Child Protection Legal Aid Services Review

Consultation and options paper

October 2016

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# About Victoria Legal Aid

Victoria Legal Aid (VLA) is an independent statutory authority set up to provide legal aid in the most effective, economic and efficient manner. We're one of the biggest legal services in Victoria, providing legal information, education and advice for all Victorians.

We fund legal representation for people who meet eligibility criteria based on their financial situation, the nature and seriousness of their problem and their individual circumstances. We provide lawyers on duty in most courts and tribunals in Victoria.

Our clients are often people who are socially and economically isolated from society; people living with a disability or mental illness, children, the elderly, people from culturally and linguistically diverse backgrounds and those who live in remote areas. We assist people with legal problems about criminal matters, family breakdown, child protection and family violence, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

We provide:

* free legal information through our website, our Legal Help telephone service, community legal education, publications and other resources
* legal advice and minor assistance through our Legal Help telephone service, Duty Lawyer Service and free clinics on specific legal issues
* support to people in the mental health system through non-legal advocates in the Independent Mental Health Advocacy service
* family dispute resolution services to help families make decisions about family law disputes away from court
* grants of legal aid to pay for legal representation by a lawyer in private practice or a VLA staff lawyer.

In addition to helping individuals resolve their legal problems, we work to address the barriers that prevent people from accessing the justice system. By participating in law reform, we influence the efficient running of the justice system and ensure the actions of government agencies are held to account. We take on important cases and campaigns that aim to improve the law and make it fairer for all Victorians.

# About this consultation

We are committed to delivering high-quality legal services that make the most economical use of our limited legal aid fund. In order to achieve this, we are reviewing the efficiency and effectiveness of our service delivery models to make sure we have an appropriate service mix and that those services target the right people, at the right intensity and at the right time.

We've seen an increase in demand for child protection services. The importance of child protection proceedings for families and the community highlight the need for us to get it right. We don’t want to reduce our funding for child protection legal services. As the primary provider of child protection legal services, we do have to do all we can to improve the outcomes for the children and adults we assist with our funded legal services.[[1]](#footnote-2)

## Stage one

During the first stage of the consultation we met with over 300 stakeholders. These included the Children’s Court, the Magistrates’ Court, young people with experience of the child protection system, lawyers, community legal centres, the Department of Health and Human Services (both centrally and at regional locations), parents, carers, support organisations and academics. They talked to us about issues of quality and access to legal services in child protection. We finalised this stage in August 2016.

## Stage two

The information provided in that process has been used in preparing this consultation paper. We have also reviewed the distribution of legal services across Victoria where there are gaps, and published an environmental scan.

The public release of the consultation paper, containing a number of options for reform, represents the second stage of the consultation process.

We are now seeking input on the proposed options set out in this paper for changing child protection legal aid service delivery. Have we accurately heard what was said to us during the consultations? What other things should we consider? What else should we think of doing?

While we have a major role in the delivery of legal support, the child protection system is large and complex. There will be some things that we will be able to change by ourselves, other things that we will need to work with others to achieve, and there are things beyond our control. The review is focusing on what we can achieve, either alone or jointly.

We invite members of the public and stakeholders to make written submissions.

## Stage three

Following the completion of the consultation period, responses to the consultation paper will be considered, and we'll develop further any changes we choose to take.

We're aiming to announce the changes we will make to child protection legal aid services in July 2017.

# How to make a submission

We want to make sure all interested people can access the consultation paper and respond by submission. If you wish to comment on the options raised in this paper, you can provide a written submission using various options. Submissions are due by 21 December 2016.

## Online submissions

To join the conversation, go to the VLA website at [legalaid.vic.gov.au](http://www.legalaid.vic.gov.au/).

You can also email your submission to [childprotectionreview@vla.vic.gov.au](mailto:childprotectionreview@vla.vic.gov.au).

Please note that we are committed to ensuring consultation documents, including submissions, are available to the widest possible audience, including readers using assistive technology or accessibility features. For this reason, we require all emailed submissions to be in Word format.

## Print submissions

While electronic submissions are preferred, you can still submit a hard copy submission and post to:

Child Protection Review

GPO Box 4380

Melbourne VIC 3001

## By telephone

If you would like to provide a comment or to speak with us about the review you can contact:

Siobhan Mansfield

Phone: (03) 9269 0298

All submissions will be published on our website 14 days after the close of the submission period. However, in certain limited circumstances, we will accept sensitive material in confidence, for example, if it is of a personal or confidential nature. If you don't want your submission published on the website, please indicate that in your submission and we'll contact you to discuss whether an edited version may still be published.

# Executive summary

Children and young people involved in the child protection system are among the most vulnerable in our community. All children are entitled to grow up in a safe and loving environment that nurtures their potential. Unfortunately, rather than being a place of safety, for some children, home is a place of abuse and harm, requiring intervention for their protection.

Across Australia, there have been numerous investigations into child protection systems, often prompted by the tragic death of a child. These looked at various aspects of the system and made recommendations for improvements. In response, legislation has been passed; more procedures and processes have been introduced and structural changes made to increase oversight, such as the creation of Children’s Commissioners.

Over the last decade, greater community awareness of the harmful impact of abuse and neglect has led to dramatic increases in reports to child protection authorities. For example, in Victoria the number of reports since 2005–06 has almost tripled. This is largely due to the appropriate increased focus on family violence and the harmful impact it has, particularly on children.

This consultation paper begins our formal process for considering future directions for child protection legal services. It provides information about the challenges the system faces, the way it currently operates and identifies potential options for reform.

Discussion themes are explored in detail and inform the proposed options. The options represent a re-imagining of our Child Protection Program – one that places children and young people at the core of all services and is designed to serve their needs.

## Reviewing the current system and our role in it

We are the primary provider of legal services to children and families in the child protection system – with almost $22 million of taxpayer funds spent last year under our Child Protection Program. The Victorian Government provides almost all of this funding, with less than one per cent of Commonwealth funding used in child protection. We work in partnership with private lawyers and community legal centres (CLCs) across Victoria to provide legal information, advice and representation.

We feel the extent of our involvement in child protection provides a great opportunity to identify deficiencies with the system informed by our practice experience, and to work with others to find solutions.

Current legal service arrangements have evolved in response to a system that is centred around urgent cases, much like the emergency ward of a hospital. Children and parents report, while they felt they had generally received a good service, they didn't fully understand what had gone on and wished that they had more time to talk to their lawyer.

A major challenge for the current system is the rapid and significant increase in protective reports. Despite the best efforts of hard-working social workers and other front line service professionals, it's difficult to meet the needs of all vulnerable children, young people and their families. The Department of Health and Human Services (DHHS) are reported to be ‘suffering from extreme stress amid huge workload’ which can impact on staff retention and recruitment.[[2]](#footnote-3)

The growing number of children, young people and parents involved with the child protection system also means that the legal sector struggles to attract enough qualified lawyers to assist. This results in a greater cost to VLA and service providers across the justice sector, with increasing numbers of matters going to court each year. Courts are dealing with more matters and the system has been, and remains, under strain.

## Consultations and resultant discussion themes and options

As part of this review we conducted a large number of consultations, meeting over 300 people across Victoria, with diverse engagement in the child protection system. This included the Children’s Court, Magistrates' Court, the DHHS, young people and parents with direct experience of the system, lawyers, academics, carers and service providers.

The consultations resulted in the following discussion themes and options:

### Understanding the importance of client-focused services

* Legal services are currently court and lawyer centred, rather than client-focused.
* The use of non-legal advocates could assist clients to access support services.
* Plain language information concerning the legal process should be created for clients, carers and service providers.
* Consistency of representation and more frequent contact with lawyers are important features of representing children and young people, particularly those with concurrent child protection and criminal legal matters.
* Children and young people in out-of-home care should have access to their lawyers beyond the making of court orders.
* Greater support around the representation of Aboriginal and/or Torres Strait Islander children (ATSI), young people and parents is required.

### Focusing on timely intervention

* Earlier legal advice and assistance, prior to litigation, would de-escalate and/or divert some matters to the Family Law courts or avoid the need for any court action.
* The creation of intake protocols could improve referral pathways for children, young people and parents with complex needs, enabling more timely provision of legal assistance.

### Supporting lawyers to ensure quality

* Legal services, including the Duty Lawyer Scheme, are highly valued and are of a generally good standard. However, there were examples of very poor quality.
* There is a desire for greater levels of training, legal education and professional support for lawyers practicing.
* There is a need to better support the professional development of regional lawyers.
* There is a need to work with our partners to develop a Workforce Development Strategy to meet the future demands on child protection legal practice.
* Funding is needed to encourage preparation and engagement with children, young people and parents in addition to Court event driven interactions.

### Maximising client access

* There are barriers hindering access to legal services by some sections of the community, including people in prison and involuntary patients in mental health facilities.
* Greater use of technology could improve access to legal services and participation in proceedings.

### Developing improved processes

* There is a need to work with our partners to ensure child protection processes and practices are being applied fairly and consistently across the State.

### Meeting the challenges of the changing nature of child protection

* A need has been identified to work to ensure that the provision of child protection legal services is sustainable and equipped to deal with the challenges presented by a changing child protection landscape.

## Clarity of purpose: why we provide assistance in child protection

It's important for us to have a clear and shared understanding of why we provide assistance with child protection matters. There was a general consensus that a client-centred approach, that puts children at the heart of service design and delivery, is critical.

We propose that the purpose of the VLA Child Protection Program is to promote the safety, wellbeing and development of children and young people.

This has three elements:

1. To explain to children their rights, in a way that is appropriate to their age and evolving capacity, and support them to participate in proceedings that are about their future.
2. To promote the safety, wellbeing and development of children by supporting parents to make decisions and take actions that have the child's best interests at heart. The family is recognised as the fundamental group unit of society and is entitled to protection.[[3]](#footnote-4) Parents are acknowledged to be central to the wellbeing of children – they have obligations to children, not rights over them.
3. To work toward improving outcomes for children and young people through our processes and practices, and those of the child protection system.

The provision of legal support to vulnerable children, young people and their parents is an integral part of the child protection system, providing a check on the extent of State intervention and ensuring that it is proportionate.

We have tried to reflect in this consultation paper what we heard during the consultation process. The questions and proposed options are intended to test whether we have accurately understood this and to get further feedback about what action we might take.

# Summary of proposed options

## Purpose

### Option 1

The purpose of the Child Protection Program be clarified as to promote the safety, wellbeing and development of children and young people.

This involves supporting:

* children and young people to understand their rights and have an effective voice
* parents to make decisions and take actions that promote the best interests of children
* processes and practices that lead to a fair, accountable and accessible child protection system.

**Discussion question:** How can lawyers promote the safety, wellbeing and development of children and young people while still representing their ‘direct interests’?

**Discussion question:** Can lawyers pursue best outcomes for parents while still promoting the safety, wellbeing and development of the child or young person?

**Discussion question:** It's acknowledged that there will be different views about what the purpose of our child protection program should be. We welcome you to share your thoughts. Are there other things that the program should focus on, and if so, why?

## Client-focused services

### Option 2

Pilot a Client Support Service, which features a team of appropriately qualified, culturally diverse, non-legal advocates to support children, young people and parents involved in child protection proceedings. The Client Support Service team would work alongside lawyers who are assisting children, young people and parents in accordance with a grant of legal assistance.

**Discussion questions:** Should we set up a pilot service where non-legal advocates or social workers and lawyers work together? If this service is set up, should it be available to all people in the child protection system, or should it be directed to helping some particular groups? Should it be part of our staff practice or a standalone unit? What are the benefits or disadvantages of each approach?

### Option 3

Victoria Legal Aid work with its partners to develop guidelines for the representation of children and young people, including specific guidelines for ‘best interests’ representation.

### Option 4

Widen the legal aid eligibility guidelines for the representation of children to enable more children under the age of 10 to be represented.

**Discussion question:** Should the guidelines for the representation of children be increased, and if so, how? Who should we not assist in order to achieve this increase?

### Option 5

Develop intake processes to identify children and young people at risk of long-term engagement with legal services and provide a client-focused, case-managed approach to legal representation, designed to prioritise consistency and more frequent contact between children and their lawyers.

### Option 6

Develop intake processes to identify children and young people who have concurrent Children’s Court Family Division and Criminal Division matters and that the funding be structured to support high-quality, consistent representation in both divisions. This could include a global grant to enable the one lawyer assist the child or young person.

### Option 7

Work with others, including young people, to identify the legal needs of children and young people in out-of-home care and possible responses, which may include information and non-legal advocacy.

**Discussion question:** Should we fund lawyers to assist children in out-of-home care? If so, for what sort of problems? Are the areas suggested the appropriate ones or are there others?

### Option 8

Develop processes to provide greater support to children and young people in out-of-home care. This may include funding lawyers to provide legal advice and assistance in the following circumstances:

* Where there has been an ‘abuse in care’ report made by a child or young person.
* Prior to each annual case plan review meeting for children and young people subject to Care by Secretary or Long-term care by Secretary orders.
* Where a permanent care order is intended to be administratively converted to a Care by Secretary Order due to a breakdown in the permanent care placement.

**Discussion question:** Help could be provided in many ways. It could be representation, advice or information. There may be other options. How do you think children in out-of-home care could be better supported?

### Option 9

Victoria Legal Aid work with local communities, the Victorian Aboriginal Legal Service and Aboriginal Family Violence Prevention and Legal Service to increase the number of Aboriginal and/or Torres Strait Islander children, young people and parents seeking legal advice at the early stage of child protection intervention.

**Option 10**

Victoria Legal Aid provide additional resources to the Victorian Aboriginal Legal Service and Aboriginal Family Violence Prevention and Legal Service to enable them to train more staff to deal with child protection matters.

### Option 11

Amend Victoria Legal Aid allocations processes to support Aboriginal and/or Torres Strait Islander children, young people and parents being offered the opportunity to be represented by an Aboriginal legal service, where one is available.

### Option 12

Make available grants of assistance for the provision of advice, assistance and representation for Aboriginal and/or Torres Strait Islander children, young people and parents where a child or young person is placed in out-of-home care and the issue of parental or sibling contact is in dispute.

### Option 13

Make available grants of assistance for the attendance of a lawyer at Aboriginal family-led decision making meetings.

### Option 14

Victoria Legal Aid require all Child Protection Panel lawyers attend cultural awareness training.

### Option 15

Victoria Legal Aid engage with children, young people and parents to develop and maintain plain-language information about the child protection system.

### Option 16

Victoria Legal Aid engage with other agencies in the disability sector to develop materials for clients with a cognitive impairment.

### Option 17

Victoria Legal Aid engage with kinship and foster carers to develop materials and information relevant to their involvement in the child protection system.

### Option 18

Victoria Legal Aid engage with service providers to develop materials and information relevant to their involvement in the child protection system.

## Timely intervention

### Option 19

Victoria Legal Aid work with DHHS to pilot a legal advice service for young people and parents who are invited to enter voluntary agreements, which involve a child being placed in out-of-home care.

### Option 20

Pilot an early intervention unit featuring a team of lawyers and/or appropriately qualified, culturally diverse non-legal advocates, to assist and support children, young people and parents in the pre-litigation and early-litigation phase.

**Discussion question:** If an early intervention unit (EIU) was set up, and it could not assist everyone, who do you think it should help? What should such a unit look like and who should be prioritised? Should it be part of our staff practice or a standalone unit? What are the benefits or disadvantages of each approach?

### Option 21

Pilot a Health Justice partnership through a Community Legal Centre to provide early advice and support to pregnant women who are or may be the subject to an unborn report.

### Option 22

Make available grants of assistance for the provision of advice and advocacy for all pregnant children and young people who may be subject to an unborn report.

**Discussion question:** Should supporting these women be a priority for the Child Protection Program? What other alternatives are there to reach and support these women?

## Quality and support

### Option 23

Introduce minimum requirements for Child Protection Panel lawyers who represent children and young people. Victoria Legal Aid to work with its partners to establish criteria for eligibility.

### Option 24

Child Protection Panel lawyers be required to undertake training in:

* trauma informed practice
* capacity assessments for children, young people and parents.

### Option 25

Child Protection Panel lawyers to complete a minimum number of child protection related hours of Professional Legal Education each year.

### Option 26

Victoria Legal Aid work with its partners to develop guidelines dealing with the engagement of other lawyers to appear as the agent of a lawyer acting pursuant to a grant of assistance, including the standards applicable to both the principal and the agent.

**Discussion questions:** The current Victoria Legal Aid practice standards touch upon some aspects of the use of agents, but they may not cover all of the issues fully. Should these be reviewed to clarify the expectations of when and how an agent may be used? What would this look like?

### Option 27

A case preparation checklist to assist in the preparation of matters be developed by Victoria Legal Aid with its partners. Evidence of the use of this tool, or a similar document, would be required on the file.

### Option 28

Clarify the practice standards for child protection matters as they relate to the conduct of child protection matters. This would include requirements concerning the preparation of matters and the service to clients, both prior to and at each court event.

### Option 29

Amend funding guidelines to place greater emphasis on preparation and engaging with clients, including increasing fees for preparation, instruction taking and negotiation away from court, to support the timely and appropriate resolution of matters.

### Option 30

Reduce the number of interim appearances without extension allowed under the grant of assistance. Additional appearances may be authorised by VLA, where the appearance is required due to factors beyond the control of the lawyer or their client. It will be expected that an application for costs be made against any party that has caused the delay.

### Option 31

Lawyers be required to seek an extension of the grant of assistance for a second conciliation conference. This would include an explanation of the reasons a second conference is required, what barriers there were to settlement at the first conciliation conference, and what is the expected outcome of the second conference.

### Option 32

Victoria Legal Aid review the requirement that Child Protection Panel lawyers make an application for costs where an adjournment is due to DHHS failing to provide a report in accordance with legislated timeframes.

### Option 33

Develop a mechanism for ensuring that counsel briefed in matters are suitably qualified and experienced in the child protection jurisdiction.

**Discussion question:** What mechanism should be used to ensure that counsel briefed in child protection matters have the necessary experience?

### Option 34

Work with Child Protection Panel lawyers and other agencies to develop regional child protection networks to support lawyers and address local issues.

### Option 35

Victoria Legal Aid work with lawyers to explore the viability of a telephone advice service to support Child protection Panel lawyers.

**Discussion question:** Should we examine the viability of this type of service, or could this be addressed in some other way?

### Option 36

Victoria Legal Aid work with the court to establish regular court user meetings, designed to improve service delivery, at all headquarter courts.

### Option 37

Victoria Legal Aid play a more active role in supporting lawyers working in the child protection system. This includes co-ordinating the provision of more professional education, research and the preparation of materials and tools that assist lawyers perform their work.

### Option 38

Victoria Legal Aid consider hosting an annual Children’s Law Forum, open to all Child Protection Panel firms, practitioners and other service providers within the sector as a means of improving understanding and expertise in children and youth law.

**Discussion questions:** Is this something that Victoria Legal Aid should consider, given the costs associated and the low level of attendance at current training? What alternatives should be considered?

## Client access

### Option 39

Victoria Legal Aid implement processes to provide parents serving a term of imprisonment access to advice concerning child protection and, where eligible, representation.

