Child Protection Legal Aid Services Review

Final report

September 2017

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# Abbreviations and acronyms

AFLDMC Aboriginal Family-led Decision Making Conferences

CALD Culturally and linguistically diverse

CECFW Centre for Excellence in Child and Family Welfare

CIMS Client Incident Management System

CLE Community Legal Education

CLC Community Legal Centres

CYFA Children, Youth and Families Act 2005 (Victoria)

DHHS Department of Health and Human Services (Victorian)

EIU Early Intervention Unit

FCAV Foster Carers Association of Victoria

FINV Family Inclusion Network Victoria

FVPLS Aboriginal Family Violence Prevention and Legal Service Victoria

IMHA Independent Mental Health Advocacy

KCV Kinship Carers Victoria

LCCLC Loddon Campaspe Community Legal Centre

LIV Law Institute of Victoria

MDTB Multi-Disciplinary Training Board

PLE professional legal education

PPDL private practitioner duty lawyer

VACCA Victoria Aboriginal Childcare Agency

VALS Victorian Aboriginal Legal Service

VLA Victoria Legal Aid

VOCAT Victims of Crime Assistance Tribunal

WLSV Women's Legal Service Victoria

# Executive summary

## The Child Protection Legal Aid Services Review

The Child Protection Legal Aid Services Review (Review) fulfils commitments in our ‘Strategy 2015-18’. The Child Protection Program is the third largest within VLA and is growing rapidly. It provides advice and representation to some of the most disadvantaged and vulnerable people within our community.

The objective of the Review, drawn from the Strategy, is to establish a system where child protection legal services are:

* timely and appropriate
* better at supporting children, particularly those at risk of long-term disadvantage
* more consistent across the state
* of higher quality.

The Review formally commenced in March 2016. The Review team conducted formal consultations with over 300 people across Victoria, together with a range of informal meetings with other people interested in the child protection system.

An Environmental Scan and a Consultation and Options Paper were released in October 2016, together with a request for submissions. There were 13 submissions received from a wide range of agencies and some individuals.

We also received input from VLA staff, consulted the VLA Sector Innovation and Planning Committee, met several times with a Young Persons Advisory Forum consisting of young people with lived experience of the child protection and out of home care systems, and held a forum with some of the key Aboriginal agencies involved in this area. We held several meetings with the Department of Health and Human Services (DHHS), and also met with a number of stakeholders to further develop ideas and to clarify our understanding of aspects of the child protection system.

## Current service issues

The current service model evolved in response to a system that is centred on urgent cases, much like a hospital emergency department. Most interactions between children, young people, parents and their lawyers takes place at Court – reinforced by the practices of the DHHS, lawyers and the Court.

This places great pressure on all participants, especially children, young people and parents. Due to dramatic increases in the number of applications, the system has also been placed under further stress.

Aboriginal and Torres Strait Islander children and young people are grossly over-represented in the system. The legal service response has failed to meet their needs. Similarly, there are others, such as those detained in custody or a mental health facility, who are not adequately supported. Consequently, they are excluded from participating or are at risk of long-term engagement with the legal system.

There are an inadequate number of legal service providers in some regional areas. These areas deal with almost half of all applications to the Children’s Court of Victoria.

There is a need to ensure that lawyers have the necessary skills so that they are able to perform this difficult work to a high standard. This goes beyond an understanding of the law, and includes the ability to deal with young people, understand the impact of trauma and deliver services in a culturally safe way.

## New approach for child protection legal services

The 2015-18 Strategy provides a framework around which VLA’s Child Protection Program can be rebuilt. The information gathered through the Review, including research, consultations, file reviews and submissions, provides the necessary building materials.

Our intention is to adopt a client-focussed design to the provision of child protection legal services, focusing on the needs of clients when designing the service model.

This requires moving away from the focus on the Court as the primary point for client interaction, as it currently disempowers clients.

In order to achieve this goal, a whole-of-system response will be required. However, there are a number of actions that VLA can take, individually and as a major provider in the sector:

* We can work with clients and others to improve the understanding of how the system operates and to give them a greater voice. This will include ongoing involvement of people with lived experience of the child protection system in helping to plan and design our services.
* We can structure our grants of assistance, practice standards and panel requirements to encourage greater interaction with clients away from court.
* We can provide services before cases get to court.
* We can support legal practitioners to acquire the specialist skills required to meet the needs of clients.
* We can work with the DHHS, child protection lawyers and the Children’s Court to further these goals.

A client-focussed model recognises that some families within the child protection system are at greater risk of longer-term engagement in the legal system, and that services should be directed at reducing that risk. The service model needs to prioritise these families:

* those with young children, particularly where the parents are themselves young people
* young adults who have themselves been children in the child protection system
* children in residential care
* children with involvement in both the child protection and the criminal justice systems
* Aboriginal and Torres Strait Islander children and families.

Lastly, a client-focussed model recognises the need to support and empower clients at all stages of the child protection system. Intervention into a family by the government child protection agency (the DHHS) may be required but it is always a serious step. The law states that this can only be done to secure the ‘best interests’ of a child. This includes protecting them from harm, protecting their rights and promoting the child’s development.

In each case, people might reasonably disagree about what is in the best interests of that child. Advice and advocacy to and for children and families, both legal and non-legal, at all stages, is critical to maintaining a fair and just system.

It is essential that children, young people and parents are aware of what is happening, understand their rights and have an effective voice, and that any intervention is appropriate and lawful. Lawyers have a legitimate and central role in this process.

Investment in new initiatives and greater training capacity to support legal practitioners to deliver the necessary services is needed. We must try doing things differently, accepting that we may not always get the results hoped for.

However, unless we are prepared to try new approaches we will continue to put ever-increasing resources into a system that does not meet the needs of some of the most vulnerable members of our community.

As the primary provider and funder of legal services to children, young people and families in the child protection system, there are a number of things that VLA can do better. However, we cannot do this alone. It requires the assistance of private practitioners and community legal centres, the Department of Health and Human Services and the Children’s Court of Victoria. It also requires us to look beyond the usual range of partners to identify new ways of doing things – working with families, carers, health providers and others to improve outcomes: a whole-of-sector response.

The set of Actions that VLA will take as a result of this Review are set out in the next section.

Not all of the Actions can be implemented at once. Some will take time to develop, while others can only be implemented after related Actions have been implemented. It is expected that it will a number of years to implement all of the Actions.

We are looking forward to working together to improve outcomes for children and families in the child protection system.

# Summary of Actions Victoria Legal Aid will take

## Purpose

**Action 1**

Victoria Legal Aid will adopt the following vision and purpose for our Child Protection Program:

Our Vision:

That the Victorian child protection system advances children's best interests.

Our Purpose:

To support the Vision by ensuring that people affected by decisions or actions of the child protection system, particularly children, young people and parents, are: informed, supported to participate or have a voice in decisions that affect them, have their rights protected and upheld, and are treated fairly and according to law.

**Action 2**

Victoria Legal Aid will work with the DHHS to develop a Workforce Development Strategy.

## Client-focussed services

**Action 3**

Victoria Legal Aid will work with relevant agencies, children, young people, parents and carers, to develop a community legal education strategy designed to improve engagement with and understanding of the child protection system, including the development and maintenance of plain-language information relevant for different groups involved with the child protection system.

**Action 4**

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

**Action 5**

Victoria Legal Aid will take steps to improve the continuity of representation of children and young people who have received assistance for a child protection matter and who are later charged with a criminal matter to be heard in the Children’s Court of Victoria.

**Action 6**

Victoria Legal Aid will work with the Children’s Court of Victoria, the DHHS and others to pilot an increase in representation for children under 10 years of age who are:

* Aboriginal and Torres Strait Islander children; and/or
* children of parents who are the subject of Children’s Court orders

where the application is, or may involve, placement of the child to out of home care.

## Timely intervention

**Action 7**

Victoria Legal Aid will pilot an Early Intervention Unit featuring non-legal advocates, where the following are considered a priority:

* cases for which a Protection Application by Notice would ordinarily proceed
* families where one or both primary carers have an intellectual disability
* Aboriginal and Torres Strait Islander families
* Aboriginal Family-led Decision Making Conferences.

**Action 8**

Legal assistance will be available to clients of the Early Intervention Unit to obtain legal advice about their child protection case.

**Action 9**

Victoria Legal Aid will pilot a Health Justice Partnership to provide early advice and legal representation to pregnant women who are or may be the subject of an unborn report.

**Action 10**

Victoria Legal Aid will work with others, including young people, to identify the legal needs of children and young people in out of home care, including during case planning, as well as developing an advice and referral process for children and young people who are the subject of an ‘abuse in care’ report.

**Action 11**

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

**Action 12**

Grants of assistance will be made available for the provision of legal 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.

## Quality and support

**Action 13**

Victoria Legal Aid, as part of an overall approach to professional education and training, will play a more active role in supporting lawyers working in the child protection system. This may include coordinating the provision of more professional education, research and the preparation of materials and tools that assist lawyers to perform their work, and may include an annual Child Protection Forum.

**Action 14**

Child Protection Panel lawyers will be required to participate in training in the following areas every three years:

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

**Action 15**

Child Protection Panel lawyers will be required to complete a minimum of four hours of child protection related hours of Professional Legal Education each year.

**Action 16**

Victoria Legal Aid will develop better internal intake and referral protocols to identify and address child protection needs of clients.

**Action 17**

Victoria Legal Aid will develop training to ensure that all duty lawyers are able to identify child protection problems and have an understanding of the child protection system.

**Action 18**

Victoria Legal Aid will increase the proportion of child protection grants of assistance conducted by staff lawyers to 20% within five years, with a focus on regional needs.

**Action 19**

Victoria Legal Aid will work with Child Protection Panel lawyers and other agencies to develop regional child protection networks to support lawyers and address local issues.

