



Victorian Aboriginal Legal Service Submission to the
Independent Review of the NLAP

November 2023



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Background to the Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service (VALS) is an Aboriginal Community Controlled Organisation (ACCO) with 50 years of experience providing culturally safe legal and community justice services to our people across Victoria.

Legal Services

Our legal practice serves Aboriginal people of all ages and genders. Our 24-hour criminal law service is backed up by the strong community-based role of our Client Service Officers (CSOs). CSOs help our clients navigate the legal system and connect them with the support services they need.

Our **Criminal Law Practice** provides legal assistance and representation for Aboriginal people involved in court proceedings. This includes bail applications; representation for legal defence; and assisting clients with pleading to charges and sentencing. We aim to understand the underlying reasons that have led to the offending behaviour and ensure this informs the best outcome for our clients.

Our **Civil and Human Rights Practice** supports clients with consumer issues, infringements, tenancy issues, coronial matters, discrimination issues, working with children checks, employment matters and Personal Safety Intervention Orders.

Our **Aboriginal Families Practice** provides legal advice and representation to clients in family law and child protection matters. We aim to ensure that families can remain together and children are kept safe. We are consistent advocates for compliance with the Aboriginal Child Placement Principle in situations where children are removed from their parents' care.

Our **Wirraway Police and Prison Accountability Practice** supports clients with civil litigation matters against government authorities. This includes for claims involving excessive force or unlawful detention, police complaints, and coronial inquests (including deaths in custody).

Balit Ngulu is our dedicated legal practice for Aboriginal children providing support in criminal matters. Balit Ngulu is designed to be trauma informed and provide holistic support for our clients.

Community Justice Programs

Our Community Justice Programs (CJP) team is staffed by Aboriginal and Torres Strait Islander people who provide culturally safe services to our clients and community.

This includes the Custody Notification System, Community Legal Education, Victoria Police Electronic Referral System (V-Per), Regional Client Service Officers and the Baggarrook Women's Transitional Housing program.



Policy, Research and Advocacy

VALS informs and drives system change initiatives to improve justice outcomes for Aboriginal people in Victoria. VALS works closely with fellow members of the Aboriginal Justice Caucus and ACCOs in Victoria, as well as other key stakeholders within the justice and human rights sectors.

Acknowledgement

VALS pays our deepest respect to traditional owners across Victoria, in particular, to all Elders past, present and emerging. We also acknowledge all Aboriginal and Torres Strait Islander people in Victoria and pay respect to the knowledge, cultures and continued history of all Aboriginal and Torres Strait Islander Nations.

We pay our respects to all Aboriginal and Torres Strait Islander Elders who have maintained the struggle to achieve justice.

Across Australia, we live on unceded land.

Sovereignty has never been ceded.

It always was and always will be, Aboriginal land.

Contributors

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Note on Language

Throughout this document, we use the word 'Aboriginal' to refer to Aboriginal and/or Torres Strait Islander people, communities and organisations. VALS acknowledges that there are many Aboriginal people in Victoria who have Torres Strait Islander heritage, and many Torres Strait Islander people who now call Victoria home.



SUBMISSION DETAILS

Organisation name: **Victorian Aboriginal Legal Service**

Organisation type: **ATSILS**

Whether you or your organisation has ever received Commonwealth funding under the NLAP or funding from other Commonwealth or State and Territory government sources: **Yes**

Indicate whether you consent to:

- your submission being published on the Review website: **Yes**
- being identified in the report of the Review as having made a submission: **Yes**
- your submission being quoted with attribution in the report of the Review: **Yes**
- your submission being quoted anonymously in the report of the Review: **Yes**



SUMMARY OF RECOMMENDATIONS

Recommendation 1. Aboriginal Legal Services should be funded to provide legal services to every Aboriginal and Torres Strait Islander person who wants to use a culturally safe service.

Recommendation 2. Aboriginal Legal Services should be fully funded to provide place-based services so that Aboriginal and Torres Strait Islander people can access culturally safe services in their community.

Recommendation 3. Aboriginal Legal Services should be funded so that we can effectively trial and evaluate new services that are responsive to the needs of the communities we serve.

Recommendation 4. Aboriginal Legal Services should be funded to help improve the implementation of reforms that impact Aboriginal and Torres Strait Islander people.

Recommendation 5. Aboriginal Legal Services should be funded to provide advice to government to a level that adequately represents the value we provide to government decision-making.

Recommendation 6. Aboriginal Legal Services should be funded to provide throughcare and transitional programs to enable higher rehabilitation and reintegration rates.

Recommendation 7. Aboriginal Legal Services should be funded to provide greater community legal education services.

Recommendation 8. Aboriginal Legal Services should be funded to employ more Aboriginal and Torres Strait Islander community and support workers.

Recommendation 9. Aboriginal Legal Services should be funded to provide cultural awareness training.

Recommendation 10. Aboriginal Legal Services should be funded to provide transport services for Aboriginal and Torres Strait Islander people released from custody.

Recommendation 11. Aboriginal Legal Services should be funded to employ Court Outreach Workers to support Aboriginal and Torres Strait Islander people at court.

Recommendation 12. Aboriginal Legal Services should be funded to upgrade offices and any other places of work so that they are appropriate for the delivery of culturally safe and trauma-informed services. This should include soundproofing, appropriate IT, and any other requirements.

Recommendation 13. Aboriginal Legal Services should be funded to run programs like the Aboriginal Community Justice Reports and versions of the *Bugmy Bar Book*.

Recommendation 14. Aboriginal legal services should be funded to provide dedicated parole services.

Recommendation 15. VALS should be funded to expand Balit Ngulu to a statewide service.

Recommendation 16. Aboriginal Legal Services should be funded to provide dedicated services that ensure all members of our communities have access to high-quality, culturally-safe, holistic, and trauma-informed legal services.



Recommendation 17. Aboriginal Legal Services should be funded to provide brokerage funding, both for individual client needs and for community emergency needs.

Recommendation 18. Aboriginal Legal Services should be funded to operate carpools that allow them to deliver services where need while keeping staff safe.

Recommendation 19. Aboriginal Legal Services should be funded to fly staff to locations that are difficult to drive to.

Recommendation 20. There should be a minimum guaranteed level of funding across the life of the agreement.

Recommendation 21. The next NLAP agreement should be longer in length to allow for greater certainty and long-term planning.

Recommendation 22. There should be regular reviews of the minimum guaranteed level of funding across the life of the agreement, but only to increase the level if needed.

Recommendation 23. Governments should have limited capacity to intervene in the distribution model once it is agreed to.

Recommendation 24. Aboriginal Legal Services should receive a greater portion of the NLAP funding than they currently do.

Recommendation 25. Government should give greater weighting to the unique strengths of Aboriginal legal services when designing the funding distribution model.

Recommendation 26. Through the NLAP agreement, the Federal Government should initiate research to provide more precise evaluations of the social benefit of Aboriginal legal services.

Recommendation 27. The NLAP agreement should ensure that all Aboriginal legal services can fully fund Custody Notification Services that meet the needs of their communities.

Recommendation 28. Aboriginal people should have the ability to choose the legal service that best suits them and there should be enough local legal services to access so that conflict of interest issues does not leave them without options.

Recommendation 29. Aboriginal Legal Services should be funded to run programs that build strong relationships with community before they need legal assistance.

Recommendation 30. Aboriginal Legal Services should be funded to provide support to apply for documents that enable civil engagement. This should include funding to pay for those applications.

Recommendation 31. Aboriginal Legal Services should be funded to provide advocacy services in a way that is responsive to community need and enables self-determination.

Recommendation 32. The advocacy work of Aboriginal Legal Services should not be constrained through NLAP and related funding agreements.



Recommendation 33. Aboriginal Legal Services should be funded to provide services based on community need.

Recommendation 34. NLAP should seek to improve referral process through funding and potentially through shared services.

Recommendation 35. Aboriginal Legal Services should be funded to provide attractive employment opportunities for Aboriginal and Torres Strait Islander people.

Recommendation 36. Aboriginal Legal Services should be funded to provide supports to Aboriginal and Torres Strait Islander staff to manage wellbeing and vicarious trauma.

Recommendation 37. Aboriginal Legal Services should be provided with funding to enable sustainable expansion.

Recommendation 38. NLAP funding should be flexible so that Aboriginal Legal Services can be responsive to community need and so that NLAP funding can be used to cover gaps created by other funding agreements.

Recommendation 39. NLAP funding streams, including terminating funding, should be rolled into baseline funding.

Recommendation 40. NLAP funding should provide greater capacity for expenses that support staff wellbeing and performance, such as a mental health budget and e-discovery tools.

Recommendation 41. NLAP should fund Aboriginal Legal Services to be able to employ a diverse range of staff so that clients have a choice regarding who they receive the service from.

Recommendation 42. NLAP should recognise the training burden on Aboriginal Legal Services and fund them to provide the training their staff need and in recognition that the legal system relies on the training we provide.

Recommendation 43. NLAP funding should increase on an annual basis at a rate that covers wage growth.

Recommendation 44. NLAP reporting should be slimmed down so that Aboriginal Legal Services are not overburdened with red tape.

Recommendation 45. The Federal Government should look at options for increasing the number of lawyers based in regional locations. This could include expanding the capacity of regional courts, providing more funding for regional services, and funding multiple services in regional locations so that it establishes a hub.

