

Dr Warren Mundy
Independent Reviewer
Independent Review of the National Legal Assistance Partnership

By email only: submissions@nlapreview.com.au

Dear Dr Mundy,

Re: Independent Review of the National Legal Assistance Partnership 2020-2025

I refer to the above matter.

The Law Institute of Victoria (**LIV**) welcomes the Independent Review of the National Legal Assistance Partnership 2020-2025, and thanks you for the opportunity to provide a submission on the National Legal Assistance Partnership Issues Paper.

The LIV is Victoria's peak body for lawyers and those who work with them in the legal sector, representing over 18,500 members. It is a public company limited by guarantee and charity registered with the Australian Charities and Not-for-profit Commission for the purposes of public policy, education, and health, among other purposes.

Please find **enclosed** the LIV's submission. The LIV consents to the publication of on the Review website, and to being identified and quoted with attribution in the report of the Review.

The LIV will provide you with an Addendum to its submission detailing a comparative costing exercise the LIV is in the process of having carried out. The exercise will outline the difference between rates for chargeable items depending on whether matters are privately billed, billed through the scale of costs, or conducted with a grant of legal aid funding, with a view to demonstrating the wide gulf between legal aid grants and private rates. This gulf is intended to highlight the increasing unviability of legal aid work for private practitioners, and the need to increase the quantum of legal aid grants for the mixed model service delivery model to remain viable.

The LIV planned to provide this Addendum to you together with this submission, but unfortunately has been unable to do so owing to unanticipated challenges in gathering, processing, and analysing relevant data. The LIV will thus supply this Addendum as soon as possible, but by latest Friday, 10 November 2023.

Sincerely yours,



Adam Awty
Chief Executive



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Independent Review of the National Legal Assistance Partnership

Prepared by: Law Institute of Victoria
Date: 27 October 2023

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Table of Contents

Overview	2
Executive Summary	3
General comments	5
Encouraging further collaboration	6
Enhancing efficiency	6
Addressing workplace supply, especially in RRR areas	6
Allowing longer-term planning.....	6
Responses to Issues Paper Questions	7
1. To what extent has the NLAP achieved the overall objectives and outcomes?	7
2. To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?	8
4. Are there other systemically disadvantaged groups, either existing or emerging, who are not supported adequately?	9
5. How should the challenges of service delivery in regional, rural, and remote locations be addressed through future agreements?	10
6. To what extent does the funding model support appropriate distribution and quantum of Commonwealth resources to meet current and future needs?	10
8. How can holistic service provision improve outcomes and reduce the demand for legal assistance services?	11
9. How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of a legal character?	12
11. To what extent are administrative processes of funders placing unnecessary regulatory burdens on legal assistance providers?	13
13. How does workforce supply and remuneration impact on the provision of legal assistance services?	14
18. What other changes to the NLAP would further improve service delivery outcomes and maximise use of resources?	15

Overview

The Law Institute of Victoria (**LIV**) welcomes the opportunity to provide feedback to the Independent Review (**Review**) of the National Legal Assistance Partnership (**NLAP**) and specifically, to respond to the questions posed in the *National Legal Assistance Partnership Review Issues Paper* (**Issues Paper**).

The LIV is Victoria's peak membership body for the legal profession, representing more than 18,000 lawyers, students, and people working in the law in Victoria. The LIV's membership comprises legal professionals from all practice areas, working in the courts, academia, policy, state and federal government, Victoria Legal Aid (**VLA**), community legal centres (**CLCs**), and private practice. The LIV's membership thus includes practitioners from all parts of Victoria's mixed model of legal assistance service delivery, making it uniquely positioned to provide feedback to the Review.

In making this submission, the LIV acknowledges the submissions to the Review provided by VLA, the Federation of Community Legal Centres, Djirra, and the Victorian Aboriginal Legal Service, and the feedback provided by the same entities in meetings with the Independent Reviewer, Dr Warren Mundy.

The LIV has never received Commonwealth funding under the NLAP or funding from other Commonwealth or State and Territory government sources.