**Action 20**

Victoria Legal Aid will work with the Magistrates’ Court of Victoria and the Children’s Court of Victoria to establish regular Children’s Court (Family Division) court-user meetings, designed to improve service delivery, at all headquarter courts.

**Action 21**

With its partners, Victoria Legal Aid will develop a case preparation checklist to assist in the preparation of matters.

**Action 22**

The case preparation fee will be split, with half to be payable for each of the following:

* the development and maintenance of a case strategy
* work performed away from Court, including taking instructions and providing advice and engaging in negotiations.

The practice standards will be amended to make the expectations for claiming these fees clearer.

**Action 23**

Victoria Legal Aid will work with the DHHS, the Children’s Court of Victoria, the Magistrates’ Court of Victoria and others to improve the timeliness of the provision of reports by the DHHS.

**Action 24**

Practitioners will be required to seek costs where the DHHS fails to provide a report within the legal timeframes.

**Action 25**

The appearance fee for the post Conciliation Conference Directions Hearing will be removed.

**Action 26**

The conciliation conference preparation fee will be split, with half to be payable for each of the following:

* the development and maintenance of a case strategy
* work performed away from Court, including taking instructions and providing advice and engaging in negotiations.

The practice standards will be amended to make the expectations for claiming these fees clearer.

**Action 27**

Victoria Legal Aid will work with its partners to develop guidelines on the process of engaging other lawyers to appear as the agent of a lawyer acting pursuant to a grant of assistance.

**Action 28**

Victoria Legal Aid will work with its partners including the Victorian Bar to strengthen briefing practices and advocacy in child protection.

## Client access

**Action 29**

Victoria Legal Aid will work with the Children’s Court of Victoria, the Magistrates’ Court of Victoria, the DHHS, Corrections, the Mental Health Tribunal and others to implement the use of video-conferencing or other technology for the purpose of providing advice and, where eligible, representation to people in custody or in a mental health facility, who may otherwise be excluded from participating in child protection proceedings.

**Action 30**

Victoria Legal Aid will work with the 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.

**Action 31**

Victoria Legal Aid will continue funding Women’s Legal Service and Loddon Campaspe Community Legal Centre to provide child protection services and work with community legal centres to identify other geographical areas where CLCs may address unmet need.

**Action 32**

Victoria Legal Aid will explore alternative funding arrangements for private practitioners in regional areas to increase the number of Child Protection panel firms in areas of unmet need.

## Improving processes

**Action 33**

Victoria Legal Aid will develop state-wide duty lawyer guidelines for the child protection duty lawyer service, with flexibility to accommodate different regional requirements.

**Action 34**

Victoria Legal Aid will develop a consistent allocations process across the state under which VLA is responsible for referring children, young people and parents to a child protection lawyer and will introduce a condition for a child protection grant of legal assistance that the case was allocated by VLA.

**Action 35**

The Victoria Legal Aid lawyer allocations process will include a preference to firms on both the Child Protection Panel and the Youth Crime Panel when referring children and young people.

**Action 36**

The Victoria Legal Aid lawyer allocations processes will give Aboriginal and/or Torres Strait Islander children, young people and parents the choice of being represented by an Aboriginal legal service, where one is available.

# Background

Our ‘Strategy 2015-18’ contains three key directions for VLA. The first commits us to ‘invest in timely intervention, especially for children and young people’. The Strategy articulates the following three specific activities under this key direction:

1. Pilot more intensive, case-managed services to help vulnerable children.
2. Review and improve our child protection legal services for parents and children.
3. Critically evaluate when (and where) legal aid services are best delivered.

For this strategic direction, the following three outcomes are expected within a three-year horizon:

1. At risk children and young people receiving a more intensive, coordinated service, which addresses the underlying causes of their legal problems.
2. Child protection legal services focusing on more timely support to parents and more integrated help for children at risk of further legal problems.
3. Increasing the intensity of services at points that are likely to prevent legal problems from escalating.

The Review is intended to fulfil the second activity with the aim of achieving the second outcome. The Review also aims to contribute to the other two outcomes.

The Strategy also requires VLA to find ways to ‘match services to the needs and abilities of our clients’ (second strategic direction) and to consider ways to ‘maximise benefits by working with others’ (third strategic direction).

The objective of the Review, drawn from the Strategy, is to establish a system where child protection legal services are:

* timely and appropriate
* better at supporting children, particularly those at risk of long-term disadvantage
* more consistent across the state
* of higher quality.

This will require engaging and working more closely with other agencies in the child protection sector.

Our Strategy and the objectives of the Review guide the Actions set out in this document.

## Why did we conduct this Review?

The Child Protection Program is the third largest within VLA and has been experiencing dramatic growth in recent years. It provides legal assistance to most of the families who are dealing with child protection cases in the Children’s Court of Victoria.

These are some of the issues that indicate a need to improve the way we provide child protection legal services to some of the most vulnerable members of our community:

The system has been placed under stress, due to the increase in the number of protection applications made by the DHHS to the Court.

Aboriginal and Torres Strait Islander children and young people are grossly over represented in the system and the legal-service response has failed to meet their needs.

Similarly, there are others, such as those detained in custody or a mental health facility, who are not adequately supported. Consequently, they are excluded from participating or are at risk of long-term engagement with the legal system.

The current service model for the delivery of legal assistance to parties involved in child protection matters evolved in response to a system that is centred around urgent cases, much like a hospital emergency department. Most interactions between children, young people, parents and their lawyers takes place at Court – reinforced by the practices of the DHHS, lawyers and the Court. This places great pressure on all participants, especially children, young people and parents.

There are an inadequate number of legal service providers in some regional areas. These areas deal with almost half of all applications to the Children’s Court of Victoria.

Lawyers should have the necessary skills to ensure that they are able to perform this difficult work to a high standard. This goes beyond an understanding of the law, and includes the ability to deal with young people, to understand the impact of trauma and deliver services in a culturally safe way.

## Review process

The Child Protection Review formally commenced in March 2016.

The Review team conducted formal consultations with over 300 people across Victoria, together with a range of other informal meetings with people interested in the child protection system. This included meeting with young people who had lived experience of the child protection and out of home care systems, through a Young Persons Advisory Forum convened through the help of the Create Foundation.

We also mapped legal services across Victoria and reviewed data to identify service gaps. The Review team also conducted a review of staff child protection practice files and considered the minutes of the VLA Child Protection Panel process (which took into account child protection practice files of external child protection lawyers).

An Environmental Scan and a Consultation and Options Paper were released in October 2016, together with a request for submissions. There were 13 submissions received from a wide range of agencies and individuals:

* Aboriginal Family Violence Prevention and Legal Service Victoria
* Centre for Excellence in Child and Family Welfare
* Children’s Court of Victoria
* Commission for Children and Young People
* Family Inclusion Network
* Foster Carers Association of Victoria
* Grandparents Victoria and Kinship Carers Victoria
* Isabelle Harrison and Claudia Grimberg
* Law Institute of Victoria
* Loddon Campaspe Community Legal Centre
* Victorian Aboriginal Legal Service
* Women’s Legal Service Victoria
* Youth Law

The full versions are available on our website.

A Staff Forum was conducted in November 2016 to obtain feedback from staff across different areas of VLA. We also met with VLA’s Sector Innovation and Planning Committee (which includes staff and stakeholder members) to get their input on the Consultation and Options Paper.

We held a forum with key Aboriginal agencies to discuss how to better support Aboriginal and Torres Strait Islander children and families, as well as holding several meetings with the DHHS. In the process, we also met with a number of other stakeholders to further develop ideas, including the Young Persons Advisory Forum.

We are grateful to all those who have provided their time and shared ideas about how we can improve the delivery of legal services to people in the child protection system.

This document sets out the key feedback, the findings arising from this process, the vision for the Child Protection Program and the steps needed to achieve this.

# 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 service 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 (CALD) backgrounds and those who live in remote areas.

We can help 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 advice appointments 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 assistance to pay for legal representation by a lawyer in private practice, a community legal centre lawyer or a VLA staff lawyer.

In addition to helping people resolve their legal problems, we work to address the barriers that prevent people from accessing the justice system. We contribute to law reform, 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. These are the ways we extend the reach of our services and improve outcomes for the community more broadly.

We are funded by the Victorian and Commonwealth governments to provide these services, however we remain independent from government. We are required to provide services in the most effective, economic and efficient manner and manage our resources in a way that makes legal aid available at a reasonable cost to the community, and on an equitable basis throughout the state.

By providing a range of services – from information and early intervention services to intensive assistance under a grant of legal assistance – VLA aims to provide improved access to justice and legal remedies for people when they need it most.

# How to read this report

This report contains a summary of Actions that we will undertake. The list of Actions is contained in the Executive Summary.

More detail about the Actions is set out in the main part of the report, including reference to the Options that were contained in the Consultation and Options Paper, released in October 2016, and the feedback we received at that time.

The Actions are grouped under themes that reflect the key directions we will take. They provide an overall strategy to improve the delivery of legal services to people in the child protection system.

This report should be read jointly with the Consultation and Options Paper and the Environmental Scan. These are both [available on our website](https://www.legalaid.vic.gov.au/information-for-lawyers/how-we-are-improving-our-services/child-protection-legal-aid-services-review/received-submissions).

A list of commonly used abbreviations and acronyms is set out at the start of this report.

# Actions VLA will take

# Purpose

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.

It was clear from our initial consultations that different people and stakeholders held different views of what the purpose or focus of legally aided child protection legal services is and should be. For example, some lawyers felt that it is limited to representing children and parents at Court, while others thought that a more child-focussed approach was required.

We put forward a possible new, clarified purpose for VLA’s Child Protection Program in the Consultation and Options Paper (Option 1). This was the subject of a great deal of feedback from VLA staff and stakeholders.