### Option 40

Victoria Legal Aid implement processes to provide parents receiving involuntary mental health treatment access to advice and, where eligible, representation.

**Discussion questions:** Should the Duty Lawyer Service be expanded to enable assistance to parents in confined environments? What should this look like?

**Discussion question:** Given the high proportion of parents who meet the means threshold for legal aid funding, should consideration be given to removal of the requirement that parents provide proof of means?

### Option 41

Victoria Legal Aid develop an internal intake protocol for use across program areas to improve referral pathways to legal and non-legal services.

### Option 42

Victoria Legal Aid develop an intake protocol for use by the Child Protection Program to encourage earlier identification of legal problems and improve referral pathways for clients with complex needs.

**Discussion questions:** Should our processes be reviewed to improve referral pathways for people who have been identified as having a potential child protection problem? This would require our lawyers, who work in areas other than child protection, to be trained to be able to identify potential child protection related issues. Should this be a priority for VLA?

### Option 43

Subject to the evaluation of the child protection pilots with Women’s Legal Service Victoria and Loddon Campaspe CLC, Victoria Legal Aid work with Community Legal Centres to:

* identify areas of unmet need
* identify what resources and/or supports the CLCs may require to deliver child protection services.

**Discussion question:** What steps should we take to increase the number of lawyers in child protection?

## Improving processes

### Option 44

Develop state-wide duty lawyer guidelines for the child protection duty lawyer service.

### Option 45

Develop a consistent approach to the structure and payment of duty lawyer services, reviewed against the structure for payments made pursuant to a grant of assistance.

**Discussion questions:** Should the appearance fee at the first mention hearing be changed to reflect the procedural nature of this court event? Or should the number of appearances that can be claimed, without having to ask for an extension, be the same where the lawyer was also the duty lawyer?

**Discussion question:** How should the payments for duty lawyer services be structured and how should they relate to the overall fees paid?

### Option 46

Victoria Legal Aid work with DHHS to establish a process for greater consistency in arrangements for children in out-of-home care (kinship, foster care, residential care and secure welfare) to provide instructions to lawyers, including the better use of technology.

### Option 47

Victoria Legal Aid work with the Children’s Court, the Magistrates’ Court, DHHS and others to identify and implement better use of technology to improve access to legal services and participation in proceedings.

### Option 48

Victoria Legal Aid work with DHHS to implement consistent arrangements across Victoria for the allocation of lawyers to children, young people and parents responding to child protection proceedings.

## The changing nature of child protection legal services

### Option 49

Victoria Legal Aid work with DHHS to develop a Workforce Development Strategy, which may include the development of a Centre of Excellence at a tertiary institution.

### Option 50

Consider the steps necessary to increase the proportion of child protection grants of assistance conducted by staff lawyers to 20 per cent within five years.

# Background

All children are entitled to grow up in a safe and loving environment, one that nurtures their potential. A secure and stimulating environment during the first thousand days of a child’s life is critical to their cognitive and emotional development.[[4]](#footnote-5) It provides the foundation for children to thrive and go on to live healthy lives. As a community, we have an obligation to assist children to achieve these goals.

Unfortunately, rather than being a place of safety, for some children home is a place of abuse and harm. This may be due to direct physical or sexual abuse, emotional or psychological harm or neglect. Abuse has an enduring impact, and impairs a child’s ability to grow into a healthy adult and lead a productive life. Where this is occurring it is appropriate that there is some intervention.

Children and young people involved in the child protection system are among the most vulnerable in our community. They have often been exposed to or experienced family violence, substance abuse, social exclusion and disadvantage. Intergenerational involvement with the child protection system may have left their parents without the skills or supports to parent adequately.

Commonwealth and State Governments, through the *National Framework for Protecting Australia’s Vulnerable Children* *2009­–20*, have committed to work together to better protect vulnerable children – acknowledging that ‘protecting Australia’s children is everyone’s responsibility’. The third in the series of three-year action plans, 2015–18, has a focus on improving outcomes for Aboriginal and/or Torres Strait Islander children, early intervention, supporting the transition to adulthood, and moving from a ‘reporting’ to a ‘responding culture’.[[5]](#footnote-6)



The intersection between the child protection, family violence and family law system is complex and difficult for families to navigate. This was highlighted by the 2015 Family Law Council Interim Report on ‘Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems’ and the Victorian Royal Commission into Family Violence. Families can be faced with proceedings in the Children’s Court, the Magistrates’ Court and the Federal Family Court. Navigating each may involve retelling their story multiple times to different people; comprehending differences in terminology and concepts; and living with the fallout of poor communication between systems contributing to inconsistent or incomplete orders.



Commonwealth and State Governments, through the *National Plan to Reduce Violence against Women and their Children 2010–22*, have committed to work together to reduce violence against women and their children because ‘reducing violence is everyone’s responsibility’.[[6]](#footnote-7)

Action is also being taken to improve child safety. The Victorian *Roadmap for Reform: Strong Families, Safe Children* aims to deliver early support to children and families at risk, and support more families to keep together.

## Who uses our legal aid services?

A review of our most frequent users of legal aid services identified that people were likely to have sought help from us across multiple law areas, such as criminal, civil and family law. The most frequent users were significantly more likely to have seen us for a child protection or family violence issue before the age of 18. The key risk factors were one or more of the following:

* Early contact with VLA (prior to 18 years of age).
* Criminal offending at a young age, specifically between 10–17 years of age.
* Having a psychiatric issue, acquired brain injury or a cognitive disability.
* Identifying as Aboriginal or Torres Strait Islander.

Outcomes are poor for children who live in residential care.[[7]](#footnote-8) When compared to the general population of children, children in out-of-home care are more likely to:

* not complete Year 12 or equivalent
* attend numerous schools
* be suspended or expelled from school
* be disconnected from their peers
* have a diagnosed mental health problem, a physical and/or intellectual disability
* experience bullying
* exhibit risk-taking behaviour.[[8]](#footnote-9)

Children and young people who are the subject of a protection order are 27 times more likely than the general population to be under youth justice supervision in the same year.[[9]](#footnote-10)

## Delivering legal aid into the community

The Legal Aid Act requires us to deliver legal aid into the community in the most ‘effective, economic and efficient manner’.[[10]](#footnote-11) Legal aid includes education, advice, information, legal services, duty lawyer services and alternative dispute resolution services.[[11]](#footnote-12)

Our statutory obligations require us to make legal aid available at reasonable cost to the community and on an equitable basis throughout Victoria, to improve access to justice and legal remedies and use innovative means to minimise the need for individual legal services.[[12]](#footnote-13) An outline summary of the Legal Aid Act can be found in [Appendix 2](#_Appendix_2) of this paper.

The Legal Aid Act is silent as to the areas of law or groups of people that should be prioritised. The VLA Board is charged with the responsibility of determining or varying the priorities in the provision of legal aid as ‘between classes of persons, classes of matters or both’.[[13]](#footnote-14)

We receive funding from the Commonwealth and the Victorian governments, the Public Purpose Fund and from client contributions. Less than one per cent of funding in child protection is from the Commonwealth Government.

## Our role in the child protection system

We are the primary provider of legal services to children and families in the legal system in Victoria. We work in partnership with private lawyers and community legal centres (CLCs) across Victoria. The Child Protection Program is one of our largest programs.

We currently deliver or fund the delivery of the following suite of child protection legal services:

* Community legal education – this is limited.
* Legal information and advice – available through the Legal Help telephone service. There were around 2,000 services delivered in 2015–16.
* Minor assistance – 100 delivered in 2015­–16 by our staff lawyers.[[14]](#footnote-15)
* Duty lawyer services – around 4,500 delivered across the State by our staff lawyers, private lawyers and CLCs.
* Casework under a grant of legal aid – 7,718 in 2015–16, 10 per cent of which was delivered by our staff lawyers. Around three per cent is delivered by CLCs and the remaining 87 per cent by private lawyers.

In 2015/16, the Child Protection Program accounted for $21.3 million or 14.1 per cent of our budget. There was a 15 per cent increase in grants of assistance on the previous year. The number of grants of assistance has increased 26 per cent since 2010–11, despite a restriction in eligibility guidelines that temporarily arrested the growth when introduced in 2012­–13.

Our telephone information and advice is free and open to anyone involved in the child protection system. We provide duty lawyer services to children, aged 10 and over, and parents.

We also provide grants of assistance to children aged 10 or over, and for a small number of children under 10 where an order has been made by the Children’s Court and we determine that it is appropriate to provide assistance to the child.

A grant of assistance is available to parents where they have reasonable prospects of the child being placed in their care. A grant of assistance may also be made to a person, who is not a parent, where the court has made them part of the case, and we are satisfied that the circumstances of the case are exceptional.

## Who took part in the preliminary consultations?

As part of this review we conducted a large number of consultations across Victoria. We met with over 300 people with diverse engagement in the child protection system. This included:

* children, young people, parents and carers
* the President of the Children’s Court of Victoria, and magistrates sitting in Melbourne, Moorabbin, Broadmeadows, Geelong, Ballarat, Morwell, Wangaratta, Shepparton and Bendigo
* the Department of Health and Human Services
* the Chief Magistrate and senior magistrates
* private lawyers from metropolitan Melbourne and regional Victoria
* the Commissioner for Children and Young People and the Commissioner for Aboriginal Children and Young People
* the Federation of Community Legal Centres
* the Victorian Aboriginal Legal Service
* the Aboriginal Family Violence Prevention and Legal Service Victoria
* the Women’s Legal Service Victoria
* the Loddon Campaspe Community Legal Centre
* the Peninsula Community Legal Centre
* the Barwon Community Legal Service
* the Gippsland Community Legal Service
* the Gippsland and East Gippsland Aboriginal Co-operative
* the Hume Riverina Community Legal Service
* the Inner City Melbourne Community Legal
* the Federation of Community Legal Centres Victoria
* the Mallee District Aboriginal Services
* the Bendigo and District Aboriginal Co-operative
* representatives from the Law Institute of Victoria Child and Youth Advisory Committee
* the Office of the Public Advocate
* the Office of the Victorian Ombudsman
* the Victorian Bar and Children’s Law Bar Association
* non-government organisations that provide support services to children, young people and parents
* academics.

The views expressed in preliminary consultations have significantly informed this paper, including the options for reform.

See [Appendix 1](#_Appendix_1) for a full list of consultations.

## Themes from the consultation process

The main themes and suggestions that emerged from the consultations included the following.

### Understanding the importance of client-focused services

There was significant comment made during consultations about the best form of representation for children – whether this should be on a direct instruction or a 'best interests' basis. While it is not for us to decide which model should apply, there is a need to ensure that there are clear standards set for the representation of children, regardless of which model applies.

The consultations also heard of problems with the legal services delivered during the court stage. This included poor-quality service, such as the failure to have up-to-date instructions from clients and inadequate briefing of ‘agents’ (a lawyer hired to go to court for a case that a lawyer from another law firm is dealing with). A review of in-house files, and the experience of the VLA Child Protection Panels process, confirms the need to increase the overall skill level in this area.

The consultations discussed:

* non-legal advocacy
* representation of children and young people
* supporting children and young people with complex needs
* supporting children and young people in the child protection and criminal law system
* supporting children and young people beyond court
* supporting Aboriginal and/or Torres Strait Islander children and young people
* information for children, young people and parents
* information for kinship, foster carers and support agencies.

### Focusing on timely intervention

Timely intervention means providing the right service at the right time. Children and parents have a range of legal and non-legal needs at different stages of their engagement with the child protection system. Currently, these are not adequately addressed. The focus on child protection legal proceedings reduces the capacity to support children and parents to address underlying issues at all stages.

While the cases in court are important, this is only a small part of the system. There were over 100,000 reports to the DHHS in 2015/16, with around 15,000 found to be substantiated. Of those, only about 5,000 resulted in an application to court. This means that many children and parents involved in the system do not get advice until concerns have escalated to the point of an application to court, while many more receive no legal advice at all.

#### Early intervention unit

During the consultations there was strong support for greater access to early legal advice and support. There was consensus that more timely legal assistance would result in:

* the de-escalation of some matters, which would avoid the need for a court hearing
* parents being assisted to seek legal help via the Family Law courts as an alternative to DHHS intervention
* young people and parents being assisted to apply for family violence orders
* young people and parents being supported to reach agreement with DHHS regarding appropriate safety plans and measures away from the court setting
* greater levels of confidence in the child protection system.

These views are supported by experiences in NSW and the UK.[[15]](#footnote-16) There were different opinions as to whether the early intervention should be provided by lawyers, social workers or a combination of both.

Given the large number of people involved in the system it was considered necessary that an early intervention unit would need to prioritise some client groups. The suggestions included:

* Aboriginal and/or Torres Strait Islander families
* parents with a cognitive impairment
* parents who are culturally and linguistically diverse (CALD)
* families where a voluntary out-of-home care placement is proposed.



#### Unborn reports

There are around 700 unborn reports[[16]](#footnote-17), many resulting in a protection application very soon after the birth. There was a common view that an opportunity is being missed to support women who may be the subject of an unborn report. An unborn report is where concerns are raised with DHHS about a pregnant woman and whether she will be able to care for her child after they are born.

### Supporting lawyers to ensure quality

The consultation discussed the level of quality of the currently delivered legal service looking to improve on the following key areas:

* ensuring quality representation for children and young people
* ensuring quality legal representation for parents
* improving panels and practice standards
* simplifying grants
* assessing grants of legal assistance and the current fee structure
* reducing delays and costs
* ensuring quality briefing practices
* supporting lawyers.

### Maximising client access

There are structural barriers that limit the involvement of parents who are detained in prison or as an involuntary patient in a mental health facility. The over-representation of Indigenous people in the prison system and in the child protection system highlights the need to reconsider the way services are available to people in confined environments.

We have an extensive prison service and are developing a telephone advice service for prisoners. The criminal law practice has contact with most newly remanded prisoners and has a mental health team that provides outreach to mental health facilities. An improvement of the internal referral processes would assist in the early identification and support of people with child protection problems.

Videoconferencing technology also provides an opportunity to increase access to advice and participation in proceedings.

The consultation groups discussed:

* whether the Duty Lawyer Service be expanded to enable assistance to parents in confined environments
* considering the removal of the means test for parents
* the new panel process and access.

### Developing improved processes

There are different arrangements in place across Victoria with regard to who is responsible for ensuring that children are able to communicate with their lawyer. These have evolved over time and are often dictated by the relationships between parties and historical practice. This contributes to the court-based nature of cases.

The delivery of the Duty Lawyer Service varies greatly from region to region. There are no guidelines that explain the purpose and scope of the service. Different arrangements exist for payment and referrals. Additionally, there are different processes in place for the allocation of duty lawyers to clients:

* DHHS refer all clients to VLA, which then allocates a lawyer.
* DHHS refers matters only where the child is over 10 years of age, and DHHS otherwise refers clients to lawyers.
* DHHS refers all matters directly to lawyers.

Representatives from across the child protection system called for the Duty Lawyer Service to be regularised across Victoria. It is proposed that we introduce guidelines and a consistent service model, including working with DHHS to have a uniform allocation system.

The introduction of a more consistent approach to the Duty Lawyer Service requires an examination of the number of mention and adjournment fees that may be claimed under a grant of assistance, where the lawyer was also the duty lawyer on the first day.

### Meeting the challenges of the changing nature of child protection

The nature of legal practice in child protection should evolve to respond to a range of external factors. These include:

* the expansion of the Children’s Court across Melbourne and the introduction of docketing (where one the same magistrate deals with the case from beginning to end)
* the rollout of specialist family violence courts and the intersection with child protection proceedings
* the need for a greater understanding between lawyers and social workers of their roles and areas of expert knowledge
* the undersupply of child protection lawyers, particularly in regional areas, requiring a long-term strategy
* the need for us to have sufficient footprint in the delivery of child protection services so we can fulfil our role as the purchaser of quality legal services.

These themes are explored and discussed in more detail in the reimagining section and inform the proposed options.

We have tried to reflect in this consultation paper what we heard during the consultation process. The questions and proposed options are intended to test whether we have accurately understood this and to get further feedback about what action we might take.

# Current child protection legal services

Current legal service arrangements have evolved in response to cases that go to court. It's a crisis response process, much like the emergency ward of a hospital.

The overwhelming majority of applications to the Court are made for ‘emergency care’ – where a child has been removed from home and the matter is brought to court, usually on the same, or the next working day. The service response, from this point, is structured around the service providers – lawyers, DHHS and the court – rather than children, young people and parents.

Children, young people and parents tend to first come into contact with a lawyer at court, after a case has started. The emotional impact of a child having been removed or the risk of this happening, combined with the other challenges in their lives, such as family violence, makes it difficult for children, young people and parents to properly engage in the process.

‘Child protection legal services are reactive. They often take place in a reactive environment that requires a reactive approach. This poses a significant barrier to developing a strategic or child-centred approach.’ – An academic

Duty lawyers are under pressure to quickly assess cases and advise children, young people and parents, often on top of other commitments. Children and parents report that, while they had received a good service, they did not always understand what was happening and wished that they had more time to talk with their lawyer.

Much of the activity after the first court date continues to take place at court. Lawyers conduct busy, high-volume practices and are in court most, if not every day of the week. This makes it difficult for them to spend time with their clients, other than at court.



Lawyers report that the absence of information from DHHS undermines attempts to progress matters between court dates.

‘The court-based practice of lawyers in the Family Division contributes to a slow system, with lots of delays. There is a general lack of preparation from both sides.’ – A magistrate

While the DHHS staff work hard to meet expectations, they are dealing with difficult matters and high caseloads, resulting in reports frequently being prepared late. Courts are mindful of the increasing number of matters and the need to progress them.

These factors drive a court-based system of service delivery that presents challenges to the participation of children, young people and parents in their case.[[17]](#footnote-18) For example, it's common for parents to be presented with reports at court that are highly critical of them. They may have limited literacy skills, a cognitive impairment or English as a second language.

The court environment is usually chaotic, and often without a private space available to quietly absorb information. The child, young person or parent may not have anyone to help them read the report. Their lawyer will try to explain the meaning of the report and what is going to happen next.

Young people and parents report that discussions held at court are frequently interrupted and that lawyers often get called into court in the middle of explaining something. This results in a disjointed service, where opportunities for clarification or explanation are regularly lost or forgotten.

Our Young Person Advisory Forum (YPAF)[[18]](#footnote-19) reported different levels of satisfaction with their dealings with lawyers at court. For some, the process had been adequately explained. Most said that the pressure of court meant that lawyers didn't always have time to explain things properly. They were excluded from the court process itself and felt disempowered. Those that had been at court were not helped to understand what was happening, with one remarking ‘it was all coloured pieces of paper, pink and blue forms and “IAO” this and that. I didn’t understand any of it and when I asked, [the lawyer] didn’t have the time to explain it, and they were all there making decisions about me.’

There was strong support for young people being able to decide whether they wished to attend court or not, with some expressing a strong preference for attending, while others said they would prefer to meet their lawyer away from court.