Executive Summary

The LIV submits that there are some areas in which the NLAP has not, or has not fully, achieved its objectives in Victoria. Accordingly, the LIV calls for a thorough evaluation of the current distribution of NLAP funding across the state of Victoria, including the implementation of the ‘mixed service model’ of delivery.¹

In particular, the LIV is deeply concerned about the low rates paid under a grant of assistance to the private profession for the delivery of legal assistance services under the current model. The private sector plays a critical role in delivering high-quality services work under Victoria’s current model, with 70% of Victorian legal aid grants being provided to private practitioners.² Despite this, LIV members report that the rates awarded to private practitioners to carry out legally aided work under a grant of aid are so low that legal aid work is rapidly becoming unsustainable, as they do not compensate practitioners fairly or appropriately for time spent on these matters. For this reason, the LIV is concerned that much of the private profession’s ongoing participation in the delivery of publicly-funded legal assistance is at serious risk.

In order to assist the Review in evaluating this issue, the LIV is currently in the process of analysing and comparing several private practitioner files across multiple areas of practice, with a view to demonstrating the significant gap between the legal aid rate paid to private practitioners to carry out legally aided work and the rate that would otherwise be paid by private clients. This is intended to highlight the increasing unviability for the private profession to undertake legally aided work – which, in turn, risks significantly undermining access to justice. The LIV will provide this data to the Review as an Addendum to this submission once the comparative analysis is complete, by latest 10 November 2023.

In this submission, the LIV specifically comments on the availability of legal aid funding for: firstly, the appointment of Independent Children’s Lawyers; and secondly, the Commonwealth Family Violence and Cross-Examination Scheme. The LIV is of the view that an increased funding quantum, together with improved funding allocation, would go some way to addressing these concerns.

To allow organisations that administer and receive NLAP funds to engage in long-term planning, the LIV calls for the NLAP to maintain a funding term of at least five, but preferably seven, years, alongside year-on-year updates to build necessary flexibility into the system.

The LIV is deeply concerned by the extent of unmet legal need in Victoria, as evidenced by the recent findings of the *Public Understanding of Law Survey (PULS)* Report (the **PULS Report**) published by the Victoria Law Foundation (**VLF**). The PULS is an indispensable data source regarding unmet legal need and underscores the importance of sufficiently resourcing legal assistance services. The LIV submits that similar assessments of legal need ought to be conducted regularly. However, legal assistance sector bodies operate under

¹ ‘The Mixed Model of Service Delivery’, *Victoria Legal Aid* (25 January 2022) <<https://www.legalaid.vic.gov.au/mixed-model-service-delivery>>.

² ‘Making It Easier for Private Practitioners to Work with Us’, *Victoria Legal Aid* (Web Page, 16 May 2023) <<https://www.legalaid.vic.gov.au/making-it-easier-private-practitioners-work-us>>.

significant funding and resourcing constraints and thus do not have capacity to conduct this necessary research.

LIV members report that workforce supply and remuneration are two of the most significant factors impacting the provision of legal assistance services, particularly in rural, regional, and remote (**RRR**) areas. Changes in employment arrangements, including but not limited to improved remuneration, will help to attract people to the sector while simultaneously improving outcomes for the existing legal assistance sector workforce, which should help to improve staff retention. This should, in turn, assist in addressing unmet legal need.

To address the challenges with legal service delivery in RRR locations, the LIV emphasises the need to incentivise young practitioners to join the RRR workforce. The LIV notes and supports recent advocacy by the Law Council of Australia in calling for HELP debt relief for practitioners living and working in RRR areas. However, any such scheme will only be effective in retaining legal practitioners in RRR communities beyond five years Post Qualification Experience (**PQE**) if sufficient professional and residential infrastructure is also in place.

Beyond already identified groups, the LIV notes that disaster-affected and climate change affected groups are an increasingly vulnerable cohort. Common legal issues arising for individuals affected by extreme weather events include insurance related claims, financial strain (including mortgage or loan repayments), housing issues, family and domestic violence issues, and employment issues. Currently, funding provided to organisations such as Disaster Legal Help Victoria is insufficient to achieve long-term disaster preparation and mitigation. Accordingly, the LIV supports quarantined funding for one of its partner organisations, Disaster Legal Help Victoria.

The LIV submits that non-legal services can and do play a significant role in supporting individuals to resolve legal problems. For this reason, the LIV supports strengthening non-legal avenues for dealing with legal problems to assist in reducing demands on legal assistance services. The LIV submits that enhancing 'wrap-around' services will improve outcomes in the criminal law and family law sector in particular, though they are beneficial in a range of settings.

With respect to violence and/or sexual violence against women and children, the LIV strongly supports the targeted allocation of resources to support early intervention strategies, alongside education campaigns and other strategies designed to change social attitudes.