There was a large degree of support for the draft purpose, while others thought that the emphasis should be different. Some suggested that it should be wider and have a stronger focus on children’s rights and accountability, while others wanted it to include support for family and carers.

The Law Institute of Victoria (LIV) and Harrison and Grimberg thought that reference to ‘best interests’ was unhelpful. The LIV said that best interests is too subjective and ambiguous. Harrison and Grimberg acknowledged that while representing parents, lawyers can still promote the safety, wellbeing and development of children and young people by advising the parents on the best way to address the protective concerns that have been identified.

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS) and the Centre for Excellence in Child and Family Welfare (CECFW) supported the purpose. The Commission for Children and Young People also supported the purpose, but encouraged a more explicit commitment to the rights of the child as set out in the international Convention on the Rights of the Child and the Victorian Charter of Human Rights and Responsibilities.[[1]](#footnote-1)

The Loddon Campaspe Community Legal Centre (LCCLC) and the Foster Carers Association of Victoria (FCAV) supported the purpose and a client-centred approach, which puts children at the heart of service design and delivery. The LCCLC observed that although the court system is adversarial, decisions must be in the best interests of the child, and that this guides the way lawyers advise and represent clients.

Grandparents Victoria and Kinship Carers Victoria (KCV) said that the best interests of children are a critical element of the purpose.

The Children’s Court of Victoria also supported the purpose, and noted that best interests take into account the need for children to be protected, and their rights and development promoted.

VLA staff had a range of views. Some thought that more emphasis should be placed on protecting children from harm and protecting their rights. Some suggested that it was not enough to protect rights but that these rights had to be ‘enlivened’ – that is, they need to be experienced in practice in a positive way. Others thought that there needed to be more emphasis on holding the DHHS to account for its legal obligations and to ensure the appropriate services were provided to families. There was also a concern from some staff to include the wider family’s rights and interests.

The Family Inclusion Network Victoria (FINV) said that the best interests of children and families are not mutually exclusive. This means that representing parents is consistent with the best interests of children.

The concept of the 'best interests' of children appears at all levels of the legal framework concerning children. The Convention on the Rights of the Child, which Australia has adopted, states that the best interests of the child are a primary consideration for all actions taken concerning children. It requires action to ensure that a child receives such protection and care as is necessary for their well-being, taking into account the rights and duties of their parents, legal guardians, or other individuals legally responsible for them.

These ideas are reflected in the Universal Declaration of Human Rights, which Australia has also signed, and the Victorian Charter of Human Rights and Responsibilities, which recognises the family as the fundamental group unit of society, entitled to be protected. The Charter confirms that every [child](http://www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/s3.html#child) has the right to such protection as is in his or her best interests.

As the submission from the Children’s Court of Victoria said, the Victorian *Children, Youth and Families Act* (CYFA) reinforces this approach, making it clear that the best interests of the child must always be paramount. The CYFA goes on to explain that in order to decide whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect their rights and to promote their development (taking into account their age and stage of development) must always be considered.

The CYFA includes a list of other considerations. This includes supporting the family unit, the need to promote and protect Aboriginal identity and culture, and that a child is only to be removed from their parent if there is an unacceptable risk of harm.

It’s clear we operate within a framework that places emphasis on the best interests of the child. The term ‘best interests’ in this context involves promoting the safety, wellbeing and development of children, including:

* protecting the rights of the child
* protecting children from harm
* preserving the family as the central unit of society
* the obligation on the DHHS to support families.

Any intervention into the family must be done according to the law, which incorporates all of these elements. This operates within the broader legal framework, which not only ensures that the law is obeyed, but that people who are affected by it have a voice and are treated with respect.

The responsibility to consider the best interests of the child does not rest solely with the DHHS. All participants in the system share this responsibility – even though they have different roles. The DHHS child protection staff are responsible for exercising the power to intervene into families and can only do so provided it meets the best interests test.

Lawyers, whether acting for children or parents, have a role in ensuring that these actions are consistent with the law. Lawyers also have obligations to ensure that children and parents understand their rights, that they are able to make decisions that are in the best interests of the child and that they are heard.

We have redrafted the purpose of the Child Protection Program to take these things into account, and centred the provision of child protection legal services within a child-focussed approach. It underscores the need to advocate on behalf of children and parents to promote the family, and the need for positive action to provide support where necessary. It confirms the need for children and parents to have a voice in the process. It draws on the rights framework and the need for all parties to work to give this effect.

It is acknowledged that some lawyers will not agree with the proposed purpose, for the reasons set out above. However, as set out in submission quotes, the purpose is consistent with good practice and the obligations of lawyers, and adopts a child-centred approach.

## Basis of legal representation of children

The reference to ‘best interests’ does not indicate a preference for a particular model of legal representation of children – either on a best interests or direct instructions basis.

The model of representation, while important, is a separate issue. The law in Victoria sets out which model applies in each case, and we operate in that framework.

Upholding the best interests of children can be achieved using either model of representation – whether acting for children, young people or parents. It is about everyone involved keeping this objective in mind and working to achieve it, even though they may disagree about how to do this or what it might look like.

We discuss further the model of representation in the following section on improving representation for children and young people.

**Action 1**

Victoria Legal Aid will adopt the following vision and purpose for our Child Protection Program:

Our Vision:

That the Victorian child protection system advances children's best interests.

Our Purpose:

To support the Vision by ensuring that people affected by decisions or actions of the child protection system, particularly children, young people and parents, are: informed, supported to participate or have a voice in decisions that affect them, have their rights protected and upheld, and are treated fairly and according to law.

## Workforce development strategy

The Purpose above highlights, amongst other things, that rights and the rule of law apply equally to the child protection system as they do to all areas of public policy and government actions, and clarifies the role of legal services in the child protection system as supporting these principles.

We believe that being clear about this Purpose will help in supporting a greater understanding amongst different participants in the child protection system.

The Review found that proceedings in the Children’s Court are often seen, and experienced, as being highly conflictual.

While child protection staff and lawyers representing children, young people and parents are both committed to providing high-quality services, child protection staff often feel that they are treated disrespectfully and that lawyers for parents do not work to ensure the best interests of children. Child protection staff work in difficult circumstances and are keen to see children growing up in safe environments.

Similarly, lawyers also work in a difficult environment. As noted above, lawyers, like child protection staff, are involved in ensuring that decisions and actions taken are in the best interests of the child. People may reasonably disagree as to what is in the best interests of a child, but this does not mean that they are not committed to achieving this outcome.

Government intervention into a family may be required but is a serious and significant step. The legal process is there to do several things. One is to make sure that the intervention only happens where necessary and in a manner that the law allows. It also ensures that families are supported and that they are treated with respect.

During the Review the team encountered a number of examples where front-line child protection staff did not accept this. They believed that lawyers who took a different view from them were not concerned about the welfare of the child.

The Review team also encountered lawyers who saw their role as limited solely to acting on their clients’ instructions, regardless of whether those instructions took into account the best interests of the child or the lawyer’s duty to the Court, for example.

While these are the extremes, and most participants fall between the two, these attitudes reinforce each other and have a negative impact on the environment at Court. Most importantly, this has consequences for children and families in the child protection system.

Child protection proceedings involve complex issues. This means that lawyers need more than an understanding of the law. They need high-level communication skills, an understanding of the impact of trauma, an understanding of mental illness and intellectual disability, and an awareness of cultural issues – particularly with regard to Aboriginal and Torres Strait Islander people. These are not skills that lawyers normally gain during their formal training.

Child protection staff also need these skills. They also need to have an understanding of the legal system and their role in it.

There is a need for greater mutual understanding and there is some movement in this direction. For example, the Child Protection Multi-Disciplinary Training Board (MDTB) initiative has existed for several years now. RMIT University Masters of Social Work and Masters of Law students are now able to complete units of study in each other’s course. However, initiatives such as these remain limited at present.

The option in our Consultation and Options Paper of a workforce development strategy to address these issues received a mixed response (Option 50).

VLA staff thought work should be done to address this, but questioned whether VLA should lead it. The CECFW suggested that this sort of strategy should focus on training rather than being based in a tertiary institution. The Women's Legal Service Victoria (WLSV) suggested it could be done through the existing MDTB. However, it is noted that private practitioners have not regularly attended training organised by the MDTB.

The Commission for Children and Young People supported the option, but cautioned that it should avoid re-enforcing adult-centric, professionally focused approaches. The DHHS, which employs lawyers as well as child protection staff, were interested in this proposal.

We have concluded that further work will be required, after adopting our clarified purpose for child protection legal services, to build a shared understanding of the purpose and role of legal services in the child protection system. It is possible that such work may include both a training approach and collaboration with one or more tertiary institutions to create a centre or centres of excellence.

A shared workforce development strategy provides an opportunity for those involved in doing this important work to build greater understanding of the system as a whole, and the role that everyone plays. Given VLA’s institutional role in the system, we believe we will need to help drive such a strategy.

**Action 2**

Victoria Legal Aid will work with the DHHS to develop a Workforce Development Strategy.

# Client-focussed services

The Consultation and Options Paper identified that current child protection legal services are designed almost solely around the court stage of a child protection case. However, contact with the DHHS does not begin and end there. For many, their first interaction will be days, weeks or even months before court and for most, interactions will continue long after the court case has been finalised.

Several of the options set out in the Consultation and Options Paper were aimed at making our services more client-focussed – designed to meet client needs rather than simply the court process or lawyers’ current ways of working.

## Improving the level of community legal awareness

We need to consider how and when to provide community legal education (CLE) to children and young people, families, carers and support workers involved in the child protection system.

At present, there is little information that clearly explains how the child protection system works. During the consultations, young people who had been through the system, and parents, carers and support services, said that it is difficult to understand what happens or how decisions are made.