Recommendation 46. NLAP funding should acknowledge the unique needs of staff based in the regions.

Recommendation 47. The Federal Government should work with Aboriginal Legal Services and CLC's to ensure a skilled workforce for the sector.



Recommendation 48. Aboriginal Legal Services should be provided with extra funding that brings their wages into line with equivalent workplaces, without impacting staff numbers or service quality.

Recommendation 49. NLAP funding should ensure that Aboriginal Legal Services have appropriate funding to support staff wellbeing.

Recommendation 50. The National Legal Assistance Data Standards Manual should be improved.

Recommendation 51. The Federal Government should consider options for improving sector understanding and compliance with the National Legal Assistance Data Standards Manual.

Recommendation 52. The Federal Government should commission research that helps inform legal service design for specific cohorts, particularly those with intersecting disadvantages.

Recommendation 53. The Federal Government should consider options for ensuring CLC's and ACCO's have access to AI tools and a workforce that has the skills to utilise them.

Recommendation 54. The Federal Government should fund a scoping and design process for shared services.

DETAILED SUBMISSIONS

Introduction

The Victorian Aboriginal Legal Service was established by community, for community. VALS is 50 years old – one of the first community legal services in Australia.

VALS provides high-quality, holistic, culturally safe, and trauma-informed legal services for Aboriginal people in Victoria.

NLAP was traditionally our primary funding source, however it now makes up less than half of our funding. VALS has always been under resourced, but this has been exacerbated by the recent freeze on NLAP funding by the previous Federal Government.

VALS believes that the NLAP review must lead to a significant increase in funding for Aboriginal Legal Services, a reduction in funding restrictions, and a reduction in red tape.

VALS has grown a lot in recent years thanks to alternative funding sources, and we have done a lot of planning for further expansion.

Federal politicians have spent a lot of time talking about supporting and empowering Aboriginal communities over the last 18 months. Investing in Aboriginal Legal Services is one of the best ways to do just that.

We hope that the NLAP review will drive the political will to ensure Aboriginal Legal Services are fully funded to provide the support our communities expect of us.

Building the Aboriginal Legal Services Our People Deserve

VALS believes that every Aboriginal and Torres Strait Islander person in Victoria who wants to use VALS should be able to do exactly that. Access to culturally safe services is a key measure to enliven the rights expressed by several Articles of the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) and essential to overcoming the generational impacts of colonisation.¹

Through confidential discussions with the Federal and Victorian governments, and our *Plan for Aboriginal Justice in Victoria*, we have highlighted some core issues that we need funding to address.² They are:

- Funding local, community-based Aboriginal Legal Services, so VALS is more accessible to community members
- Respecting the right of Aboriginal and Torres Strait Islander peoples to self-determination in legislative and other policy reform processes

¹ United Nations, [United Nations Declaration on the Rights of Indigenous Peoples](#) and VALS, [A Plan for Aboriginal Justice in Victoria](#), p.8.

² Ibid (VALS).

- Early intervention services
- Implementing reforms that address the over-policing and overincarceration of Aboriginal and/or Torres Strait Islander people
- Culturally safe and responsive services
- Reducing recidivism

RECOMMENDATIONS

Recommendation 1. Aboriginal Legal Services should be funded to provide legal services to every Aboriginal and Torres Strait Islander person who wants to use a culturally safe service.

Local services

Place-based services, that meet local community needs, are a priority for VALS. The communities we serve put high value on in-person supports. Our Client Support Officers (**CSOs**) in the regions report that the feedback they receive most is that if a VALS lawyer is not able to speak to them in-person, then they will find another service or go unrepresented.³

We currently have offices in Bendigo, Ballarat, Mildura, Morwell, Shepparton, Swan Hill, Warrnambool, and Preston. We previously had an office in Bairnsdale, but we were unable to maintain it and our Warrnambool, Bendigo, Mildura and Morwell offices are only funded until the end of the 2024-2025 financial year.

Traditionally, our regional offices have been staffed by a CSO. Some regional offices have also had a lawyer from our Criminal Law or Balit Ngulu Practices depending on need or funding. For instance, we usually try to employ a criminal lawyer in Mildura given the strong need within the community for both crisis and early prevention legal services as well as the significant and costly travel burden from the our main office in Melbourne. We have also sought to employ legal practitioners in regional communities where the vulnerability of the client demands it such as in Shepparton where we have a Balit Ngulu lawyer based to provide legal services to children and young people.

As part of our expansion, we hope to have a lawyer from each of our Criminal Law, Civil and Human Rights, and Aboriginal Families practices, as well as a legal secretary and CSO. We also hope that eventually the funding for Balit Ngulu will expand to allow for a lawyer in each of the regional offices, or at least the locations where there is high demand for legal services for Aboriginal children and young people.

³ We currently have 7 regional offices, all staffed with CSO's except for a few vacancies, and in discussions with the regional CSO's in the development of this submission, they unanimously agreed that clients want to be able to speak to their lawyer in person.



The Bendigo and Warrnambool offices have been opened in the last 18 months. In Bendigo, we had a year-on-year increase in the number of clients our Criminal Law Practice represented in Bendigo of 100% thanks to the new office and staff in that community, supported by the strong partnerships with local Aboriginal Community Controlled Health Organisations.⁴ In Warrnambool we have seen a 100% increase in the number of clients supported with criminal matters and a 200% increase in the number of clients supported with family law matters, based on a year-to-year analysis.⁵

Our full plan includes new offices in Geelong, Frankston, Bairnsdale, Western Melbourne, Wodonga and Horsham.⁶ This would give us good coverage of all the local government areas with the largest Aboriginal populations and mean that we had offices within an hour or so drive of almost every Magistrate's, Children's and County Court in the State. Many of these locations also have Victoria Legal Aid offices, Orange Door Network offices, and other Aboriginal organisations. This would allow us to ensure our service delivery remains high quality and holistic and continue to be engaged in integrated partnerships that allow for early prevention rather than crisis driven responses.

Expanding our office locations will also reduce the amount of driving our staff are required to do. This will reduce fatigue and allow for more time to be devoted to supporting clients directly and assist with reducing turnover. Currently, lawyers in our Preston office do significant and regular driving to every corner of the state which contributes towards their feeling of being burn-out.

We believe that both the Federal and State governments have a role in funding VALS and other Aboriginal legal services. However, Federal Government funding has not played a significant role in VALS' expansion in recent years as the core NLAP funding has failed to keep pace with inflation, let alone increasing demand.

Beyond the expansion of our local offices, our executive team believe that there is a lot of capacity to expand the staffing numbers to a point where our lawyers caseloads reflect industry standards. Our lawyers typically have higher caseloads than lawyers at Community Legal Centres (CLCs) or Victoria Legal Aid. Our executive believe that their teams would need increase anywhere from 100% to 300% to meet demand for our services and keep caseloads at industry standards.

If NLAP funding was to cover VALS to expand its staffing 200%, that could require an increase in NLAP funding to VALS of 600%. NLAP funding for VALS is currently around \$5 million per annum and our expenses for the 2021-22 financial year were about \$14 million.⁷ Assuming that a 200% increase in staff would increase our total expenses by a similar amount, that would mean our total expenses would rise by almost \$30 million. A long way above the \$5 million that we currently receive through NLAP.

⁴ Data is from VALS' database, comparing the January to March quarter for 2022 to 2023 and includes LGA's covered by the Bendigo office.

⁵ Data is from VALS' database, comparing the January to March quarter for 2022 to 2023 and includes LGA's covered by the Warrnambool office.

⁶ VALS, [A Plan for Aboriginal Justice in Victoria, pp.10-11](#).

⁷ VALS, [Annual Report 2021-22](#).



While these are very rough projections designed to give a reasonable impression of how severely underfunded VALS is, we also believe it is a conservative projection. This is for three main reasons:

- We have found that new and expanded services have always induced demand. While our custody notification data can help us reasonably anticipate underlying demand for criminal law matters, there are a range of other legal services and related support services where it is harder to anticipate demand. We have found that communities will quickly engage with new and expanded services from VALS, so it is likely that the true demand for our services would be much higher than it currently is if we were fully funded to meet the needs of the communities we support.
- It reflects that our strategic litigation and policy work has been increasing off a very low base in recent years and there is reason for it to continue to expand. In recent years VALS has engaged in more strategic litigation, including the Age Pension Test Case, intervening in *Thompson v Minogue* and supporting Aboriginal families at Coronial Inquests.⁸ This work has been complemented by an expansion of our policy and advocacy work. We have had strong feedback from the community that they value this work, both supporting and amplifying families and individuals, and the broader work for systemic change.
- We have successfully piloted many services in recent years, such as Balit Ngulu, Baggarrook and the Aboriginal Community Justice Reports. These programs are expanding the expectations of our communities and there are many more services that should be delivered through Aboriginal Legal Services that we are currently not funded to do.

As our services expand it is likely that the expectations of our communities will increase, and this will drive new sources of demand. The long-term goal of NLAP should be to ensure that Aboriginal Legal Services are fully funded to provide the service that our communities expect. This will be important to delivering on the Federal Government's commitments under Closing the Gap.

RECOMMENDATIONS

Recommendation 2. Aboriginal Legal Services should be fully funded to provide placed-based services so that Aboriginal and Torres Strait Islander people can access culturally safe services in their community.