‘Personally, I always wanted to be at court, it’s the only way you can be certain that your voice is being heard. I missed one or two [hearings] because of school but I didn’t like the feeling of not knowing what was happening. I knew a kid from resi who hated going to court and was forced to because he had to see his lawyer. The lawyer should have come to him.’ – A young person

Lawyers for DHHS, as well as parents and young people themselves, described court as a generally high-pressured environment and that the negotiated outcomes at court did not prioritise their participation. In some regional locations, where only the afternoon has been allocated to deal with child protection matters, there is heightened pressure to resolve cases in the few hours available.

The Children’s Court has commented that ‘instructions are often obtained from clients on the day of the court event, even where the legal representatives have an ongoing relationship with the client. This practice has a significant impact on the court's capacity to efficiently manage court and judicial resources, particularly in busy mention lists.’[[19]](#footnote-20)

Current legal service arrangements particularly disadvantage some client groups, including:

**Children and young people, who are often not at court.** While there are good reasons to respect the wishes of children and young people as to whether they come to court, the current processes mean they are compelled to attend by default or they must be available during the day to provide hurried instructions. This can be disruptive to children, who report understandable anxiety about what is going to happen at court. It was reported that in the mind of many children, each court event is the final one.

**Parents in custody or other institutional settings.** The Duty Lawyer Service is available to parents or children who are at court. A parent who is an involuntary patient or in prison cannot attend and is excluded from the process.

**Aboriginal and/or Torres Strait Islander children, young people and parents.** The Aboriginal Family Violence Prevention and Legal Service and Gippsland and East Gippsland Aboriginal Co-operative explained that for many Aboriginal and/or Torres Strait Islander people, cultural norms informed by personal and historical experience, have resulted in a reluctance to engage with legal processes. When engagement does occur, it requires time to build trust.



**People with a cognitive impairment.** The time-pressured nature of current practice does not cater for the needs of children or parents who are living with an impairment.



**People from a culturally and linguistically diverse background.** The lack of time to address different cultural understandings of children and parenting practices creates confusion that generates a lack of confidence in the overall system.

‘A lot of women we help with intellectual disabilities and literacy issues, they are in crisis mode at the court and they don’t hear what is happening. They go straight to how it's making them “feel”, which isn’t what the workers, the lawyers or the Court wants to hear. So they leave feeling they haven’t been heard.’ – A support worker

# Reimagining child protection legal services

## Purpose of the Child Protection Program

‘VLA has a greater role to play in the [child protection] system than it currently does. To do this, it needs to adopt a rights-based approach to delivering [child protection] legal services. In order for this to happen, it must first conceptualise the underlying principles of why the service exists. Answer the obvious question: why does VLA have a Child Protection Program?’ – An academic

A clear and shared understanding of why we provide assistance with child protection matters provides a focal point around which services can be designed and roles defined. Clarity of purpose and role leads to an increase in agreement and improved outcomes.

While different views were put forward during the consultations about why we should help children, young people and parents, there was agreement that it is important. There was also strong agreement that the removal of a child from the family is one of the most serious actions that the State can take, and should be a last resort.

Some focused on the need to ensure that children had an ‘effective’ voice in the system. Others were concerned to ensure that the rights of children and parents are protected. Some highlighted a need for a check on the use of State power. There was general consensus that a client-centred approach, which puts children at the heart of service design and delivery, is critical.

We propose that the purpose of the VLA Child Protection Program be clarified and stated clearly so that it is understood by everyone.

We propose that this purpose is to promote the safety, wellbeing and development of children and young people.

This involves supporting:

* children and young people to understand their rights and have an effective voice
* parents to make decisions and take actions that promote the best interests of children
* processes and practices that lead to a fair, accountable and accessible child protection system.

### Supporting children and young people

It's essential that rights be explained to children and young people in a way that's appropriate to their age and capacity. They must be supported to participate in proceedings about their future. It's vital that lawyers ensure that children and young people have an effective voice. This means more than just repeating a child’s instructions. It requires advocacy on behalf of the child to achieve their wishes. This may include advocating for supports and services for a parent, so that the child’s wish to return home can be achieved or exploring other family options for a child when it's unsafe to return home.

The importance of giving a child or young person the opportunity to have their voice heard and participate in the decisions that affect them is recognised both nationally and internationally.[[20]](#footnote-21)

The Children, Youth and Families Act says that lawyers appearing for children above the age of 10, who are capable of providing instructions, must follow the wishes of the child, to the extent this is practical and keeping in mind the level of the child’s maturity.[[21]](#footnote-22)

Only in exceptional circumstances will the court request that a lawyer represent a child or young person under the age of 10 (or otherwise assessed as incompetent) on ‘best interests’. This is where the lawyer does not need to follow the wishes of the child, but may argue for an outcome that the lawyer has decided is in the child’s best interest.

The proposed purpose focuses on helping a child or young person’s effective participation in proceedings. This can happen where the lawyer is helping the child or young person on a direct representation or a 'best interests' model.

**Discussion question:** How can lawyers promote the safety, wellbeing and development of children and young people while still representing their ‘direct interests’?

### Supporting parents

The second element of our purpose is the need to support parents. This was an area of disagreement during the consultations.

Some child protection practitioners and support agencies said that some parents, and lawyers, ask for orders that, in their view, are not in the best interests of the child. In the most extreme situations, it was suggested that lawyers were arguing for orders against – or in the absence of – the instructions of their client. Parents should not be permitted to continue where it was against the best interests of the child, they said. This view is based on the ‘best interests’ of a child being clearly identified, unchanging and not open to another interpretation.

By contrast, some lawyers see child protection proceedings as similar to criminal law proceedings, where it is up to the ‘prosecution’ to prove the case and a parent has a right to be ‘defended’. They spoke of the difficult circumstances of parents, who experience social exclusion and disadvantage. Representing parents is important to make sure that government does not unreasonably interfere with families.

These positions come into conflict because they see the role of parents, and their representation in child protection proceedings, as being different or separate from the interests of children. This creates a culture that adds to the stressful situation of these proceedings and undermines confidence in the legal process.

It helps to bring the two views together, while still promoting the interests of children and young people.

The family is recognised as the fundamental group unit of society and entitled to protection.[[22]](#footnote-23) Parents are central to the wellbeing of children. Promoting the safety, wellbeing and development of children must include supporting parents to participate in proceedings. However, parents have obligations and responsibilities towards children and young people, not rights over them.

This is the approach in the Federal Family Law courts and in international law. It is also the position under the Children Youth and Families Act. Legal assistance to parents must promote the best interests of children.

‘A good lawyer will take instructions and advise their client on the merits of their case in line with the legislation, if you’re sacked because of it, so be it. There must always be a legal overlay, otherwise cases just run to second Direction’s Hearing as a matter of course. That’s simply a bad look for the jurisdiction and obviously from a legal funding perspective.’ – A magistrate

Lawyers regularly 'reality test' the position adopted by parents. Their advice and analysis is shaped by the legal test that is applied to all child protection matters – what is in the best interests of the child? Lawyers can only make arguments to the court that are consistent with this legal test. Whether the court accepts their proposal is for the magistrate to decide. This ability to challenge government intervention into a family is an essential feature of a modern democracy.

This means that it's appropriate to provide representation for a mother to argue that a child should be in her care, where there is evidence that this is safe, even when the DHHS may disagree.

There are limits on publically funded legal assistance. Current guidelines for a grant of legal assistance require that a parent’s proposals must have ‘merit’. As previously mentioned, a parent must have a reasonable chance that the child will be placed in their care. This is determined by reference to the central concern of the child protection system – the best interests of the child. For example, a parent with an active, longstanding drug addition will not be funded to argue for the immediate return of a child to their care.

The critical role of parents in the lives of children means that it's essential that they be given support and the opportunity to provide a nurturing environment. This means that parents are entitled to be treated fairly and given an opportunity to explain why the child should be with them. It also means that the parent with the active drug habit, referred to in the previous paragraph, should be provided help to deal with their addiction and to recommence caring for their child.

As mentioned, children under 10 years are not normally represented.[[23]](#footnote-24) Representation of parents provides an alternative view and assists the court in making these important and difficult decisions about children and young people.

**Discussion question:** Can lawyers pursue best outcomes for parents while still promoting the safety, wellbeing and development of the child or young person?

### Supporting good processes and practice

The third element of the purpose is supporting good processes and practice. We must ensure that its arrangements work toward positive outcomes for children and young people. Similarly, we must work with others across the child protection system to remove barriers to advancing the interests of children.

Our involvement in child protection across Victoria contributes to improving the child protection system. Our practice experience helps spot weaknesses in the system and we are able to work with our partners to find solutions. For example, we identified that the limited number of lawyers in some areas was a barrier to accessing legal assistance. We identified Bendigo as a region where this was evident. We worked with the Loddon-Campaspe CLC and the local DHHS office to pilot a new service arrangement.

The discussion that follows details a number of barriers to access to justice caused by processes that don't place children and young people at the centre of the system.

The promotion of client-centred, timely, high-quality, accessible legal support to vulnerable children, young people and their parents is integral to a fair and transparent child protection system.

**Discussion question:** *It's acknowledged that there will be different views about what the purpose should be, and we welcome you to share your thoughts. Are there other things that the program should focus on, and if so, why?*

**Option 1**

The purpose of the Child Protection Program be clarified as to promote the safety, wellbeing and development of children and young people.

This involves supporting:

* children and young people to understand their rights and have an effective voice
* parents to make decisions and take actions that promote the best interests of children
* processes and practices that lead to a fair, accountable and accessible child protection system.

Having identified some of the problems, the challenge is to redesign the delivery of legal services in a way that places the subject of the proceedings – children, young people and families – at the centre of service delivery.

## Client-focused services

‘I would like to see a system where [clients] have a network of supports wrapped around them to address multiple needs. Lawyers working with non-legal advocates to make sure [parents] are doing what they need to do to get the kids home.’ – A support worker

### Non-legal advocacy

There was strong support from lawyers, magistrates, support agencies and academics for children, young people and parents receiving greater levels of support, including non-legal support, away from court. Many of those consulted cited the Family Drug Treatment Court as a model of best practice ‘wrap-around’ support.[[24]](#footnote-25)

The work of [child protection lawyers] is not always straightforward or strictly legal. Sometimes your focus will be on educating your client on issues like family violence. Other times it will be the importance of washing before meeting with [DHHS].’ – A lawyer

Lawyers, magistrates and support workers said that better-supported parents are more likely to address protective concerns in a timely way. When lawyers and magistrates talked about ‘supporting parents’ they generally meant supporting them to link-in with support services such as counselling or parenting programs.

When support workers talked about ‘supporting parents’ they described ‘wrap-around support’, which included lawyers and/or non-legal advocates helping to connect parents with services, but also supporting parents by having more involvement and contact.

Lawyers and support workers told us that for parents, getting the right help at the earliest opportunity improves the chances of them having children returned within the timeframes set by the legislation. As one drug and alcohol support worker said, ‘the sooner supports are in place [for parents], the less time is lost just “treading water”, which parents really can’t afford to do with the [two-year] timelines’.

‘Having good “legally informed” support at the right time could have a huge impact on case trajectories. I think having social workers working alongside lawyers, keeping them up to date and informed about what’s happening for the client, would be fantastic.’ – A support worker

A number of lawyers and support workers said that finding the right help can be difficult for parents, especially when there are multiple services, lengthy waitlists, complicated intake processes or referrals required to get the help needed. It was felt that a non-legal advocate who had knowledge of the service sector could help parents navigate the system and find what they need, where they need it. Regional lawyers and support workers emphasised the importance of ‘local knowledge’ about services and availability so that parents know what their options are and whether they need to look outside their region to access it.

‘We have one mental health service locally and no recognised mental health service in our nearest region. Parents need to travel, sometimes huge distances to access supports and the waitlists are long. [Parents] need to know that upfront.’ – A lawyer

Young people, lawyers and support agencies said that better-supported children and young people are safer, particularly if they are placed in out-of-home care. Lawyers and support workers said that having a point of contact, in addition to child protection workers, would allow more opportunities for children and young people to ‘check-in’ and make sure they're feeling safe in placement.

Lawyers said that this additional support was even more important for children and young people who are waiting to be allocated a child protection worker. Some support workers and many lawyers said that children and young people who were unallocated to a consistent child protection worker risked ‘flying under the radar’. For these children and young people, a non-legal advocate could make sure that case plans and cultural plans are being prepared and respected, and that court-ordered conditions are followed.

Lawyers reported that their job often required non-legal work. This included making sure that clients have the necessary paperwork to do a drug screen, following-up with a child protection practitioner to check that supports had been put in place or helping parents and young people sort out problems with Centrelink, housing waitlists and non-legal advice and information.

Lawyers said that much of the non-legal support they provided to families contributed to better legal outcomes. It was also said, that the level of non-legal support required by some parents would be better performed by a non-legal advocate. A number of lawyers said that the best use of their skills and expertise was in providing legal support and assistance, but that this would be enhanced with the help of a non-legal advocate. It was however, important for lawyers that the role of the non-legal advocate was clearly defined and processes in place to make sure lawyers were being contacted when legal advice was required or legal action necessary.

‘Some of my colleagues might say “it’s not my job to help with referrals, we aren’t social workers” … but we should all be a lot better at referring our clients to supports because that’s how you get kids home – and that is part of our job.’ – A lawyer

The types of non-legal supports suggested by lawyers, support workers and young people consulted included:

* assisting parents to link-in with support services to address protective concerns
* assisting young people and parents with housing, financial counselling and Centrelink enquiries
* being a point of regular contact for children, young people and parents to ‘check in’ on progress or other relevant matters
* providing an avenue for support and oversight for children and young people in out-of-home care
* assisting Aboriginal and/or Torres Strait Islander families to navigate the case planning or Aboriginal family-led decision making process
* advocating on behalf of children, young people and parents for compliance with court-ordered conditions and case-planned decisions
* advocating on behalf of Aboriginal and/or Torres Strait Islander children, young people and parents to ensure cultural case plans are prepared and respected
* supporting parents to ensure they comply with court-ordered conditions, such as urine drug screens and attendance at access.

We currently have non-legal advocates our Independent Mental Health Advocacy Service (IMHA) who support people in the mental health system. We are also recruiting Aboriginal Community Engagement Officers (ACE Officers) to support Aboriginal and Torres Strait Islander people access legal assistance, strengthen community relationships and raise awareness of the things that cause legal problems.

During consultations, the review was made aware of a Victorian pilot involving a CLC employing a social worker to work alongside lawyers to support clients with family law and family violence matters. The pilot is still relatively new and yet to be formally evaluated by the CLC. Were we to use non-legal advocates to assist with child protection matters, it's unclear yet what the demand for this would be or how it would work.

**Discussion questions:** Should we set up a pilot service where non-legal advocates or social workers and lawyers work together? If this service is set up, should it be available to all people in the child protection system, or should it be directed to helping some particular groups? Should it be part of our staff practice or a standalone unit? What are the benefits or disadvantages of each approach?

**Option 2**

Pilot a Client Support Service, which features a team of appropriately qualified, culturally diverse, non-legal advocates to support children, young people and parents involved in child protection proceedings. The Client Support Service team would work alongside lawyers who are assisting children, young people and parents in accordance with a grant of legal assistance.

### Representation of children and young people

Central to providing effective support to children and young people is a shared understanding of the role and function of a children’s lawyer in a child protection setting.

‘I don’t really enjoy representing children. I feel like it’s easier in many ways because you aren’t actually driving the direction of a case. With parents, the conversations are legal focused and you can actually achieve outcomes, whereas with children, it’s not like that and I don’t enjoy it.’ – A lawyer

‘I don’t think children should be directly represented and I would go so far as to say that I think in some cases it can amount to systems abuse. What child is not going to say they want to go home?’ – A magistrate

It's not up to us to decide what type of model should be used to represent children – either direct or best interests – this is a matter for Parliament. However, there were strong views expressed about this issue by lawyers, magistrates and child protection practitioners. Some argued that a ‘direct interest’ model of representation enhanced children and young persons’ ability to participate in proceedings and encouraged a relationship of trust between the lawyer and child or young person. Others strongly supported a ‘best interest’ model of representation, which encouraged lawyers to act as an ‘honest broker’ for the court.

The Young Person Advisory Forum (YPAF) was similarly divided, with some members believing that younger children should be represented on a ‘best interest’ model until the child is capable of expressing a preference. The rest said that, other than exceptional cases, all children should be represented on a ‘direct interest’ model.[[25]](#footnote-26)

All members of YPAF agreed that ‘confidentiality’ was important and that trust was particularly significant for children and young people in out-of-home care. Young people said that frequent contact, and continuity of representation, was required to build and maintain trust.

‘Being in care, you live in fight or flight to survive. You might run away but that doesn’t mean anyone will notice. Decisions are made and you don’t feel like you have any say. It makes a big difference having a lawyer on your side. The same lawyer, not lots of different ones. Trust is a big thing when you’re in care.’ – A young person

Both models of legal representation, when performed well, are able to promote and protect the rights of children and young people. When performed poorly, both fail to serve children and young people.

The focus of the Child Protection Program must be on supporting lawyers who undertake this work – on direct or best interests bases – to understand their role and its significance in the lives of children and young people. This includes supporting the sector more generally to understand the function of a children’s lawyer in the child protection setting and the positive impact this relationship can have on outcomes for children and young people.

Our current legal aid eligibility guidelines limit when children under 10 years of age receive legal representation. Assistance will only be provided where the Children’s Court has made an order that it is in the child’s best interests to be legally represented and we agree that it is appropriate to pay for representation. Children under the age of 10 years are represented on a ‘best-interests’ basis.

The guidelines were amended in 2013 to make them consistent with changes made to the Children, Youth and Families Act, which said only children over the age of 10 must be legally represented. Before that representation was provided to children aged seven or older on a direct instruction basis.

In NSW all children are legally represented. Children aged under 12 years are represented on a best interest basis, while older children are represented on a direct instruction model. It is important to note that Legal Aid NSW receives a higher level of Commonwealth and State funding per capita than Victoria Legal Aid.[[26]](#footnote-27)

During the consultation a number of lawyers said that limiting representation had meant that many children were not being heard. They suggested that more children should be represented.

This raises the question whether the guidelines should be widened to allow for more children to be represented. Increasing the level of representation of children would be consistent with the proposed purpose of the Child Protection Program. However, it may have an impact on other services. For example, there has been a significant increase in the Family Law courts in the appointment of Independent Children’s Lawyers to represent children. These appointments are generally funded by legal aid commissions. In Victoria this has been offset by a reduction in the level of legally aided representation for parents.

The high level of demand in child protection means that, without additional funding, it is likely that more representation for children would result in a reduction of services elsewhere. In particular, this may mean that representation for parents would have to be further restricted.

**Discussion question:** Should the guidelines for the representation of children be increased, and if so, how? Who should we not assist in order to achieve this increase?

**Option 3**

Victoria Legal Aid work with its partners to develop guidelines for the representation of children and young people, including specific guidelines for ‘best interests’ representation.

**Option 4**

Widen the legal aid eligibility guidelines for the representation of children to enable more children under the age of 10 to be represented.