With respect to the criminal justice system, the LIV similarly strongly supports the targeted allocation of resources to support early intervention strategies designed to minimise offender contact with the system to promote rehabilitation and thereby reduce recidivism. This includes, but is not limited to, allocating funding to support access to legal assistance in relation to low-level offending, and to support the provision of assistance at an early stage in criminal proceedings. In particular, the LIV supports the provision of legal assistance to enhance access to diversion programs.

General comments

The LIV notes that the Review will evaluate the extent to which the objectives, outcomes, and outputs of the NLAP have been achieved, and to which the NLAP is efficient, effective, and appropriate in achieving its policy intent. It notes that the Review is seeking current evidence of unmet legal need and demand, particularly pertaining to the most disadvantaged communities and population groups, such as those in RRR locations.

As the peak body for the Victorian legal profession, the LIV engages in ongoing consultation with all cohorts within the legal profession in Victoria, notably including private firms, the legal assistance sector, and practitioners working in RRR locations. Although it maintains sustained engagement with legal practitioners across Victoria, the LIV does not collect its own data regarding the delivery of legal services.

The LIV notes that, in order to assist the Review, it is currently in the process of analysing and comparing several private practitioner files across multiple areas of practice, with a view to demonstrating the significant gap between the legal aid rate paid to private practitioners to carry out legally aided work and the rate that would otherwise be paid by private clients. This is intended to highlight the increasing unviability for the private profession to undertake legally aided work – which, in turn, risks significantly undermining access to justice by increasing rates of unmet legal need. The LIV will provide this data to the Review as an addendum to this submission once the comparative analysis is complete.

Relatedly, the LIV agrees with the need identified in the Issues Paper to improve data collection and frameworks. However, and as discussed further in its response to Question 18, the LIV cautions against increasing the burden of data collection borne by those working in the legal assistance sector. As noted in the LIV's response to Question 11, the reporting burden experienced by legal assistance bodies is already substantial and should not be increased.

The LIV further agrees that assessments of legal need provide an indispensable source of data allowing the identification of unmet legal need. Accordingly, ongoing assessments of legal need should be prioritised, as should funding to allow such assessments to be conducted. The first volume of the PULS Report was recently published by the VLF, which provides a timely example of the value of rigorous research testing the current level of unmet legal need.

Besides the PULS Report, the LIV acknowledges the valuable insights provided by the Productivity Commission's *Public Inquiry Report on Access to Justice Arrangements*, National Legal Aid's *The Benefits of Providing Access to Justice*, and the Law Council of Australia's *Justice Project*, each of which is referenced in the LIV's responses to the questions posed in the Issues Paper.

The submission that follows provides the LIV's responses to the questions in the Issues Paper. Before doing so, however, the LIV makes the following general comments regarding key issues raised by the Review.

Encouraging further collaboration

Broadly, the LIV encourages a holistic view of the system that is funded under the NLAP, rather than an approach that creates competition between the various recipients of NLAP funding. In the LIV's view, this approach facilitates collaboration across the legal assistance sector, which will reduce duplication and inefficiency.

Similarly, the LIV encourages a holistic view of the legal assistance sector in Australia, noting that it is often difficult (and artificial) to distinguish between the Commonwealth and State aspects of what is, in essence, a single justiciable problem, and that justiciable problems are often intersectional and compounding.

Enhancing efficiency

Existing inefficiencies in NLAP programs, for example, duplicative reporting obligations, ought to be recognised and addressed in order to best utilise Commonwealth funding. The LIV notes that Victorian CLCs have an average of nine different funding streams, all of which require individual reporting, though this figure (and the reporting burden) can be much greater: one Victorian CLC has forty-eight separate funding streams. Although the LIV endorses increasing NLAP funding, it submits that the quantum of funding does not represent the whole picture – rather, the functionality of existing funding streams also needs to be carefully examined in the Review.

Addressing workplace supply, especially in RRR areas

There are ongoing difficulties in providing government funded legal assistance to communities in RRR areas, due in part to challenges in attracting and retaining legal practitioners in RRR areas. To address these challenges, the LIV endorses the proposal of a HECS debt relief scheme for legal practitioners who live and work in RRR communities. This proposal is discussed in more detail in the responses to Questions 5 and 13 below.