Many Aboriginal and Torres Strait Islander families have an understandable mistrust of the legal system. This results in fewer families receiving legal help for child protection issues than have contact with the system.

Four of the options in the Consultation and Options Paper (Options 15, 16, 17, 18) involved co-producing materials to help people to better understand the child protection system. These options respond to information gaps we identified and were supported in many of the responses, including from VLA staff, FINV, Grandparents Victoria and the Commission for Children and Young People.

Some submissions provided suggestions around audience and the process of creating materials, for example, the LIV supported developing materials for children and parents, but did not believe that it was the role of VLA to provide material to carers and other service providers.

The Victorian Aboriginal Legal Services (VALS) noted that materials should be prepared for Aboriginal people, and that VALS should be involved in preparing this material. They also indicated the need for their involvement in preparing materials for carers to ensure that material is culturally safe. VALS said that materials should also consider Aboriginal people with a cognitive impairment.

It is proposed that VLA take a broader approach to how we provide CLE in child protection, through the development of a community legal education strategy that would include information materials.

This would involve scoping the need for education, identifying priority audiences and areas of higher need, options for delivering information and opportunities for partnership.

A priority in this would be to engage with regional Aboriginal communities and organisations to build stronger relationships, identify legal service delivery gaps for this community, and develop strategies to promote service access and increase awareness of legal rights.

While some suggested that it was not our role to provide materials to carers and other service providers, we note the important role they play. They support children to understand the process and often facilitate contact with siblings and parents. Carers and support providers also use our Legal Help telephone service. Providing support to these groups is consistent with the vision and purpose we have set out above for our child protection legal services.

**Action 3**

Victoria Legal Aid will work with relevant agencies, children, young people, parents and carers, to develop a community legal education strategy designed to improve engagement with and understanding of the child protection system, including the development and maintenance of plain-language information relevant for different groups involved with the child protection system.

## Improving support and representation of children and young people

The Review heard some consistent themes about the representation of children. It was accepted that children should receive high-quality legal services and that particular skills are required to represent children, including a different approach to taking instructions and giving advice.

The need for continuity of representation was repeatedly identified as being very important, including by the Young Persons Advisory Forum. It allows children to form relationships of trust, avoids them having to retell their story and reduces the chances that critical information is missed.

The findings of reports, such as the ‘Always was, always will be Koori children’ report[[2]](#footnote-2) and other inquiries, and our review of materials, shows that the quality of representation of children varies greatly. There are many things contributing to this, including:

* a child protection legal system that is not designed around children
* the rapid increase in the number of cases which has put additional strain on the system
* the overall skill level of practitioners
* the culture that has developed in this area.

Several of the options designed to address this are dealt with in this section, while other issues (including training and practice standards) are discussed later.

### Guidelines for representation of children

One proposal for improving the standard of service was to develop guidelines for the representation of children, including those represented on a ‘best interests’ basis (Option 3).

This was very broadly supported, including by the Children’s Court of Victoria, the Commission for Children and Young People, the LIV, FVPLS, the CECFW, Grandparents Victoria, the FCAV, Harrison and Grimberg, and VLA staff. We therefore confirm that we will undertake this Action.

A number of other Actions are also set out further below.

**Action 4**

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

### Continuity of representation of children

As discussed in the Consultation and Options Paper, for some children and young people, involvement in the child protection system is the beginning of ongoing and long-term involvement in the legal system.

There is clear evidence that many of the high-contact, long-term users of legal aid services first received services as a child or young person. An analysis of our data over a 10-year period (2006-16) showed that one third of our high-cost clients came into contact with the legal system between 10 and 19 years old, compared with the overall client group, who first have contact between 20 and 29 years old. Of our high-cost young client users, 60% received help with a child protection matter. A high proportion of those who received help for a child protection case went on to get help for a criminal law problem. This requires us to think of ways to reduce the risk of this happening.

One option (Option 6) considered ways to provide greater continuity and support to children and young people who are involved with the child protection and criminal justice systems. Another (Option 23) asked whether lawyers who represent children and young people should meet a different set of standards.

There was broad support for developing processes to identify and better support young people who are at risk of long-term involvement in the legal system. There was less clarity about how this might best be achieved.

In 2015/16, around one in five children who received legal assistance with a child protection matter also had legal help for a criminal law case within one year of the child protection case. Unfortunately, over half received support from different law firms in all instances, with another 23% receiving support from the same lawyers for some of their criminal cases.

The need for continuity of representation was identified by many agencies. The CECFW said that consistent representation in child protection and criminal matters is critical. The Commission for Children and Young People believes that the approach should be that one lawyer acts for a child in all matters. The Commission for Children and Young People and the Children’s Court of Victoria support a more integrated approach to supporting these children. Grandparents Victoria and the FCAV also supported this approach.

For the young people we consulted, continuity of representation was recognised as a feature of best practice. They expressed frustration and concern about having different lawyers, with one saying “I hated having different lawyers. That person may not have had time to go through your file, they don't know you or your circumstances, you have to explain everything again.”

It was accepted that high-quality, consistent legal representation across the areas of child protection, family violence and youth crime represented a model of best practice. It was also accepted that the representation of children requires specialist skills.

The LIV, while supporting the idea of continuity, noted the limited number of firms on both of the relevant practitioner panels as a barrier to consistent representation. At present, 40% of the lawyers on either the Child Protection Panel or VLA’s Youth Crime Panel are members of both panels. Of these, there are fewer lawyers in metropolitan Melbourne than lawyers in regional areas who are members of both panels.

The Youth Crime panel is a subset of both the Summary Crime and Indictable Crime panels. The Youth Crime panel was created to reflect the specific skills and knowledge required to handle youth crime matters, and the unique needs of young people as a client group. Lawyers who want to work in this area have to show they have the necessary skills and experience to represent children and young people. To satisfy those requirements, lawyers must either be an LIV Accredited Specialist in ‘Children’s Law’ or demonstrate practice based experience and participate in VLA-designed professional development.

By contrast, the Child Protection panel does not have any subset panels. There is no requirement to participate in specific child-focussed professional development and all lawyers are expected to be able to represent adults, children and young people. However, to get onto the Child Protection Panel, lawyers have to demonstrate that they have experience representing children.

There were different views about creating a specialist children’s panel of lawyers (Option 23), so that only lawyers on the children’s panel can represent children in child protection legal matters.

The CECFW expressed strong support, noting "consistent legal representation across both family and criminal divisions is critical". The Children’s Court of Victoria, FCAV and WLSV all supported this proposal, as did the Commission for Children and Young People, who indicated that a specialist panel would "increase the prestige of representing children". It also recommended that Aboriginal community controlled organisations should be consulted as part of this.

The LIV did not support the proposal and said that no change should be made. Harrison and Grimberg and VLA staff made a strong argument that all practitioners should have the skills needed to represent children and young people. They suggested that the panel entry requirements should set these out, and that any gaps be made up through the provision of training.

During the VLA Staff Forum, concerns were also expressed that creating a new panel could lead to a reduction in the pool of lawyers, particularly in regional areas. This would put more pressure in areas where there is already a shortage of providers.

If we commit to better supporting children and young people at risk of long-term engagement with the legal system, then we need to encourage good-quality, child-focussed legal representation. A child-focussed legal service must be designed to meet the specific legal needs of at risk children and young people, which will frequently include various combinations of child protection, family violence and youth crime legal help.

There are advantages to having a specialist panel. Lawyers would need to show they have the skills to represent children to be accepted and to remain on the panel. A panel helps to create expertise to provide leadership in the practice area.

However, there are also limitations. There is already only a small pool of lawyers in the child protection area. A large number of lawyers would need to be members of the child protection panel and the children’s sub-panel, to make sure that children and parents can be represented. This may be difficult in regional areas where there are fewer lawyers. The creation of a panel may further restrict the number of lawyers, making it harder for people to get assistance. A general panel also allows lawyers to develop an understanding of all aspects of the child protection process.

VLA is currently undertaking a review of the legal aid practitioner panels process – examining the process for getting on to a panel, and the ongoing requirements once a firm or an individual practitioner (a certifier) is on the panel. This review may reveal further actions that we can take to improve the panels.

Currently, on balance, we believe that quality representation of children can be achieved without the creation of a new specialist subset panel for acting for children in child protection matters. Instead, we have identified that the two key aspects required for this are skills and continuity of representation.

The availability of training and the creation of practice standards will assist in building and maintaining skill level to represent children well. We address these in the Quality and Support section of this report, particularly at Actions 13-15.

Continuity of representation can also be encouraged in different ways.

New duty lawyer guidelines, together with new duty lawyer allocations processes (discussed in greater detail later in the paper – see Actions 33-36) will result in children and young people being referred, wherever possible, to lawyers who are members of both the Child Protection Panel and the Youth Crime Panel.

The current Youth Crime legal aid grant guidelines also limit the opportunity for some children to be represented by the same lawyer in both their child protection and youth crime cases.

The current guidelines provide that children and young people facing criminal charges are eligible for a grant of legal assistance if they are likely to:

* be sentenced to youth detention or an order involving youth justice supervision, or
* have reasonable prospects of obtaining diversion.

Children who are likely to receive a different penalty than either of those set out above, are assisted by the duty lawyer service.

We could change this guideline to allow a child who has had a lawyer for a child protection case to choose the same lawyer for their criminal case (should that lawyer be on the Youth Crime panel). This may reduce the number of different lawyers children and young people have to deal with. This could combine with the referral of children to lawyers on both panels where possible (Action 35), which will also assist with greater continuity of representation.

