

OFFICIAL



# National Legal Assistance Partnership Review

Victoria Legal Aid submission



## Acknowledgement of Country

This submission was written on the land of the Wurundjeri and Boon Wurrung people of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present. We also acknowledge the strength and resilience of all First Nations people who today are still arrested and imprisoned at rates far higher than other Australians.

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## Introduction

Victoria Legal Aid (VLA) welcomes the independent review of the National Legal Assistance Partnership (NLAP) and the opportunity to improve access for some of the most marginalised people in our society.

Publicly funded legal assistance is an essential component of the justice system and seeks to ensure that people have access to justice. The legal assistance sector is comprised of legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services, private practitioners and barristers undertaking legal aid work. Investing in legal assistance delivers economic and social benefits to disadvantaged and marginalised people, families, the justice system and other areas of government service delivery<sup>1</sup>.

The next NLAP agreement can support better outcomes for clients and efficiencies for the legal assistance sector and justice system through:

- a new funding model underpinned by legal need and demand;
- investment into regular analysis of legal need across the country to understand service demand;
- access to culturally appropriate legal services for First Nations people;
- increased investment in publicly funded family law and civil law service offerings;
- addressing workforce challenges and supply of private practitioners willing to undertake legal aid work, particularly in rural and regional areas; and
- efficiencies through systemic advocacy, the integration of legal and non-legal services, national service delivery, technology, artificial intelligence and data capability.

VLA endorses National Legal Aid's submission to the NLAP Review and the sector submissions on Building the Evidence Base, Data Principles, Disaster Legal Assistance, Respect@Work and Sector Outcomes. We also endorse Impact Economics and Policy report 'Justice on the Brink'. This submission supplements those reports and is intended to highlight issues within a Victorian context.

### Role of Victoria Legal Aid in legal assistance sector

VLA is a statutory authority established under the *Legal Aid Act 1978 (Vic)*. VLA is reliant on funding from both the State and Commonwealth governments. Funding from the Commonwealth government is provided through the National Legal Assistance Partnership for the provision of legal assistance services predominately related to both family law and federal civil law matters.

VLA is the primary entry point to the legal assistance sector in Victoria, providing easily accessible information, advice, streamlined intake, and referrals through a phone line, live-chat and in person services. Other entry points include our website which receives more than 2 million visits per year, at court and tribunal duty lawyer services and our 15 offices across Victoria. VLA assists people with legal problems in a range of areas including criminal law, family law, child protection, family violence, mental health, disasters, discrimination, disability, tenancy, fines, social security, immigration, guardianship and administration, debt, and assistance for victims of crime. We do this through our specialist legal teams, non-legal advocates and allied professionals, working with our legal assistance sector partners as part of the mixed model of service delivery.

We provide information and advice, community legal education, early intervention, services that prevent legal issues from occurring or escalating, dispute resolution, legal and non-legal advocacy, and ongoing assistance and representation. VLA also supports and promotes improved legal assistance sector

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<sup>1</sup> PricewaterhouseCoopers (PwC) Australia, *The Benefits of Providing Access to Justice* (Final Report, January 2023) 1 <<https://www.nationallegalaid.org/resources/benefits-providing-access-justice/>>.

coordination through co-designed service design processes, shared tools and the provision of learning resources.

VLA uses its practice and evidence base to address systemic injustices and inequality for clients and communities through strategic litigation and advocacy as well as policy and law reform. This supports the efficient use of legal aid funding and minimises the need for one-to-one legal services.

## Legal need and service delivery models

Victoria Law Foundation's Public Understanding of Law Survey (PULS) is the first population-based research of its kind in a decade. This research explores how people understand, experience and navigate the law and everyday problems in Victoria.<sup>2</sup> The PULS first report, which focusses on understanding legal need, found that 42 per cent of respondents reported one or more justiciable problems over the past two years with increasing complexity. This equates to 6.4 million problems across the adult population of Victoria.<sup>3</sup>

Investing in regular analysis of legal need across the country will further understanding of service demand and need nationally. This data is critical to understanding current and possible future demand, how people experience the law and act (or do not act) on their problems, and what may be needed from the legal assistance sector to respond accordingly.

### ***Disadvantage and legal need in Victoria***

Analysis of legal service provision and demographic data, highlights regions with an intersection of population growth, disadvantage and limited legal access indicate significant legal need. While Victoria is not as geographically dispersed as other states and territories, the legal assistance sector suffers from similar challenges in attraction and retention of staff in regional and rural areas.

Victoria is one of Australia's most populous states with fast growing populations driving legal need, including complex and intersecting legal and non-legal issues.

The 2021 national *Dropping off the Edge* study conducted by the University of Canberra, shows disadvantage concentrated in a small number of outer urban growth corridors and larger regional cities. Rapidly growing populations, poor infrastructure and indicators such as housing stress, family violence, incarceration, disability and unemployment indicate *extreme disadvantage* in the following ten Local Government Areas (LGAs):

- |                    |                         |
|--------------------|-------------------------|
| 1. Casey           | 6. Brimbank             |
| 2. Wyndham         | 7. Melton               |
| 3. Greater Geelong | 8. Mornington Peninsula |
| 4. Hume            | 9. Greater Dandenong    |
| 5. Whittlesea      | 10. Frankston           |

Comparing these regions to the rate of legal assistance services per thousand population, five LGAs emerge as areas of particularly high legal need, where a combination of high disadvantage and low rates of services to population indicates significant unmet need for legal assistance. **Casey, Wyndham, Greater Geelong, Whittlesea** and **Melton** each have very high population and high growth well above the state average, significant levels of disadvantage and a lower rate of legal service provision than the rest of Victoria.

<sup>2</sup> Nigel Balmer, Pascoe Pleasence, Hugh M McDonald and Rebecca L Sandefur, Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need, 30 August 2023 (PULS Volume 1).

<sup>3</sup> As above.

These areas of significant growth in regional and outer metropolitan areas place increasing pressure on VLA's inner metropolitan service locations, with our office in Sunshine being the closest to expanding demand in Wyndham / Melton, our office in Dandenong closest to Casey, Ringwood / Broadmeadows offices closest to Whittlesea and Geelong office to Greater Geelong.