Allowing longer-term planning

The current NLAP funding term is five years. To allow organisations that administer and receive NLAP funds to engage in long-term planning, the LIV calls for a funding term of at least five years to be maintained at a minimum, but preferably seven years, with year-on-year updates to build necessary flexibility into the system. This suggestion is discussed in more detail in the response to Question 6 below.

Responses to Issues Paper Questions

Below, the LIV responds to select questions in Chapter 4 of the Issues Paper which it is well-placed to respond to, being Questions 1, 2, 4, 5, 6, 8, 9, 11, 13, and 18.

This submission does not respond to the questions in Chapter 3 of the Issues Paper as the LIV is of the view that other organisations are better placed to provide insight to the Review regarding necessary reform to the funding of Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) and Family Violence Prevention Legal Services (**FVPLS**).

The LIV notes that, together with VLA and funded by the Victorian Legal Services Board and Commission, it is leading a cultural capability framework project working group intended to build the foundation for cultural awareness education and training for Victorian lawyers. The LIV-VLA cultural capability framework is designed to assist in ensuring that government funded non-Indigenous legal assistance services are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, where required.

1. To what extent has the NLAP achieved the overall objectives and outcomes?

The LIV notes that the purpose of the NLAP, as stated in the agreement itself, is to ‘contribut[e] to integrated, efficient, effective and appropriate legal assistance services which are focussed on improving outcomes and keeping the justice system within reach for vulnerable people facing disadvantage, within available resources’.³

There are some areas in which, the LIV submits, the NLAP has not – or has not fully – achieved these objectives. By way of specific examples, the LIV is concerned about the availability of legal aid funding for:

- the appointment of Independent Children’s Lawyers (**ICLs**); and
- the Commonwealth Family Violence and Cross-Examination Scheme.

As to ICLs, the LIV notes that funding is not always provided for meetings with children in their own communities and/or away from city offices – increasing resource demands for private firms in RRR locations. Further, funding is often not provided for multiple meetings with children and/or for liaising with court consultants, other relevant health practitioners, and/or educational institutions on an ongoing basis. As funding grants for ICL appointments are limited, there are concerns in the legal assistance sector (which are shared by the LIV) that practitioners acting as ICLs are not appropriately remunerated for their expertise, time, and travel. This has clear consequences for the ICL system and its capacity to achieve its objectives.

The LIV is also concerned about the legal aid funding available under the Commonwealth Family Violence and Cross-Examination Scheme (the **Scheme**). Matters that would be subject to funding under the Scheme are often highly complicated and, in many instances, clients have already exhausted their standard legal aid

³ National Legal Assistance Partnership 2020–25, cl 3.

funding. Under the Scheme, legal aid funding is in principle available for a lawyer to prepare and represent the party at any hearing where cross-examination may occur.

This includes:

- Stage 3 trial preparation;
- Stage 4 trial costs;
- Stage 2H litigation intervention limited to one conference;
- Some stage 2G interim contests and procedural hearings; and
- Reasonable disbursements for other reasons with prior approval from VLA.

For a legal aid funding grant to be allocated, the Scheme requires:

- That a section 102NA(1) order be made by the Court;
- The party/parties to be unrepresented; and
- The party/parties to have completed an application form.

LIV members report some judicial officers make orders for services not covered by the Scheme with an expectation that legal aid funding will be available, even where the client has already expended their standard funding.

Further, a LIV member has reported an example where it was necessary for a lawyer to frequently withdraw as the party's legal representative from the case for excluded hearings, before returning for later hearings which are covered under the Scheme. This is particularly concerning where the Court holds an expectation that the party would remain represented due to an understanding that the funding for representation under the Scheme would cover all aspects of the case.

Whilst the provision of education to both practitioners and the judiciary would assist in increasing the profession's general understanding of the Scheme and thus may improve the consistency of its application, the LIV submits that an increase in the quantum of legal aid funding targeted at family and civil law matters in particular is necessary to address these concerns – which would, in turn, assist in achieving the overall objectives and outcomes of the NLAP.

2. To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?

The LIV is concerned by the continuing prevalence of unmet legal need in Victoria, which underscores the importance of sufficiently resourced legal assistance services. In this regard, the LIV notes the PULS finding that 78% of respondents with a legal need considered this need to be unmet, even after seeking out expert assistance (including both legal and non-legal assistance).⁴

⁴ Nigel J. Balmer, Pascoe Pleasence, Hugh M. McDonald and Rebecca L. Sandefur, Victoria Law Foundation, *Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need* (2023) 152 ('PULS Report').