New laws about sentences in the Children’s Court were passed recently and come into force next year. These laws may require other changes to the guidelines for service in Youth Crime. We may need to introduce new guidelines to ensure that our services respond adequately to any change in the law. In these circumstances, we will wait until it is clear whether other changes are also needed. This will avoid confusion and multiple changes being made within a short time.

It is acknowledged that other barriers also limit the capacity of lawyers to provide continuity of representation of children and young people. This includes how cases are arranged at court and the difficulty of cases being listed in different locations. We will continue to work with the Children’s Court and lawyers to improve processes to promote continuity where possible.

**Action 5**

VLA will take steps to improve the continuity of representation of children and young people who have received assistance for a child protection matter and who are later charged with a criminal matter to be heard in the Children’s Court of Victoria.

### Representation of children under 10 years of age

The representation of children under 10 years of age (Option 4) was raised frequently during the consultations. Many participants believe that the 2012 change in law, setting the age at which children are presumed to have capacity to instruct a lawyer at 10 years, had unfairly excluded many children from participation in child protection proceedings.

The Convention on the Rights of the Child states that where a child is able to form their own views, these views should be taken into consideration. The age and maturity of the child will influence how much weight the views are given. The Convention also says that a child should be heard in any proceedings that affect them. There will be children below the age of 10 years who can form a view.

The Children’s Court can appoint lawyers for children aged below 10 years if there are ‘exceptional circumstances’. Exceptional circumstances are not defined, although the expression is used often in the law and is generally given its plain meaning. Lawyers appointed for children under 10 years of age act on a ‘best interests’ rather than a ‘direct instructions’ basis.

Over 70% of children in the Children’s Court (around 3900 in 2015/16) are below 10 years of age. Only 260 orders for a ‘best interests’ lawyer were made in 2015/16. This includes cases where a child over 10 years did not have the capacity to instruct a lawyer.

The Children’s Court of Victoria says that “consistent, high quality legal representation of a child of any age is critical to …when determining outcomes in the best interests of that child”, but that orders for representation for a child under 10 are often raised by the Court rather than by lawyers representing parents, or the DHHS. The Court, and others, points out that the legal requirement for ‘exceptional circumstances’ limits the number of orders for representation.

Increasing the number of children represented was supported by a wide range of agencies, including the Commission for Children and Young People, CECFW, FCAV, LIV and other legal providers.

Many supported the representation of all children, as occurs in NSW. The law would need to be changed for this to happen. We also estimate that this would cost the Legal Aid Fund around an extra $10 million yearly. Some staff, and some of the submissions, said that an increase in the representation of children should not be offset by a decrease in the representation of parents.

In considering whether to increase the representation of children it is necessary to ask why, and what benefit might flow from this.

DHHS child protection workers often say they represent the views of the child. However, this approach substitutes the role and obligations of the DHHS for the rights of the child. Among other things, the DHHS is responsible for promoting the prevention of child abuse and neglect, assisting children who have suffered abuse and neglect and providing services to their families to prevent further harm.

The DHHS must have regard to the best interests of the child when considering any action, but this is not the same as it representing the interests of the child. The law specifically recognises the right of children to separate legal representation. In some circumstances the case cannot proceed unless the child has had an opportunity to get legal assistance. Clearly, the Parliament of Victoria recognises that there is a role for the separate legal representation of children.

In Victoria, we need to show that there are exceptional circumstances for this to happen. In 2015/16 Aboriginal children made up 20% of all applications for a protection order made for children under 10 years. The ‘Always was, always will be Koori children’ report identified the failure to ensure that the minimum safeguards to maintain cultural identity and connection are maintained. This can have serious consequences for children.

Where the DHHS is considering placing an Aboriginal child in out of home care there is an argument that the exceptional circumstances test is satisfied. Legal representation would allow these children to participate in proceedings and ensure that their cultural interests are promoted.

Another approach to the representation of younger children is to consider infants and toddlers. There is clear evidence that the first 1000 days of a child’s life are critical to their long-term development. Around one third of children who are the subject of protection applications are below three years of age. It is important that the Court is properly informed of all issues surrounding these children and is able to make the best decision. This may be more difficult where the child’s parents are themselves in out of home care.

In these cases, the role of the DHHS is complicated as it has obligations to both the parent and the newborn. The intergenerational disadvantage experienced by these families means extra support would be helpful. Representation would ensure that the interests of the child are adequately presented, in circumstances where the parent is likely to have limited resources and the DHHS has conflicting responsibilities.

Greater representation for both of these groups is consistent with our strategy and purpose. However, there is no current process that readily identifies these matters. Children below 10 years of age are not referred to a duty lawyer and other parties may not think to apply for a lawyer for the child.

We could alter our processes to provide a duty lawyer in cases involving children under the age of 10, to assess whether to request an order for the appointment of a lawyer to act on a best interests’ basis.

It is not known how many additional orders might be made for the representation of younger children if we did this, or what the impact of representation would be. There is a risk that there would be a large increase in the number of orders made, which could become unsustainable. In order to properly assess the impact of the proposed change, we propose to conduct a pilot, focused particularly on the two groups of children discussed above. This will require cooperation with the Children’s Court of Victoria and the DHHS. It may involve more than one location to fully assess the demand and impact.

**Action 6**

Victoria Legal Aid will work with the Children’s Court of Victoria, the DHHS and others to pilot an increase in representation for children under 10 years of age who are:

• Aboriginal and Torres Strait Islander children; and/or

• children of parents who are the subject of Children’s Court orders

where the application is, or may involve, placement of the child to out of home care.

# Timely intervention

## Legal services when and where clients need them

People do not need legal assistance for every dealing they have with and within the child protection system. However, young people and parents told us that they wanted greater levels of support – both legal and non-legal – before, during and after the court process.

They also identified several areas of unmet need that did not require a lawyer, such as the coordination of referrals to support services, but where they believed that extra support is needed to reduce the power imbalance in their dealings with the DHHS.

The Consultation and Options Paper proposed four pilots designed to test the impact of providing additional assistance to clients, including non-legal support, at different points in the child protection process (Options 2, 7, 20 and 21). These are discussed below. The discussion below also refers to some similar but different types of workers:

|  |  |
| --- | --- |
| Non-legal support workers | Social workers or youth workers who work with lawyers to provide direct support to people involved in child protection cases. They help children, young people and families feel safe by providing support during court and case planning, referrals and appointments, and visits to professionals |
| Non-legal advocates | Consumer advocates, lay advocates, social workers or youth workers. They help people to advocate for themselves when interacting with the DHHS. The role involves helping to identify problems, including legal problems, providing warm referrals to legal and other services, assisting with documentation, accompanying children, young people and families to important appointments, and helping to arrange communications with professionals, including lawyers |
| Peer support | A person, who has been through a system or service, supports another person who is going through that system or service. The peer’s experience helps the children, young people and families relate. The relationship, being one of equals, allows trust to develop |

### Legal help before Court proceedings are started

Several options in the Consultation and Options Paper proposed different approaches to providing help to clients before they reach Court.

One was a legal advice service for young people and parents invited to enter a voluntary agreement where a child will be placed in out of home care (Option 19). Another, an Early Intervention Unit (EIU) featuring lawyers and non-legal advocates, would help families in the pre-litigation and early litigation phase of child protection cases (Option 20). A Client Support Service featuring non-legal support workers assisting families who are responding to protection proceedings before the Children’s Court (Option 2) was also suggested.

The aim of these approaches is to help clients at an earlier point, both to provide a better outcome for the child and their family and to reduce the number of cases that go to Court.

The submissions we received supported earlier legal intervention. However, some questioned the effectiveness and impact of involving lawyers before court processes started.

The CECFW thought that involving lawyers before Court would "make it adversarial and legalistic, and perhaps counterproductive in reaching an outcome in the best interests of children". DHHS staff and others in non-legal roles also expressed concern about the impact of early involvement of lawyers. As discussed earlier, lawyers for both children and parents have a role in promoting the best interests of children. However, conflict can arise where the different roles of lawyers and child protection workers are not clearly understood. The development of a workforce strategy is designed to assist with this.

Grandparents Victoria and Kinship Carers Victoria supported these options for earlier legal help, noting that "the numbers of voluntary care arrangements made within families is escalating without any understanding of what they mean for all parties".

The Children’s Court of Victoria supported the options, because "a successful service here [pre-litigation] could potentially reduce court listings and the associated costs both financial and emotional".

The Commission for Children and Young People also supported these options, but suggested that a broad range of cases be included and that non-legal advocates be involved. It urged greater support for children and young people who do not have an effective relationship with a support worker, and called for greater flexibility and collaboration between VLA and the non-legal community service sector so that existing relationships and local knowledge can be best used.

Several submissions, including from the FVPLS, LCCLC and the Commission for Children and Young People, suggested that the early intervention services should prioritise Aboriginal and/or Torres Strait Islander families. A similar view was expressed by VLA staff.

There were differing views as to the use of non-legal advocates. As noted above the Commission for Children and Young People supported their involvement. The WLSV supported a "combined structure that provides support for legal and non-legal provided by lawyers and social workers that would help address clients’ multiple areas of disadvantage".

The LIV emphasised the need to ensure that the advice and support provided by non-legal advocates did not include legal advice. They pointed to the inTouch Multicultural Centre Against Family Violence model as best practice. This adopts an ‘integrated’ approach where the non-legal advocate is the first point of contact but can refer the person to legal and other supports as needed.

Some submissions pointed out that the DHHS is required to take "all reasonable steps to provide the support services necessary" to ensure the best interests of children. The LIV submission questioned using VLA resources to help families get "supports that ultimately should be provided by the DHHS to comply with their statutory obligation".

In contrast, the FINV referred to an example where the assistance of a non-legal advocate was critical to achieving a positive outcome for one member.

There will be instances where the DHHS and a person’s legal team may reasonably come to different views as to what supports should be put in place to help the family, for example, where the DHHS propose that a child live in out of home care. In these cases, a non-legal advocate would be able to help get the necessary supports to support the family.