Recommendation 3. Aboriginal Legal Services should be funded so that we can effectively trial and evaluate new services that are responsive to the needs of the communities we serve.

Self-determined reforms

VALS is playing an increasingly large role in ensuring the voice of our communities has an impact on law reform and implementation in Victoria. This is a crucial element of our holistic service model,

⁸ VALS, [Community fact sheet: the Age Pension test case](#) and VALS, [Community fact sheet: VALS intervention in Court of Appeal Strip Searching and Urine Testing Case](#) and VALS, [Veronica Marie Nelson: Inquest Begins Today](#).



something that the community has an increasing demand for, and highly valuable for governments with genuine commitment to Closing the Gap.

Significantly we have had a crucial role in the Victorian Government’s bail reforms in 2023 – the Attorney-General noted specifically that “the stakeholders that I would particularly like to call out are ... the Victorian Aboriginal Legal Service – Nerita Waight [VALS CEO] has been an invaluable source of information and testing in relation to this legislation and how it can do better for Aboriginal people.”⁹

In recent years we have also been part of reform implementation, like providing a legal service for community members wishing to give evidence to the Yoorrook Justice Commission (in partnership with VLA), providing support to community members applying to the Stolen Generations Reparation Scheme, as well as similar roles relating to Victoria’s Spent Convictions Scheme, anti-vilification reforms and Royal Commission into Victoria’s Mental Health System.¹⁰

However, we are often not funded for these functions and, if we are, it is often well below the cost that we have estimated it would take to do the job in a way the met the communities’ expectations and truly empowered them.

There has been a lot of discussion nationally about the Federal Government’s use of the big four consultancy firms. We would argue that much of the work that VALS does in Government consultations, working groups and implementation processes is similar in nature to the type of work the big four are contracted to do. However, our work is more valuable but less well remunerated. Governments should seek to cost the benefit of our work to improve government decision making and implementation processes the same as they would for the big four consultancy firms. To pay Aboriginal Legal Services less, or not at all, is a form of structural racism that says government literally values Aboriginal voices less. A proper evaluation of this work should form part of the underlying costings of how much funding should go to Aboriginal Legal Services through NLAP.

RECOMMENDATIONS

Recommendation 4. Aboriginal Legal Services should be funded to help improve the implementation of reforms that impact Aboriginal and Torres Strait Islander people.

Recommendation 5. Aboriginal Legal Services should be funded to provide advice to government to a level that adequately represents the value we provide to government decision-making.

⁹ Parliament of Victoria, [Hansard: Bail Amendment Bill 2023, Second Reading, Jaclyn Symes \(ALP\)](#), 5 October 2023.

¹⁰ VALS, [A Plan for Aboriginal Justice in Victoria](#), pp.13-14.

Culturally safe and early intervention services

Aboriginal people deserve the option to use a culturally safe service. Systemic and individual racism remains pervasive throughout Australia, and particularly in the legal system. Our people often do not trust government and generalist services because of a history of discrimination that continues today.

Funding culturally safe services, like VALS, gives Aboriginal people who choose to use those services a better chance of getting out of the legal system and staying out. We know that in many cases where an Aboriginal person cannot access a culturally safe legal service, they often are unable to fully engage in the process and this can lead to poorer outcomes.

We also run programs that help address the underlying causes of contact with the legal system and programs that support rehabilitation.

For instance, our Baggarook program provides housing and support for Aboriginal women transitioning out of prison. This program is run in partnership with Aboriginal Housing Victoria.¹¹ The current facility has six units. VALS has dedicated staff that help women in the program find secure housing and employment, reconnect with culture and Community, and lend a hand where need – like driving them to the shops or meetings with other support services. In other jurisdictions, notably the Northern Territory, Aboriginal Legal Services have been funded to run much larger transitional and throughcare programs.¹² The North Australian Aboriginal Justice Agency's (NAAJA) throughcare team has site in major population centres, including Darwin and Alice Springs, a dedicated youth service, and approximately 20 staff.¹³

VALS has been exploring options for replicating the Baggarook service for men and children. We believe that place based throughcare services with appropriate staffing levels is vital to improving rehabilitation and reintegration rates. The current housing crisis across Australia is making it harder for people to transition out of custody.¹⁴ The Federal Government should ensure NLAP funding for Aboriginal legal services includes capacity to run throughcare and transitional programs.

Case Study – B

B is an Aboriginal Woman who has been previously incarcerated and is living in transitional housing to support her to reintegrate back into the community. B has experienced homelessness, domestic family violence, has complex mental health issues and disability, along with physical health issues. These issues are exacerbated by substance misuse.


B has been sectioned under the *Mental Health Act* and has been admitted to the Psychiatric Unit as a treatment order was put in place by authorities. B's capacity to understand and advocate for her needs is limited as she lives with an acquired brain injury, Although she is resourceful and shows resilience, she is at risk of being reincarcerated.

¹¹ VALS, [Baggarook](#) and VALS, [Submission to the Inquiry into Victoria's Criminal Justice System – September 2021](#).

¹² NAAJA, [Throughcare Program](#).

¹³ NAAJA, [Productivity Commission study on Expenditure on Children in the Northern Territory](#).

¹⁴ The Guardian, [Victorian prisoners denied parole due to lack of accommodation during housing crisis](#).



Baggarrook staff work alongside B to communicate to service providers such as hospital workers, police officers, and housing officers. This assists other organisations and institutions supporting B to gain a better understanding of her experiences and provide more appropriate culturally sensitive support, this also builds a better rapport with B. Building rapport between B and services she accesses creates a higher chance she will engage with them in the future, when she exits Baggarrook.

We also do Community Legal Education (**CLE**) through as many formats as possible. Increasing the communities understanding of their rights and how to deal with legal issues is a key part of our work, although we currently only have one dedicated Community Legal Education officer who works across the entire state and with all our legal practices.¹⁵ The breadth of this work includes school programs to teach Aboriginal young people about safe and respectful relationships, promoting services, and information sessions. CLE is often crucial to supporting the implementation of law reforms and service changes.

Client Service Officers (**CSO**) have been an important part of ensuring our services are culturally safe. Our CSO's are Aboriginal and Torres Strait Islander staff that are able to guide clients through their matters.¹⁶ They often help clients with transport and phone services. CSOs are also able to help translate legal jargon and are often trusted by clients to retell the client's story when needed, so that the client does not need to. Many clients will only come into their local VALS office on days when they know the CSO is in because they build a strong connection with them.

Given the broad nature of the work that CSO's do, we have been upskilling them with social worker qualifications, so they are better able to deal with the complex needs of our clients, who often carry significant trauma.

We have one CSO per regional office and currently have two in our metro office. In our Balit Ngulu Practice, we have one Aboriginal Community Engagement (**ACE**) worker per regional lawyer and currently have two positions in our metro office to support four lawyers. The ACE workers are similar to the CSOs but specialised to support Aboriginal children and young people.

Expanding the number of CSO and ACE workers would significantly boost VALS' capacity to support our clients and community. We also need more funding to train these staff across the breadth of skills they need to support our clients.

Many organisations ask VALS to provide cultural awareness training, particularly organisations in the legal system. It is not surprising – we are the only dedicated, full service legal assistance service for Aboriginal and/or Torres Strait Islander people in Victoria and have 50 years of experience. We provide cultural awareness training and advice on an ad hoc basis, but we have no dedicated funding for this purpose. We welcome being able to improve cultural awareness across the legal system, but we

¹⁵ VALS, [Community Legal Education](#).

¹⁶ VALS, [Regional Client Service Officer \(CSO\) Program](#) and VALS, [Submission to the Inquiry into Victoria's Criminal Justice System – September 2021](#).



should be funded to provide this training so that we are able to address some of these systemic issues without draining resources for continuing to provide wrap-around support for our clients.

We have many incidents where clients are released from custody without transport or the support to get transport.¹⁷ People leaving custody are often dealing with trauma and do not have the connections and supports in place to help them reintegrate. Many of our staff, particularly our CSOs and other members of our Community Justice Programs team (**CJP**), drive clients when possible. However, given people are often released from custody at odd hours or without access to a phone call, we are not always able to help. We currently do not have the resources to provide transport in every instance. NLAP funding to Aboriginal legal services could include a component that would allow us to develop transport services for people leaving custody, either in-house or through a contract arrangement, where our communities require such services.

Our lawyers and CJP staff regularly attend court to be available for Aboriginal people who want to engage our services. However, we do not have dedicated court outreach workers currently. Some courts, like the Coroners Court of Victoria, have Aboriginal staff to support Aboriginal people attending the court.¹⁸ However, identified roles employed by the courts often have to contend with the institutional racism in those workplaces. Evidence provided at the Coronial Inquest into the passing of Veronica Nelson by a Koori engagement officer employed by the Magistrates' Court suggested that they were not able to provide assistance to Veronica because the Court had her doing generalist work. Aboriginal legal services should be funded to have Court Outreach Workers for major courts so that Aboriginal people have access to culturally safe support.

An increase in online hearings due to changes in court practices during the COVID pandemic has put a strain on our infrastructure. Our offices are not soundproofed, do not have air-filtration, and we need more high-quality audio-visual equipment and IT support. Given the complex issues our clients have and the need for trauma-informed services, the physical space that we engage clients in is really important to our service delivery.