4. Are there other systemically disadvantaged groups, either existing or emerging, who are not supported adequately?

The PULS Report provides valuable information regarding certain circumstances or factors that are linked to vulnerability and the prevalence of unmet legal need, both in terms of the number and duration of justiciable problems.⁵

In particular, the PULS Report identifies that respondents who are experiencing financial distress, and/or who are of Aboriginal and Torres Strait Islander origin, and/or who are LGBTIQ+, are more likely to experience a comparatively elevated number of justiciable problems, enabling the PULS Report to identify 'a broad association between justiciable problems and disadvantage'.⁶

Further, the presence of these factors is linked to the phenomenon described in the PULS Report as 'problem clusters', wherein respondents with certain characteristics are more likely to experience multiple justiciable problems at once.⁷ For example, 35 per cent of respondents who identified as being unable to eat, or to heat or cool their homes owing to a shortage of money, reported experiencing 5 or more justiciable problems.⁸ These findings provide further evidence of the need for effective 'wrap-around' non-legal services.

The LIV also notes that disaster-affected and climate change affected groups are an increasingly vulnerable cohort.⁹ Notably, for example, the PULS Report details that '[t]hose affected by bushfires were more likely to have justiciable problems, have a greater number and longer lasting problems, and make greater use of services'.¹⁰

Common legal issues arising for individuals affected by disasters include insurance related claims, financial strain (including mortgage or loan repayments), housing issues, family and domestic violence issues, and employment issues.¹¹ Currently, funding provided to organisations such as Disaster Legal Help Victoria is insufficient to ensure long-term disaster preparation and mitigation, hindering the development of sufficient organisational capacity to enable appropriate responses to events such as pandemics and disasters that can result in a sudden and unforeseeable increase demand for legal services.

The LIV also submits that the processes for distributing disaster funding could be improved to ensure that funds reach those who need them at the earliest opportunity, to prevent the compounding of disadvantage.

By way of example, a delay in notification of funding allocations following the occurrence of a disaster undermines service delivery by rendering the actual delivery of services uncertain, which can then lead to a range of consequences that heighten vulnerability (for example, by restricting access to safe housing and healthcare). In Victoria, this issue was experienced in relation to the flooding experienced in Eastern Victoria

⁵ Ibid, 9.

⁶ Ibid, 47, see also 14, 152.

⁷ Ibid, 84

⁸ Ibid, 76.

⁹ PULS Report (n 4) 9, 95.

¹⁰ Ibid, 9, 95.

¹¹ PricewaterhouseCoopers (PwC) Australia, *The Benefits of Providing Access to Justice* (Final Report, January 2023) 31 ('PWC Report').

in 2022: though funding was announced in October 2022, it was only notified for allocation at the end of June 2023.

5. How should the challenges of service delivery in regional, rural, and remote locations be addressed through future agreements?

To adequately address the ongoing challenges with legal service delivery in RRR locations, the LIV emphasises the need to incentivise young practitioners to join the RRR workforce. The LIV notes recent advocacy by the Law Council of Australia in calling for HELP debt relief for practitioners living and working in RRR areas. This advocacy was informed by the Law Council of Australia's *Justice Project*, which examined the extent of unmet legal need of Australians in RRR communities.¹² On this basis, a HECs debt reduction scheme was provided as a possible incentivisation model. The LIV notes that RRR communities are especially vulnerable as they currently account for 31% of VLA clients in Victoria.¹³ Further, even where legal support can be obtained by RRR communities, accessibility issues exist: notably, 19% of people living in remote areas need to travel more than 80 kilometres to obtain legal advice.¹⁴ Relatedly, the cost to CLC's and private practitioners in providing services in RRR settings can be prohibitive owing to the heightened costs associated with travelling larger distances to meet with clients and attend courts, and to provide community legal education and outreach. These costs cannot always be overcome by technology, either, as internet access can be limited and/or unreliable in RRR locations.

The LIV notes that similar HECs relief programs have previously been adopted for medical practitioners and teachers.¹⁵ There is evidence that for such programs to be effective, there needs to be sufficient professional and residential infrastructure in RRR locations. Only with sufficient professional and residential infrastructure in place will such a scheme be effective in retaining legal practitioners in RRR communities beyond five years PQE.

6. To what extent does the funding model support appropriate distribution and quantum of Commonwealth resources to meet current and future needs?