The PULS report identifies that non-legal services play a crucial role in supporting people with their legal problems.<sup>4</sup> The new NLAP agreement would benefit from coordinated models and partnerships working across the legal assistance sector, including legal and non-legal services working together in a more holistic way. Incorporation of lived experience and co-design in service delivery and evaluation is crucial to ensure services are client centered and meet the needs of users. VLA strongly supports this direction as demonstrated by the below examples.

Our evidence shows that non-legal support, and the role of allied and non-legal professionals has the benefit of reducing impact on courts and enhancing problem resolution. We see opportunities for First Nations clients, as well as in the family law and family violence space.

### **Independent Mental Health Advocacy**

*Our Independent Mental Health Advocacy (IMHA) service is a non legal advocacy service that supports and assists people across Victoria to make, and be involved in, decisions about their mental health assessment, treatment and personal recovery. This includes providing consumers information on the mental health system and their rights, building capacity for self-advocacy, directly engaging with a person's treating team, training mental health staff and linking consumers to other services. The first of its kind in Australia, IMHA's success in working with consumers to increase individual participation in self-advocacy as well as its role in systemic advocacy has been recognised in a 2019 Independent Evaluation of IMHA<sup>5</sup> and in the recently introduced Mental Health and Wellbeing Act in Victoria that has ensured every Victorian subjected to compulsory mental health treatment will be provided an 'opt-out' referral to IMHA advocates<sup>6</sup>. VLA also employs two Senior Consumer Consultants, dedicated lived experience roles, to oversee and promote consumer leadership and has a Speaking from Experience group that consists of consumer experts who provide expertise, advice and influence VLA's work.*

### **Victoria's first dedicated legal service for victims of crime – a coordinated, collaborative model across the legal assistance sector**

*The Victims Legal Service (VLS) in Victoria provides an example of coordinated, collaborative and innovative partnerships for civil legal assistance delivery. The VLS provides legal advice and assistance in financial assistance and compensation, and restitution and compensation order matters to victims of crime, and is delivered statewide in partnership between VLA, Victorian Aboriginal Legal Service, Djirra, Women's Legal Service Victoria and seven Community Legal Centres across Victoria. The VLS was designed in partnership with these services, the Victorian government and lived experience experts (victims of crime/victim-survivors) with the aim of providing victims of crime with trauma-informed, specialised and coordinated legal information and advice services that are culturally safe, equitable and accessible. The VLS is coordinated through a working group of service providers providing governance, a Project Coordinator employed at VLA and a community of practice of VLS partners. The service provides a dedicated state-wide helpline delivered by VLA as the primary entry point (although there is a no wrong door approach to service provision across the partners) and legal advice and file-work provided by all*

<sup>4</sup> Nigel Balmer, Pascoe Pleasence, Hugh M McDonald and Rebecca L Sandefur, Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need, 30 August 2023, 10 (PULS Volume 1).

<sup>5</sup> RMIT University, [Evaluation of the Independent Mental Health Advocacy Service](#) (2019).

<sup>6</sup> [New mental health laws for a new era – we're in your corner | Victoria Legal Aid.](#)

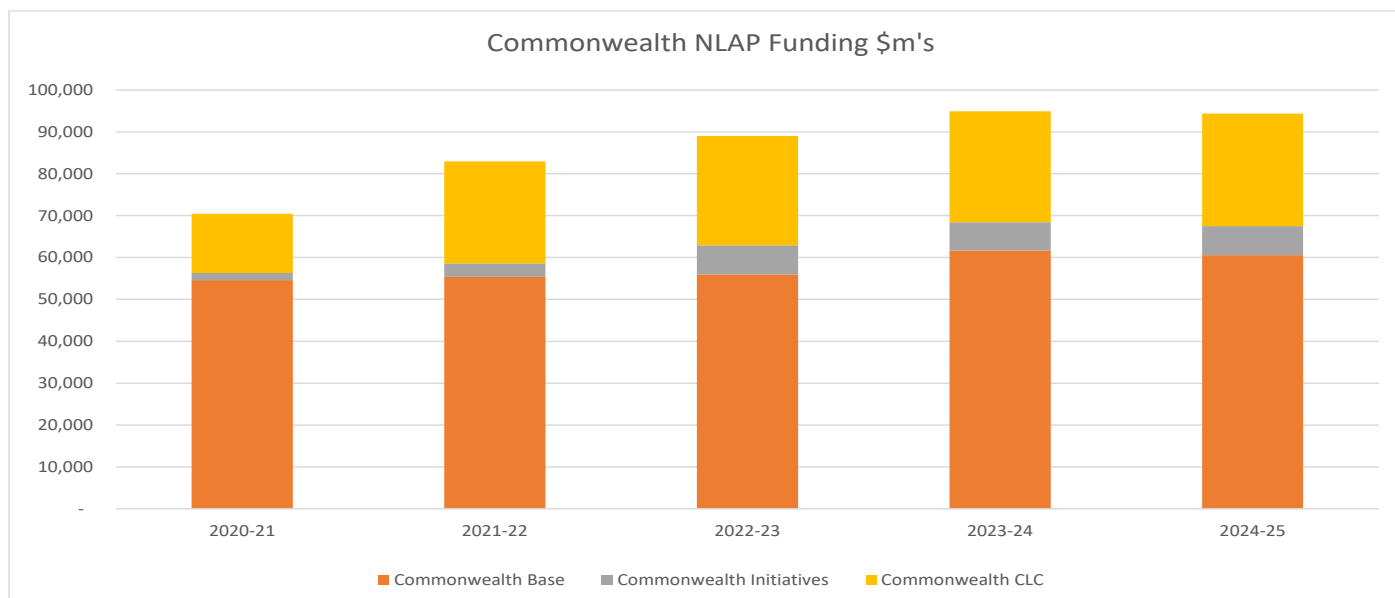
service partners. In the first 3 and a half months of its operation, the VLS helpline responded to 682 enquiries and made 162 referrals to VLS partners.<sup>7</sup>

## Funding model and framework

The national wellbeing framework, Measuring What Matters, recognises that access to fair and equal justice is critical if people are to enhance their wellbeing.<sup>8</sup> The framework identifies the NLAP as a key contributor to expanding access to fair and equal justice. The NLAP should continue to play an important role in supporting prevention of or early intervention into people’s everyday problems. We know that individual legal issues often come from social problems such as issues with housing, health, education or employment security.