RECOMMENDATIONS

Recommendation 6. Aboriginal Legal Services should be funded to provide throughcare and transitional programs to enable higher rehabilitation and reintegration rates.

Recommendation 7. Aboriginal Legal Services should be funded to provide greater community legal education services.

Recommendation 8. Aboriginal Legal Services should be funded to employ more Aboriginal and Torres Strait Islander community and support workers.

¹⁷ One lawyer noted an incident of a young person being released from police custody prior to 5am without phone credit or money. A member of our Community Justice Programs team noted an incident where a community member was released from prison with conditions to attend a mental health facility on the other side of the state. They were given a train ticket, but no other supports to ensure they got to the facility and complied with the conditions of their release. These examples are just two of many.

¹⁸ Coroners Court of Victoria, [Support Services](#).

Recommendation 9. Aboriginal Legal Services should be funded to provide cultural awareness training.

Recommendation 10. Aboriginal Legal Services should be funded to provide transport services for Aboriginal and Torres Strait Islander people released from custody.

Recommendation 11. Aboriginal Legal Services should be funded to employ Court Outreach Workers to support Aboriginal and Torres Strait Islander people at court.

Recommendation 12. Aboriginal Legal Services should be funded to upgrade offices and any other places of work so that they are appropriate for the delivery of culturally safe and trauma-informed services. This should include soundproofing, appropriate IT, and any other requirements.

Reducing recidivism

VALS is engaged in a number of initiatives that help reduce recidivism. We are currently running a pilot program, the Aboriginal Community Justice Reports (ACJRs).¹⁹ The ACJRs are based on *Gladue* reports in Canada, but designed for the Victorian context. They are sentencing reports that help the bench understand the unique circumstances of a person's life. There is a particular focus on a person's strengths so that sentencing decisions can be designed in a way that enables rehabilitation. The courts have regularly noted the importance of ACJRs in various rulings,²⁰ including the Supreme Court in *DPP v Herrmann* [2021] VSCA 160, where they said:

“Experience overseas has demonstrated that reports such as the Canadian Gladue Reports are important aspects of the criminal justice system, particularly in the case of Aboriginal offenders. In that respect, we note that a project has recently commenced to trial Aboriginal Community Justice Reports. As this case has demonstrated, the provision of such reports in appropriate cases will constitute an important step in ensuring the just sentencing of offenders in this State ([88]).”

The funding for this trial is running out. We believe this project should be funded on an ongoing basis. Not only do they support Aboriginal people to get more appropriate outcomes that enhance their chances of rehabilitation, the reports are also an important educational tool for the courts and legal practitioners and have been incredibly well received.

The ACJRs also stand as an example of how we are often given small amounts of money to trial new programs, but even when they work it is hard to get government funding to make them ongoing and to scale them up. Increasing the base funding provided to Aboriginal legal services through NLAP and providing greater flexibility around how that funding can be used would give us more capacity to keep trial programs going while we seek permanent funding arrangements.

¹⁹ VALS, [Aboriginal Community Justice Reports](#) and VALS, [Unlocking Victorian Justice: Aboriginal Community Justice Reports Project](#).

²⁰ Other positive comments from the courts have been made in *DPP v Tirris* [2022] VCC 1575, *DPP v Rotumah* [2022] VCC 1532, *DPP v Muir* [2023] VCC 611, and *DPP v Jones* [2022] VCC 1939.



We believe that the development of a *Bugmy* Bar Book for Victoria would be an important complement to the ACJRs.²¹ *Bugmy* is a court decision that said the courts must consider the circumstances of someone’s background and that this be given proper weight by sentencing judges.²² This project can bring relevant research together for lawyers and the court to ensure they are properly considering these circumstances. Aboriginal people must lead such a project and there must be ongoing funding to keep the research up to date and to promote its use across the legal institutions. VALS believes that we could run this project in Victoria and that having the ongoing staff housed in VALS would ensure the cultural safety and impact of the book.

VALS would like to expand our capacity to support Aboriginal people seeking parole.²³ The parole system in Victoria is currently very difficult and many clients believe it is not worth applying for parole because it is too unlikely that they would get parole and, if they did get parole, the conditions would be too onerous to comply with. Parole should serve as an incentive towards rehabilitation and contributes to the overincarceration rate of our people.²⁴ A dedicated parole service paired with a throughcare or transitional program would allow us to help Aboriginal people with rehabilitation and reintegration, so that we can help end the cycle of incarceration.

RECOMMENDATIONS

Recommendation 13. Aboriginal Legal Services should be funded to run programs like the Aboriginal Community Justice Reports and versions of the *Bugmy* Bar Book.

Recommendation 14. Aboriginal Legal Services should be funded to provide dedicated parole services.

Balit Ngulu

Balit Ngulu (**Balit**) is a dedicated service for Aboriginal children and young people. Balit was established by VALS in 2017 to ensure Aboriginal children had access to high-quality, holistic, and trauma informed legal services. Previously, it had been hard for VALS to provide these services through our other legal practices due to conflict of interest issues.²⁵

VALS funded the launch of Balit with its own funding, mostly through the sale of an asset, in the hope of proving the model worked so that government would provide ongoing funding. However, after the first year of operation Balit was shutdown when no government funding was provided for it to continue.²⁶

²¹ VALS, [A Plan for Aboriginal Justice in Victoria](#), p.18.

²² The Public Defenders, [The Bugmy Bar Book](#).

²³ VALS, [A Plan for Aboriginal Justice in Victoria](#), p.19.

²⁴ Human Rights Law Centre, [Victorian review recommends continued human rights exemption for parole board](#).

²⁵ Nous Group, [Evaluation of Balit Ngulu](#), p.6.

²⁶ The ABC Online, [Victorian Aboriginal Legal Service shuts down youth service](#).



3 years later, the Victorian Government provided funding for Balit to operate in Melbourne and Shepparton for 3 years.²⁷ We are approaching the end of that funding and with less than 8 months to go, we have not received a commitment from government for further funding.

Case Study – LB

LB is a young person who required lots of support particularly early intervention. Disengaged with school, with community programs and due to difficult family circumstances also couch surfing at the age of 15.

VLA appeared as a friend to the court on the first occasion and said they'd try to find him/send a letter to his last known address. They were not able to achieve that. Balit Ngulu appeared on the second occasion and made a commitment to the court we would make some outreach attempts. We found him, we bought him a phone (not through Balit funding), we bought him credit, we linked him back in with the Education Justice Initiative, and we bought him clothes (again none of this is funded despite our staff doing significantly more work directly with community).

He was knocked back from the local ACCO because he did not qualify for support there for a range of reasons. We have been using our limited resource to make up for the lack of wrap around supports available to young people in the regions in the absence of youth justice and child protection.

Balit currently operates at slightly over \$1 million per annum (VALS has topped up the money provided by the Government to meet growing demand and community expectation for the service). We believe to expand the service across Victorian and into family and civil law services so that Balit can. Better support Aboriginal children and young people in Victoria, it would need approximately \$5 million per annum.

The first iteration received a positive analysis by Nous Group and the second iteration has achieved a exceptional results. The courts often speak about the importance of Balit staff, particularly the ACE workers, in their decisions.²⁸ Balit staff have noted that clients often form a strong bond with them given the intense support and contact they receive through the service. Clients often wish to stay in contact with staff well beyond the time when their legal matters are resolved.

Given the obvious success of Balit over many years, the Victorian Government's stated aim to invest in services that reduce youth offending, protect the rights of children and reduce poor child protection outcomes and the comparatively small amount of money needed to fully fund Balit as a state-wide service, it is another example of how current funding models fail to progress services from pilot phases to fully scaled services with ongoing funding.

²⁷ Premier of Victoria, [Supporting Aboriginal Children And Young People](#).

²⁸ Several clients have received bail, diversion or caution thanks to Balit services when they would otherwise have been given harsher outcomes. The court has particularly noted that they trust the ACE workers to ensure our clients stay connected to the support services, schooling and programs they need to stop engaging in the behaviour at issue.

RECOMMENDATIONS

Recommendation 15. VALS should be funded to expand Balit Ngulu to a statewide service.

Recommendation 16. Aboriginal Legal Services should be funded to provide dedicated services that ensure all members of our communities have access to high-quality, culturally safe, holistic, and trauma-informed legal services.

Brokerage funding

Brokerage funding is a constant issue across our service. Often access to the legal system, or support services that address the underlying causes for contact with the legal system, requires small amounts of money.

VALS regularly supports clients with this kind of funding. It is not uncommon for us to seek donated phones from staff and then top them up with phone credit so that clients can stay in touch through the duration of their legal matters. Some court application costs are not covered by legal aid grants and VALS will often cover these costs even if it is for a matter we cannot help with and have referred them on to legal aid or other services. Clothing and transport are other common uses for brokerage funding.

During the floods in Victoria in October 2022, VALS bought cleaning supplies, non-perishable items, clothing and prepaid credit cards to distribute to community members in the immediate aftermath. We were able to supply this support quicker than governments could distribute support funds, which helped community members while they waited for that support to arrive. Providing this support also meant we had far more contact with community than we otherwise would. People recovering from a natural disaster often have a range of legal needs and early contact can help resolve those issues before they compound.²⁹

NLAP funding for Aboriginal Legal Services should include flexible brokerage funding needs so that we can provide quick aid to our clients and community. Given the ongoing systemic racism that Aboriginal people experience engaging government services and support, brokerage funding delivered by Aboriginal Legal Services can play an important part in supporting community members that are excluded from generalist supports.