The LIV submits that the current funding model does not support appropriate distribution and quantum of Commonwealth resources to meet current needs or future needs.

In particular, the quantum of funding is inadequate, meaning that the sector has become heavily dependent on unpaid volunteer work.¹⁶

¹² Law Council of Australia, *HELP Debt Reduction and Indexation Relief for Legal Practitioners Working in Rural, Regional and Remote Locations* (Consultation Draft, 2023) 4.

¹³ PWC Report (n 11) 18.

¹⁴ *Ibid* 19.

¹⁵ *HELP Debtor Guidelines (Teachers) 2023* (Cth).

¹⁶ See, eg, Victoria Law Foundation, *Working in Community Legal Centres in Victoria Results from the Community Legal Centres Workforce Project* (Report, 2021) 28.

The LIV recommends a funding model that has a longer-term focus and which includes greater flexibility, allowing baseline funding to be better linked to legal need and which may better service future and current needs.

The LIV calls for the NLAP funding term to be maintained at a minimum of five years, but preferably for a term of seven years, with year-on-year updates, to build necessary flexibility into the system. Increased funding for the provision of essential legal services, and to fairly and adequately compensate private practitioners for legal aid work, must be secured for this term to allow those in the legal assistance sector to engage in budgetary planning and to allow for staff retention measures. The LIV submits that reasonable remuneration includes adequate indexation which, at a minimum, would require annual increases to NLAP grants at a rate equal to any increases to the Consumer Price Index (CPI).

8. How can holistic service provision improve outcomes and reduce the demand for legal assistance services?

The LIV submits that holistic service provision can and does improve outcomes for clients and reduce demand for legal assistance services.

With respect to the improvement of outcomes for clients, the LIV notes that the provision of holistic, wrap-around services in conjunction with legal services can have a powerfully rehabilitative effect for those caught up in the criminal justice system. For example, First Step Legal, a community legal centre established in 2008, provides pro bono legal advice and representation to clients of First Step Health who are engaged in treatment programs. Working together, First Step Legal and First Step Health provide an integrated service delivery model through the co-location of services that emphasise identifying and addressing the issues experienced by clients that can have criminogenic effects, such as mental health issues and/or substance abuse issues.

Providing integrated legal and health services allows relevant professionals to work together to achieve legal outcomes that promote clients' wellbeing and prospects of rehabilitation, which, in turn, reduces overall costs to the state in administering the justice system.

Further, with respect to family law matters, the LIV notes that the provision of integrated therapeutic responses to family violence issues, which recognise the social, economic, and emotional issues underpinning an incidence of family violence, can result in improved outcomes for affected parties. Such services include child protection, family law and family and domestic violence legal services, and health based supports that provide collaborative, integrated wrap-around care and which promote community-based and family-centred services and supports.¹⁷ By way of example, the LIV commends the provision of specialist family advocacy and support services provided through Legal Assistance Centres and CLCs, which integrate legal and social work services.¹⁸ Another example of a non-legal resource that can improve outcomes for parties is supervised contact centres, which provide a setting for supervised interactions between a child and a parent to take place in family law matters. These centres provide a secure but child-focused environment in which a parent may

¹⁷ Family and Relationships Services Australia, *Strengthening Prevention and Early Intervention Services for Families into the Future* (Report, March 2017) 15.

¹⁸ Victoria Legal Aid, 'What is the cost of not funding legal assistance?' (May 2023) 4.

spend time with a child in an accessibly priced and suitably supervised setting – which can significantly improve family relationships, build trust, and facilitate the resolution of matters.

With respect to reducing the demand for legal assistance services, the LIV notes that the provision of non-legal services can resolve legal problems by addressing the root cause of a justiciable problem, thereby reducing the likelihood of its reoccurrence.

In addition to the examples provided above, the LIV notes that individuals who access legal services may also require assistance that is non-legal in order to obtain a resolution to their problem. For example, to assist an individual in challenging a debt, a lawyer may be required to assist their client in attending Centrelink to obtain a proof of income statement. Although this is not strictly legal work, it is a necessary prerequisite to providing legal assistance services to that individual.

The LIV notes that non-legal services are already commonly used in Victoria to resolve justiciable problems: the PULS Report found that respondents obtained independent, non-legal help for 29 per cent of problems, in comparison to legal help, which was sought for only 21 per cent of problems.¹⁹ These non-legal services included council or government services, professional or health services, and social workers or welfare services.²⁰ Strengthening common non-legal avenues for dealing with legal problems may therefore assist in reducing demands on publicly funded legal assistance.