The figure below shows that:

- Commonwealth funding through the NLAP has increased over the life of the agreement from \$70.5m to \$94.4m (\$23.9m), with the majority of the increase relating to CLC funding increases (\$12.6m – 53%) and specific initiatives (\$5.2m – 23%). This excludes Commonwealth funding received outside the NLAP (i.e. NDIS appeals).
- fixed term or initiative funding under the NLAP has become a greater proportion of overall Commonwealth funding increasing from 2 per cent in 2020-21 to 10 per cent in 2024-25. While this funding is welcome, it is tied to specific, time-limited programs and does not address the need for base funding to meet an ongoing need. There is an over-reliance on time-limited funding which means it is difficult to deliver and sustain services as staff seek more job security. This growing ‘funding cliff’ supports important reforms including mental health, disability and family advocacy support services.
- the increase in base funding over the agreement of \$6m is largely driven by Lighthouse Project funding. Excluding this funding, underlying base funding has only increased by \$3.5m over the 5 years (which equates to approx. 1.6 per cent per annum). This represents a decrease in real terms given current inflation rate of 6 per cent.

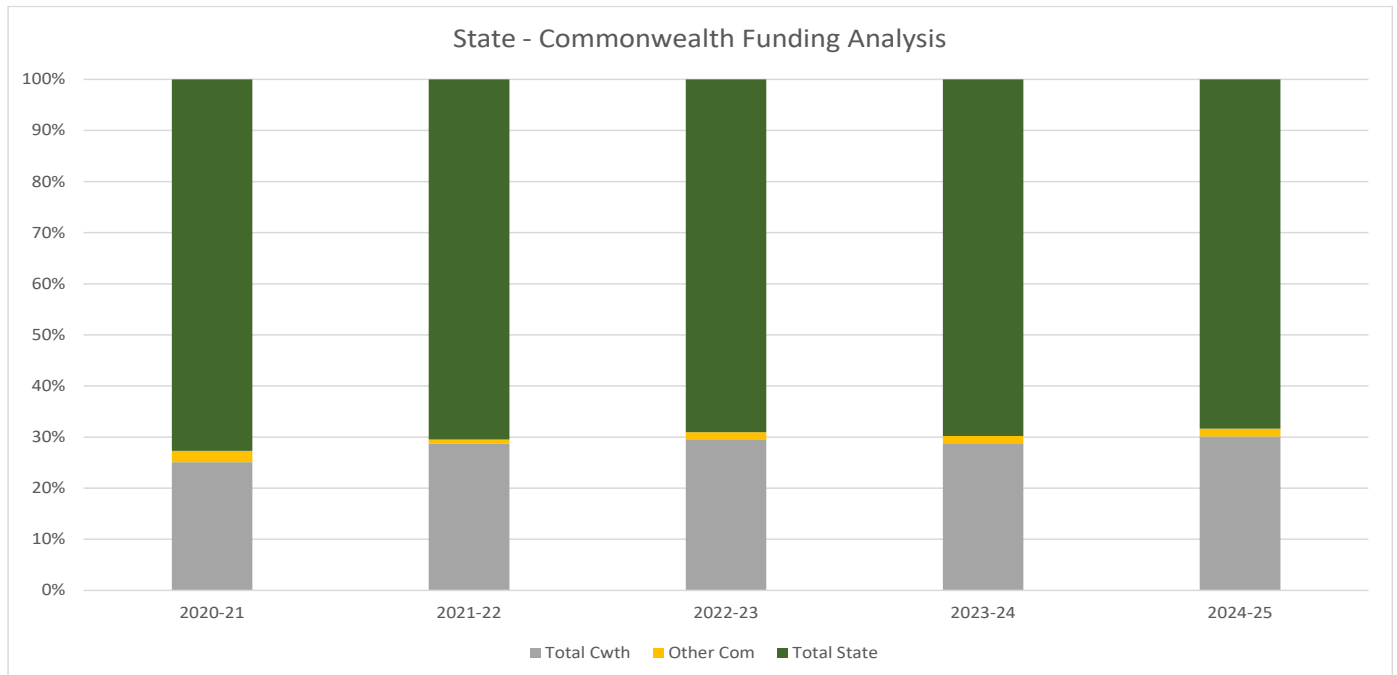


<sup>7</sup> For more information about the Victims Legal Service see here: [New partnership delivering support to victims of crime | Victoria Legal Aid.](#)

<sup>8</sup> Australian Government, 2023, ‘Measuring what matters: Australia’s First Wellbeing Framework’ <https://treasury.gov.au/policy-topics/measuring-what-matters/dashboard/access-justice>.

The figure below shows that funding from the Commonwealth under the NLAP as a proportion of total government funding remains low - between 25-30 per cent over the life of the NLAP.

Inadequate funding means we have had to implement strict eligibility guidelines, in particular a very strict means test – our primary levers to manage demand. This has the effect of reducing the number of people eligible for legal aid, progressively eroding core services, and increasing unmet legal need in the community. Over the last 10 years, state funding has grown by approximately \$100m, compared to \$25m in Commonwealth funding over the same period. While this growth is welcome, VLA continues to face significant financial sustainability challenges as there is insufficient core funding to meet projected demand.



A new funding model should be established with a more sophisticated modelling of legal need and demand (supported by national legal need surveys and appropriate system forecasting).