### Supporting children and young people with complex needs

The social disadvantage facing children and young people involved with child protection is a profound reminder of the need to work together to deliver client-focused services that promote improved outcomes. Of those children and young people experiencing the child protection system, there were three groups identified during consultations who have particularly complex needs requiring a different legal service approach:

* Children and young people with concurrent Children’s Court Family (child protection) and Criminal (charged with criminal offending) Division involvement, who may be at risk of long-term engagement with the legal system.
* Children and young people in out-of-home care, subject to long-term orders without conditions.
* Aboriginal and/or Torres Strait Islander children and young people.

### Supporting children and young people in the child protection and criminal law system

A strong link has been shown between child protection and criminal offending by young people.[[27]](#footnote-28) Lawyers and child protection practitioners raised this issue during a number of consultations.

As mentioned previously, long-term users of our legal services were more likely to have seen us for a child protection or family violence matter before the age of 18. The extremely high rates of children in out-of-home care and involved in criminal proceedings were something that lawyers, magistrates and child protection practitioners have observed and are concerned about.

The consensus was that children and young people involved in both child protection and criminal proceedings, especially those in out-of-home care, are amongst the most vulnerable children appearing before the Court.

‘The criminalisation of kids in resi care is a real issue locally. [Kids] get put in a unit, feel like they’ve been dumped and act out. Police take a zero tolerance approach so they get charged and so the cycle begins …’ – A lawyer

The review heard that criminal offending typically commenced after children and young people entered out-of-home care, particularly in the residential care system. There was general agreement that these children and young people required us to adopt a different approach. This emphasises consistency of representation in both the child protection and criminal law matters – avoiding children having to deal with different lawyers and ensuring a more consistent approach is taken to interventions that are put in place.

Current legal services and funding guidelines reflect the separation of criminal and child protection matters in the Children’s Court. This is not consistent with a client-focused service.

‘For children and young people, I raise this as an in-house problem as well, there are issues with consistency of representation. A lack of continuity is problematic because for young people, trust has been identified as foundational to their ability to participate in proceedings. This is particularly the case for young people traversing the Family and Criminal Divisions.’ – An academic

There was support for Victoria Legal Aid developing an intake process to identify potential high-contact users. They would receive legal representation that prioritised consistent representation and more frequent contact with the child or young person. This more intensive approach, earlier in a child or young person’s life, might avoid long-term involvement in the justice system.

**Option 5**

Develop intake processes to identify children and young people at risk of long-term engagement with legal services and provide a client-focused, case-managed approach to legal representation, designed to prioritise consistency and more frequent contact between children and their lawyers.

**Option 6**

Develop intake processes to identify children and young people who have concurrent Children’s Court Family Division and Criminal Division matters and that the funding be structured to support high-quality, consistent representation in both divisions. This could include a global grant to enable the one lawyer assist the child or young person.

### Supporting children and young people beyond court

The focus on court proceedings, while important, means that insufficient attention is given to what happens before and after the case. Lawyers and support workers identified the lack of adequate legal support for children and young people in out-of-home care as a problem, particularly once the court case has finished. Children are unaware of their rights or how to seek assistance.

‘If you are in out-of-home care, you want to be able to speak to your lawyer at least every couple of weeks. But it needs to be consistent, so you know to expect it, that’s important. It means that if something goes wrong you can let them know. Court days are stressful; it would be nice to de-brief with a person that you look up to.’ – A young person

Young people said that having ongoing contact with their lawyer beyond or in between court dates would mean that they could keep lawyers ‘in the loop’. One young person described their experience with a lawyer who telephoned regularly between court dates ‘because [the lawyer] knew I hated the unit I was in’. The ongoing communication allowed the young person to de-brief about living arrangements, which included living with a violent co-resident. The lawyer was able to use the information and updates to argue for the young person to be moved to a different unit, closer to her school. For this young person, having that ongoing support and contact with her lawyer made a big difference.

Where the court makes a final decision that involves a child being placed on a long-term order, DHHS must prepare a case plan. There is no support provided to help the child be involved in this process.

Issues arise after orders are made. A child protection practitioner pointed out that there is no legal support available for a young person who says that they have been abused whilst in care. Lawyers raised concerns about changes made after the court case finished. For example, the child’s living arrangements may change, the child may be unhappy about where they are to live or the amount of contact they have with their parents or siblings. These things will be decided by DHHS. The child may have these decisions reviewed, first through an internal DHHS review and then to the Victorian Civil and Administrative Tribunal (VCAT). However, there is only limited legal assistance available for this.

**Discussion question:** Help could be provided in many ways. It could be representation, advice or information. There may be other options. How do you think children in out-of-home care could be better supported?

**Option 7**

Work with others, including young people, to identify the legal needs of children and young people in out-of-home care and possible responses, which may include information and non-legal advocacy.

**Discussion question:** Should we fund lawyers to assist children in out-of-home care? If so, for what sort of problems? Are the areas suggested the appropriate ones or are there others?

**Option 8**

Fund lawyers to lawyers to provide legal advice and assistance in the following circumstances:

* Where there has been an ‘abuse in care’ report made by a child or young person.
* Prior to each annual case plan review meeting for children and young people subject to Care by Secretary or Long-term care by Secretary orders.
* Where a permanent care order is intended to be administratively converted to a Care by Secretary Order due to a breakdown in the permanent care placement.

### Aboriginal and/or Torres Strait Islander children and young people

There is increasing recognition of the gross over representation of Aboriginal and/or Torres Strait Islander children in the child protection system.

The Aboriginal and Torres Strait Islander community makes up less than one per cent of the Victorian population. As at 30 June 2015, there were 1,511 Aboriginal and/or Torres Strait Islander children across Victoria in out-of-home care, representing 17 per cent of children in out-of-home care, compared with 7,049 non-Aboriginal and/or Torres Strait Islander children. This is a rate of 71.5 per 1,000 Aboriginal and/or Torres Strait Islander children, compared to a national average of 52.5 per 1,000, and was the second highest in Australia (after the ACT). At the same time, 20 per cent of Aboriginal and/or Torres Strait Islander children in Victoria were involved in the children protection system, compared with around four per cent of non-Aboriginal and/or Torres Strait Islander children.

The Taskforce 1000 Review conducted by the Commissioner for Aboriginal Children and Young People reviewed the cases of almost 1,000 aboriginal children in out-of-home care. It's understood to have revealed a wide failure to adhere to the Aboriginal placement principles and to have meaningful cultural plans for Indigenous children in out-of-home care. Being able to develop a strong sense of cultural identity and connection with family is fundamental to a child’s development.

The outcomes suggest a failure on the part of the system to properly support these children. As the representatives of Aboriginal and/or Torres Strait Islander children, young people and parents, lawyers must accept some responsibility for the failure to engage with and protect the interests of Indigenous children.

‘Lawyers for children and parents aren’t holding the [DHHS] to account strongly enough. Taskforce 1000 tells us that. We should have a cultural support plan for each Aboriginal child in out-of-home care, but this still isn’t happening.’ – A support worker

The Victorian Aboriginal Legal Service and the Aboriginal Family Violence Prevention and Legal Service both provide child protection legal services. Demand pressures in other areas means that they have a limited number of staff able to deal with child protection and can currently only assist a relatively small number of parents and children.

Like others in the sector, they find it difficult to recruit staff with relevant experience in child protection. This can create difficulty in gaining entry to or remaining on the VLA s. 29 Panel of Child Protection lawyers. The agencies identified the need for closer co-operation and support from us to enable them to develop larger child protection practices that benefit from their connection with and experience of community.

There was strong support from all organisations representing Aboriginal and/or Torres Strait Islander people, that families should be offered the opportunity of being represented by an Aboriginal legal service where one is available. It was felt that Aboriginal legal services had the appropriate cultural expertise to promote and protect the cultural identity of Aboriginal and/or Torres Strait Islander children and young people.

Aboriginal and Torres Strait Islander organisations observed that families were much more likely to engage with supports and services that collaborated with community members or utilised Aboriginal liaison officers. It was widely acknowledged that the introduction of a Koori support officer at the Broadmeadows Children’s Court had impacted positively on engagement levels between Aboriginal and Torres Strait Islander clients and their lawyers.

A number of lawyers have a desire to better engage and support Aboriginal and/or Torres Strait Islander children, young people and parents. Cultural awareness training is one way of assisting lawyers to develop greater insight both into the historical factors contributing to contemporary disadvantage, but also to identify different cultural norms and means of communication.[[28]](#footnote-29)

‘[Victoria Legal Aid] is a white-faced organisation. I think that legal services across the board are generally fairly white faced. That’s an issue and a barrier that we need to break down if we are to properly engage Aboriginal clients.’ – A lawyer

Gippsland and East Gippsland Aboriginal Co-operative and others emphasised the need for legal providers to have greater involvement with local Aboriginal and Torres Strait Islander communities. It was felt that this would promote an environment of trust in which Aboriginal and/or Torres Strait Islander people would feel more comfortable in seeking assistance.

There were a number of factors identified as compounding the immense challenges faced by Aboriginal and Torres Strait Islander families in accessing legal services. This included fear, mistrust and loss of confidence in the justice system and government agencies generally due to personal and family experience, and the history of the Stolen Generation. Aboriginal and Torres Strait Islander parents were said to fear engaging with child protection, and any associated legal processes, that might result in a child being removed.

Personal cultural factors, such as shame, are also a barrier. For some, it was said that language and communication barriers, together with a lack of knowledge about legal rights and services available, was a barrier.

Geographical isolation can also be a factor. The cost of travelling to speak with a lawyer or attend court, particularly if public transport is limited, can exclude some people from participating in proceedings.

The over-representation of Aboriginal and Torres Strait Islander people in custody was also noted as a problem. This makes it difficult for parents to get assistance with child protection problems, particularly as relatively few criminal lawyers also deal with child protection matters.

There was very wide agreement that Aboriginal and Torres Strait Islander families should receive a comprehensive suite of legal services that ensure appropriate support at each stage of the legal process. This extended to funding lawyers to attend at Aboriginal family-led decision making meetings. Child protection practitioners spoke of agreements being reached during these meetings, and then breaking down once the parent received legal advice. This does not promote confidence in the system or encourage the creation of positive long-term relationships.

In light of the over-representation of Aboriginal and Torres Strait Islander children and young people in out-of-home care, there was strong support expressed for Victoria Legal Aid funding disputes around contact with parents and siblings. The promotion of contact between family members is an important aspect of creating and maintaining cultural identity, a feature of profound importance for Aboriginal and Torres Strait Islander people.

**Option 9**

Victoria Legal Aid work with local communities, the Victorian Aboriginal Legal Service and Aboriginal Family Violence Prevention and Legal Service to increase the number of Aboriginal and/or Torres Strait Islander children, young people and parents seeking legal advice at the early stage of child protection intervention.

**Option 10**

Victoria Legal Aid provide additional resources to the Victorian Aboriginal Legal Service and Aboriginal Family Violence Prevention and Legal Service to enable them to train more staff to deal with child protection matters.

**Option 11**

Amend Victoria Legal Aid allocations processes to support Aboriginal and/or Torres Strait Islander children, young people and parents being offered the opportunity to be represented by an Aboriginal legal service, where one is available.

**Option 12**

Make available grants of assistance for the provision of advice, assistance and representation for Aboriginal and/or Torres Strait Islander children, young people and parents where a child or young person is placed in out-of-home care and the issue of parental or sibling contact is in dispute.

**Option 13**

Make available grants of assistance for the attendance of a lawyer at Aboriginal family-led decision making meetings.

**Option 14**

Victoria Legal Aid require all Child Protection Panel lawyers attend cultural awareness training.

### Information for children, young people and parents

At present, there is little available information that explains the child protection system in a way that meets the needs of children, young people, parents or carers. Particularly having regard for the different levels of literacy and capacity. In order to meet their needs, services should be co-designed with children, young people, parents and carer organisations.

The majority of those consulted identified an absence of current, plain language, legal information for children, young people and parents. In order to develop these materials, the engagement of children, young people and parents is required to ensure readability and effectiveness. Materials suggested to enhance client-focused practice included:

* mapping of legal processes
* flowchart of decision making
* description of court processes
* description of the different court orders
* description of case planning processes
* description of decision making principles
* mapping of the legislative permanency framework.

In order to meet the different needs of clients, materials should be delivered in a number of forms, including in hard copy, online and possibly through a mobile application. Of critical importance was that the materials were purpose designed to enhance the understanding and participation of children, young people and parents within the child protection system.

‘People with an ID look for the pictures, particularly if they can’t read. No jargon. No legal speak. Easy to read so I can understand it.’ – A parent

**Option 15**

Victoria Legal Aid engage with children, young people and parents to develop and maintain plain-language information about the child protection system.

**Option 16**

Victoria Legal Aid engage with other agencies in the disability sector to develop materials for clients with a cognitive impairment.

### Information for kinship, foster carers and support agencies

There are a number of groups and organisations involved in the child protection system that have limited access to information about the child protection system or the legal services available. This includes carers, who provide invaluable support to children and organisations working with children and parents. It's important to work with these groups to develop relevant information so that they may better support children and parents getting access to legal services.

‘Volunteerism is sometimes seen as amateurism. But a lot of carers don’t view their role in the system as amateurish. We give 24-hour care to some of the most damaged kids in the community. We know these kids better than many of their family members. We want to be a part of the solution. If we have information, we could better prepare kids for the court process and fallout but we feel constantly excluded. This is despite the fact we are the ones that have to pick up the pieces when court says they can’t go home.’ – A carer

Support workers were highly supportive of the development of materials that could assist them to support children, young people and parents navigating the child protection system. They felt they could play an important role in reinforcing advice and support if they had greater awareness and knowledge of how the legal processes operated.

**Option 17**

Victoria Legal Aid engage with kinship and foster carers to develop materials and information relevant to their involvement in the child protection system.

**Option 18**

Victoria Legal Aid engage with service providers to develop materials and information relevant to their involvement in the child protection system.

## Timely intervention

### Early intervention unit

While cases in court are important, these involve only a small number of those actively engaged in the child protection system. There were over 100,000 reports to the DHHS in 2015/16, with around 15,000 found to be supported. Of those, only about 5,000 resulted in an application to court. This is because DHHS supports many families to make sure that children are safe.

However, children, young people and parents may not be able to advocate for themselves. There will be some people who find it challenging and frightening when dealing with a government agency. These early dealings can result in major decisions being made.

There is limited legal support available before court. This means that many children and parents involved in the system do not get legal help, or they get it when they have reached the stage of having to go to court.

‘I think getting lawyers involved in the pre-litigation stage would be better for families. It’s away from the stresses of court. It may help with that feeling of defeat that you help so many parents’ with once a case gets to court.’ – A child protection practitioner

Examples of the decisions that can be made at this stage are ‘Child Care Agreements’.[[29]](#footnote-30) These can lead to children and young people being placed in out-of-home care. There were around 1,200 children placed in out-of-home care under such agreements in 2014/15. [[30]](#footnote-31)

These agreements are voluntary, not an order of the court. Lawyers and support workers said that families did not always understand that they didn't have to agree to the arrangements, and that some families felt that they had to agree.

‘There is an increasing trend in our region of placing kids in out-of-home care on voluntary agreements. The parents don’t get legal advice and I query how many of them actually understand what they’re signing up for and that they can say “no thanks”.’ – A lawyer

There was strong support for children, young people and parents having access to early legal support, especially before signing a Child Care Agreement that resulted in a child or young person being placed in out-of-home care.

This would make sure that everyone understood what was happening. It would also give children, young people and parents a voice, to explain what they needed to keep the family together. It would help raise other options that might prevent children having to be moved from home.

Experience from the UK shows that early legal intervention helps reduce the level of dispute and leads to more stable long-term solutions.[[31]](#footnote-32)

‘Parents often don’t know their rights until a matter gets to court, so parents will just go along [with DHHS]. They don’t know the internal review processes and their ability to access legal advice is absent.’ – A support worker

There were different opinions as to whether the early intervention should be provided by lawyers, social workers or a combination of both. Some lawyers thought that there was little point in being involved early. They would advise parents not to provide information to the DHHS because it might be used against the parent if the case did go to court. Some child protection practitioners thought that lawyers would be uncooperative and get in the way of families receiving the help they need. There was concern that the process might become too legalistic.

There was a larger group of lawyers and child protection practitioners, as well as others involved in the system, who supported the idea.

Legal Aid NSW established an early intervention unit (EIU) in 2011, with funds from the Commonwealth Government, to support people in the child protection system. The unit is made up of six lawyers, one information referral officer and two social workers. The EIU is isolated from other practice areas, allowing it to assist people who may otherwise be referred elsewhere due to a conflict of interest.

The NSW EIU assists people with a range of needs, including child protection, family violence and family law. The lawyers reported finding working alongside social workers positive, although it was an adjustment, and improved their capacity to assist their clients. The service employs a trauma informed practice model – focusing on the needs of the children and parents they are working with. The combined structure provides an opportunity for other legal and non-legal needs that may be contributing to the protective concerns to be addressed. These may be issues of debt, housing or access to necessary health treatment.

‘We recently helped a mother who had her first three children removed from her care due to a drug issue. She was pregnant again but in a different space and motivated to change. We worked intensively with her during the final trimester of her pregnancy, saw her every week for eight weeks, worked on various things, linked her in with appropriate supports. She kept her baby and things are looking really positive. That was a baby earmarked for immediate removal. That’s the impact an EIU can have.’ – A NSW Lawyer

The information and referral officer makes appropriate referrals for clients who require ongoing assistance. The officer can also make arrangements for a legal aid application to be completed and on occasion will submit the application for the client. This assists private lawyers who receive a referral from the information and referral officer.

The NSW model is one example of how an EIU might be established. This was also discussed in the 2014–15 Victoria Legal Aid Family Law Services Review. There was qualified support for this proposal in responses to the Family Law Legal Aid Services Review consultation and options paper.

Ultimately, the decision we made in the final report of our Family Law Legal Aid Services Review was to further investigate the viability of establishing an enhanced Duty Lawyer Service based on the Legal Aid NSW EIU. This is to be done in consultation with the Family Law Courts and CLCs.

If an EIU was established, the large number of people involved in the child protection system means that an EIU might not be able to help everyone. During the consultations, there were suggestions as to who the EIU might concentrate on. The suggestions included:

* Aboriginal and Torres Strait Islander families
* parents living with a cognitive impairment
* culturally and linguistically diverse parents
* families where a voluntary out-of-home care placement is proposed.

**Discussion question:** If an EIU was set up, and it could not assist everyone, who do you think it should help? What should such a unit look like and who should be prioritised? Should it be part of our staff practice or a standalone unit? What are the benefits or disadvantages of each approach?

**Option 19**

Victoria Legal Aid work with DHHS to pilot a legal advice service for young people and parents who are invited to enter voluntary agreements, which involve a child being placed in out-of-home care.

**Option 20**

Pilot an early intervention unit featuring a team of lawyers and/or appropriately qualified, culturally diverse non-legal advocates, to assist and support children, young people and parents in the pre-litigation and early-litigation phase.

### Unborn reports

There was a common view that an opportunity is being missed to support women who may be the subject of an unborn report. An unborn report is where concerns are raised with DHHS about a pregnant women and whether she will be able to care for the child after it is born.

Women who have previously had a child permanently removed from their care will generally be involved in an unborn report. Pregnant young women who are themselves subject to a current protection order, and are in out-of-home care, are not part of the unborn report data. DHHS engage with these young women as part of their existing order.