9. How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of a legal character?

Noting that data collection within the legal assistance sector is a core priority of the current NLAP and its associated National Legal Assistance Data Strategy,²¹ the LIV supports a data-led approach to ascertaining the funding required for activities that reduce and prevent legal need.

The LIV supports initiatives such as the Victorian Government's Early Intervention Investment Framework (EIIF), which seeks to shape government policy in a manner that reduces pressure on acute government services (such as hospitals, prisons, and homelessness and family violence services).²² The LIV commends the Victorian Government for becoming the first Australian jurisdiction to incorporate early intervention into its budgetary considerations via the EIIF.²³ The EIIF is also incorporated into the Victorian Legal Assistance Action Plan 2022–2025.²⁴ Accordingly, the LIV suggests that there is Australian precedent for analysing legal assistance services through the lens of early intervention strategies.²⁵

¹⁹ PULS Report (n 4) 16.

²⁰ Ibid.

²¹ Attorney-General's Department (Cth), *National Legal Assistance Data Strategy* (June 2021) 6.

²² Victorian Government, *The Early Intervention Investment Framework* (August 2022) 1.

²³ Ibid.

²⁴ Department of Justice and Community Safety, *Legal Assistance Action Plan Victoria 2022-2025: Building the Foundations* (September 2022) 11.

²⁵ Ibid 17-18, 27.

As noted in response to Question 4, above, the LIV calls for appropriate funding for disaster-related legal assistance, which may act as an additional pathway for the reduction or prevention of legal need. The LIV refers to the finding in the Royal Commission into National Natural Disaster Arrangements that “a number of issues arose due to the absence of pre-planning or strategic framework” within the legal assistance sector in response to the 2019-2020 bushfires.²⁶ Accordingly, the LIV supports quarantined early intervention funding for organisations such as its partner organisation, Disaster Legal Help Victoria.

In the criminal law sector, the LIV has previously advocated for the prioritisation of diversion programs to limit contact between first-time offenders and the justice system (thereby also assisting to ensure a person can rehabilitate appropriately without the stigma attached to these types of offending).²⁷ The LIV does not agree that the correct approach to perpetrator rehabilitation is to develop programs that focus on deterrence, as it is not clear that the deterrence model is the most effective way to reduce recidivism. Instead, the LIV supports targeted therapy and meaningful rehabilitation to address the underlying causes of criminal behaviour as a more effective response to prevent re-offending.

From a family law perspective, the LIV strongly supports the increased allocation of resources to support early intervention, education, and other strategies to shift attitudes towards violence and/or sexual violence against women and children.

Research indicates that family violence is likely to escalate during pregnancy or after the birth of a child.²⁸ During this time, victim-survivors are most vulnerable due to limited access to financial resources, particularly if accessing parental leave or time off work, and isolation from their regular work or social networks. The LIV supports pre-natal intervention to ensure women at risk of family violence understand the nuanced and subtle ways in which family violence may present. The LIV is concerned that women accept these types of violence, including economic abuse or coercive control, as normal or an inevitable aspect of the adjustment period when a baby is born. The LIV encourages greater collaboration between pre-natal educators, medical professionals, birth support staff, social workers and legal professionals to ensure people experiencing pregnancy are informed on the various forms of family violence and the rights and resources available to them.

11. To what extent are administrative processes of funders placing unnecessary regulatory burdens on legal assistance providers?

The LIV acknowledges member feedback regarding the significant reporting and compliance burdens imposed as a condition of receiving funding. Members report that the reporting obligations linked to Commonwealth funding can be duplicative, inconsistent, and inefficient. Administrative burdens are not linked to NLAP funding alone; they are caused by a failure to streamline reporting obligations across different funding streams.

²⁶ *Royal Commission into National Natural Disaster Arrangements* (Report, 28 October 2020) 439.

²⁷ Law Institute of Victoria, Submission No 112 to Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria’s Criminal Justice System* (10 September 2021) 58.

²⁸ Australian Bureau of Statistics, *2016 Personal Safety Survey* (Report, 2017).
<<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>.