VLA supports further investment in the sector and a new funding model that:

- is driven by **legal need and responsive to community needs**, as well as government policy and system changes
- supports '**pipeline funding**' that recognises the legal assistance sectors **system demand drivers** and the role of Justice Impact Statements in assessing the implications of new policy and law reform proposals. This approach should have been automatically applied when recent family court reforms occurred, related to a new case management system in the Federal Circuit and Family Court of Australia, rather than this being an exceptional process.
- includes **CPI and adequate indexation**
- encourages and adequately resources **coordinated models and partnerships** which place the user at the centre
- better reflects the work and effort required by **private practitioners**
- **reduces** and contains the quantum of **fixed term programs**
- builds the **evidence base** and **data capability** nationally
- supports other **departments funding legal assistance for specific interests**

- drives **innovation** in service delivery across the mixed model
- supports **flexibility and discretion** within legal aid commission guidelines.

In this context, a five-year agreement remains appropriate with flexibility built in. The agreement, for example, could allow for annual adjustments to funding levels in consideration of new policy or other reforms and on emerging needs. This proposal would benefit from Department coordination and leadership and enhanced capability to undertake the appropriate forecasting and analysis.

VLA supports the general principle of greater flexibility with funding and, where practical, a move away from the current practice where Commonwealth funding is strictly used for Commonwealth matters. We note that there are some situations where keeping funds tied is appropriate, for example, where funding is under pressure, thereby creating a 'protective mechanism' for certain types of legal problems to ensure that these are not eroded over time.

## Improving outcomes for First Nations people and communities

All First Nations people should be able to access culturally appropriate legal services that make them feel safe, respected and listened to. VLA is committed to self-determination and supports the position of Aboriginal Community Controlled Organisations on whether funding for these bodies should be part of the next NLAP or a separate agreement.

As a mainstream provider in the legal assistance sector, we acknowledge the ongoing harms of colonialism perpetuated through the justice system and are working to improve cultural safety and outcomes for our First Nations clients. Legal aid commissions have an important role in providing legal assistance to First Nations communities by ensuring choice of provider and in managing conflict of interests.

The next NLAP agreement provides an important opportunity to commit to a self-determined approach for First Nations clients and services. The next NLAP should:

- **drive cultural capability improvements** – VLA is progressing a range of initiatives including:
  - collaborating with the Law Institute of Victoria to develop a cultural capability framework for the legal sector (refer to further details below)
  - new training for lawyers to working safely and effectively with First Nations clients and people from culturally diverse communities regarding how to recognize and respond to family violence and suicide risk indicators.
- **encourage increased levels of First Nations employment** needed within the sector.
- provide **greater discretion to use funds for First Nations service delivery** to support Closing the Gap and encourage resolution of legal problems with assistance from tailored services to meet legal and non-legal roles where appropriate. For example, our Aboriginal Community Engagement (ACE) Officers provide specialist non-legal support to First Nations people to access our legal assistance services. The ACE Officers contribute to building and supporting relationships with local community-controlled organisations and other service providers, and building greater knowledge of legal problems and assistance available through community legal education and other community engagement activities. VLA currently employes five ACE officers located in our regional offices and is expanding this service statewide, as well as to the Bail and Remand Court.
- **be adaptable** as Treaty and other reforms resulting from Inquiries such as the Yoorrook Justice Commission occurring in Victoria are likely to see policy and service delivery change such as new self-determined legislation and service systems.
- invest in **stronger data collection and data sharing** to enable a stronger understanding of the other intersecting (legal and non-legal) issues experienced by First Nations clients. For example,



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understanding First Nations client trajectories through criminal justice, child protection and other systems, will enable the design of more holistic support and service models. This work should be framed by the principles of Indigenous Data Sovereignty which applies a model of self-determination to the management of data about First Nations people.

VLA and the Law Institute of Victoria are collaborating to develop a First Nations Cultural Capability Framework, to support legal practitioners in meeting their responsibilities to First Nations clients. This commitment reflects our organisational roles and responsibilities to prescribe practice standards for legally aided services and to promote professional practice and set specialisation standards respectively. We are working with Aboriginal community-controlled legal organisations and First Nations networks to ensure First Nations voices are centred in the framework.

The framework will articulate domains of knowledge, behaviour and skills are necessary to provide culturally capable services. The framework will lead to the creation of a best practice guide for Victorian practitioners, establish new service standards that practitioners must adhere to and new learning resources. Legal aid commissions are uniquely positioned to leverage their employment and contractual relationship with staff and private practitioners to mandate cultural capability training. It is important that legal aid commissions also use their systemic position to advocate for and support delivery of better outcomes for First Nations clients in the legal system and to promote culturally safe workplace practices.

## Family law and family violence

VLA provides a wide range of family law services that assist people to achieve safe, sustainable and child focussed outcomes in parenting and financial and property disputes, following relationship breakdown.

While most family law matters are resolved outside of court, legally aided family law work is complex, often involving child protection, family violence, child abuse, mental health issues, substance abuse and or cognitive impairment issues. Cases generally run longer and involve multiple government agencies or professionals undertaking assessments, to ensure the best interests of children are met or a just and equitable outcome in financial matters.

The family law system plays a critical role in our community's response to family violence and women's safety. The dynamics and risks of relationships involving family violence are a key aspect of legally aided family law matters<sup>9</sup>. Victims of family violence are 16 times more likely to have a family law issue than other community members<sup>10</sup> and fears about care arrangements for children, children's safety and property ownership can also prevent victim survivors (who are predominantly women) from leaving violence. The risk of family violence is highest at the time of separation and for victims of family violence, 'separation' continues from point of relationship breakdown until parenting arrangements are finalised. Timely, accessible legal assistance can empower women to make safe decisions, by enabling them to understand and act on complex legal and financial rights.

Following many years of insufficient funding for family law services, eligibility for legal aid is now so restricted that a person can be a victim of family violence, living below the poverty line, and still not necessarily be eligible for ongoing legal aid representation for their family law matter.

From 2014 to 2021 there was a 14 per cent increase in total family law court applications and a nearly 25 per cent increase in Independent Children's Lawyer (ICL) appointments without any ongoing additional funding for legal assistance meet this demand. In Victoria we have had to restrict our funding for ICLs, to

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<sup>9</sup> National Legal Aid data shows 86 per cent of family law legally aided matters include allegations of domestic and family violence and our family law program recently conducted a random case review of 100 files and found all matters involved allegations of family violence.