There is often little engagement during the pregnancy to put supportive arrangements in place. Some child protection practitioners indicated to us that they did not reveal the likelihood of a protection order application being made, for fear that if told the women may relocate and thwart the application.

‘I think the majority of women value an upfront approach and so if there are risks being picked up, talk about it. Women should be given the opportunity to respond and engage … Yes, I think risks could be de-escalated by having early legal advice and support.’ – A support worker

Too often women face a protection application very soon after giving birth. The inability of the new mother to attend court and see the duty lawyer means that she is unable to participate in the proceedings. The Royal Women’s Hospital advised that they deal with around three women a week who are in this position.

It's proposed that we trial different initiatives to better support these women and their children. Inner Melbourne CLC has an outreach service to the Children’s Hospital, the Royal Women’s Hospital and Royal Melbourne Hospital. It provides support to women to address their legal needs, although it does not have the resources to represent women in the Children’s Court. This suggests one model to support a CLC that is engaged in a health partnership, to provide advice and representation to women who maybe the subject of an unborn report.

**Discussion question:** Should this be a priority for the Child Protection Program? What other alternatives are there to reach and support these women?

**Option 21**

Pilot a Health Justice partnership through a Community Legal Centre to provide early advice and support to pregnant women who are or may be the subject to an unborn report.

**Option 22**

Make available grants of assistance for the provision of advice and advocacy for all pregnant children and young people who may be subject to an unborn report.

## Quality and support

### What the review heard about the quality of the currently delivered legal service

There was a great deal of praise for lawyers, who are working hard and delivering high-quality legal services to children, young people and parents.

We met with numerous lawyers who impressed with their knowledge, thoughtfulness and commitment to the delivery of child protection legal services to children, young people and parents. The magistracy consistently acknowledged the good quality of legal services, including the Duty Lawyer Service.

‘Kids might not be able to tell you the name of their worker but they will generally always know the name of their lawyer. Some people might find that surprising as they have such limited contact but obviously, the significance of the relationship [kids] have with their lawyers is pretty significant.’ – A support worker

Support agencies were similarly generous in their praise of lawyers, particularly when appearing for children with concurrent matters in the Family and Criminal Division of the court. Examples were shared where lawyers had supported children and young people to navigate the case-planning phase, beyond the making of orders.

We heard of lawyers travelling a long way, without additional payment, to meet with children and young people who were placed away from family members. We also heard of lawyers working to assist clients outside of business hours, appearing at bail justice hearings and staying at court afterhours.

The feedback received from DHHS was varied, although examples of positive interactions between child protection practitioners and lawyers were given. While some identified a more challenging environment at the Melbourne court, this was not replicated at Broadmeadows. Nor was it confined to Melbourne.

It's important to acknowledge that lawyers and DHHS staff deal with confronting material, in difficult circumstances and often with little thanks. It's a specialised area, requiring an understanding beyond the law, encompassing such diverse topics as childhood development through to knowledge of the various types and quality of support services available for families.

Lawyers deal with highly emotional situations and frequently have to deliver ‘bad news’ to clients. For example, explaining to a child that they won’t be going home, or having contact with their sibling or explaining to a parent that their child is to be permanently removed from their care. It can take a toll on both a professional and personal level. It's generally acknowledged that the confronting nature of the work is a primary reason for the small number of lawyers practising in the field.

However, there were also reports of poor practices, particularly with the representation of children and young people. Reports were provided by lawyers, including lawyers from DHHS, child protection practitioners, young people, support service providers and carers.

Lawyers, magistrates, lawyers for DHHS, child protection practitioners and support service providers also gave numerous examples of poor practices by lawyers that had caused cases to be delayed. A major factor was lawyers not having up-to-date instructions.

One extreme example, given by a lawyer, was a case where a final contested hearing was unable to continue because the lawyers had not spoken with the children for several months.[[32]](#footnote-33)

Lawyers, child protection practitioners and foster carers gave examples of lawyers not meeting face-to-face with the child or young person, preferring instead to take all instructions (including introducing themselves) by telephone. One lawyer told of an occasion where they were going to visit a child who they were representing at the child’s school. She mentioned this to another lawyer, who had been appointed to act for a child who was at the same school. The first lawyer had to persuade the second to join them in going to the school, rather than the second lawyer introducing himself or herself over the telephone as they had planned.

A carer told us that the only contact that an intellectually disabled child had with her lawyer were brief telephone calls, and that the child was not helped to understand what was happening with her case.

Several lawyers saw cases where a lawyer had agreed to final orders without confirming the arrangements with the child or young person. This did not allow the child or young person to be involved in the decisions about them, even though the lawyer is supposed to be acting on the instructions of the child or young person.

Lawyers, carers and young people spoke of some lawyers not telling the child or young person what had happened in court, or there being a lengthy delay in doing this.

Lawyers must consider whether a child has ‘capacity’ to instruct, that is, that they understand enough to tell they lawyer what they want. There were several examples where this was not done. A child protection practitioner told us of a lawyer requesting that the worker assess a child’s capacity, to avoid making a trip to visit the child.

A lawyer told us about another lawyer who had acted for a young person on a direct instructions basis for a number of applications over several years. More recently, a different lawyer had contact with the child and quickly assessed that the child did not have capacity to instruct. When looking into this further the new lawyer found that there was long-standing medical evidence that the child did not have the capacity to understand or instruct.

Instructions should be taken from children in private and without a parent or carer present. Children may not want to upset their parents or carers. They may be concerned to say what they really want, or be under pressure or at risk of violence. Despite this a lawyer noted that another lawyer routinely takes instructions from children and young people in the presence of parents.

The review heard of an instance where a lawyer, while in court and having already spoken with the magistrate, turned to a young person to introduce himself or herself as the young person’s lawyer for the day. The young person had been living with a family member who was no longer able to care for them. The lawyer said words to the effect of ‘You want to live with mum, don’t you?’ The protective concerns in this case related to the mother, who was seated next to the child.

A magistrate noted a general lack of courtesy being extended to children, young people and parents, particularly when they are waiting at court for extended periods of time, without regularly updating the child about what's happening.

A review of in-house files, and the experience of the VLA Child Protection Panels process with external files, identified a number of these concerns. The file reviews were helpful for the review as they show clearly the impact of such practices on legal outcomes.

‘Lawyers need to prioritise matters where clients have attended at court. The other day we had a family attend and wait around all day, just for an adjournment, because the lawyer overlooked them being there.’ – A magistrate

### Ensuring quality representation for children and young people

There are particular skills required to ensure that these children and young people are adequately and effectively represented. During consultations, members of the YPAF told us that their experiences varied. Many questioned whether lawyers appreciated their situation or the impact of decisions made by the court or DHHS on their lives. Others felt their wishes weren’t taken seriously. Those who felt their lawyers had ‘heard’ them and were active in advocating on their behalf, with DHHS and before the court, reported a high degree of satisfaction with the legal service delivered.

‘I had a really good experience with my lawyer. I felt like they heard me and they fought for us. My sister and I couldn’t live with our mum and they fought for us to stay with family.’ – A young person

Carers described having to support children to deal with the uncertainty court processes can create, particularly when lawyers fail to communicate outcomes in a timely manner. Lawyers need the skill and time to engage with children to promote the child’s understanding and involvement in proceedings, and reduce their fear and apprehension.

‘Court time is a highly anxious time for kids in out-of-home care and not being provided with time to sit down and ask questions with their lawyer really impacts on their ability to concentrate at school. Most carers are willing to assist kids to see their lawyer so long as it's planned in advance. I just don’t think that a five-minute call the night before court is adequate for most kids.’ – A carer

At present, all lawyers on the VLA Child Protection Panel can represent children and young people. The information detailed above suggests that this vital task is performed with varying degrees of skill.

Given the importance of the role, it is vital that all children and young people receive a high-quality service. This raises the question whether there should by specific requirements for lawyer who represent children and young people.

‘Lawyers should understand about trauma triggers. They should know about how to talk to kids about stuff that might be upsetting, even just telling kids that if it gets too much they can say “I need a break”, always.’ – A young person

This may be achieved by setting different requirements for lawyers who act for children and young people. For example, Legal Aid NSW maintains a separate panel of lawyers who may represent children and young people. This is a sub-set of their general child protection panel. There are higher entry requirements for this panel than for the general child protection panel. Another approach to improving the representation of children and young people is through the provision of training or skill development exercises to lawyers.

**Option 23**

Introduce minimum requirements for Child Protection Panel lawyers who represent children and young people. Victoria Legal Aid to work with its partners to establish criteria for eligibility.

**Option 24**

Child Protection Panel lawyers be required to undertake training in:

* trauma informed practice
* capacity assessments for children, young people and parents.

**Option 25**

Child Protection Panel lawyers to complete a minimum number of child protection related hours of Professional Legal Education each year.

### Ensuring quality legal representation for parents

Lawyers acting for parents also gave us many examples of poor practices. Lawyers for the DHHS and child protection practitioners said that some lawyers refused to negotiate final outcomes at early stages, insisting that conciliation conferences be held. They said this caused unnecessary delays in finalising court matters. In one instance when the DHHS lawyer asked why there should be a conciliation conference, the lawyer for the parent indicated that it was so they could claim the additional fees paid for the conciliation conference.

‘At the mention stage, you used to have a proper discussion. Now everyone just books [cases] in for conciliation conference. There is no negotiation. When you ask what’s in dispute, the [lawyer] will say 'everything' then walk away. It's like if matters resolve early, there is a perception you haven't fought hard enough.’ – A lawyer for the DHHS

Some lawyers said that having automatic funding for two conciliation conferences, each paid at $590, encourages unnecessarily listing matters for conciliation conferences and long negotiations. They thought that most matters only needed one conciliation conference, and that most other issues could be dealt with at a directions hearing.

Magistrates and lawyers from the DHHS, Victoria Legal Aid and private practice identified problems with how agents are used. This is where a lawyer from one firm ‘hires’ a lawyer from another firm to step in for them at court. This may be due to having cases on at the same time or listed at another court.

Lawyers for the DHHS said that these arrangements were frequently made at the last minute, resulting in agents not having enough information to allow the case to progress. It also means that children, young people and parents need to explain things repeatedly to different people.

Lawyers gave examples of agents being briefed to appear in complex hearings by text message.

‘The issue of agency is a live one. The last minute exchange of information and briefing, it’s bad for the clients and it’s obvious quickly when a lawyer isn’t on top of the material. It can also result in reserved submissions not running when the court is available to hear it.’ – A magistrate

Magistrates were concerned by the low level preparation by ‘agents’. This view is also found in the submission by the Children’s Court to the Access to Justice Review 2016. The court noted that ‘the quality of legal representation for parties is also affected where a lawyers engages an agent to appear on their behalf in circumstances where workload demands or the geographical location of the matter results in their unavailability. This can result in agents, holding limited instructions (and often unknown to the client) appearing at a particular court event’.[[33]](#footnote-34) It went on to observe that ‘the engagement of agents has increased with the extension of the venues of the Family Division of the Court to Moorabbin, and more recently, Broadmeadows’.[[34]](#footnote-35)

‘Agency is an issue in private practice and I think it's partly an issue of business and profit. But if agency without scaffolding results in rubbish briefings then perhaps agency guidelines may go some way to improve that.’ – A lawyer

Lawyers and child protection practitioners gave examples of lawyers on the panel briefing non-panel firms to appear as their agent for children and young people. The non-panel firm did all the work, and was paid by the panel firm that was authorised by VLA to be the lawyer in the matter.

**Discussion questions:** The current Victoria Legal Aid practice standards touch upon some aspects of the use of agents, but they may not cover all of the issues fully. Should these be reviewed to clarify the expectations of when and how an agent may be used? What would this look like?

Magistrates and lawyers for DHHS reported that some lawyers are involved in multiple cases, listed for different things, such as mentions, directions hearings, conciliation conferences, on the same day. This results in court delays, with children, young people, parents and the court having to wait until the lawyer is available.

Magistrates, lawyers for DHHS and lawyers thought that some lawyers had a practice of routinely continuing matters to a late stage, the second directions hearing, without making genuine attempts to reach an agreement at an earlier time. Lawyers for DHHS said that the current fee structure promoted unnecessary delay in finalising cases.

‘A lot of cases aren't resolving at conciliation conference but will resolve on the same terms at a first directions hearing. We don't understand why it's not resolving earlier. With some, you can see it’s parent driven but others, you question whether it's been pushed off to claim more fees.’ – A lawyer for the DHHS

Lawyers said that some lawyers were negotiating and reaching agreement with DHHS without instructions from the parent. A lawyer provided one example where another lawyer had called the local child protection practitioner and negotiated the outcome. When the mother arrived at court the lawyer told her what had been agreed, rather than giving her advice and asking her what she wanted. The outcome was not what the mother had wanted, and possibly a poor long-term outcome for the child.

A child protection practitioner was concerned that some lawyers for parents frequently met with both parents, even when there were allegations of family violence between them, ignoring the obvious risks involved. A lawyer and a child protection practitioner gave examples of a lawyer acting for both parents where there were allegations of serious family violence. One example included a lawyer regularly appearing for both the mother and father in proceedings.

The lack of adequate case preparation was identified as another key problem area. Magistrates, barristers and lawyers commented on the lack of a clear case strategy in many cases.

‘The quality of briefs and the general approach taken by lawyers, in terms of “how” to run a case in the Children's Court is an area for improvement. Creating a good case in opposition requires thought and planning. I see lots of cases where DHHS “win” by default.’ – A barrister

Barristers and lawyers described the approach by some lawyers as just relying on DHHS to gather the evidence and then trying to criticise that, instead of having the information to support the case for the person they were representing. This meant that some cases take longer, because information that might have helped settle the case is not obtained at the early stages. It can also mean that this information is not brought to the attention of the court.

‘I wish lawyers would be more targeted about who they subpoena. I have one at the moment that [relates to] a report prepared three years ago. Lawyers used to ring up and have a conversation with us. That doesn’t happen anymore. We just get the paperwork. I understand the importance of going and giving evidence but blanket subpoenaing is costly and takes staff away from families who need our help.’ – A support worker

One example of the lack of preparation that was raised several times in connection with this was a failure by lawyers to issue targeted requests for documents (subpoena). It was said that either the requests are not generally made or they are irrelevant. One service provider spoke of being called to provide evidence about an event many years earlier where the parent had failed to attend. This was no longer relevant to the ability of the parent to care for the child now and it took up valuable staff time for the agency.

A case preparation checklist may assist lawyers in the preparation of matters, to ensure that they have considered relevant factors and steps, such as cultural plans, and develop a clear case theory. The use of checklists in medical procedures has been an effective way of saving lives and reducing the number of complications.

**Option 26**

Victoria Legal Aid work with its partners to develop guidelines dealing with the engagement of other lawyers to appear as the agent of a lawyer acting pursuant to a grant of assistance, including the standards applicable to both the principal and the agent.

**Option 27**

A case preparation checklist to assist in the preparation of matters be developed by Victoria Legal Aid with its partners. Evidence of the use of this tool, or a similar document, would be required on the file.

**Option 28**

Clarify the practice standards for child protection matters as they relate to the conduct of child protection matters. This would include requirements concerning the preparation of matters and the service to clients, both prior to and at each court event.

**Option 29**

Amend funding guidelines to place greater emphasis on preparation and engaging with clients, including increasing fees for preparation, instruction taking and negotiation away from court, to support the timely and appropriate resolution of matters.

### Panels and practice standards

We recently introduced new requirements for lawyers wishing to provide legal services funded by Victoria Legal Aid. A new s. 29A Child Protection Panel was created. Each panel firm must have a person who is authorised to declare that an application for assistance meets the guidelines for a grant of assistance. These people are referred to as ‘certifiers’.

To be approved as a certifier the lawyers must have a minimum of two years’ experience in the conduct of child protection matters and that child protection comprises 30 per cent of their work. Lawyers were also required to submit two files of their choice for assessment, as well as demonstrating an understanding of the issues surrounding representing children.

There are 69 on the child protection panel – 30 in metropolitan Melbourne and 33 in regional Victoria, together with six CLCs, some of which operate throughout Victoria. A lawyer on the panel must comply with the ‘Practice Standards’, which set out the expected service level.

### Simplified grants

Our simplified grants process allows private lawyers and CLCs on our s. 29A Child Protection Panel, and our staff lawyers, to apply for grants[[35]](#footnote-36) of legal assistance online, through the ATLAS portal.

The simplified grants process enables assistance to be approved automatically, without requirement for a VLA staff member to assess the application. The system is subject to a post-fact compliance checking process. However, this means that we are largely reliant on the assessment by lawyers as to whether a person gets assistance.

While it covers most situations, a lawyer cannot use the simplified grants process for longer or complex matters.[[36]](#footnote-37) These requests are referred to our Assignments staff for assessment and are subject to statutory reconsideration and independent review processes.

Our staff practice is subject to the same requirements as private lawyers in relation to both the granting of legal aid and post-fact compliance checking.

### Grants of legal assistance and the current fee structure

Eligibility guidelines for grants of assistance are one means of regulating who is provided with assistance and for what purpose. As such, it's important that funding guidelines align with the purpose of Victoria Legal Aid and the purpose of the Child Protection Program.

The way in which fees in child protection cases are structured inevitably exerts an influence on how cases are conducted. At present, grants of legal assistance for child protection matters are principally contained in two guidelines.[[37]](#footnote-38)

#### State Family Guideline 1

State Family Guideline 1 says that we may make a grant of legal assistance to a child who is the subject of an application in the Family Division of the Children’s Court. Children above the age of 10 years of age and young people are a VLA ‘priority’ and so will always receive funding to have a lawyer represent them in the Family Division of the Children’s Court.

The court may make an order for a child to be represented on a direct instructions basis, in exceptional circumstances. This may include children younger than 10. These children will also usually be represented.

#### State Family Guideline 2

Under State Family Guideline 2, we may make a grant of legal assistance for a person to respond to certain proceedings in the Family Division of the Children’s Court if that person is a parent or otherwise meets the guideline’s criteria. The parties and matters that are eligible for a grant of assistance are set out in detail in the guideline.

A means test applies to requests for assistance made by parents.[[38]](#footnote-39) The lawyers must also certify that the circumstances of the person requesting assistance meets the ‘merit test’ set by us.

‘Primary applications’ are where a child is not subject to a court order and DHHS are asking for an order. The merit test for primary applications is that there is a good chance of the child or young person living with the parent. ‘Secondary applications’ are where DHHS may be applying to change, break or extend a pre-existing order.

Primary applications, for children, young people and parents, account for around two-thirds of all grants of assistance, with one-third of grants of assistance being for secondary applications.

The guidelines were amended to take account of the legislative changes to the Children, Youth and Families Act that commenced on 1 March 2016. Funding was made available for a child or parent to request an administrative review of some DHHS case-planning decisions. Additionally, provision was made for a child or parent to initiate or respond to an application to revoke a protection order in limited circumstances, and to introduce simplified grants funding for Interim Accommodation Order appeals.