For example, the LIV notes that Victorian CLCs have an average of nine different funding streams – all of which require reporting. However, the largest number of funding streams for a single Victorian CLC is forty-eight. VLA have reported that data collection, as well as reporting, is an issue for both legal aid commissions and CLCs. It is crucial that compliance and reporting burdens are limited as much as possible to minimise the extent to which critical funding resources – which could be spent on service delivery – need to be diverted to satisfy compliance and reporting obligations.

The LIV thus submits that changes are necessary to ensure that only the most important information is required to be collected to ensure that the cost burden of compliance and reporting is minimised as much as possible.

13. How does workforce supply and remuneration impact on the provision of legal assistance services?

LIV members comment that workforce supply and remuneration are two of the most critical factors impacting on the provision of legal assistance services, particularly in RRR areas. Members strongly agree with the statement in the Issues Paper that “[a] suitably skilled, sized and located legal profession is a pre-requisite for effective access to justice. Attracting students to study law, and graduates into the breadth of sectors, requires competitive remuneration, conditions, and pathways”.²⁹

Feedback received by the LIV members notes that legal assistance sector employees are moving to legal aid commissions to access better remuneration, and so greater wage parity is required across the sector. Member feedback also supports the Issues Paper’s suggestion that practitioners working in the legal assistance sector experience challenging workplace conditions, including vicarious trauma resulting from work with complex needs clients, and high file numbers.³⁰ Challenging workplace conditions, together with inadequate salaries (in the case of LAC, and particularly CLC, ATSil, and FVPLP, employees) and rates (in the case of private practitioners undertaking legal aid work) result in burnout and high staff turnover, as noted by the Issues Paper.³¹

LIV members report frustration that, whilst the Productivity Commission suggested in 2014 that rates paid by LACs to private lawyers were inadequate,³² these remain ‘generally lower than market rates and in many instances have fallen in real terms’,³³ - even while the law has become more complex, the evidentiary material required in litigation has become more voluminous, business costs have risen, and administrative burdens (including those related to funding grants) have become more onerous.

The LIV therefore submits that changes in employment arrangements, including but not limited to remuneration levels, would lead to an overall increase in workforce supply that would be able to address unmet legal need, beyond simply improving outcomes for the existing legal assistance sector workforce. Further, the LIV emphasises that these targeted changes to remuneration can only be meaningful if they include adequate

²⁹ National Legal Assistance Partnership Review (Issues Paper, August 2023) 30 (‘NLAP Review Issues Paper’).

³⁰ Ibid.

³¹ Ibid.

³² See generally Productivity Commission, *Access to Justice Arrangements* (Inquiry Report, 3 December 2014).

³³ NLAP Review Issues Paper (n 29) 30.

indexation in line with increases to the CPI. By contrast, if there is no change in the conditions of practitioners working in the legal assistance sector, the LIV's expectation based on member feedback is that there will be a decrease in both quantity and quality of supply, with direct consequences for the viability of legal aid. For those private practitioners who receive 70% of legal aid grants in Victoria,³⁴ the LIV also calls for a stronger correlation between the volume of work performed and the amount of grant funding received. The LIV considers that private practitioners are under-remunerated for the legal assistance work they do. Among the private profession, a perception exists that government pay superior rates to private law firms to carry out commercial legal services in comparison with the rates they pay private law firms and practitioners to carry out critical legal aid work.

In relation to the legal assistance workforce in RRR areas specifically, these general changes in working conditions, including remuneration, will need to be accompanied by measures designed to retain practitioners in those areas – particularly beyond the five-year PQE mark. In this respect, the LIV considers that the HECS–help scheme recommended in the response to Question 5 should go some way to incentivizing legal assistance practitioners to remain working in RRR areas, on the basis that it would increase real remuneration levels.

18. What other changes to the NLAP would further improve service delivery outcomes and maximise use of resources?

The LIV submits that ongoing assessments of legal need must be regularly conducted. Doing so will improve service delivery outcomes and maximise the use of resources. The PULS Report recently conducted by the VLF provides an indispensable source of data on unmet legal need. However, the LIV cautions against imposing an obligation upon CLC's to conduct such necessary research as, due to their funding and resourcing constraints, CLCs lack the capacity to do so.

Further, the LIV suggests that creating a uniform system governing the use of online hearings would enhance efficiency in the use of NLAP funds.

³⁴ 'Making It Easier for Private Practitioners to Work with Us', *Victoria Legal Aid* (Web Page, 16 May 2023) <<https://www.legalaid.vic.gov.au/making-it-easier-private-practitioners-work-us>>.