<sup>10</sup> Law and Justice Foundation of NSW, *Quantifying the legal and broader life impacts of domestic and family violence*, <http://www.lawfoundation.net.au/publications/dfv> (accessed 16 February 2022).

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only the most severe cases, where allegations of child abuse<sup>11</sup> are present. This means many children in situations of risk or harm are missing out on the benefit of an ICL to support decision making that ensures safe outcomes for children. ICLs are central to a safe, accessible, and inclusive family law system that places children's best interests at the centre of decision-making.

ICLs are specialists with a professional obligation to present an independent and impartial view to the court on what parenting arrangements are in a child's best interest; ICLs are not a child's legal representative. ICLs ensure that the family law courts have access to high quality independent evidence such as police or child protection records to make decisions that will reflect a child's best interests. This is important for managing safety risks in complex family law cases that involve family violence, child abuse or other child welfare concerns.

To ensure a safer, more accessible family law system the next NLAP agreement should prioritise:

- **Increased and consistent funding for ICLs** will ensure that legal aid commissions can provide a high quality ICL service, and the most complex cases can be resolved. A dedicated ICL Commonwealth funding pool will allow legal aid commissions to administer demand-based funding to meet appropriate ICL appointments requested by the courts.
- **Expanded eligibility** for family law cases where there are allegations of family violence or child abuse
- Where a person has legal aid funding for their **family law matters**, they should also be granted **assistance for family violence intervention order matters**, where necessary. Currently, we can assist a person with their family law matter but not their family violence matter due to funding constraints.
- **Holistic approaches** to legal assistance that ensures that family law legal assistance is multidisciplinary and wrap-around for clients experiencing significant disadvantage, for example, financial counselling, social work.
- Greater availability of lawyer assisted **Family Dispute Resolution** as an early intervention method in family law cases.
- **Enhanced support pre and post duty lawyer or initial interventions** for cases involving family violence – Family Violence Intervention Orders and Family Advocacy Support Service being supported by case management.
- **Greater support for property law matters** which links to wellbeing framework and economic safety / recovery after leaving a violent relationship.
- **Adequate resourcing in child support matters** to prevent children living in poverty, and child support being used as a tool to perpetuate financial abuse. This includes early intervention advice, financial counselling services and representation at external administrative review.
- Legal aid commission's role in providing **professional development to the sector**. A requirement that family law professionals undertake consistent and specialist professional development in areas such as family violence, child development and attachment, trauma, and its impacts on child development. As well as regular professional development to support family law professionals to work in culturally safe ways with First Nations people, and families who are culturally and linguistically diverse.

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<sup>11</sup> Re K Factor 1 (*Re K* (1994) FLC 92-461).

## Civil law

Early access to legal assistance for civil issues, together with wrap-around supports, plays a crucial role in upholding, protecting and promoting human rights, preventing the escalation of legal and other problems, including interaction with the criminal justice system, and limiting personal and systemic flow-on costs.<sup>12</sup> Despite this, there has been prolonged under-investment in civil legal assistance, including because of pressures on other parts of the system. Publicly funded civil legal assistance across Victoria is predominantly provided by VLA, CLCs and First Nations legal service providers, with limited involvement from private practitioners.

In Victoria, VLA addresses diverse civil justice needs of a broad range of clients across the State through the provision of legal assistance and non-legal advocacy, strategic reform work, including strategic litigation, and providing information and education to communities about their rights.

The under-funding of civil legal assistance means that, as the PULS report identifies, civil legal needs are going unmet, including because legal issues are not being identified, people are not getting legal assistance or the legal assistance they receive is not resolving their legal issue.<sup>13</sup>

### ***Priorities for civil legal assistance***

Civil legal assistance should be tailored to meet client needs, address the impact of civil legal problems on people and communities and protect and promote human rights. The next NLAP should enhance civil law service delivery and associated service models in the following ways:

- The provision of **tailored services** across diverse areas of civil need, with particular investment in emerging and persistent areas of need
- Legal aid commissions through National Legal Aid are well placed to further develop and deliver **national legal services**, in responding to specific areas of legal need, that increase the reach of legal assistance and maximise available resources whilst also having the capacity to tailor services to local community need. We support the delivery of nationally coordinated service delivery in response to veterans legal assistance and disability legal assistance developed through the Defence and Veterans Legal Service and Your Story Disability Legal Service. Both services demonstrate how collaborative, nationally consistent service models can, in particular contexts, meet the needs of clients and provide a more holistic service to address underlying and systemic issues.
- **Service models that allow for variation in intensity of services** (information, advice, minor work or casework and representation) depending on the need and capability of clients, allowing for prioritisation of client groups and effective responses to multiple legal needs.
- **Resourcing of coordination across the legal assistance sector** and of partnerships and collaboration between legal and non-legal services
- **Respect@Work** – in addition to committing ongoing funding to crucial services, improved investment in collaboration and coordination of service delivery nationally would ensure that services are designed to meet gaps in current legal need, and likely result in service efficiencies and improvements, including through the sharing of resources, systems and/or processes in relation to community legal information and education, precedents, professional development, client intake and data and evaluation frameworks.

<sup>12</sup> Victorian Government, *Access to Justice Review* (Summary Report, August 2016) 4.

<sup>13</sup> Nigel Balmer, Pascoe Pleasence, Hugh M McDonald and Rebecca L Sandefur, *Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*, 30 August 2023 (PULS Volume 1).

