimum trust and confidence in ATSI women through provision of culturally and gender sensitive services. The exemption sought in this application will support this objective.

Sworn at:

In the State of Victoria, this 1st day of April 2010

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) SHELLEY BURCHFIELD

Before me:



MEGAN ROSS

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