Funding in Children’s Court includes:

* a lump sum preparation fee for lawyers
* separate fees for appearances at up to four mentions, four adjournments and two directions hearings
* separate fees for appearances at breach hearings
* an additional preparation fee for lawyers where there is a conciliation conference
* appearance fees for attendance at up to two conciliation conferences and subsequent court appearances
* appearances at a daily rate for interim contests
* an additional preparation fee for lawyers where there is a final contested hearing
* appearances at a daily rate for final contested hearings.

The full fee schedule for child protection matters can be found in [Appendix 3](#_Appendix_3), while the details of the fees are found in the *VLA Handbook for Lawyers*.[[39]](#footnote-40)

We only provide funding for legal advice and assistance for clients at DHHS case planning meetings in very limited circumstances after proceedings conclude. This applies to children and young people, only when they have had a placement change, which they say is against their best interests. For parents, it's only where they say DHHS should still be working towards their children coming home within the legal timeframes.

There are many other decisions made at case planning meetings where children, young people and parents are unable to have legal assistance, including on the issue of parent and sibling contact where a young person is in out-of-home care on an order without court conditions.[[40]](#footnote-41)

There was varied feedback regarding the current guidelines.

Some lawyers said that the current guideline for parents, which is limited to cases where they can argue for the child to live with them, is too narrow. They suggested that parents should be supported to argue for access.

‘The guidelines won’t fund arguments around contact and that cuts out a lot of fathers from the process. For Aboriginal families, that can be devastating.’ – A lawyer

A lawyer said that the guidelines for a grant of assistance are easier for when cases come back to court at a later stage (secondary applications) than when they are first at court (primary applications). This leads to higher levels of support at a later stage in proceedings, rather than at their commencement.

Assistance is available to have some decisions made by DHHS reviewed. One lawyer said that this should be widened to include contact disputes where a child or young person is subject to a long-term order without conditions for contact.

Another suggestion was that the guidelines should provide for funding of County Court appeals, particularly where a parent is responding.

There was positive feedback regarding the inclusion of Notes on the State family guidelines, which lawyers found helpful.

There was varied feedback received regarding the current fee structure. Some said that the fees for preparation of the matter were too low. They said it does not encourage early, appropriate settlement of matters at the mention phase.

Several lawyers discussed the increased effort required on the day of the first directions hearings, which involve lengthy negotiations, sometimes lasting all day. The current fee is only $165 and does not reflect the level of work involved.

The Children’s Court is moving to a ‘docketing’ system in metropolitan Melbourne as of 2017. This is where the same magistrate will hear the case from start to finish. It was said that the fees don't support the move to docketing, in that they are too low and lawyers need to have multiple matters in order for their practice to be viable.

The fees allow for lawyers to be able to appear for four ‘mention’ hearings and ‘four adjournments’. If there are more than this, the lawyer must make a request to us for additional funding. Some lawyers thought that the current numbers were not enough, while others thought that they were too many. One person said that current arrangement was correct, as it limits the ‘culture of endless adjournments’ – where cases do not progress in a timely way.

It was observed by magistrates that some lawyers appear at court and adjourn matters where their client is not present. This can happen even where the lawyer has not had contact with their client since the last court date. There was concern that this appearance was being billed to us even though there had not been any work done.

Several lawyers said that the fees do not support the provision of legal advice and negotiation away from court. Instead, they contribute to a high-volume court based approach.

The need to move away from court-based interactions between lawyers and the people they represent has been detailed earlier in this paper. The fees paid to lawyers should be designed to create an environment that supports this.

The fees could be adjusted to place greater emphasis on preparation and consultations away from court. This may require an adjustment in the fees paid in other stages of the proceedings, including reducing the number of appearances that may be claimed without need for an extension. Although the guidelines allow for four mentions and four adjournments, on average matters are dealt with in fewer appearances.

There is a perception that some matters are not progressed due to inaction on behalf of one or more of the parties. Reducing the number of appearances that may be claimed without an extension may promote a culture of greater accountability.

There was feedback from a number of people during the consultations that some matters were being unnecessarily listed for a second conciliation conference, in circumstances where a directions hearing would be sufficient. There is a suggestion that greater oversight of this may reduce the number of unnecessary second conciliation conferences. It's noted that this would place an additional burden on lawyers and Victoria Legal Aid.

There was strong feedback that the first directions hearing, conducted after a conciliation conference, is often a lengthy hearing. The current fee paid does not adequately reflect the court’s expectations of lawyers. It was suggested that the fees be adjusted to take into account what is required and encourage the appropriate conduct of these court events.

### Delays and costs

Delays in proceedings are often caused by the failure of one of the participants to take reasonable steps to progress the matter. For example, despite the requirement that DHHS provide its reports prior to the hearing this is not what happens in practice.

It's acknowledged that DHHS staff are under pressure and work hard to provide materials in a timely way. However, current practice places pressure on parents to quickly digest the information and provide instructions. It encourages a culture of children being brought to court, or made available at short notice to provide instructions.

‘The reality is that we are stretched and court reports aren't being completed on time. The court reports are time consuming and they are often a second priority to investigations. But I acknowledge, reports should be prepared and given to parties before the day of court.’ – A child protection practitioner

It's in the interests of children, young people and parents that they are given time away from court to understand what is happening and properly instruct their lawyer. We need to ensure that our processes support this.

‘Adjournments remain an issue in the Family Division. Matters are frequently unable to progress due to incompetence or lack of instructions. This requires a more robust approach from the Bench. Cost applications should be made and the Bench should be enforcing in circumstances where appropriate.’ – A magistrate

There is currently a requirement imposed by us on lawyers to request an order for costs where a matter is adjourned through no fault of the lawyers or the person they are representing. There are varied levels of adherence to this. In part this is dependent upon the response from the local magistrates.

The requirement could be expanded to clarify the circumstances to which it applies. This may encourage a move away from an over reliance on court days and promote matters being progressed in a timely manner.

**Option 30**

Reduce the number of interim appearances without extension allowed under the grant of assistance. Additional appearances may be authorised by VLA, where the appearance is required due to factors beyond the control of the lawyer or their client. It will be expected that an application for costs be made against any party that has caused the delay.

**Option 31**

Lawyers be required to seek an extension of the grant of assistance for a second conciliation conference. This would include an explanation of the reasons a second conference is required, what barriers there were to settlement at the first conciliation conference, and what is the expected outcome of the second conference.

**Option 32**

Victoria Legal Aid review the requirement that Child Protection Panel lawyers make an application for costs where an adjournment is due to DHHS failing to provide a report in accordance with legislated timeframes.

### Ensuring quality briefing practices

Our Child Protection Panel provides a framework for ensuring that solicitors performing this work have a minimum level of experience. However, it was pointed out that there is no complementary framework for barristers briefed by solicitors.

It's acknowledged that the use of barristers is appropriate and necessary in some instances. Through no fault on their part, a lawyer may be unable to attend for a particular event. Barristers help overcome such occurrences. It's noted that barristers are generally engaged to conduct final hearings.

Similar difficulties can arise, with the use of barristers, as with the use of agents. There's no existing relationship of trust with the barrister, and the barrister is not aware of all of the previous conversations that have taken place. Children, young people and parents need to retell their story to yet another person. The lack of continuity can be confusing and distressing for children, young people and parents. Accordingly, use of barristers should be in a manner that ensures that the service is as good as that which the lawyer would be able to deliver.

‘There is variability in terms of the ability of Counsel. Worst case scenario is you have Counsel who have no case concept and cross-examination is unwieldy and takes too long.’ – A magistrate

Although lawyers will try to brief a barrister who is experienced, there is no process to ensure this happens. This issue has recently been considered in the context of the Family Law and Indictable Crime programs at Victoria Legal Aid. A preferred barristers list has been introduced for Indictable Crime matters. This provides that, except in special circumstances, only barristers on the list may be engaged for criminal trials funded by VLA. The Family Law Legal Aid Services Review concluded that options for a similar list would be examined for that area of practice.

**Discussion question:** There may be some limits on the ability to replicate this in child protection, due to the small number of barristers who have this experience. What mechanism should be used to ensure that counsel briefed in child protection matters have the necessary experience?

**Option 33**

Develop a mechanism for ensuring that counsel briefed in matters are suitably qualified and experienced in the child protection jurisdiction.

### S**upporting lawyers**

A number of regional lawyers expressed a strong desire for more training and professional support. Regional lawyers have access to most Melbourne-based training sessions by video-link. However, many said they would value the opportunity to attend longer sessions in person.

Panel firms welcomed our decision to make our internal training available to them. However, lawyers were keen for more opportunities to improve their knowledge and skills.

Lawyers were eager to have more training on both the technical aspects of conducting child protection matters, as well as on broader issues such as representing people with an intellectual disability.

However, much of the training that's currently provided is poorly attended by child protection lawyers. This includes multi-disciplinary training events that are arranged by the Children’s Court, VLA and DHHS and events hosted by us or the Law Institute of Victoria. Regional lawyers said that attendance might be increased if sessions were held regionally or if held in Melbourne, that the sessions be longer or all-day and scheduled on non-sitting days.

An annual conference may provide an opportunity for lawyers and others involved in child protection areas to engage in joint training and development. While this may be expensive, lawyers indicated a willingness to contribute to the cost.

**Discussion questions:** Is this something that Victoria Legal Aid should consider, given the costs associated and the low level of attendance at current training? What alternatives should be considered?

Lawyers also identified the need for resources to assist them – such as updates on recent developments in the law, precedent forms and letters, and information for children, young people and parents about the process.

Lawyers from across Victoria identified the need for local forums, involving representatives from across the child protection system, to come together to improve understanding and work to resolve issues. This would provide an opportunity to exchange information about the services available in a local area.

‘I would benefit from some training on capacity and taking instructions from children. The youth crime training that was arranged was very good and something similar would be very helpful. It made such a difference seeing how other people handle the same situation, particularly when you're a sole practitioner (lawyer) in the country.’ – A lawyer

Similarly, there are inconsistent arrangements in place for court-user meetings. These meetings provide an opportunity for an exchange of information between the court and the primary court users.

Where these meetings have been established, lawyers and the court both report that they work well. They provide a means for putting good practices into place and resolving problems that arise. The meetings should try to include a broad range of participants, including parents and those with experience of the system as children.

Many lawyers operate in small practices, either on their own or as the only experienced child protection lawyer in their office. Lawyers expressed concern that there is no one that they can readily speak with if they wish to get advice or to test an idea. It was thought that a telephone advice service for lawyers would enable them to obtain the support they require to carry out their duties.

‘We love the online seminars and gain a huge amount from them. A lot of the training events or [Professional Legal Education] arranged in the city are 1–2 hour lectures at the end of a day. [Video conferencing] is good, but nothing beats face-to-face. Having a regional [child protection] conference, maybe once a year, would shift the focus, so it's less Melbourne-centric.’ – A lawyer

It's not known at this stage how much this service would cost, or what the level of usage would be. Also, the rules around ‘conflicts of interest’ may also presents challenges in creating this service. This may require that the service be provided by a mix of lawyers, from both VLA and panel lawyers, so that this problem may be avoided. However, this may make the process complex and unusable.

**Discussion question:** Should we examine the viability of this type of service, or could this be addressed in some other way?

**Option 34**

Work with Child Protection Panel lawyers and other agencies to develop regional child protection networks to support lawyers and address local issues.

**Option 35**

Victoria Legal Aid work with lawyers to explore the viability of a telephone advice service to support Child protection Panel lawyers.

**Option 36**

Victoria Legal Aid work with the court to establish regular court user meetings, designed to improve service delivery, at all headquarter courts.

**Option 37**

Victoria Legal Aid play a more active role in supporting lawyers working in the child protection system. This includes co-ordinating the provision of more professional education, research and the preparation of materials and tools that assist lawyers perform their work.

**Option 38**

Victoria Legal Aid consider hosting an annual Children’s Law Forum, open to all Child Protection Panel firms, practitioners and other service providers within the sector as a means of improving understanding and expertise in children and youth law.

## Client access

‘We often see women who are receiving involuntary treatment and their mental health diagnosis is used as a basis for [DHHS] intervention. As in-patients they aren't able to go and see a lawyer, they have other forms of communication restricted, including internet and telephone so their capacity to access legal advice is extremely limited.’ – An independent mental health advocate

There are structural barriers that limit the involvement of parents who are detained in prison, or as an involuntary patient in a mental health facility. The inability to attend at court means that these parents are unable to access the Duty Lawyer Service and participate in proceedings.

The over-representation of Indigenous people in the prison system and in the child protection system highlights the need to reconsider the way services are made available to people in confined environments.

We have an extensive prison service and are developing a telephone advice service for prisoners. The criminal law practice has contact with most newly remanded prisoners. We also have a mental health team that provides outreach to mental health facilities. These points of contact provide an opportunity to identify child protection issues at an early stage. We have done considerable work in recent years to improve our referral processes, through the Improved Client Access and Triage Project. However, there may be more that can be done to improve referrals between different areas.

**Discussion questions:** Should our processes be reviewed to improve referral pathways for people who have been identified as having a potential child protection problem? This would require our lawyers, who work in areas other than child protection, to be trained to be able to identify potential child protection related issues. Should this a priority for VLA?

Videoconferencing facilities have been rolled out to most prisons and are also available from many mental health facilities. These present opportunities to enable parents in confined environments to participate in proceedings.

**Discussion questions:** Should the Duty Lawyer Service be expanded to enable assistance to parents in confined environments? What should this look like?

**Option 39**

Victoria Legal Aid implement processes to provide parents serving a term of imprisonment access to advice concerning child protection and, where eligible, representation.

**Option 40**

Victoria Legal Aid implement processes to provide parents receiving involuntary mental health treatment access to advice and, where eligible, representation.

**Option 41**

Victoria Legal Aid develop an internal intake protocol for use across program areas to improve referral pathways to legal and non-legal services.

**Option 42**

Victoria Legal Aid develop an intake protocol for use by the Child Protection Program to encourage earlier identification of legal problems and improve referral pathways for clients with complex needs.

### Removal of means test for parents

A lawyer said that members of newly arrived communities are unable to obtain a grant of assistance due to difficulty providing sufficient proof of their income to show that they meet the legal aid means test.

‘Newly arrived families who aren’t able to provide proof of income aren’t able to obtain ongoing legal representation. This is a significant barrier to them accessing legal services that needs to be addressed.’ – A lawyer

A CLC reported that some parents are dealing with a range of appointments and demands. The requirement to provide proof of their income is seen as another, unnecessary, burden.

It's also noted that the means test is not applied by legal aid providers in a number of countries with similar systems.

There's no way of accurately assessing how many people don't meet the means test. Anecdotally, it is thought that most parents qualify for assistance. This uncertainty means that it's not possible to say what the impact of this change would be.

We are currently conducting a Means Test Review. More information about that Review can be found at <http://www.legalaid.vic.gov.au/information-for-lawyers/how-we-are-improving-our-services/means-test-review>.

**Discussion question:** Given the high proportion of parents who meet the means threshold for legal aid funding, should consideration be given to removal of the requirement that parents provide proof of means?

### Panels and access

There was considerable feedback from lawyers about the Panels process. While the Panel arrangements are outside the scope of this review, it was felt important to reflect the issues that were raised. The comments will also assist us as we conduct an internal review of our Panels process.

‘I think the Panel could be bigger. There are still lawyers who are consistently carrying too many files and some who aren't on top of ones they're holding. It's still too concentrated.’ – A magistrate

In metropolitan Melbourne, some lawyers suggested that the new Panel process had reduced the overall level of quality by introducing a larger pool of lawyers, some of whom did not have the same level of experience as the previous group of providers.

‘There has been a dilution in overall quality. I have seen a lot of inexperienced people getting on the Panel. I don't think that two years' experience is enough to be appearing at those early stages, where placements are being argued.’ – A lawyer

In regional areas, lawyers reported that the Panels process was too onerous, causing some long-term child protection lawyers to not apply to be on the Panel, while others were rejected. This has led to a shortage of lawyers in regional areas.

Access to lawyers and legal representation varies across the State. It appears that the shortage of Panel lawyers in some areas, particularly in the west and northwest of Victoria, is having an impact on access to legal assistance for people engaged in the child protection system. For example, there are only three private lawyers and the Aboriginal Family Violence Prevention and Legal Service on the Panel in Mildura. There are often situations where a parent is unable to obtain legal assistance, as the firms have a conflict or are already assisting someone in the matter. This is also the case in places such as Warrnambool and Horsham.

‘The panel process did see a reduction in the numbers of local praccies. Some of the ones we lost were good practitioners (lawyers) but they didn’t want to go through the process. Some of them had years and years of experience but were resistant to having to “prove” their worth.’ – A child protection practitioner

The increased volume of protection applications in regional Victoria exacerbates this problem. In 2015–16 almost 50 per cent of court applications were in regional Victoria,[[41]](#footnote-42) despite only around one-quarter of Victorian children residing in regional areas. At the same time, only 40 per cent of the grants of assistance were in regional Victoria.

The disparity of the level of representation is significant – with an average of 1.7 grants of assistance for each family in metropolitan Melbourne, compared with 1.2 grants for each family in regional areas. In some areas this drops to around one grant per family. This suggests that there are people in regional areas who are missing out on assistance.

The low level of representation in regional areas may be due to a range of factors. These include:

* difficulty in getting access to a lawyer
* different application of the eligibility guidelines
* lack of support services in regional areas
* lower levels of engagement by parents in regional areas, due to geographic or other factors.

While it's likely that all of these may be contributing factors, the lowest level of grants relative to applications is in areas where there are few lawyers. This suggests a strong connection between the number of lawyers and access to grants of assistance.

Unlike many other areas of legal practice, such as family law and criminal law, there are very few private paying clients in child protection. The lack of a private market to sustain lawyers means that it's difficult to attract lawyers into this area. It also means that it's harder for non-Panel lawyers to gain experience in child protection. This limits the ability for new lawyers to qualify for entry onto the Panel, thereby limiting the size and growth in the pool of lawyers.

The Access to Justice Review 2016 recognised a gap in the availability of child protection services and the need for us to take action where gaps exist.[[42]](#footnote-43)

One way of doing this is to increase the number of CLCs that provide child protection services. A two-year pilot with Loddon Campaspe CLC and Women’s Legal Service Victoria is an example of how this might be achieved. The pilot commenced in 2015 and involves the provision of funding so that each CLC can extend services to include child protection. The service agreements specify the services to be provided by the CLC and there are reporting arrangements in place to monitor the services provided. The pilots are subject to an evaluation process.

The provision of child protection services by the CLC complements other services that the CLCs already provide, including support with family violence, family law and debt problems. In the event that these prove successful, this model may be expanded to increase service options.

The extension of services through CLCs alone is unlikely to be sufficient to resolve this problem. It must be part of a broader strategy to support lawyers to provide quality services, and to secure the future supply of quality legal services. This is examined later under the heading 'the changing nature of child protection'.

Ways of increasing the supply of lawyers was discussed. One lawyer suggested that we could make exceptions to allow less experienced lawyers to practice in areas of low supply, but that they not be permitted to provide services outside that area. Some thought that the specialised nature of child protection means that standards should not be compromised. Some lawyers thought that higher fees could be used as an incentive to encourage more firms to deliver child protection services.