- Service models that include **allied professionals**, including **non-legal advocacy**,<sup>14</sup> and are **designed, delivered and evaluated in partnership with service users**.
- **Education, engagement, partnerships** and staffing that promote awareness and understanding of legal issues and support early access to assistance.
- **Disaster support** – we support a move away from reactive response to a disaster to an ongoing model with core funding for coordination and disaster preparation. This includes early preparation through community legal education and legal information, as well as what legal assistance and need may be required in a disaster situation. For example, access to surge funds when disasters occur would provide immediate assistance to communities who need it. Our experience shows that decision making, and administration of funding has been difficult to access or delayed in the past. We also know the PULS results highlight a long recovery tail for people who experience disasters.
- Adequate and appropriate services in **regional and remote areas**.
- A **systemic approach to legal and social issues**, including strategic advocacy and litigation, to inform and influence broader system change and reduce individual legal need.
- **Increased access to legal assistance in administrative review matters**. Funded access to legal assistance will be crucial for the effective implementation of the Administrative Review Tribunal reform and reduction of the current backlog, including in relation to migration, social security, and the NDIS – decisions that profoundly affect people’s lives and wellbeing. There is an opportunity for a coordinated, national service to support the implementation of this reform and improved outcomes for clients.
- Increased investment in **migration legal assistance** for refugees and people seeking asylum, recognising the under-investment in legal assistance in migration matters, including for asylum seekers, refugees and other vulnerable non-citizens, for over a decade. In addition to better, fairer outcomes for clients, well-resourced migration legal assistance can clarify critical aspects of law, ensure proper access to review and seek to address system inefficiencies such as backlogs. Key priorities include expanding our service offerings, legal advice and representation at the AAT, extending eligibility for migration wrap around services and assistance to non citizens facing multiple legal problems.

#### ***Youth Citizenship in the West – a collaborative legal assistance model focused on prevention***

*Our Youth Citizenship in the West Project assists young people from refugee communities, and their families, in Melbourne’s western suburbs to apply for citizenship and delivers community legal education to raise awareness about the importance of citizenship and the risks of visa cancellation.<sup>15</sup> The project is delivered in partnership with WEstjustice, bringing together the specialist legal expertise of VLA’s migration program and WEstjustice’s deep connections to schools and community groups in the west, together with a range of non-legal partners, including settlement services. Through this partnership model, the project promotes access to civil legal assistance and information for refugee communities and supports them to navigate the citizenship process. In doing this, the project aims to promote connection and belonging in communities, to support young people and their families with their futures, and to prevent escalating legal*

<sup>14</sup> Non-legal advocacy is a service provided by allied professionals to support people to understand and enact their rights, navigate systems, access the services they need to address legal and psycho social needs and present their views and preferences to decision makers, for example, to mental health clinicians or child protection practitioners.

<sup>15</sup> For more information about the Youth Citizenship in the West project here: [Strengthening paths to citizenship | Victoria Legal Aid](#)

*issues, including contact with the justice system. This service model is one that could be adapted and rolled out in different communities across the country.*

## Supporting efficiencies and outcomes

We see several ways the next NLAP agreement can support better efficiencies and outcomes for the legal assistance sector and justice system.

### **Strategic advocacy**

The *Legal Aid Act 1978* (Vic) requires VLA to take innovative steps to reduce the need for individual legal services. One way we achieve this is by pursuing improvements in law and policy including through strategic advocacy that result in better outcomes for our clients and the community. VLA undertook strategic advocacy and strategic litigation in response to the Robodebt scheme. This is an example of an issue identified through service provision and sector engagement, prioritised for strategic litigation and accompanied by strategic advocacy and communications. The outcome was \$1.76 billion in waived and refunded robodebts issued to over 443,000 people. The importance of this strategic advocacy was recognised in the Robodebt Royal Commission Report which found the strategic litigation test cases run by VLA was crucial in the demise of the Robodebt scheme, and exposed the illegality of Robodebt when other checks on the scheme did not or could not. The report also recognised the value of free legal assistance, in not only providing support for individual clients but also in acting in the interests of public good.

The NLAP should recognise the legitimate ‘public interest’ role of legal aid commissions and ensure sufficient funding is available to enable all legal aid commissions to undertake this work. This should be included in core funding as this ensures the independence of legal aid commissions to undertake this work and to make decisions about what matters they fund and advocate on.

### **National approaches**

National service delivery and approaches to training such as the civil law and family violence examples cited above offer economies of scale, improved quality and more consistent services for clients.

### **Non-legal and legal services working together**

Throughout our submission we have highlighted many examples of non-legal and legal services working together that deliver better outcomes for clients and efficiencies for the justice system and other government funded systems (e.g. First Nations communities, mental health, migration).

### **Technology, Artificial Intelligence and data capability**

Governments have a responsibility to invest in technology and data to improve client services, better understand client outcomes and trajectories, and support organisational efficiency in order to maximise the impact of our resources. The next NLAP agreement has to stimulate greater use of Artificial Intelligence (AI) within ethical frameworks because of the potentially significant benefits it offers to community access to legal assistance, organisational efficiency and our ability to understand trends in demand, service delivery impact and resource utilisation. It is vital that the legal assistance sector has the capacity to explore and test AI applications in similar ways as other public services are doing, to ensure they adopt contemporary tools and can respond to clients’ needs and preferences. All of this needs to be underpinned by a strong data capability and ethical frameworks.

AI is currently used within parts of the legal assistance sector however it is not harnessed to its full potential. An example of early information and assistance with resolution of legal issues is the [Amica](#) separation tool. This tool was developed by National Legal Aid and allows separating parties to agree on parenting, property and money issues when they separate.

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Greater use of AI provides the opportunity to:

- improve access to justice for clients such as usability and availability of information delivered via automated communication channels like chatbots. This could lead to more people receiving actionable tailored guidance (including legal information, referrals and -eventually, short advice) on what help they need and how to get it without needing to interact with legal service organisations' staff (and at different hours of the day)
- improve efficiency of internal operations, private practitioner support, complaints and compliments handling, compliance checking, and administration of CLC funding.
- improve brief preparation and case materials and summaries.
- improve working conditions for legal assistance staff across the sector through smarter knowledge management systems, early detection of wellbeing concerns.
- enhance access to information about cases, referral and booking tools for VLA and sector partners.
- improve private practitioner relationship management by reducing the burden of processing and approving grants of aid and by providing access to more training.

More broadly, VLA technology and data capability is driving improvements in access to justice, staff experience and efficiencies. See Attachment A for a case study of significant reforms, lessons and achievements VLA has implemented over the past few years. VLA strongly supports the next NLAP providing for additional investment (as outlined in the NLA submission) in data and technology innovation (including AI).