RECOMMENDATIONS

Recommendation 17. Aboriginal Legal Services should be funded to **flexible** provide brokerage funding, both for individual client needs and for community emergency needs.

²⁹ VALS, [Disaster Recovery – Accessing Legal Help](#).



Carpool

VALS' current model is highly centralised in Melbourne. While we are rapidly expanding our staffing levels in regional Victoria, there will always be a need to supplement local staff in the regions with staff from our Preston head office.

Preston to Mildura is our longest trip, totalling almost 550km, although trips to other corners of the state can take almost as long given the nature of the roads and geography of the state. While we have put in processes to manage trips to multiple locations in the same week, there has been instances where a lawyer may have a matter in Shepparton at the start of the week and Morwell at the end of the week.

Given the high usage of our fleet, we need to replace cars every two to three years. We currently operate about 30 vehicles. The annual running cost of the fleet in 2022-23 was a little over \$80,000 (although this was on the low side due to lower usage resulting from COVID pandemic effects). This year we are replacing 12 vehicles and that will cost about \$350,000 (not including trade-in costs).

It is also anticipated that we will need to transition the fleet to hybrid and electric vehicles in the coming years and these vehicles still have a sizeable premium on the purchase cost.

While it is not a regular occurrence, some staff prefer to fly to locations like Mildura. Round trips can cost approximately \$300-\$500 each. There may be some scope to maintain a car or two in Mildura for staff to use after they fly there. ALS' in other states certainly have a higher need for funding to fly to regional and remote locations, but even VALS would be able to utilise such funding. Particularly given Mildura has historically been a location where Aboriginal people have been subjected to even higher overpolicing than other parts of the State,³⁰ any funding that helped us provide more services to that community would be well utilised.

RECOMMENDATIONS

Recommendation 18. Aboriginal Legal Services should be funded to operate carpools that allow them to deliver services where need while keeping staff safe.

Recommendation 19. Aboriginal Legal Services should be funded to fly staff to locations that are difficult to drive to.

³⁰ The ABC Online, [Public drunkenness is soon to be decriminalised in Victoria, but stakeholders say they are still waiting for clarity](#) and The Age, [COVID-19 fines four times more likely for African and Middle Eastern Australians](#).



Fair And Effective Funding For Aboriginal Legal Services

VALS believes that NLAP should be designed to guarantee a minimum level of funding to each Aboriginal legal service for each year of the agreement, with capacity to direct a portion of the funding each year based on priorities and need. A guaranteed minimum level of funding would allow for longer planning, as well as greater job security for staff.

VALS believes that the next agreement could also extend to ten years, with regular reviews of the minimum level of funding in case it needs to be raised for any reason. The minimum funding level should not be able to be reduced for any reason.

Governments should have limited intervention in distribution. The Federal Government should establish the distribution model for the guaranteed minimum funding level and top up across the agreement based on priorities and need.

VALS believes that Aboriginal Legal Services should receive a greater level of funding than generalist services to reflect that our communities often have greater and more complex needs, our services are often more expensive (for instances, recruiting identified roles is difficult given the hyper competitive nature of that part of the employment market and this often requires higher wages or recruiting staff that need more intensive training), and our communities have high expectations that they will be able to engage all the services they need through Aboriginal Legal Services.

RECOMMENDATIONS

Recommendation 20. There should be a minimum guaranteed level of funding across the life of the agreement.

Recommendation 21. The next NLAP agreement should be longer in length to allow for greater certainty and long-term planning.

Recommendation 22. There should be regular reviews of the minimum guaranteed level of funding across the life of the agreement, but only to increase the level if needed.

Recommendation 23. Governments should have limited capacity to intervene in the distribution model once it is agreed to.

Recommendation 24. Aboriginal Legal Services should receive a greater portion of the NLAP funding than they currently do.

The Strength of Aboriginal Legal Services

There are many strengths to the service model of Aboriginal Legal Services. These strengths should be acknowledged and the extra value they deliver should be considered when designing the funding distribution model as our strengths deliver a greater return on investment for government.



Our community and social workers are undoubtedly one of our greatest strengths. As discussed above, our CSOs provide a range of services to clients that make our services much more accessible for Aboriginal people than generalist services. This includes creating a culturally safe environment, performing social worker, providing valuable non-legal support and case management, meeting with clients, supporting referrals out to support services, ensuring court attendance to reduce flow on issues, being easier to chat to through more informal conversations than with a lawyer, having more time than lawyers to spend with client, and providing transport. Our CSOs and ACE workers are all Aboriginal and Torres Strait Islander staff. Along with our Custody Notification Officers they make up a large part of our Aboriginal staff, which is slightly over 40% of our total staff numbers.

The holistic legal service model of Aboriginal Legal Services is also a significant strength. We are essentially a one stop shop with our Criminal Law, Civil Law and Human Rights, and Aboriginal Families Practices.

The addition of our Balit Ngulu and Wirraway services in recent years means we are able to support more clients with a greater range of matters than ever.

Case Study – Sarah


Sarah is an Aboriginal woman in her 60s who lives in Melbourne. She previously worked as a full manager and owned her own home. However, in the early 90s she was diagnosed with Schizophrenia and since then has been caught in a vicious cycle of police mistreatment, incarceration, and compulsory mental health treatment.

Sarah now lives in public housing. When her mother, who was part of the Stolen Generations, passed away recently, VALS Civil Team advocated with the Department for Sarah to stay in her home and for the lease to be transferred into her name so that she was not homeless. VALS have also supported Sarah to have thousands of dollars of infringements waived due to mental health and to get her car back on hardship grounds when police impounded it.

For a number of years, Sarah would call us to ask for legal assistance when she was detained in a psychiatric ward. We were unable to assist Sarah until our mental health practice commenced on 1 July 2022 through Victorian Government funding. Since that time, we have represented Sarah at multiple mental health tribunal hearings to ensure her voice is heard and her rights upheld and the least restrictive treatment applied.

For one of those hearings, Sarah's treating team were applying for electroconvulsive therapy. Susan was locked in a seclusion room and did not have capacity to refuse. VALS worked with her family to determine Sarah's wishes and advocate for more time for Sarah to make her own decision which was successful and she has not been subject to ECT.

Sarah is now living in the community and subject to a community treatment order. VALS will continue to support her to try and have these orders revoked so that she can regain her autonomy and dignity and exercise self-determination over her own life.



Our Civil and Human Rights team have also provided Sarah with advice on her eligibility for different compensation schemes, on personal safety intervention orders made following neighbour disputes and supported her to share her story with the Disability Royal Commission, and now the Yoorook Justice Commission (Yoorook).

Our Wirraway team are also in the process of assisting Sarah to take legal action against police for mistreatment as they have incarcerated her for being drunk when this was untrue, and left her home unlocked after they have taken her to hospital so that she has been robbed multiple times. Our criminal team have also assisted Sarah in relation to charges made against her resulting from her neighbour dispute.

Our Custody Notification Service handled over 11,000 notifications in 2021-22 and made over 70,000 welfare check calls in response to those notification.³¹ Not only does it allow us to support every person in custody who identifies as Aboriginal, it gives us a really strong view of policing trends in our communities across the state. This allows supports our service design and advocacy work. Currently, funding from the Federal Government does not cover the full cost of VALS' Custody Notification Service.

We have recently established health justice partnership with the Victorian Aboriginal Health Service (VAHS). This is strengthening our connection to VAHS and helping each of our organisations refer clients on for other support services. This type of integration with other culturally safe support services is a strength of Aboriginal Legal Services.

RECOMMENDATIONS

Recommendation 25. Government should give greater weighting to the unique strengths of Aboriginal Legal Services when designing the funding distribution model.

Recommendation 26. Through the NLAP agreement, the Federal Government should initiate research to provide more precise evaluations of the social benefit of Aboriginal Legal Services.

Recommendation 27. The NLAP agreement should ensure that all Aboriginal Legal Services can fully fund Custody Notification Services that meet the needs of their communities.

Demand Pressures And Opportunity For Service Growth

Means test

³¹ VALS, [Annual Report 2021-22](#), p. 32



Currently, VALS has a means test where clients must be receiving Centrelink payments or earning approximately \$52,000 per annum. This is to ensure our resources are directed to the community members who would have the most difficulty accessing alternative legal services. We do apply some discretion to the means test on a case-by-case basis.

However, the effect of the means test is to dampen demand and, as expressed previously, we believe that we should be funded to provide culturally safe legal services to any Aboriginal or Torres Strait Islander person in Victoria who wants to use our services. Our people do not become impervious to the systemic racism of the legal system once they reach a certain income level.

We are a long way from being able to reach this goal based on current funding levels, but the Federal Government should consider pathways to making this possible.

Conflict of interest issues

We encounter a number of conflict-of-interest issues through our work which often limit accessibility to our services. Historically, women have struggled to access support from Aboriginal Legal Services if their partners or other family members have already used the service and the legal matters involve family disputes.

Many of our people also live in smaller communities with fewer lawyers. Over 50% of Aboriginal people in Victoria live in regional areas, compared to about just 30% of the population overall.³²

This means that Aboriginal communities need access to multiple services. It is why Family Violence Prevention Legal Services were established and why VALS established Balit Ngulu. It is why we are strong advocates for Aboriginal people having access to generalist services too, and why those services must be culturally appropriate.