There was also support, from the FINV and the Independent Mental Health Advocacy (IMHA) Speaking from Experience Group[[3]](#footnote-3), for the inclusion of peer support in the model. Involving people with lived experience of the child protection system, to help others navigate the process, is consistent with a client-focussed approach. Evidence shows that this form of support helps improve outcomes for families involved in the child protection system[[4]](#footnote-4). The use of peer support may also assist in engaging Aboriginal and Torres Strait Islander families, and is consistent with greater self-determination. Peer support is incorporated into the non-legal advocacy service model operated by IMHA.

There is clearly support for earlier intervention. While this gap could be filled by non-legal support workers, as noted above there is a risk that this will duplicate supports that are already available.

Lawyers could also fill this gap, however, it is not clear that at earlier stages of a child or family’s involvement with the child protection system, they need formal legal advice and representation.

Non-legal advocates, on the other hand, have a distinct role. They can assist people to understand the process, advocate for their own interests and wishes and get access to services and coordinate supports. This may include issues such as housing, counselling, medical services, and dealing with school or other authorities.

**Where to locate an early intervention service**

Another issue that came up in response to the Consultation and Options Paper was where any early intervention unit or client support service should be located – within a legal service, as part of another service or entirely independent.

The FINV supported a standalone unit prioritising parents with a disability, Aboriginal and/or Torres Strait Islander families and young parents who have exited out of home care.

The CECFW said that these services need to be part of an integrated platform, and not within a legal setting.

Some were concerned about the independence of such a service. VLA staff were concerned that the records of the support advocates might be required to be produced in court, undermining the capacity to work in a confidential manner with the client and their legal representative. The inclusion of the service as part of the legal practice may be a sufficient safeguard against this. In addition, we need to monitor any changes to information sharing laws arising from the implementation of the recommendations of the Royal Commission into Family Violence.

There are different advantages and disadvantages for each of the possible locations. A new service could be created within VLA, but separate from existing offices and teams, or within a CLC. Another approach would be to add non-legal advocates to VLA’s existing staff practice. This would enable close collaboration and easier access to legal advice when required, but may limit access to clients of the VLA staff practice.

A third approach is to create a new unit that is co-located with other service providers, such as health services. This allows for immediate access to a range of services that may be needed by families. This approach meets the concerns about the service being seen as too legal if located within a legal service. However, it does align the service with other support services that the service may need to help clients to advocate to. By contrast, VLA’s IMHA service exists as a separate unit within VLA, which allows it to maintain independence and help clients to access other services.

**Pilot Early Intervention Unit**

On balance, it is proposed that a new unit be established within VLA to test the impact of focusing on earlier intervention for clients.

This allows the opportunity to test new approaches to service delivery and to draw on our experience establishing an IMHA. It may be possible to locate the EIU within IMHA. This would reduce the set-up costs, as much of the infrastructure is already in place.

A pilot EIU that combines several options (Options 2, 19 and 20) would see non-legal advocates support families where the DHHS is involved, but before the matter goes to court.

Established as a separate unit, the EIU could support families who have a relationship with a lawyer from VLA, a CLC or a private firm. However, it will not be mandatory for a person to have a lawyer before they start working with the EIU.

It is proposed that the unit include non-legal advocates rather than lawyers or support workers. Non-legal advocates would fill a gap in the range of services that are provided to families. Additionally, this would avoid the duplication of services that might arise from having support workers. The experience of the IMHA service shows that non-legal advocates can complement the services provided by lawyers.

The EIU would have the capacity to assist families when the case goes on to court. The pilot will adopt an integrated model of service delivery, where non-legal advocates will collaborate with lawyers to provide a wraparound service that extends beyond court-based events. Non-legal advocates will help to meet the needs of children, young people and parents, as well as help identify problems, including other legal problems. The service may also include peer support.

While cases could be referred to the EIU by the DHHS, the unit will need to engage with the community to increase awareness of the service it provides. This may include outreach to increase participation by people who may otherwise not use legal services.

**What cases will the EIU focus on**

Around one-third of child protection cases that go to court are commenced by Notice. These cases often involve a range of longstanding concerns, but none alone are serious enough to go to court. The EIU could focus on cases where there is generally limited family engagement with legal and other supports, and early intervention may be effective in diverting the case from court proceedings.

It was frequently reported that families feel a lack of power when dealing with the DHHS. The Aboriginal Family-led Decision Making Conferences are an example of this. The DHHS staff have knowledge of the child protection system, access to legal advice and the power to take the matter to court if they are not satisfied with the outcome. In contrast, the families generally have not received legal advice, have their own negative experience of the system and have limited knowledge of the process or the options that are available. Support by the EIU could assist to reduce this power imbalance.

While the non-legal advocates would be able to support people in many instances, there will still be the need for legal advice in some cases. This can be dealt with by way of a grant of assistance to provide legal advice to a client of the EIU. A family member could consult their lawyer for an hour, so that they are aware of their rights and obligations and ensure that any agreement is appropriate.

Critical to the implementation of the Pilot will be adequate training and support for non-legal advocates to deal with cumulative harm, particularly when helping clients with cognitive impairments or mental health issues.

We propose to develop the Pilot with the assistance of VALS and FVPLS to ensure that it is appropriate for Aboriginal and Torres Strait Islander families.

**Involvement of children and young people, parents and carers**

The Review has benefited from the involvement of people involved in the child protection system – children and young people, parents and carers. They have provided valuable insights into the system and the impact that current structures have on them. This has helped to shape the Actions set out in this report.

The ongoing involvement of clients in the design and delivery of services is vital to ensure that our services remain client focused. This is largely a new approach for VLA, although a similar group was established as part of the IMHA process. To ensure that we maintain a client focus, we intend that a group, comprised of people with direct experience of the child protection system, be established to inform the establishment and operation of the Early Intervention Unit pilot.

**Action 7**

Victoria Legal Aid will pilot an Early Intervention Unit featuring non-legal advocates, where the following are considered a priority:

* cases for which a Protection Application by Notice would ordinarily proceed
* families where one or both primary carers have an intellectual disability
* Aboriginal and Torres Strait Islander families
* Aboriginal Family-led Decision Making Conferences.

**Action 8**

Legal assistance will be available to clients of the Early Intervention Unit to obtain legal advice about their child protection case.

### Legal help for pregnant women subject to child protection involvement

Timely interventions are important for all children and young people, but especially critical for infants and their families. The first 1000 days of a child’s life are considered central to their development.

Some women are more likely to face child protection involvement when they have children. There were 2,026 unborn reports in Victoria in 2015-16, 21% more than the previous year. An unborn report is where concerns are raised with the DHHS about a pregnant woman and whether she will be able to care for the child after it is born. Pregnant young women who are themselves subject to a current protection order and are in out of home care, however, are not part of the unborn report data as the DHHS engage with these young women as part of their existing order.

At present, there is no service providing advice about child protection issues to pregnant women. Often child protection services do not engage much with pregnant women to put support services in place during the pregnancy. Women in this situation often then face a protection application in court very soon after giving birth, when they may not be able to attend court and see a duty lawyer, meaning they are unable to participate in the proceedings.

Many women in this situation simply do not understand the likelihood of an application to the Children’s Court to remove their child shortly after their baby’s birth. During consultations, child protection practitioners said that the potential benefits of greater involvement with pregnant women during pregnancy to put supports in place had to be balanced against the risk of the women leaving the state. Once out of Victoria, the DHHS has no power to intervene. The practitioners said this meant that they were often not clear with the women about the likelihood of removing the child.

It was generally accepted that early advice and assistance (another pre-Court early intervention) for pregnant mothers was important.

In the Consultation and Options Paper we proposed two alternatives. One was to pilot a Health Justice Partnership through a CLC to provide early advice and support to pregnant women where an unborn report has been made (Option 21). The other was to make grants of assistance available for child protection lawyers more generally to provide advice and advocacy for all pregnant children and young people who may be subject to an unborn report (Option 22).

The CECFW again raised the possibility that including lawyers creates the "risk of potentially unnecessary involvement with the legal system and a further risk of alienating pregnant women from much needed support service".

The LIV said that to be effective, a Health Justice Partnership service would need to feature experienced practitioners, and that few CLCs have experience of child protection cases. They also expressed concern about the continuity of representation were cases to go on to court. In their view, it would be better to refer these cases to lawyers on the Child Protection Panel.

The LIV also suggested including non-legal supports, because this will help mothers deal with the protective concerns raised by the DHHS. The submission from the Commission for Children and Young People made a similar point, stating that "a greater level of intervention and intensive multi-disciplinary support is needed for women who are subject to an unborn report".

LCCLC said that "many women subject to unborn reports do not access regular antenatal care". They suggested an early intervention grant of aid be introduced. This would fund a lawyer to attend a pre-birth meeting with the DHHS. LCCLC said that seeing a woman at hospital after they have given birth may be of no greater assistance than seeing her at court.

The WLSV and FVPLS supported the proposal for a Health Justice Partnership and urged VLA to draw from the experiences of existing health justice partnerships.

Concerns were raised by the FINV about the "medical model response to pregnant mothers, particularly those with disabilities". They expressed some scepticism regarding the philosophy of health justice partnerships, questioning the impact of traditional ‘Health’ responses on legal service delivery.

**Pilot service**

Ultimately we have concluded that this remains an area of great need for a vulnerable group of clients, and some sort of service response is required.

The various concerns raised above about the potential effectiveness of a Health Justice Partnership are valid, but running a pilot would help to identify what impact this type of service could have and how to overcome potential problems. The alternative of opening a new class of grants would not enable us to design, test and monitor a new service response as closely.