## Roles and responsibilities

The state and federal government departments (DJCS and AGD, respectively) both play important roles in supporting the legal assistance sector and justice systems. The current NLAP places administrative responsibility with the States and Territories including determination of some funding.

VLA supports shared responsibility and incorporating state and federal financial contributions in the NLAP. The next NLAP should enhance the Commonwealth's stewardship role and provide greater connection to service delivery and outcomes across jurisdictions, and work with service providers to better understand legal need and demand through data and forecasting/modeling. At present, both departments have a disproportionate focus on compliance and reporting, as opposed to improving the capability of the sector and systems in which legal assistance works.

The state departments should play a key leadership role in sector based collaborative planning to build the strength and coordination of the sector. The states will need to provide leadership and accountability, with service providers such as legal aid commissions and community legal centres, providing the data and evidence. Victoria has had a Collaborative Planning Committee (CPC) in operation for some years and a recent independent evaluation identified that the committee contributes to improved relationships and information sharing. The evaluation made recommendations that the CPC review its purpose including what role the CPC can and should play to fulfil Victoria's obligations to engage in jurisdictional and local collaborative service planning. Since then, the CPC has updated its terms of reference and the Department of Justice and Community Safety has taken on a co-chair role in recognition of the leadership needed from both the department and the legal assistance sector to achieve improved collaborative service planning.

Victoria also has noteworthy examples of place-based collaborative planning to address local challenges, including the Gippsland Legal Assistance Forum, and collaborative planning in Melbourne's West (in response to burgeoning demand, service complexity and the construction of the Wyndham Court). While beneficial, these initiatives require significant investment by participating agencies if they are to succeed. Without dedicated resources, outcomes are often compromised.

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In this spirit, VLA would support a shift towards greater evidence-based decision-making for CLC funding and allocations and supports decision-making on CLC allocations being made by the State Attorney-General with support and leadership from the department. This should be in consultation with the sector to ensure decisions are informed by service delivery and data. Improved data collection with a focus on outcomes is critical to making informed and evidence-based decisions. VLA is responsible for administering funding for community legal centres program and remains open but not wedded to continuing this role.

## **Workforce and supply**

Legal aid commissions are reliant on private practitioners undertaking legal aid work as part of the mixed model of service delivery. Private practitioners deliver about 70 per cent of legal aid services nationwide.<sup>16</sup> We know that maintaining sufficient stable supply of practitioners willing to undertake legal aid work is difficult, particularly in rural and regional areas. The inadequacy of fees is a key factor affecting supply and impacts the viability of legal aid and the mixed model and ultimately service delivery to clients.

In 2022, VLA undertook a private practitioner supply analysis which had over 180 participants. The findings from this review found that low fees and the complexity of client need are two key barriers to undertaking legal aid work. The analysis found that 61 per cent of private practitioners considered grant fees too low and a primary reason they were not undertaking legal aid work. Family law fees were highlighted as a major disincentive to operate on a family law panel. For example, VLA rates are \$172 per hour and private rates can fall between \$300 to \$700.

In Victoria there is a declining supply of family law private practitioners. Over the last 10 years, there has been a decline of 33 per cent of firms doing family violence, family law and Independent Children's Law work. Fees have not kept pace with changes in the court operating model and additional work required by practitioners because of case management changes and complexity. Targeted fee improvements are one means to improve participation by private practitioners in providing legally aided services. However, fees alone are unlikely to solve all service challenges and will need to be supplemented by other strategies to improve service coverage, such as increased service provision by community legal services or the extension of VLAs practice in particular jurisdictions or localities. Victoria's north-east region exemplifies this issue, where VLA has no office and relies on a dwindling number of private practitioners to service the numerous courts including Wangaratta, Benalla and Wodonga. With the closest VLA office in Shepparton, service resilience in the region will be improved by strengthening services by the Hume Riverina Community Legal Service, encouraging greater private practitioner participation and establishing a VLA office in Wodonga.

VLA supports a sector approach to pay equity and acknowledges the pay disparity between legal aid commissions and its community legal centre and Aboriginal and Torres Strait Islander legal service counterparts. The next NLAP should have a view to growing the sector and enabling movement across the service providers.

### ***Recruitment incentives***

VLA employs approximately 1100 staff and around 40 per cent are based in our regions. Our data shows that current regional turnover rate is 22 per cent and that:

- more than half of our entry level lawyer roles (54 per cent) across our regions are held by lawyers with less than two years practice experience (noting this experience has primarily been gained through the pandemic and remote work).
- 27 per cent of our lawyer roles are currently vacant.

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<sup>16</sup> Impact Economics, Justice on the Brink Report, page 18.

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- 49 per cent of our senior lawyer roles across the regions are held by staff who have been in the role for less than one year.

VLA supports the NLAP creating incentives for regional workforce participation noting our own challenges to recruit skilled lawyers to regions, particularly more rural areas. To support attraction and retention in our regions, we have implemented the following initiatives:

- trialing specialist roles to meet legal need in regions (Gippsland crime specialist, Regional Chambers roles).
- removing barriers and taking more financial risk by creating ongoing roles where funding is fixed term for 'hard to fill' roles.
- introducing a Regional Accelerator Program – this program requires a minimum time commitment from the employee to work in a nominated regional area in exchange for a guaranteed 'at-level' transfer to location of choice upon completion of the term.
- supporting short term accommodation to support acute service delivery risk.

We note that housing and accommodation, as well as a lack of access to childcare, are also recruitment barriers in outer regional areas. For example, in Warrnambool it has been documented in the media that lack of rental supply has contributed to the shortage of doctors/nurses in the region. This region is also a holiday destination which makes short term accommodation options limited and more expensive. We have also had occurrences where staff in regional locations have had to take leave due to childcare staff shortages.



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## Attachment A - Digital and data transformation at VLA

At Victoria Legal Aid, we're responding to the changing needs of our clients, and the increasingly digital environment we operate in within the justice sector – enabled by funding from the Legal Services Board. We're improving our systems and processes to increase access to justice and create more efficient and effective services. Digital and data transformation needs to be encouraged and funded under the next NLAP to achieve better client outcomes and operational efficiencies.