**Discussion question:** What steps should we take to increase the number of lawyers in child protection?

**Option 43**

Subject to the evaluation of the child protection pilots with Women’s Legal Service Victoria and Loddon Campaspe CLC, Victoria Legal Aid work with Community Legal Centres to:

* identify areas of unmet need
* identify what resources and/or supports the CLCs may require to deliver child protection services.

## Improving processes

Ensuring that processes are directed to advancing the interests of children and young people is the third element underpinning the proposed purpose of the Child Protection Program. There are a number of processes that have been identified as potential barriers to achieving the aim of improving outcomes for children and young people.

### Structure of the duty lawyer service

There are inconsistent duty lawyer arrangements in place around Victoria. Representatives from across the child protection system called for the Duty Lawyer Service to be regularised across Victoria.

The process by which children, young people and parents are allocated a lawyer varies. There are no guidelines that explain the purpose and scope of the Duty Lawyer Service. Different arrangements exist for the circumstances in which lawyers are paid and how referrals are made.

In metropolitan Melbourne a duty lawyer roster operates each day. One Victoria Legal Aid staff member and several private lawyers and/or CLC staff are rostered each day, on a rotation basis.

When a new protection application is made by DHHS, we are provided with the details of the children and parents. A conflict check is then conducted by one of our staff. Children, young people and parents are then referred to one of the rostered duty lawyers, including VLA. Private lawyer duty lawyers are paid up to a maximum number of hours for the day. There are a large number of applications made daily in metropolitan courts. This means that there is always work for the duty lawyers to do.

There are different processes in place for the allocation of duty lawyers in regional areas. In some places, DHHS only refers to VLA matters where the child is over 10 years of age, and otherwise refers clients to lawyers. In others, DHHS refers all matters directly to lawyers.

The majority of lawyers consulted identified the direct referral of people to lawyers by DHHS as inherently problematic, because it was seen to lead to the giving of cases to lawyers who would not challenge the decisions of DHHS. Lawyers reported concern that they would not be given referrals, because they had not agreed with the DHHS position.

‘I don’t think I’ll be getting any more DHHS referrals for a while, not after today. I picked up an Aboriginal mother because VALS weren’t able to act. As I approached the DHHS lawyer, I overheard the [child protection practitioner] say “oh no, not her, can’t we get someone else for mum”. Ended up running submissions and the kids were returned. They (DHHS) weren’t happy.’ – A lawyer

There are fewer applications made at each court in regional areas. This means that there is not enough work to justify the cost of having duty lawyers at each regional court, every day of the week.

Where we are notified of an application, staff conduct a conflict check and then contact local lawyers to see if they are available to go to court. This can be difficult in areas where there are few lawyers on the Panel. In many cases there are not enough lawyers available and some people miss out.

‘I think that the current direct referral system [from DHHS to the lawyer] is excellent and extremely efficient …’

‘With respect, you would say that; you get referred all the kids. I don’t get referrals [from DHHS] because I don’t rollover. I’ll fight if a fight needs to be had.’ – An exchange between lawyers

If the lawyer goes to court, but the child, young person or parent doesn't, the lawyer doesn't get paid. This can discourage lawyers from going, when weighed against the other demands on their time.

In some regional areas the lawyer does not get paid for this first day, even if the child, young person or parent does come to court. This reflects the gradual development of the duty lawyer services, from region to region, rather than a co-ordinated approach.

The lack of guidelines that explain the nature and scope of the Duty Lawyer Service in child protection was seen to lead to different services being delivered in different areas, to people who were in similar situations. While there may be reasons for different services across regions, this should be part of a considered strategy rather than the result of historical factors that may no longer be relevant.

### Payment for the first court appearance

The child protection Duty Lawyer Service provides legal services for parents on the first day of a new application before the court. Duty lawyers help many parents and the work on the first day is often complex. It can involve difficult negotiations and sometimes legal argument before a magistrate.

After the first day, most cases will be adjourned or put off for three weeks to allow the DHHS to prepare a written report. The report will outline why the application was brought and detail the DHHS plan for how to make things safe for the child or young person, usually by the use of court orders.

‘I don’t think you can fund endless mentions; it makes sense to confine them. But a court-based approach to practice has developed. You see clients at court, you get reports at court. The first return is when you tend to get updated instructions. Most cases will then be listed for conciliation conference.’ – A lawyer

Not all parents assisted by the Duty Lawyer Service are eligible for an ongoing grant of assistance. This means that not all parents will be represented by a lawyer beyond the first hearing day.

Parents that are eligible for ongoing legal assistance can submit an application for legal assistance. Once a grant of assistance is confirmed, their lawyer will then be able to claim a preparation fee in addition to fees for up to eight future court days (four mention and four adjournment fees), without having to explain to us why these court dates were necessary.

Where a case returns after three weeks, and a child, young person or parent disputes some aspect of the DHHS report, the case will be adjourned (put off) for a conciliation conference or interim contest. Because the case is considered to be progressed, the lawyer may claim an appearance fee, rather than a lower adjournment fee.

We heard from lawyers, including those for the DHHS, that cases are rarely settled at the first mention hearing, with the majority being adjourned for conciliation conference or interim contest.

**Discussion questions:** Should the appearance fee at the first mention hearing be changed to reflect the procedural nature of this court event? Or should the number of appearances that can be claimed, without having to ask for an extension, be the same where the lawyer was also the duty lawyer?

**Discussion question:** How should the payments for duty lawyer services be structured and how should they relate to the overall fees paid?

**Option 44**

Develop state-wide duty lawyer guidelines for the child protection duty lawyer service.

**Option 45**

Develop a consistent approach to the structure and payment of duty lawyer services, reviewed against the structure for payments made pursuant to a grant of assistance.

### Arrangements for interviewing children

Many lawyers highlighted uncertainty as to who was responsible for ensuring that children were able to communicate with their lawyer, as there are different arrangements in place across Victoria. These arrangements have evolved over time and are often dictated by the relationships between parties, and historical practice.

‘In terms of “who” is responsible for transporting a child to see their lawyer, there has never been a satisfactory answer to that. The answer that springs to mind is: “it depends”. Depends on the office, the workers, the lawyers …’ – A child protection practitioner

Lawyers point out that where a child or young person is in out-of-home care there is an obligation on the Secretary to act as a ‘good parent would’. They reason that just as a parent would take their child to the doctor or dentist as required, they should also take them to see their lawyer when necessary.

DHHS staff highlighted that lack of time and resources can make it difficult to meet requests to deliver children for appointments. In some instances, requests are made with little notice, making it too hard to comply. Children can often be placed at great distance from where the case is being dealt with. Also, lawyers’ offices may not be a place where some children feel comfortable.

The lack of clarity around this issue is hindering ready access to lawyers by children and young people. This could be addressed through discussions with DHHS.

The use of technology, such as videoconferencing, may also be a means of overcoming some of these barriers. While not a replacement for all face-to-face contact, videoconferencing is an effective means for engaging with people in a more direct way than by telephone. The current forms of the technology are available by use of the internet and are inexpensive.

‘I think we should be utilising technology and using e-courts to allow greater access for regional and remote families.’ – A magistrate

Technology could be of assistance to overcome barriers in regional areas. For example, where an emergency application arises in a regional town, the court hearing the matter may be some distance away and parents don't have the means of getting there. The use of contemporary technology may provide a means for easing this problem, enabling the parent to instruct a lawyer and attend the court hearing by videoconference.

It's noted that many children, parents and young people may not have ready access to computers or the internet. This may require facilities being made available at locations such as DHHS or other public venues. This will require collaboration with the court and DHHS to examine how to put this into practice.

**Option 46**

Victoria Legal Aid work with DHHS to establish a process for greater consistency in arrangements for children in out-of-home care (kinship, foster care, residential care and secure welfare) to provide instructions to lawyers, including the better use of technology.

**Option 47**

Victoria Legal Aid work with the Children’s Court, the Magistrates’ Court, DHHS and others to identify and implement better use of technology to improve access to legal services and participation in proceedings.

**Option 48**

Victoria Legal Aid work with DHHS to implement consistent arrangements across Victoria for the allocation of lawyers to children, young people and parents responding to child protection proceedings.

## The changing nature of child protection legal services

The nature of legal practice in child protection will need to evolve to respond to a range of external factors.

### Expansion of the Children’s Court

First, the expansion of the Children’s Court to three sites in Melbourne is creating new challenges to small firms, particularly those with a high-volume who may have matters in more than one court on the same day. The use of docketing by the court at all metropolitan courts will place greater pressure on lawyers to be in a position to progress matters. This will mean that they have taken action between court dates and that they are familiar with the case.

### Specialist Family Violence Courts

Secondly, the Royal Commission into Family Violence recommended that specialist Family Violence Courts be set up at all headquarter courts. This is to be implemented over five years. This allows one magistrate to deal with related family violence, family law and criminal charges. It's unclear whether these courts will also deal with related child protection proceedings. However, regardless of the approach that's adopted, there is a greater recognition of the connection between these issues.

Lawyers must have a better understanding of the connection between child protection, family violence, criminal law and family law. They will need to be able to support people within these different areas.

‘There needs to be some marry up between lawyers acting for parents and parties acting in intervention orders, criminal matters and family law. There is a real disconnect between the provision of legal services in those areas.’ – A magistrate

To do this lawyers will need to know more than the law. They will need to by familiar with how to deal with issues such as trauma, understand the importance of cultural identity and the learnings of childhood development neuroscience.

While many lawyers have acquired these skills, they have done so 'on the job'. However, the examples of poor practice, discussed earlier, indicates that there are still gaps in lawyers understanding of these matters.

### Role of lawyers and social workers

Thirdly, the need for a greater understanding between lawyers and social workers, of their roles and areas of expert knowledge, was identified as a key theme during the consultations.

‘Lawyers and social workers are often at logger heads. [Social workers] sometimes don’t understand that lawyers are there to make sure the system works. Whereas [social workers] sometimes feel that their role is undervalued by lawyers and that [lawyers] are disrespectful. There is no team-centred training featuring both professions and I think universities have a role to play in this.’ – An academic

While lawyers, child protection practitioners and academics called for this greater level of cooperation, they also spoke of the conflict between lawyers and social workers. There is a high level of distrust and disrespect. As one regional child protection practitioner observed, ‘workers get treated like shit. There is an “us” versus “them” mentality and the kids get lost in the battle’. In a similar vein, we heard of a lawyer for DHHS ‘high five’ a child protection practitioner at court after they secured an out-of-home care placement for a young person following submissions. While these may be extreme examples, there were many examples of this form of deep divide.

Academics supported the training of lawyers and social workers together as a way of improving understanding – both of the technical aspects of the other discipline and of each other’s role. They also said that there needs to be more research into the area, particularly into how the legal system deals with these complex issues. They said that universities had a role to play in developing the necessary understanding between professions in order to help children be safe and develop. The Multidisciplinary Training Board was set up after the Child Protection Proceedings Taskforce in 2009.[[43]](#footnote-44) It provides training for lawyers and child protection practitioners each year. However more could be done.

### Undersupply of child protection lawyers

Fourthly, there is an undersupply of child protection lawyers, particularly in regional areas. This limits access to legal supports for vulnerable people, and requires us to take some action to address this problem.[[44]](#footnote-45)

### Our role in managing the legal assistance sector

Fifthly, we have a recognised role to play as a manager of the legal assistance sector.[[45]](#footnote-46)

The Access to Justice Review noted that:

‘For government as a purchaser of legal assistance services (from both in-house and external providers), to maximise effectiveness and efficiency, Victoria Legal Aid needs to be able to assess the relative value of those providers for the benefits of competition to be fully realised. As a public provider, Victoria Legal Aid must also have a sufficient market share to influence the price and quality of the private market, to ensure that there is internal expertise to inform policy and purchasing decisions, and to assess the quality of services purchased. The public provider also needs to have capacity to respond to market failure of various kinds. There is evidence of market failure in Victoria in some regional areas, and in areas of the law like mental health and child protection.’

The review concludes:

‘Victoria Legal Aid would need to maintain some 15–20 per cent of the legal assistance market, at a minimum (that is, of the total number of grants of legal assistance supplied in Victoria) to retain the unique benefits that a public service provider brings. The precise range of this figure is a matter of judgment informed by the review’s consultations within the sector and analysis of arrangements in other jurisdictions. Victoria Legal Aid could maintain a higher market share, as it currently does at 32 per cent for grants of legal assistance, but this level of market share must by justified on value for money analysis’.[[46]](#footnote-47)

These factors suggest a number of actions that might be undertaken, in addition to the proposals raised in the earlier parts of this paper.

The need to secure lawyers with a broad range of skills can't be addressed by us alone. We don't shape the structure of university courses. DHHS also has an interest in the training of law and social work students that promotes greater understanding of the issues that both sets of professionals’ deal with.

It's proposed that a long-term workforce development strategy be designed to provide a pool of lawyers and social workers who have the expertise to meet the challenges of a contemporary child protection system. In order to gain the most benefit, it will require a high degree of collaboration between VLA and DHHS.

The strategy may involve approaching a tertiary institution to establish a Centre of Excellence in child protection legal services. A centre of this nature would be able to undertake training and research into improving the provision of legal services in child protection – something that has been limited to date.

As previously noted, our staff lawyers only conducted 10 per cent of grants of assistance in 2015/16. This proportion has not varied greatly in the last few years. However, in 2006/07 we dealt with 15 per cent of matters.

It's worth noting that the number of grants of assistance to VLA staff lawyers was 747 in 2006/7 and 792 in 2015/16. For the same period, the number of grants dealt with by private lawyers and CLCs increased by 64 per cent, from 4,210 to 6,919.

‘Did you say 10 per cent? As in 10 per cent of all grants? That seems like only a very small percentage. Can VLA increase its market share?’ – A support worker

As noted previously, CLCs currently provide a small number of these services. Accordingly, private lawyers have met the increase in demand for services. A major contributor to this is the lack of substantial growth in the VLA staff child protection practice to respond to the increase in demand. This is despite the increase in the demands for duty lawyer services and the increasing complexity of matters.

**Discussion question:** In light of the comments made in the Access to Justice Review report, should we increase the number of grants of assistance conducted by our staff?

The increase could be achieved by our staff taking on more of the additional matters that will come into the system as demand continues to grow.

This shift would require investment into the staff practice to ensure that staff are located in appropriate areas. It's acknowledged that there are areas where the VLA staff practice can also improve. An increase in the volume of work would also require the proper structures for the supervision and support of staff to be in place. We have greater capacity to control the quality of services provided by the staff practice and the training that it receives. An increase would also require a review of internal processes to ensure that appropriate decisions are made concerning the matters in which we can be involved, and those that should be referred out. It would take time to implement the necessary changes to support an expansion of the staff practice.

**Option 49**

Victoria Legal Aid work with DHHS to develop a Workforce Development Strategy, which may include the development of a Centre of Excellence at a tertiary institution.

**Option 50**

Consider the steps necessary to increase the proportion of child protection grants of assistance conducted by staff lawyers to 20 per cent within five years.

# Appendix 1

## Who we met with:

* Young people
* Parents
* Carers
* The Children’s Court at Melbourne
* The Children’s Court at Broadmeadows and the Family Drug Treatment Court
* The Children’s Court at Moorabbin
* The Children’s Court as it sits in Ballarat, Bendigo, Bairnsdale, Geelong, Mildura, Morwell, Shepparton, Wangaratta and Warrnambool
* The Magistrates’ Court
* Victorian Civil and Administrative Tribunal
* Department of Health and Human Services at Melbourne, Ballarat, Bendigo, Bairnsdale, Geelong, Mildura, Morwell, Shepparton, Wangaratta and Warrnambool
* The Commissioner for Children and Young People
* The Commissioner for Aboriginal Children and Young People
* Victorian Ombudsman
* Office of the Public Advocate
* Youth Affairs Council of Victoria
* Practitioners from 8 Melbourne based section 29A Panel firms (12 firms were invited to participate)
* Practitioners from 16 Regional 29A Panel firms (all firms were invited to participate)
* Children and Youth Issues Committee, Law Institute of Victoria
* Collaborative Practitioner Section, Law Institute of Victoria
* The Children’s Court Bar
* The Family Law Bar
* Victorian Aboriginal Child Care Agency
* Victorian Aboriginal Legal Services
* Aboriginal Family Violence Prevention and Legal Service Victoria
* Women’s Legal Service Victoria
* Loddon Campaspe Community Legal Centre
* Peninsula Community Legal Centre
* Barwon Community Legal Service
* Gippsland Community Legal Service
* Hume Riverina Community Legal Service
* Inner City Melbourne Community Legal
* Federation of Community Legal Centres Victoria
* Mallee District Aboriginal Services
* Bendigo and District Aboriginal Co-operative
* Berry Street
* Child FIRST, Ballarat
* MacKillop Family Services
* Anglicare Victoria
* Gippsland and East Gippsland Aboriginal Co-operative
* Foster Carers Association
* Upper Murray Family Care
* Headspace
* The Bridge Youth Service
* Centre for Excellence in Child and Family Welfare
* Child Wise
* In-Touch Multicultural Centre Against Family Violence
* Council of Single Mothers and their children Victoria
* EACH Social and Community Health
* Ringwood Family Relationship Centre
* Boorndawan Willam Aboriginal Healing Service
* Women with Disabilities Australia
* Reinforce – Self Advocacy for Parents with a Disability
* Salvation Army Urban Justice Centre
* The Queen Elizabeth Centre
* Turning Point
* Tweddle
* Odyssey House
* Safe Steps
* Royal Children’s Hospital – Gatehouse and Victorian Forensic Paediatric Medical Service
* Royal Women’s Hospital
* Professor Cathy Humphreys
* Professor Helen Rhoades
* Professor John Tobin
* Dr Briony Horsfall
* Legal Aid New South Wales, Early Intervention Unit, Domestic Violence Unit
* Women’s Legal Service, New South Wales

# Appendix 2

## Summary of the Legal Aid Act 1978 (Vic)

### Purpose

To outline the basic structure of Victoria Legal Aid’s statutory scheme under the *Legal Aid Act 1978* (Vic) (Legal Aid Act).

### What is Victoria Legal Aid?

Victoria Legal Aid is an independent statutory authority. Victoria Legal Aid is a body corporate with perpetual succession and a common seal and is capable of doing, and being liable for, all acts and things that a body corporate can do (section 3 of the Legal Aid Act).

Victoria Legal Aid can provide legal assistance to people whose interests are adverse to the interests of the State or of the Commonwealth (section 25). Under section 5, Victoria Legal Aid does not represent the Crown.

### What is legal aid?

Section 2 of the Legal Aid Act sets out a number of definitions of terms commonly used, such as ‘legal aid’ and ‘legal assistance’. Often these terms are used interchangeably, but a reading of the Act highlights the difference between the two:

Legal aid means:

* education, advice or information in or about the law
* any legal services that may be provided by a law practice or an Australian lawyer, and
* any other matter within the above functions, powers and duties, including alternative dispute resolution programs, duty lawyer services, legal advice and legal assistance.

Legal assistance means:

* legal services provided under the Act other than by way of duty lawyer services (appearing on behalf of a person or giving legal advice to a person at a court without prior arrangement with that person), also known as a grant of legal assistance (see below for more information), or
* legal advice.