We therefore propose a pilot Health Justice Partnership approach. However, see also the Out of home care legal services section below for a further response regarding pregnant young women already themselves subject to a child protection order and in out of home care.

The pilot may be co-located within a maternity hospital, enabling access to both the antenatal and postnatal clinics. The service could accept referrals from within the hospital where an unborn report is being considered or has already been made. The service could also accept self-referrals from women seeking legal advice about an issue of safety. As maternity hospitals have their own social workers and support programs for pregnant and new mothers, consideration will be given to how these services are integrated.

A pilot could be run in several ways. CLCs already have experience with health justice partnerships and we have existing contracting arrangements readily available to establish and fund pilot services with CLCs. CLC staff could be trained and supported to deliver legal advice and representation that extends beyond the unborn report stage and can include appearance at court, should a protection application be made to Court. We have experience in quickly supporting CLCs to develop this capacity, through the existing CLC child protection pilots currently running (discussed further in the Client access section later in this report).

An alternative would be to include this as part of the work of the EIU, using lawyers to provide advice where needed.

A third approach would be to create a separate unit within VLA that deals with these matters.

We will explore these options to identify the appropriate structure for the pilot.

**Action 9**

Victoria Legal Aid will pilot a Health Justice Partnership to provide early advice and legal representation to pregnant women who are or may be the subject of an unborn report.

### Out of home care legal services

Current legal supports stop once the court case has finished. However, there are a range of issues that may arise about what happens after. This may include dissatisfaction with where a child is placed, disputes about contact with parents or siblings and issues with schooling, to name a few.

It was proposed that we work with others, including young people, to identify the legal needs of children and young people in out of home care and develop possible responses, which may include information and non-legal advocacy (Option 7). There was also recognition of the need for greater support for children and young people in out of home care (Option 8).

There was strong support for both Options, particularly from the LIV and the Commission for Children and Young People. Several submissions acknowledged that children and young people in out of home care had specialised legal and non-legal needs, many of which are unmet.

The Commission for Children and Young People thought that "experienced non-legal advocates with the ability to form ongoing relationships with a child may be preferable in many circumstances". The Commission suggested a ‘secondary consult model’, featuring non-legal advocates, trained to identify legal issues and make ‘warm referrals’ where appropriate. It identified several advantages to the use of non-legal advocates for children and young people in out of home care, including the possibility of more frequent, regular contact.

The LIV said that legal advice and assistance before each annual case plan review, for children on Care and Long-term Care by Secretary Orders, "would provide a profoundly beneficial increase in the accessibility by young people to legal assistance".

The DHHS believes that children and young people in out of home care who have made a complaint about the quality of their care should be able to get legal advice and support. No service currently provides this help and it has potential benefits. It would help children understand their rights, explain the process and decision and help them get support, including through Victims of Crime applications.

Legal services have a role in overseeing the safety of children in out of home care. The Royal Commission into Institutional Responses to Child Sexual Abuse[[5]](#footnote-5), the Victorian Ombudsman ‘Reporting and Investigating Allegations of Abuse in the Disability Sector’[[6]](#footnote-6) and the Commission’s ‘As a good parent would’ report[[7]](#footnote-7), all identify the need for greater, more coordinated service responses, from a range of providers.

However, the introduction of this type of service would be resource intensive. Lawyers have not been involved in this area. It remains unclear how a legal service might work in this area. From July 2017, a new Quality of Care framework, the Client Incident Management System (CIMS), applies to complaints in Victoria. The CIMS shifts the focus from risk assessment to harm, by looking at the impact on the child or young person. Community Service Providers will be expected to take ownership of complaints and work towards resolving them themselves, while the DHHS will retain oversight.

We will continue working with the DHHS to develop an appropriate response for children and young people in out of home care who have a complaint about the quality of care they receive. The discussions will also involve identifying potential funding for such a service.

We have identified a number of areas where children in out of home care may benefit from assistance. However, this has raised more questions about what services should be provided and how.

At present, too many of the answers to these questions remain unknown. For this reason, we propose that there be further discussions and investigation into how we could assist children and young people in out of home care more specifically.

**Action 10**

Victoria Legal Aid will work with others, including young people, to identify the legal needs of children and young people in out of home care, including during case planning, as well as developing an advice and referral process for children and young people who are the subject of an ‘abuse in care’ report.

## Improving services to Aboriginal and Torres Strait Islander children and families

Aboriginal and Torres Strait Islander children, young people and families are over-represented in the child protection system. They have experienced poor outcomes, both historically and currently, from the system. Aboriginal children in Victoria are removed at much higher rates than other children.

Despite being over represented in the child protection system, this community does not receive a proportionate level of legal help.

There are several barriers that limit access to legal services. Past experience discourages people from being involved in the legal system. The number of Aboriginal women in custody has been rising sharply, but services are limited. FVPLS provides an outreach service to the Dame Phyllis Frost Centre, but there is more that could be done to support Aboriginal people in custody. Few legal service providers have strong relationships at the local level that would lead to greater trust.

The Consultation and Options Paper contained a number of options directed to improving the quality and range of services provided to Aboriginal and Torres Strait Islander families (Options 9 to 14). The proposals aimed to support greater self-determination by Aboriginal and Torres Strait Islander people and organisations.

The options received wide support. The submissions recognised the need to ensure culturally safe practices, increased compliance by the DHHS with the Aboriginal Child Placement Principle and to build stronger relationships with local communities.

To explore these issues further a forum was held in April 2017. It was attended by the Commissioner for Aboriginal Children and Young People, together with representatives of FVPLS, VALS and the Victorian Aboriginal Childcare Agency (VACCA). The forum discussion, together with the submissions and other feedback, has been invaluable in helping shape the Actions in this paper.

The VALS and FVPLS provide child protection legal services to Aboriginal and Torres Strait Islander families. However, resources limit the number of people they can help. Extra resources are needed to increase the number of people these organisations can help, and this was proposed as one of the options (Option 10). This was supported by Grandparents Victoria, the FVPLS, FCAV, LIV, the Commission for Children and Young People, VALS and LCCLC.

In developing our community legal education program, discussed above, we will work with local communities to identify the needs of Aboriginal people in particular areas (Action 3). We will work with the VALS and FVPLS to identify areas of high demand and to put into place sustainable service arrangements to increase their capacity to assist people.

Another possible action is to change allocations processes to give Aboriginal and/or Torres Strait Islander children, young people and parents the choice of being assisted by an Aboriginal legal service (Option 11). This was supported by Grandparents Victoria, FVPLS, FCAV, LIV, the Commission for Children and Young People, VALS and LCCLC. The process of referring children, young people and parents to duty lawyers will be changed to give these clients the choice of being assisted by an Aboriginal legal service where one is available. This Action is included in the arrangements for duty lawyer services discussed later in this paper.

Although it is critical that the Aboriginal legal services are supported to increase their level of service, there will still be a need for VLA and other legal service providers to represent Aboriginal and Torres Strait Islander people. It is essential that these services are culturally safe. It was proposed that child protection lawyers be required to undertake relevant training on a regular basis (Option 14). This was supported in 11 of the submissions received and also by VLA staff. This Action is contained in the Training section later in this paper.

The submissions, and the discussion at the April 2017 Forum, spoke of the power imbalance that exists in the dealings between Aboriginal families and the DHHS. Aboriginal Family-led Decision Making Conferences (AFLDMC), where families and a number of DHHS staff meet to discuss how to support the family, were identified as a specific example of this. All participants at the April 2017 Forum agreed that families should be assisted by a lawyer or other form of advocate who is familiar with the system.

Option 17 had proposed a grant of legal assistance so a lawyer could attend an AFLDMC with a client. As discussed earlier, AFLDMCs will be a priority for the pilot Early Intervention Unit (see Action 15). The ability for clients of the EIU to get legal advice will provide another protection for those participating in this process.

The importance of Aboriginal and Torres Strait Islander children and young people maintaining cultural identity and connection is recognised in the law. Unfortunately, a large number of children are placed in out of home care, often with non-Aboriginal families, and without cultural support plans in place.

Ongoing contact with parents and siblings is an important way to help these children retain connection with their cultural identity and family connections. The ‘Always was, always will be Koori children’ report spoke of the failure to maintain contact between parents and children, and between siblings, as a significant barrier to maintaining cultural connection.

To assist in improving this, the guidelines for legal assistance will be amended to include assistance where an Aboriginal child or young person is in out of home care and the dispute is about contact with a parent or sibling in order to maintain cultural identity and family connections.

**Action 11**

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

**Action 12**

Grants of assistance will be made available for the provision of legal 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.

# Quality and support

Children, young people and parents involved with the child protection system deserve access to high-quality legal help.

During consultations, we heard that access to high-quality legal representation depended on several variables, including location, individual ability and professional peer support. A review of staff practice files, and the experience of the VLA Child Protection Panels process with external files, confirmed what we heard. The file reviews clearly showed the impact of practitioner service delivery on legal outcomes.

There is limited training and professional support offered to child protection lawyers, despite the complexity of this area. Since 2010, the Multi-Disciplinary Training Board has received funding to deliver training for lawyers, child protection workers and court staff. However, the sessions are often poorly attended by one or more groups.

## Improving training

The submissions recognised the need for lawyers delivering child protection services to have the appropriate skills for this specialised area.

Almost all supported introducing a requirement that lawyers complete a minimum number of hours of child protection related training each year (Option 25), together with training in areas such as trauma informed practice and capacity assessments (Option 24). As noted above, there was also very strong support for cultural awareness training. The ‘Always was, always will be Koori children’ report recommended the development of this training.

To meet the increasingly complex legal needs of children, young people and parents, lawyers are being required to understand multiple legal areas, including child protection, family violence, family law and criminal law. This need will increase as the Specialist Family Violence Courts are opened across Victoria (see below in the Client access section). Training will need to be developed to support lawyers to do this work.