### Clients have increased access to justice

#### Legal Help

Our Legal Help phonenumber and Legal Help Chat services play an integral role in helping the public, increasing access to justice and preventing the escalation of legal problems by answering legal questions or connecting clients with other organisations that can help.

When we began our digital transformation journey, responding to clients in Legal Help was time consuming and complex as staff needed to switch between a number of applications and screens during each call, relied on manual referral process and offline note-taking (advice record).

In early 2020, Legal Help piloted a new intake solution which consolidated multiple systems into one convenient tool. This means Legal Help staff spend less time switching between multiple screens, making it easier for the team to do what they do best – provide information and advice to those people who need it most.

We also upgraded the telephony system used in Legal Help for calls and chat. This system offers improved experience for callers through:

- Intelligent queue management will notify callers of their place in queue or provide them with the average wait time before we are able to answer.
- Seamless movement between webchat and phone without needing to make a separate call that places them at the end of a phone queue.
- A more reliable platform with fewer technical issues allowing staff to focus on client need.
- Predictive analytics that overtime will forecast call volume and provide Legal Help with the ability to meet service demands.

The combination of the two systems means we can recognise repeat callers, if they call from the same phone number. After confirming the person's details, it removes the need for clients to repeat their story, which was identified as a key frustration of help-seekers.

#### Help Before Court

Our duty services at court are a high demand service. To improve the efficiency of this service for clients, we introduced Help Before Court (HB4C), a new VLA summary crime pre-court service model. The service provides legal assistance to progress or resolve client's cases before their court dates and away from physical court locations.

The service begins with a digital intake form, which is then internally processed to:

- improve our clients' experience of the justice system and avoid long waits at Court
- facilitate earlier resolution and better linkages with support services
- promote continuity of service between clients and lawyers
- relieve pressure on the at-court duty lawyer system
- support panel practitioners by creating a new stream of work

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The mid-term evaluation for the current HB4C service identified the service had been used by over 5,000 individuals as of August 2021 and over 3,500 of these received a substantive service in the form of legal advice or representation in court. This uptake of a reasonably new service demonstrates the level of demand for the service and the benefits of greater pre-court assistance.

The service is delivering successful outcomes for clients and the broader justice system, including:

- Early access to legal advice is facilitating earlier resolution with less court events and more efficient linkages with support services
- Diversion away from the justice system through accurate legal advice, reducing the need for a more acute response
- Improving the experience of clients with the justice system, including avoiding court wait times, enabling continuity of service and improving capacity to understand and make own legal decisions

### Improved legal understanding in the community

We have an obligation to ensure community members can access reliable, timely and targeted legal information that meets their needs and capabilities.

#### New website

In 2022 we launched our redeveloped website - designed with our users in the community in mind. It was shaped by extensive user testing with current and former clients, including people with experience of domestic violence, disability and mental health issues, people receiving social security benefits or currently unemployed, those with past experience as offenders and those who have previously received the support of legal representation.

New features of the website include:

- improved navigation and search function, including a fly-out menu on every page, which allows users to jump deep into the website from any page
- a large search bar on the homepage and a prominent search field on every page
- clean, calm and uncluttered visual design which looks just as good on a smartphone as it does on a tablet or desktop PC to support the 60 per cent of our website visitors who view the website via their smartphone.
- interactive map of legal aid offices, community legal centres and partner firms that provide legal aid, supporting help seekers to find services.

It provides a contemporary, interactive platform that allows users to help themselves by accessing easy-to-use legal information, engaging with our services digitally and connecting to legal assistance. It also delivers improved information architecture, updated content, a search function and navigation to guide users to information. This will make it quicker and easier for people to find, understand and use the legal information they require.

#### My safety tool

The new website was also designed as a platform off which new digital service delivery and self-help tools could be made available to the community. The first of these built since the launch of the website is *My Safety: options before and after relationship separation*.

The concept for this tool was based on feedback from clients and sector partners, particularly in the family violence space, as well as our commitment to ongoing development of digital pathways to simplify and tailor legal information for help-seekers.

The tool prompts a user to answer a series of questions about their situation. This then curates a large volume of legal information into a tailored and relevant 'outcomes page' for a help seeker. They get

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information on their options for next steps, services that may assist them and links to further information about family violence and separation. This tool helps to curate legal information relevant to their situation, reducing the time and frustration of being faced with large amounts of content in what is typically a stressful life situation.

## Effective and sustainable Victoria Legal Aid

### Data capability

Victoria Legal Aid's Data and Digital Information Strategy 2022-26 sets out a range of projects and initiatives which, together, support VLA to develop its data and digital information capability so that we can make impactful decisions underpinned by data and information, we can understand our impact, and we can collaborate with partners.

An independent external review found our approach to data collection and use was not optimised to manage operations and communicate our service. While this primarily focused on our Legal Help data, there were similar challenges across the organisation. We undertook a data project to:

- reduce data duplication and manual handling, improve resource utilisation; and
- improve the reliability of data and reports: by standardising design, streamlining data sources, and improving data quality.

These changes provide greater visibility and understanding of Legal Help performance trends, enabling a stronger evidence-base and improved decision-making for operations, future service reforms, advocacy and investment.

We're also enhancing our data science capability to:

- address priority cohorts such as First Nations and young people, to ensure our service delivery meets their unique needs.
- better understand private practitioner supply and compliance risks

### LASO – client and case management

We're building a new client and case management system to log service records, update client records and manage files. Called LASO (Legal Aid Services Online), it creates a single digital workspace so our lawyers and legal administration staff can work smarter focusing on tasks that matter.

LASO strengthens our digital capability to meet the demands of the modern world and is a foundational system for future technology and data reforms. It replaces several platforms reaching the end of their lifecycle, creating a single, integrated system. This delivers a more seamless experience for clients (e.g. reducing the need for client to re-tell their stories, more effective intake and triage practices), and helps to streamline and standardise our work processes.