The need to fund this choice of service for Aboriginal people, should be accounted for in the NLAP funding.

RECOMMENDATIONS

Recommendation 28. Aboriginal people should have the ability to choose the legal service that best suits them and there should be enough local legal services to access so that conflict of interest issues does not leave them without options.

Community engagement

Typically, clients contact VALS for support during an emergency. Most notably, many community members have contact with VALS for the first time when they are taken into custody. Other community members contact us when they have a legal issue they need support with.

³² Live In Melbourne, [Explore Victoria](#) and Victorian Public Sector Commission, [Aboriginal Victoria today](#).



This means that our staff often have to quickly build a relationship with clients in order to get the best outcome for them. While our staff are well practiced in how to build trust through culturally safe practices, particularly our CSO's as mentioned previously, having more time to establish relationships would be beneficial.

While we have a range of outreach measures to proactively engage community, such as our CLE programs, there is opportunity to increase community engagement in non-emergency periods.

Other ACCOs often run community workshops, such as yarning circles or painting classes. VALS has not had the resources to provide this sort of service previously. VALS believes it would improve our connection to community and create important relationships to build on when community members do need our legal services if we had funding to provide these types of activities.

RECOMMENDATIONS

Recommendation 29. Aboriginal Legal Services should be funded to run programs that build strong relationships with community before they need legal assistance

Civil engagement package

Many of our clients do not have birth certificates, drivers' licenses, enrolments, and other forms of identification. This can limit their opportunities in life and their access to the legal system. Civic engagement can also be a rehabilitative factor for those in contact with the legal system.³³ This is particularly true for Aboriginal children and young people who have lived in out-of-home-care.

A driver's license program was an important part of the Bourke Justice Reinvestment Program.³⁴ The Chair of Just Reinvest NSW said "Driver's licences are not just licences to drive, they're a licence to participate in the community, to work."³⁵

VALS has been engaged by the Department of Justice and Community Safety in recent years about a persistent issue with Aboriginal people seeking Working With Children Checks (WWCC) where they are not responding to requests for further information. It is believed they are interpreting the requests as a sign that the outcome will ultimately be negative when in fact many would probably get approved for their WWCC if they supplied the further information.


VALS regularly helps with applications for these sorts of identification base don the needs of clients, but a proactive program for community might serve as an important preventative service.

VALS could help with drivers' licenses, WWCC, registering to vote in federal and state elections, registering to vote in First Peoples' Assembly of Victoria elections, applications for copies of birth

³³ VALS, [Submission to Joint Standing Committee on Electoral Matters' Inquiry into the 2022 Federal Election – August 2022](#), pp.3-4.

³⁴ Driving Change, [Bourke Justice Reinvestment Program](#).

³⁵ The Age, [Once a crime capital, Bourke is now a model for crime reduction](#).



certificates, registering as a member of VALS, and other important documents required for civic engagement.

RECOMMENDATIONS

Recommendation 30. Aboriginal Legal Services should be funded to provide support to apply for documents that enable civil engagement. This should include funding to pay for those applications.

Advocacy

VALS engages in a range of advocacy and there should be funding for this provided through NLAP.

Our Civil team has participated in campaigns such as the #SaveSorryBusiness campaign for community members affected by the collapse of the Youpla funeral fund.³⁶ They are also participated in the research and advocacy led by Inner Melbourne Community Legal examining the discriminatory issuing of COVID fines in Victoria.³⁷

Our Wirraway Practice represents clients who are next of kin in Coronial Inquests into deaths in custody and support the advocacy of those clients. Notably, they represented Uncle Percy Lovett, the partner of Veronica Nelson.³⁸ That advocacy has led to bail reforms that are intended to reduce the overincarceration of Aboriginal people, and healthcare in women's prisons being returned to public health providers.³⁹

Lawyers across our service regularly engage with the government and media to advocate for clients and the community.

We also have a dedicated Policy, Communications and Strategy team (**policy team**) to coordinate and amplify the advocacy work of VALS. The policy team regularly lead VALS' work on submissions to government and parliamentary consultations, such as our extensive submissions to the Yoorrook on the criminal legal system and child protection, both of which were extensively cited in Yoorrook's interim report on those issues.⁴⁰

Even though governments do not provide us with specific funding for advocacy, they regularly ask for us to be part of consultations on various reforms and benefit greatly from our advice. They should pay for this service through the NLAP funding agreement.

³⁶ VALS, [Statement regarding "ASIC launches proceedings against five Youpla Group directors"](#).

³⁷ The Age, [COVID-19 fines four times more likely for African and Middle Eastern Australians](#)

³⁸ VALS, [Coronial Inquest into death of Veronica Marie Nelson to examine healthcare in Victorian prisons and bail laws](#).

³⁹ The Age, [Victoria changes bail laws but youth crime statistics on the rise](#) and The ABC Online, [Public health bodies to take over care in Victorian women's prisons](#).

⁴⁰ VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Child Protection – November 2022](#) and VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System – November 2022](#), and [Yoorrook Justice Commission, Report into Victoria's Child Protection and Criminal Justice Systems](#).



NLAP should provide enough funding to support the advocacy work of Aboriginal legal services. VALS believes this can be built into the calculation of the funding we are provided through NLAP and each ALS can choose whether that money is spent on dedicated policy and advocacy staff, or built into the work of other staff.

Our advocacy work is restricted by the Australian Charities and Not-for-profits Commission (**ACNC**) and the legislation they enforce. For instance, we cannot encourage people to vote for particular parties. The regulations ACNC enforce are enough to ensure that Government funding is used appropriately by Aboriginal legal services. There is no need for further restrictions through the NLAP agreement.

RECOMMENDATIONS

Recommendation 31. Aboriginal legal services should be funded to provide advocacy services in a way that is responsive to community need and enables self-determination.

Recommendation 32. The advocacy work of Aboriginal Legal Services should not be constrained through NLAP and related funding agreements.

Other service expansion opportunities

VALS believes there are a range of other opportunities to expand our services. Our civil team regularly runs wills days in partnership with a private firm and these are always well attended. There is clearly strong demand for this service.

The housing crisis has meant that there is even more need for our tenancy advice services and community legal education around rights to housing.

Improving the quality and efficacy of referrals is also an opportunity for expansion. We certainly receive referrals that are inadequate. Often there is not enough information provided and this requires the person to retell their story multiple times. Many organisations are not fully aware of all the services we now provide, and this means we miss referrals. We have also been improving our databases and our intake methods so that we can improve our referrals to other organisations.

RECOMMENDATIONS

Recommendation 33. Aboriginal Legal Services should be funded to provide services based on community need.

Recommendation 34. NLAP should seek to improve referral process through funding and potentially through shared services.



Current Funding Challenges

Endless pilot funding

We have been discussing expanding our place-based services for over six years now. Our initial proposal was for 10 offices, including our head office. That later expanded to 12 based on demand trends in our data and feedback from local communities, particularly from various Regional Aboriginal Justice Advisory Committees (RAJAC's).^{41,42}

Over the last six years, we have had signed letters from the current Attorney-General of Victoria and their predecessor signalling that they supported our plan and would look to fund it imminently. We had initially funded the expansion of our local offices at about \$5 million up front, plus \$6 million per annum over the four years forward estimates. While the figures have shifted a little bit due to alterations to the plan and changes in the economy such as the surge of inflation driven by the COVID pandemic, the funding required remains within the ballpark of the initial bid. Over the last six years, the income for the Department of Justice and Community Safety in Victoria has grown from about \$7 billion per annum to almost \$11 billion per annum.⁴³ Meaning that our proposal would represent less than 0.1% of DJCS' annual budget if it was fully funded.

However, in Victoria's 2020-21 budget, VALS was given just \$2 million over two years to trial new office sites.⁴⁴ In Victoria's 2021-22 budget we were again given \$2 million over 2 years to trial new sites.⁴⁵ There was no funding provided for our place-based services in Victoria's 2022-23 budget, although the Victorian Government agreed to find funding out of the budget cycle through DJCS' budget.⁴⁶ That agreement was ultimately not delivered on, but VALS received \$7 million over two years for expanding our local office network in Victoria's 2023-24 budget.⁴⁷ During this time, we received funding for a new office in Bendigo as part of the funding allocated for the building of the new Bendigo Law Courts Development.⁴⁸

VALS has never asked for a trial of our place-based services. We know that they work because we have had regional offices for much of our 50 years of operation, and we knew the demand existed for them based on our own data, community feedback, and government data. It is also worth noting that place-based services are a priority of the Victorian Government, and it is unclear why a trial was needed given they support these models and had plenty of data and community feedback to support our proposal, which had been designed in line with the government's framework.⁴⁹

⁴¹ VALS, A Plan for Aboriginal Justice in Victoria, p.10.

⁴² RAJAC's form part of the governance structure for Victoria's Aboriginal Justice Agreement and are an input mechanism for enabling self-determination at the local level.

⁴³ Department of Justice and Community Safety, [Annual Report 2021-22](#), p.43.

⁴⁴ VALS, [The Victorian Government's budget has left Aboriginal people behind](#).

⁴⁵ VALS, [Daniel Andrews and Jaclyn Symes have put the Governments legacy on Aboriginal justice at risk](#).