### Victoria Legal Aid’s objectives, functions and duties

Victoria Legal Aid has four statutory objectives set out in section 4 of the Legal Aid Act:

* To provide legal aid in the most effective, economic and efficient manner.
* To manage its resources to make legal aid available at a reasonable cost to the community and on an equitable basis throughout Victoria.
* To provide improved access to justice and legal remedies to the community.
* To pursue innovative means of providing legal aid directed at minimising the need for individual legal services in the community.

Victoria Legal Aid has two primary functions set out in section 6 of the Legal Aid Act:

* To provide legal aid in accordance with this Act.
* To control and administer the Legal Aid Fund.

Victoria Legal Aid has a number of duties set out in section 7 of the Legal Aid Act, including to:

* ensure that legal aid is provided in the most effective, efficient and economic manner and in a manner which dispels fear and distrust
* establish any local offices that it considers appropriate and generally use its best endeavours to make legal aid available throughout the State
* determine or vary priorities in the provision of legal aid as between classes of persons and classes of matters or both
* determine the matters or classes of matters in respect of which legal services may be performed on behalf of assisted persons by way of legal aid
* liaise with professional associations in order to facilitate the use, in appropriate circumstances, of services provided by private legal practitioners
* make maximum use of services which private legal practitioners offer to provide on a voluntary basis
* endeavour to secure the services of interpreters, marriage counsellors, welfare officers and other appropriate persons to assist in connection with matters in respect of which legal aid is provided
* inform the public of the services provided by Victoria Legal Aid and the conditions on which those services are provided; encourage and permit law students to participate, so far as Victoria Legal Aid considers it practicable and proper to do so, on a voluntary basis and under professional supervision in the provision of legal aid.

Importantly, section 7(1)(c) of the Legal Aid Act means that when determining the priorities for legal aid as between classes of persons and classes of matters Victoria Legal Aid must operate ’subject to and in accordance with’ an arrangement between the Commonwealth and the State under section 49 of the Legal Aid Act. The National Partnership Agreement on Legal Assistance Services is an agreement under section 49 of the Legal Aid Act.

Victoria Legal Aid has a number of specific powers set out in section 6(2) of the Legal Aid Act, including:

* in co-operation with a government department or body concerned with social service or social welfare, arrange measures and take steps that may be conducive to meeting the need for legal aid in the community
* enter into arrangements from time to time with a body or person with respect to any investigation, study or research that, in the opinion of Victoria Legal Aid, is necessary or desirable for the purposes of this Act
* make recommendations to or through the Attorney-General with respect to any reforms of the law the desirability for which has come to it attention in the course of performing its functions
* initiate and carry out educational programs designed to promote an understanding by the public, and by sections of the public who have special needs in this respect, of their rights, powers, privileges and duties under the laws in force in the State
* undertake research into all aspects of legal aid including new methods of financing and providing legal aid.

### Victoria Legal Aid rations a fixed legal aid fund

Victoria Legal Aid operates under a capped fund. The Legal Aid Fund is established under section 41 of the Legal Aid Act. All moneys made available by the State and Commonwealth and other sources are paid into the Legal Aid Fund and from which all of the administrative costs and expenses, including the provision of legal assistance are paid. The Legal Aid Fund is limited by the moneys provided by the State and Commonwealth, which unlike other government funded schemes, such as social security, is capped annually.

This means that Victoria Legal Aid must prioritise moneys from the Legal Aid Fund in a manner that best meets its objectives including providing legal aid in the most effective, economic and efficient manner.

The importance of rationing as a primary function of Victoria Legal Aid is made explicit in ss. 4(c), 8(2)(e), 9 and 41 of the Legal Aid Act.

As the Court of Appeal recently put it in *Slaveski v Smith* [2012] VSCA 25, the Legal Aid Act empowers Victoria Legal Aid ‘… to determine as a matter of discretion its priorities for the application of a limited fund between competing demands for legal assistance.’

The Court of Appeal also noted that ‘[t]here is nothing in terms that requires the State to provide any amount, still less to provide whatever amount may be necessary to meet all just claims for legal assistance.’

### Victoria Legal Aid issues guidelines to determine eligibility for high intensity legal aid services

Where legal aid is to be delivered through the highest intensity legal representation services, ie legal assistance, it is regulated through a formal grant of legal assistance.

Section 24 of the Legal Aid Act sets out the circumstances in which legal assistance may be provided. It is drafted in discretionary terms and essentially requires consideration of both means (section 24(1)(a)) and reasonableness (section 24(1)(b)). It is not possible to determine whether a person is eligible for legal assistance by reading the Act. Instead, section 9 of the Legal Aid Act requires Victoria Legal Aid to promulgate guidelines to be applied in determining whether legal assistance will be provided under section 24.

Under section 8(1) of the Legal Aid Act, Victoria Legal Aid can deliver services under grants of legal assistance through its own officers or through private practitioners. The allocation of work between private practitioners and Victoria Legal Aid is guided by the factors listed in section 8(2) which include:

* the need for legal assistance services to be readily available and easily accessible to disadvantaged people
* the requirements (if any) of any legal aid arrangement
* the desirability of an assisted person being entitled to select a legal practitioner of his or her choice
* the need for appropriate use to be made of the services capable of being provided by officers of Victoria Legal Aid
* the importance of maintaining the independence of the private legal profession
* the need for the Legal Aid Fund to be used effectively and efficiently.

### The Board and delegations

The Board of Directors is created by section 11 of the Legal Aid Act. Under section 12 the Board is responsible for the management of the affairs of Victoria Legal Aid and ensuring it is meeting its statutory objectives. It is also required to determine the policies, priorities and strategies of Victoria Legal Aid. Under section 10 the Board can delegate most of its powers to officers of Victoria Legal Aid. Significantly, it cannot delegate the power to make guidelines under section 9.

# Appendix 3

## Table A2 – Standard fees in State family cases in the Family Division of the Children’s Court

Table A2 shows the standard fees payable by Victoria Legal Aid (VLA) in State family cases in the Children’s Court (Family Division.

These fees are effective from 1 March 2016. For fees payable prior to this see [Archived versions of the Handbook.](http://handbook.vla.vic.gov.au/archived-versions-of-handbook)

These fees cover all necessary work. VLA will not allow claims for additional work, except as provided for as follows:

* VLA will pay for four interim accommodation hearings without any extensions of aid
* In the event that the interim accommodation order is continued by consent and without any substantial negotiation having taken place, the directions hearing fee is payable
* In the event that the application proceeds to an interim contest or defended hearing an extension of assistance is required
* No additional fee is payable for pre-contest mentions
* VLA will pay $165 if the court requires the attendance of the parties at a directions hearing
* Where an interim accommodation order contested hearing does not proceed to hearing or is not resolved by final orders, the fee of $342 is payable
* VLA will pay a preparation fee for final defended hearing as follows:
  + a fee of $391 if the matter settles at the conciliation conference or final directions hearing
  + a fee of $916 if the matter does not settle at the conciliation conference or directions hearing, and if assistance is granted for final defended hearing.
* Fees for a second or subsequent day of hearing: where the interim contest or defended hearing continues beyond one full day, VLA will pay an additional fee for every day or part of a day beyond the first day of defended hearing in accord with the fees set out in Table A2.

Where a matter has been listed for a conciliation conference, VLA will pay the preparation and appearance fees in the table.

Where a second conciliation conference could reasonably be expected to result in a resolution of the dispute, a solicitor may proceed to a further conference without an extension of aid. A second general preparation fee is not payable.

In the event that a solicitor attends upon a conciliation conference which is adjourned without hearing the directions hearing fee is payable.

Where a conciliation conference proceeds beyond three hours, an hourly rate of $147 is payable in addition to the attendance fee. This hourly rate is only applicable where the conference itself proceeds beyond three hours, and does not apply to time at court following the conciliation conference.

Where the solicitor is required to attend a post-conference mention at the conclusion of the conciliation conference, the directions hearing fee is payable. Where counsel is briefed to attend the conciliation conference, counsel must be briefed at the fee of $590 which includes a conference between counsel and the client to prepare for the conference.

In the event that the application proceeds to an interim accommodation order appeal hearing an extension of assistance is required pursuant to Guideline 3.

Applications for internal reviews of case planning decisions under Guideline 4.1 are new applications for assistance. Applications for external reviews are by way of extension on a pre-existing grant under Guideline 4.1 or a new application where the internal review has been undertaken without a grant of legal assistance.

### Stages 1 and 2

| **Service/proceeding – Applications under Guideline 1 and 2** | **Lump sum fee** |
| --- | --- |
| Preparation fee other than for extension of existing order | $494 |
| Preparation fee for extension of existing order by consent | $108 |
| Directions hearing | $165 |
| Appearance fee: interim accommodation order | $342 |
| Interim contest – day 1 | $684 |
| Interim contest – subsequent day | $494 |
| Final defended hearing – daily fee | $848 |
| Settles at conciliation conference or directions hearing – preparation fee | $391 |
| Final defended hearing – preparation fee | $916 |
| General preparation for conciliation conference (**Note:** includes taking initial instructions, briefing counsel) | $221 |
| Attendance at conciliation conference (**Note:** Includes preparation for conference and solicitor or counsel’s conference with client on the day of the conciliation conference or prior to conciliation conference) | $590 |

### Stage 3

| **Service/proceeding - Applications under Guideline 3** | **Lump sum fee** |
| --- | --- |
| Preparation | $1,470 |
| Conference | $269 |
| Appearance fee – day 1 | $1,978 |
| Appearance fee – subsequent days | $1,793 |
| Mention fee | $336 |
| Appear at judgement (where required) | $403 |

Practitioners can claim these fees using ATLAS. Applications under Guideline 3 are made via an extension of the substantive Child Protection grant in ATLAS.

### Stage 4

| **Service/proceeding - Applications under Guideline 4** | **Lump sum fee** |
| --- | --- |
| 4(a) Internal case plan review: Guideline 4, preparation fee | $494 |
| 4(b) External case plan review: Preparation fee | $494 |
| 4(b) External case plan review: Appearance fee – day 1 | $684 |
| 4(b) External case plan review: Appearance fee – subsequent day | $494 |

### Stage 5

| **Service/proceeding - Applications under Guideline 5** | **Lump sum fee** |
| --- | --- |
| Preparation fee | $494 |
| Directions Hearing | $165 |
| Appearance fee: interim accommodation order | $342 |
| Interim contest – day 1 | $684 |
| Interim contest – subsequent day | $494 |
| Final defended hearing – daily fee | $848 |
| Settles at conciliation conference or directions hearing – preparation fee | $391 |
| Final defended hearing – preparation fee | $916 |
| General preparation for conciliation conference (**Note:** includes taking initial instructions, briefing counsel) | $221 |
| Attendance at conciliation conference (**Note:** includes preparation for conference and solicitor or counsel's conference with client on the day of the conciliation conference or prior to conciliation conference) | $590 |

1. For more information on the consultation process, visit the VLA website: legalaid.vic.gov.au [↑](#footnote-ref-2)
2. The Age, 20 May 2015, ‘Another recruitment drive for 110 child protection workers’

   <http://www.theage.com.au/victoria/another-recruitment-drive-for-110-child-protection-workers-20150519-gh506i.html>

   See also <http://www.abc.net.au/news/2014-06-22/child-protection-staff-not-coping-with-workload-batty-death/5541774> [↑](#footnote-ref-3)
3. Charter of Human Rights and Responsibilities Act 2006, s17(1), Children, Youth and Families Act 2005, s10(3)(a) [↑](#footnote-ref-4)
4. Department of Human Services, Children, Youth and Families Division, Child Protection, Placement and Family Services, Early Childhood Development Program Guidelines, August 2012 [↑](#footnote-ref-5)
5. National Framework for Protecting Australia’s Children 2009-2020, Foreword. <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business> [↑](#footnote-ref-6)
6. National Plan to Reduce Violence against Women and their Children 2010-2022, Foreword. <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022> [↑](#footnote-ref-7)
7. Roadmap for Reform: strong families, safe children, p8 [↑](#footnote-ref-8)
8. Ibid [↑](#footnote-ref-9)
9. Australian Institute of Health and Welfare, Young people in child protection and under youth justice supervision, 2013–14 [↑](#footnote-ref-10)
10. Legal Aid Act, s4(a) [↑](#footnote-ref-11)
11. Legal aid Act, s2 [↑](#footnote-ref-12)
12. Legal Aid Act, s4 [↑](#footnote-ref-13)
13. Legal Aid Act, s7(1)(c)(i) [↑](#footnote-ref-14)
14. Provided by VLA in-house staff only. This is legal work, including perusal of documents, written advice, telephone calls on the client's behalf, oral or written negotiations and, in some cases, simple appearances before courts or tribunals that are conducted within reasonable limits. This work is not carried out under a grant of assistance and is only undertaken where it can be demonstrated there is a tangible benefit for the client. [↑](#footnote-ref-15)
15. Masson and Bader, Dickens and Young, The pre-proceedings process for families on the edge of care proceedings, March 2013, <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/summary.pdf> [↑](#footnote-ref-16)
16. Public Advocate, “Rebuilding the village: Supporting families where a parent has a disability” 2015 [↑](#footnote-ref-17)
17. See also the comments of the Public Advocate in “Rebuilding the village: Supporting families where a parent has a disability” 2015 at p44. [↑](#footnote-ref-18)
18. A group of nine aged between 19 and 25, who had direct experience of the child protection system and legal services. [↑](#footnote-ref-19)
19. Access to Justice Review, p365 <https://myviews.justice.vic.gov.au/application/files/1914/7554/7818/Access_to_Justice_Review_-_Report_and_recommendations_Volume_2.PDF> [↑](#footnote-ref-20)
20. Article 12 of the CROC and section 10, section 11 (g) and section 524 [↑](#footnote-ref-21)
21. S524(10) [↑](#footnote-ref-22)
22. Charter of Human Rights and Responsibilities Act 2006, s17(1), Children, Youth and Families Act 2005, s10(3)(a) [↑](#footnote-ref-23)
23. The Court makes an order for children under the age of 10 to be represented if exceptional circumstances exist and it is in the bests interests of the child. There were fewer than 200 of these orders made in 2015/16. [↑](#footnote-ref-24)
24. The aim of the Family Drug Treatment Court is to help parents stop using drugs/alcohol and promote family reunification. A Children's Court magistrate is supported by a multi-disciplinary team, comprised of drug and alcohol clinicians and a dedicated social worker. It works with agencies providing services for parents in the program. They include residential treatment, drug and alcohol counselling, mental health counselling, parenting programs, and housing programs. Professionals also work with children to help them with the journey to family reunification. [↑](#footnote-ref-25)
25. The exception to direct representation was where a child was not mature enough to understand and provide instructions. [↑](#footnote-ref-26)
26. If VLA received the same level of funding per Victorian, this would see an additional payment of $4 million annually from the Commonwealth and $22 million annually from the State. See VLAs submission to the ‘Access to Justice Review’ for more detail <http://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/access-to-justice-review> [↑](#footnote-ref-27)
27. This link is described by the President of the Children’s Court of New South Wales, Judge Peter Johnstone, who delivered a paper at the 2016 Aboriginal Legal Service Symposium on Aboriginal Children, Culture and the Law on ‘Cross-Over Kids’. Further research confirming the link includes: Stewart, A., Dennison, S. & Waterson, E. (2002) ‘Pathways from child maltreatment to juvenile offending’ *Trends and Issues in Crime and Criminal Justice* 241; Ryan, J.P., Williams, A.B. & Courtney, M.E. (2013) ‘Adolescent neglect, juvenile delinquency, and the risk of recidivism’, *Journal of Youth and Adolescence* 42, pp. 454-465; Smith, C.A., Ireland, T.O. & Thornbury, T.P. (2005) ‘Adolescent maltreatment and its impact on young adult antisocial behaviour’ *Child Abuse and Neglect,* 29(10), pp. 1099-1119. [↑](#footnote-ref-28)
28. The ‘Always was, always will be Koori children’ report by the Commission for Children and Young People, released 26 October 2016, recommends that the Commission, VLA and the LIV work together to ensure that lawyers in the Children’s Court are culturally proficient. This may include annual cultural and community awareness training. [↑](#footnote-ref-29)
29. CYFA, Part 3.5 [↑](#footnote-ref-30)
30. Productivity Commission, Report on Government Services 2016 [↑](#footnote-ref-31)
31. Masson and Bader, Dickens and Young, The pre-proceedings process for families on the edge of care proceedings, March 2013, <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/summary.pdf> [↑](#footnote-ref-32)
32. There were two children, each with their own lawyer. [↑](#footnote-ref-33)
33. Access to Justice Review 2016, p365 <https://myviews.justice.vic.gov.au/application/files/1914/7554/7818/Access_to_Justice_Review_-_Report_and_recommendations_Volume_2.PDF> [↑](#footnote-ref-34)
34. Ibid [↑](#footnote-ref-35)
35. Sections 34 and 35 of the Legal Aid Act [↑](#footnote-ref-36)
36. Interim and final hearings that are estimated to take longer than five days; County Court appearances; and additional appearances beyond the number provided by the funding broadband. [↑](#footnote-ref-37)
37. VLA Handbook for Lawyers, Chapter 6, State Family Guidelines https://handbook.vla.vic.gov.au/handbook/6-state-family-guidelines [↑](#footnote-ref-38)
38. The means test is the tool we use to assess financial eligibility for grants of legal assistance. This is the type of help we provide to people who need a lawyer for ongoing casework – including legal advice, preparation of legal documents and representation in court. We also use the means test to work out whether a person can contribute towards the cost of their legal help. [↑](#footnote-ref-39)
39. <http://handbook.VictoriaLegalAId.vic.gov.au/handbook> [↑](#footnote-ref-40)
40. The March 2016 legislative changes introduced several new court orders, including Care by Secretary and Long-Term Care by Secretary Orders. Both these orders are meant for children and young people who have been away from the care of their parents. They don’t have any court-ordered conditions attached to them, so all decisions about levels of contact with parents, where a young person lives, what school a child attends are made by DHHS. These types of decisions are called ‘case plan’ decisions and they do not involve the court. If a child, young person or parent is unhappy with a case plan decision, they can ask for DHHS to review it. If they are unhappy with the result of an internal review, they can ask for the Victorian Civil Administrative Tribunal (VCAT) to review it. We have introduced funding for a lawyer to assist and represent at a VCAT hearing, in limited circumstances. [↑](#footnote-ref-41)
41. Children’s Court of Victoria data [↑](#footnote-ref-42)
42. Access to Justice Review, 2016, p 400 <https://myviews.justice.vic.gov.au/application/files/1914/7554/7818/Access_to_Justice_Review_-_Report_and_recommendations_Volume_2.PDF> [↑](#footnote-ref-43)
43. <http://www.childrenscourt.vic.gov.au/about-us/multi-disciplinary-training> [↑](#footnote-ref-44)
44. Access to Justice Review 2016, p 400 <https://myviews.justice.vic.gov.au/application/files/1914/7554/7818/Access_to_Justice_Review_-_Report_and_recommendations_Volume_2.PDF> [↑](#footnote-ref-45)
45. Ibid, p404 [↑](#footnote-ref-46)
46. Ibid [↑](#footnote-ref-47)