⁴⁶ VALS, [The Andrews Government fails to invest in essential Aboriginal legal services again](#).

⁴⁷ VALS, [Victorian Government kickstarts expansion of Aboriginal legal services](#).

⁴⁸ VALS, [Victorian Aboriginal Legal Service opens first ever office in Bendigo](#).

⁴⁹ Vic.gov.au, [Place-based approaches](#).



The small drip feeding of funding means that it is incredibly hard to set up new offices given the short-term nature of the funding impacts on our ability to recruit staff.

Some of the funding that was provided for the trials that we had not asked for, needed to be rolled into our general funding to help us cover resourcing shortages in some of our legal practices after those shortages had led to new client freezes.⁵⁰

While we have been working with the Victorian Government to get funding for our place-based model and appreciate that they have accepted they have a responsibility to fund VALS' work and have slowly increased the amount of funding they provide to us, we have not had serious engagement on expanding our local office network from Federal governments over the same time period. Engagement with the Federal Government was particularly difficult when Scott Morrison was Prime Minister and Christian Porter and Michalia Cash were Attorney-General. Indeed, what existing funding we received had indexing capped. The new Federal Government, with Anthony Albanese as Prime Minister and Mark Dreyfus as Attorney-General have been a lot easier to speak to, however funding has not increased significantly yet. We note that we have had good discussions with the current Attorney-General, his Ministerial Office staff, and his Department. We hope that these relationships will lead to a significant increase in the funding that the Federal Government provides to VALS, and that it is embedded structurally in the Federal Budget so that it is not as easily subjected to changes in cabinet and government.

Aboriginal workforce issues


VALS has found recruiting difficult for a range of reasons, including wage disparity with other organisations in the CLC and ACCO sectors, but it can be particularly difficult to recruit Aboriginal staff. Identified roles often stay unfilled for far longer than non-identified roles.

Competition for Aboriginal employees is intense. Governments at all levels have both overall targets for Aboriginal employment levels and identified roles, particularly for community engagement or cultural safety positions. Government often pays significantly more and, in some respects, can also provide better conditions within their EBA's.

It can also be very difficult for Aboriginal people to work in an Aboriginal Legal Service. Many of our Aboriginal staff have remarked that the community will engage them for support at all hours and in non-work settings. This makes it hard for Aboriginal staff to establish work-life balance.

Many of our staff have experience of the trauma inflicted by the legal system through close family members or their own direct experience. It can be stressful to be constantly engaged with similar forms of vicarious trauma constantly at work.

⁵⁰ National Indigenous Times, [Victorian ALS forced to freeze client intake due to lack of funding](#), and VALS, [New client freeze at VALS due to lack of funding and increasing demand](#).



Given these issues, we are often hiring Aboriginal staff at the start of their careers and investing in training and upskilling them. We are proud to do this and want to be an employer of first choice for Aboriginal people. However, we need to be properly funded to do this on a larger scale.

RECOMMENDATIONS

Recommendation 35. Aboriginal Legal Services should be funded to provide attractive employment opportunities for Aboriginal and Torres Strait Islander people.

Recommendation 36. Aboriginal Legal Services should be funded to provide supports to Aboriginal and Torres Strait Islander staff to manage wellbeing and vicarious trauma.

Sustainable expansion funding

VALS has undergone significant expansion in recent years due to funding sources outside of NLAP, notably the Victorian Government and our online donations. In 2017, our total expenses were under \$9 million and we had about 80 staff in total at about 72 full-time equivalent staff (FTE) (although this included expenditure and staff related to the ALS in Tasmania too).⁵¹ In 2022, our total expenses were \$12.5 million (approximately a 40% increase), and we employed almost 100 staff at 91 FTE (a 26% increase) (and these numbers no longer include Tasmania).⁵² Thanks to \$7 million provide by the Victorian Government for the expansion of our local offices (and other funding sources), those numbers will grow significantly for the 2023 year.

While this expansion is needed, we are conscious that expansion needs to be done in a sustainable way. This includes hiring more managers to support the growing staff profile. Legal Practices have been run by Principal Managing Lawyers who were responsible for management duties. For our three larger Practices we have now also assigned Managing Lawyers to help with running the Practices. VALS currently only has one Human Resources (HR) staff member, and it is anticipated that we will need more HR resources as VALS grows. The expansion also requires more administrative staff and resources for the Finance team.


Staff burnout in the CLC and ACCO sector broadly is often connected with a lack of staff resources to enable the core work of the organisation. Having sufficient HR, administrative, and managerial staff is important to building and maintain a strong workplace culture and retaining staff.

VALS regional offices have unique needs. Given the staffing profile of these offices is low, they report to the Principal Managing Lawyers in the Preston head office. This means it is often impractical to support lawyers in these locations who do not already have several year's experience.

Expansion is necessary, but obviously creates its own challenges and drains already scarce resources. VALS believes that Aboriginal Legal Services should be provided with sustainable expansion funding to

⁵¹ ACNC, [South East Australian Aboriginal Justice Services Limited: Annual Information Statement 2017](#).

⁵² ACNC, [South East Australian Aboriginal Justice Services Limited: Annual Information Statement 2023](#).



help with hiring, onboarding, and training of staff to ensure existing resources do not need to be diverted to expansion.

RECOMMENDATIONS

Recommendation 37. Aboriginal Legal Services should be provided with funding to enable sustainable expansion.

Non-funded matters

Because our work is holistic and our clients often have complex needs, we regularly provided services that are not funded through the relevant agreement.

For instance, our Balit Ngulu Practice is only funded to provide criminal legal assistance, but the clients that use that service often have child protection matters and civil issues, like intervention orders. It is often impossible to resolve the criminal matters without addressing the non-criminal matters.

The NLAP funding could take into account these types of issues and provide greater discretion for Aboriginal legal services to use NLAP funding to fill these gaps.

RECOMMENDATIONS

Recommendation 38. NLAP funding should be flexible so that Aboriginal Legal Services can be responsive to community need and so that NLAP funding can be used to cover gaps created by other funding agreements.

Consolidating funding

We believe that NLAP should consolidate funding streams and terminating funding streams should be rolled into baseline funding.

For example, we have received funding for Coronial Inquest matters and Family Violence matters. When the funding was granted, they were priorities. They are still priorities, and they have also become part of our regular service delivery.

While specific funding streams allow Government to direct how resources are used, it is often inefficient. It creates greater complexity for finance and performance reporting and means limits the capacity of Aboriginal Legal Services to respond to community need. Particularly while baseline funding is so far short of demand, the inflexibility provided by multiple funding streams limits the impact of that funding. And when funding streams end, that does not mean community expectations end. Often Aboriginal Legal Services are left to try and fund the continuation of those services through baseline funding.

RECOMMENDATIONS

Recommendation 39. NLAP funding streams, including terminating funding, should be rolled into baseline funding.

Non-staffing funding gap

There are a range of areas where we need further funding to support staff and client wellbeing and improve the efficiency of our service. Some of the funding gaps identified by Principal Managing Lawyers at VALS include:

- Improved trauma-informed service delivery. Staff identified the need for in-house counselling for clients and mental health budget for staff.
- Document management software. Staff noted that we currently rely on pro-bono e-discovery tools to manage large scale discovery and that our service would benefit from having access to such tools in-house.

RECOMMENDATIONS

Recommendation 40. NLAP funding should provide greater capacity for expenses that support staff wellbeing and performance, such as a mental health budget and e-discovery tools.

Staff choice for clients

Principal Managing Lawyers noted that it is important for clients to have a choice in which staff they engage with for their support and legal services. It was particularly noted that having options based on the gender of staff and other attributes would help clients feel more comfortable, particularly those with significant trauma.⁵³ Clients having the option to choose which staff works with them can also be important for cultural reasons.

RECOMMENDATIONS

Recommendation 41. NLAP should fund Aboriginal Legal Services to be able to employ a diverse range of staff so that clients have a choice regarding who they receive the service from.

⁵³ For example, in the context of Balit Ngulu, their clients are children and young people who often have experienced abuse and trauma in a range of settings.

Training budget

VALS allocates a training budget for all staff as part of costing roles, however we often have a greater need for training. We are often recruiting staff at the beginning of their careers, and they need more training support. The complexity of our clients needs means that staff also need a broader set of skills to provide appropriate support.

VALS often lose staff after they have trained them up. In essence, the sector and legal system rely on VALS as a training service provider like TAFEs and universities. We are not adequately resourced for providing this training given we often lose a lot of the benefit when staff move on.

RECOMMENDATIONS

Recommendation 42. NLAP should recognise the training burden on Aboriginal Legal Services and fund them to provide the training their staff need and in recognition that the legal system relies on the training we provide.

Growth in wages creating an increasing funding gap

VALS wages have traditionally been lower than Victoria Legal Aid, the CLC sector, and in comparison, to other ACCOs. A combination of a new EBA implemented in 2022 to bridge some of that disparity and a competitive employment market has driven up our wages faster than the allocated funding streams for those roles.

Current wage costs for VALS increased by 12.9% across the last financial year. Some of this is due to expansion based off funding for new staff. However, the costs of the new EBA and labour market pressures mean that a significant portion of that increase is an increase in wages that is not covered by the indexation of our funding streams.


RECOMMENDATIONS

Recommendation 43. NLAP funding should increase on an annual basis at a rate that covers wage growth.

Cutting Red Tape

VALS believes that the current reporting processes could be slimmed down. Excessive red tape means that a lot of staff hours are devoted to filling out reports. We believe that some of this reporting does not provide value to the Government or the public in terms of measuring value for money.

Our finance reports are now directed through the single funding agreement we have with the Victorian Government. Initially this process was more difficult than when we reported through the Federal



Government, but the agreement with the state has been adjusted to make the financial reporting easier.

We currently provide performance reports on NLAP funding every six months. We believe that the data team would spend approximately 150 hours on each report and executive staff spend about half a day drafting their sections (about 30 hours in total).

Over time, the reporting requirements have been adjusted to remove some parts of the reports that were time intensive to compile and seemingly provided little information. For instance, we were required to list and categorise all stakeholder meetings. Sifting through diaries was time intensive and it is unclear what the data showed, given any individual meeting might cover a range of issues, some that are not necessarily specific to NLAP funding.

The ABS is creating a report using the NLAP reporting to try and quantify the work being done with NLAP funding. However, the ABS data will vary in a range of ways (for instance NLAP records matters at the start date and the ABS data will record from the end date). This means our data team will have to produce multiple versions of what is supposed to be the same data.

The value of Aboriginal Legal Services and the CLC sector is broadly accepted. It would be better for resources to be spent on service delivery rather than reporting that provides little value. Reporting to ensure governance standards has value, but there should not be a need to prove the value of the NLAP funding through such resource intensive methods.

RECOMMENDATIONS

Recommendation 44. NLAP reporting should be slimmed down so that Aboriginal Legal Services are not overburdened with red tape.

Staffing Challenges

Staff recruitment and retention

A significant recruitment challenge is finding staff for regional offices. In Victoria legal professionals tend to be city based and most of the opportunities in the sector are city based.

The people we recruit in regions often live there and work in the sector already. Our recent recruitment in the regions has typically been lawyers working at the local Victoria Legal Aid office or private firms. Lawyers seem to rarely move for work opportunities.

Added to this, we need experienced lawyers in the region due to the lower staffing profile meaning it is harder to provide mentoring, support and training.

Some of our Principal Managing Lawyers have indicated that in the regions we often need wages that compete with the private sector, or at least CLCs.



We often find it hard to recruit to needs, especially when we require specific skills. For instance, we have been building up our data collection and reporting by using ActionStep, but have been unable to easily recruit staff that already had ActionStep experience in the legal sector and had to provide training. For some admin roles, like legal secretaries, we often want full-time employees, but most of the people interested in these roles are studying and only want to do part-time. Some of these challenges are easier to manage than others, but they all add to the burden of running an Aboriginal Legal Service.

Retention is as important as recruitment. At VALS we have been looking for various ways to keep staff. We have several staff who started as a volunteer or working on reception and have gone on to reach senior and management positions. They provide an invaluable source of corporate knowledge, particularly when they have worked across several parts of VALS.

However, until recent expansions there were few opportunities for development. Expanding our services has created more management positions which incentivises some staff to stay at VALS. We have also looked to increase the amount of strategic litigation staff can do as this is an important professional development opportunity and allows staff to engage in work they are passionate about. Through the recent EBA, we also increased a number of conditions for staff, including increasing leave entitlements.

Ultimately wages will always play an important part of staff recruitment and retention, and Aboriginal Legal Services have not been able to compete with relevant sectors.

As discussed previously, it is hard to recruit Aboriginal staff.

RECOMMENDATIONS

Recommendation 45. The Federal Government should look at options for increasing the number of lawyers based in regional locations. This could include expanding the capacity of regional courts, providing more funding for regional services, and funding multiple services in regional locations so that it establishes a hub.

Recommendation 46. NLAP funding should acknowledge the unique needs of staff based in the regions.

Recommendation 47. The Federal Government should work with Aboriginal Legal Services and CLC's to ensure a skilled workforce for the sector.



Sector wage disparity

Aboriginal Legal Services are not able to provide the same wages as comparable jobs in the legal assistance and ACCO sectors.

For example, the starting rate for a VALS lawyer is about \$78,000, where as a VLA lawyer starting rate is about \$85,000. For Senior Lawyers, the salary band is \$94,458 – 98,625.80 at VALS, and \$96,953 - \$121,188 at VLA.⁵⁴

Similar disparities exist between VALS and other ACCOs, particularly at the senior level.

RECOMMENDATIONS

Recommendation 48. Aboriginal Legal Services should be provided with extra funding that brings their wages into line with equivalent workplaces, without impacting staff numbers or service quality.

Staff wellbeing

Staff wellbeing is an incredibly important issue for Aboriginal Legal Services. Our staff are exposed to vicarious trauma risks every day.

Many staff report that the standard Employee Assistance Program is not sufficient for them or not suited to their needs. VALS has explored and trialled several options for supporting staff wellbeing, but it is still a work in progress.

Permanent workforce development funding would allow us to provide more flexible responses to staff needs. Part of our challenge in providing the support our staff need to maintain their wellbeing is that everyone has different needs.

Caseload data has been an ongoing cause of poor staff wellbeing outcomes. Some of our staff regularly have 100 or more open files, particularly in the Criminal Law Practice. In recent years we have taken difficult decisions to freeze new client intake until caseloads reduce to safer levels.⁵⁵

RECOMMENDATIONS

Recommendation 49. NLAP funding should ensure that Aboriginal Legal Services have appropriate funding to support staff wellbeing.

⁵⁴ Rates based on VALS' EBA and jobs advertised by VLA in October 2023.

⁵⁵ National Indigenous Times, [Victorian ALS forced to freeze client intake due to lack of funding](#).

Other staffing issues

Regional staff are often covering large areas. The impact of the travel can impact staff wellbeing, it increases costs to VALS through travel expenses and time in lieu and reduce the amount of time staff can spend with clients. If our regional office locations were all fully funded and staffed, this would reduce some of the travel requirements and associated impacts.

We mostly utilise pro bono work in the civil space. There is a common view across VALS that it is often too difficult to get someone provided on a pro bono basis up to a level where they are providing value. Training, backgrounding and managing staff provided on a pro bono basis is often too much effort. There was however a belief that administrative staff provided on a pro bono basis could be valuable.

National Legal Assistance Data Standards Manual

The National Legal Assistance Data Standards Manual is difficult to use. The manual needs more instructions. The examples are unclear, and this leads to poor quality data and more hours spent compiling reports. VALS believes that there could be better training for new lawyers and data quality workers, potentially delivered through a shared service.

RECOMMENDATIONS

Recommendation 50. The National Legal Assistance Data Standards Manual should be improved.

Recommendation 51. The Federal Government should consider options for improving sector understanding and compliance with the National Legal Assistance Data Standards Manual.

Improving Data and Technology Use

VALS believes that the Government could play a greater role in creating data sets about the experience of specific cohorts. For instance, there is little high-quality data on older people and trans people in Aboriginal community and their experiences of the legal system. We know some things anecdotally or from broad studies, like the prevalence of elder abuse through financial methods, but it is hard to design specific services based on the available data. High quality research into the experiences of specific cohorts would be more useful than NLAP reporting data for service design. Executive staff at VALS reported that they did not use NLAP data for service delivery and instead relied on VALS' internal data collection and analysis and practice experience to supplement community and client feedback when designing new services.

VALS has implemented a client feedback survey where we survey clients at multiple points during their experience with VALS. Early results have been useful in broadening our understanding of client experiences. This data is much richer than the NLAP report data.

The CLC and ACCO sectors are not at the forefront of technology due to funding constraints. It seems likely that Artificial intelligence tools will be commonly used by private sector law firms in the near



future, as it could be particularly useful for research and summarising relevant cases or discovery documents.⁵⁶ The Government should consider how it ensures equitable access to such tools so that CLC's and ACCO's can afford them and their staff have the skills to utilise them.

RECOMMENDATIONS

Recommendation 52. The Federal Government should commission research that helps inform legal service design for specific cohorts, particularly those with intersecting disadvantages.

Recommendation 53. The Federal Government should consider options for ensuring CLC's and ACCO's have access to AI tools and a workforce that has the skills to utilise them.

Shared Services

There are opportunities for more shared services between Aboriginal Legal Services and CLC's.

While each of us serve a unique client base, there are many common elements that underpin our service delivery. A lot of data, HR and administrative work could be delivered through shared service models, or in-house staff could be supplemented through shared services. A lot of the common tools for legal work, like templates and forms for various tasks, could be delivered through an appropriate shared service.

VALS has not done extensive thinking on what shared services could look like, but a study and design process could be funded by the Federal Government to ensure NLAP funding was used efficiently and not spent on unnecessary replication across the sector. Shared services should be optional as some legal services would need to maintain certain elements in-house. The importance of cultural safety might mean that Aboriginal services choose not to participate in some elements of shared services.

We note that peak bodies already provide some shared services. VALS is a member of both the Federation of Community Legal Centre's in Victoria, and the National Aboriginal and Torres Strait Islander Legal Service. There is potential for both of these peak bodies to provide a greater range of shared service options for members.

RECOMMENDATIONS

Recommendation 54. The Federal Government should fund a scoping and design process for shared services.

⁵⁶ Thomson Reuters Legal Solutions, [Legal AI tools: Essential for attorneys.](#)