The idea that VLA take a greater lead in coordinating training, conducting research and providing materials relevant to this area (Option 37) was approved of by VLA staff, the WLSV, Harrison and Grimberg, the CECFW, the LIV, the Commission for Children and Young People and the Children’s Court of Victoria.

Practitioners appreciated the decision by VLA to make professional legal education (PLE) sessions available to CLCs and panel firms. Since April 2016 we have run 92 PLE events, with 491 CLC lawyers and 329 private practitioners attending.

When VLA introduced the Youth Crime Panel, VLA developed a training program to help criminal lawyers acquire the necessary skills to meet the panel requirements. A component of that training involved the intersection between youth crime, child protection and family violence. During consultations, we heard from several regional practitioners that they found this training very helpful. For many, it was the first practice-based training they had received and many felt it had enhanced their practice. Training of this nature could also assist child protection lawyers to obtain the necessary skills.

The development of training needs to be carried out within VLA’s overall approach to professional education and training.

Lawyers were eager for VLA to hold an annual Children’s Law Forum (Option 38), but there remains an ongoing concern that practitioners will not attend. Legal Aid NSW holds an annual conference attended by practitioners from across the state – the 2016 Conference heard from the state minister responsible for child protection and the President of the Children’s Court of NSW.

An annual Children’s Law Conference would provide an opportunity to bring practitioners together to discuss key issues relating to the child protection system. The introduction of a minimum number of hours of relevant PLE might encourage greater attendance. This is something that we will consider as part of the measures to provide greater training in this area.

Training could be provided at cost, which would limit the financial payment. All lawyers are required to do at least 10 hours of training annually, to keep their professional registration. The program of training discussed in this section would help lawyers meet this obligation. To ensure that these skills are maintained, and that lawyers are familiar with current practices, the training could be required to be completed on a three-year cycle.

**Action 13**

Victoria Legal Aid, as part of an overall approach to professional education and training, will play a more active role in supporting lawyers working in the child protection system. This may include coordinating the provision of more professional education, research and the preparation of materials and tools that assist lawyers to perform their work, and may include an annual Child Protection Forum.

**Action 14**

Child Protection Panel lawyers will be required to participate in training in the following areas each three years:

• trauma informed practice

• capacity assessments for children, young people and parents

• cultural awareness training.

**Action 15**

Child Protection Panel lawyers will be required to complete a minimum of four hours of child protection related hours of Professional Legal Education each year.

## Developing better referral pathways

There is increasing overlap in legal practice in the areas of family violence, child protection, family law and criminal law. This will increase further with the roll out of specialist Family Violence Courts. These Courts will deal with family violence and criminal law matters, and will make some family law orders.

It's unclear at this stage how associated child protection proceedings will be dealt with. This is particularly important in regional areas, as the specialist Children’s Court operates only in metropolitan Melbourne.

Lawyers in the Magistrates’ Court will need to have an understanding of the operation of child protection so that they can give advice to clients and make appropriate referrals. This requires the development and implementation of training processes for VLA staff and other lawyers working in this jurisdiction, particularly as duty lawyers. This should occur at the same time as the rollout of the special courts.

VLA is developing training to provide lawyers who appear as family violence duty lawyers an understanding of child protection, criminal law and some areas of civil law, such as Victims of Crime Assistance Tribunal (VOCAT) and tenancy. This will allow them to identify issues and make appropriate referrals. The next step is to expand this training to ensure that all duty lawyers have some understanding of the other areas.

The introduction of the VLA prisoner help line, at four metropolitan prisons, will provide a more direct pathway for parents at those prisons who need help with a child protection matter. There will be many people in custody who do not have access to this pilot service, but will continue to rely on our visiting prison advice service. Similarly, there are people in mental health facilities, serviced by our Mental Health and Disability Advocacy legal team and/or by our Independent Mental Health Advocacy service, who need help with child protection matters.

Better referral pathways are required within VLA to help people get the child protection services they need (Options 41 and 42).

The development of better referral pathways should include links with the pilots for an Early Intervention Unit (Action 7) and a Health Justice Partnership approach for pregnant women (Action 9), particularly to ensure that, wherever possible, clients have access to any non-legal supports offered by these services.

**Action 16**

Victoria Legal Aid will develop better internal intake and referral protocols to identify and address child protection needs of clients.

**Action 17**

Victoria Legal Aid will develop training to ensure that all duty lawyers are able to identify child protection problems and have an understanding of the child protection system.

## Increasing proportion of matters conducted by VLA staff

The number of child protection cases conducted by VLA staff has not changed greatly over the last 10 years, despite the dramatic increase in demand. This is mainly due to the internal staff practice capacity remaining largely the same over this period.

Instead the rise in demand has been absorbed by private practitioners, who deliver around 90% of child protection legal services under a grant of legal assistance. This represents a rise from 80% in 2006/07, with the number of cases dealt with by private practitioners increasing from 4,300 to 7,300 in 2016/17.

This change in the proportional share of the work has limited the ability of VLA to fulfil our institutional role in the child protection system. Our ability to provide training, identify and respond to issues and engage in strategic litigation have all been constrained. In commencing the Review, VLA has acknowledged the need to give more prominence to this area and for VLA to play a greater leadership role.

The Victorian Government’s Access to Justice Review 2016 identified the importance of VLA maintaining "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 Access to Justice Review suggested that this needs to be between “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”. It said that VLA could do more than 20%, but that would need to be justified on a value for money analysis.

The Consultation and Options Paper proposed that the amount of work done by the VLA staff practice increase to 20% over five years (Option 50).

The CECFW supported this, suggesting the VLA should represent all children. The LIV indicated that there should be an independent assessment of the costs and benefits associated with an increase of this nature. The Commission for Children and Young People supported an increase in the proportion of matters conducted by VLA staff, particularly with a focus of specialist skills required to assist families with complex needs. It suggested that this could assist a move toward greater focus on early interventions and dispute resolution.

The proportion of child protection grants conducted by VLA staff will be increased to 20% over five years. This can be achieved by taking on a greater share of the increasing number of applications to court. This gradual increase would mean that the number of grants of assistance to private practitioners would continue to increase. Private practitioners will continue to be the primary provider of services, and remain a central element in a multi-party jurisdiction that needs a range of service providers.

The increase to 20% will better enable the VLA staff practice to provide the benefits of a “public service provider”, as identified by the Access to Justice Review. This includes investing in training and development of lawyers at VLA, CLCs and the private profession. As the organiser of almost all legal services to children and families in the child protection system, it is important that VLA have the skills and experience to fulfil its statutory function. The staff practice is unable to support this fully at present given its limited size.

The increase in cases will also enable VLA to more effectively identify and respond to issues that arise, either through engagement with other stakeholders or by strategic litigation.

An increase in the number of cases undertaken by staff lawyers needs to consider where there are particular gaps in service. For example, in some areas staff lawyers deal with less than 5% of matters in their region. Consideration will need to be given to the staffing needs at different locations, and how to train and support staff.

**Action 18**

Victoria Legal Aid will increase the proportion of child protection grants of assistance conducted by staff lawyers to 20% within five years, with a focus on regional needs.

## Strengthening local collaboration

During the consultations, many participants highlighted the benefits of local networks and a desire for these to be strengthened.

The Paper proposed developing regional child protection networks (Option 34) and regular court-user meetings (Option 36). These options were supported by VLA staff, the CECFW, WLSV, LIV and the Commission for Children and Young People. This will involve collaboration between local agencies to establish and maintain these processes.

**Action 19**

Victoria Legal Aid will work with Child Protection Panel lawyers and other agencies to develop regional child protection networks to support lawyers and address local issues.

**Action 20**

Victoria Legal Aid will work with the Magistrates’ Court of Victoria and the Children’s Court of Victoria to establish regular Children’s Court (Family Division) court-user meetings, designed to improve service delivery, at all headquarter courts.

## Improving preparation and contact outside of court

This section deals with three connected points: the preparation of cases by lawyers, the contact lawyers have with the people they represent away from Court, and the timely delivery of reports by the DHHS.

### Timely and effective preparation by lawyers

During consultations, we heard that case preparation by lawyers was often inadequate and largely undertaken during court appearances.

Lawyers said their ability to properly prepare was linked to the late provision of court reports by the DHHS.

Young people said that they wanted greater levels of contact with their lawyers between court dates and away from the associated stress of court. Parents with a disability said the same thing.

The preparation of cases has two parts. First, practitioners need to consider the strength of the evidence and develop a case strategy based on this, their instructions and the legal framework. The evolving nature of many child protection cases means that the strategy will need to be reviewed at various stages of the proceedings.

VLA currently pays preparation fees at three stages of a matter – with the initial grant of assistance, for the conciliation conference and for a final hearing. Lawyers should form a case strategy at each stage.

The second part of preparation relates to ‘client care’ – communicating with clients away from Court, helping them to understand what is happening and to be involved in the running of their case. This includes taking a full history and ensuring that the client understands the process and is able to ask questions. The practitioner needs to advise the client about the strengths and weaknesses of the case. Additionally, there should be contact with the DHHS and support services as appropriate.

The need to shift from the Court as the primary place of contact was highlighted throughout this Review. Children, young people and parents repeatedly said that they needed more time to ask questions and consider their options than is possible at Court. They described not feeling that they understood what happened and that they had not been able to participate. The current focus on court events places unrealistic pressure on participants.

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 Review also found that inadequate preparation resulted in poorer outcomes. This includes where alternatives had not been explored or services had not been provided, leading to delay.

The Consultation and Options Paper proposed several steps directed to improving the quality of service, including the use of checklists (Option 27) and steps to increase the level of preparation and contact with clients away from court (Option 28).

There was support for these measures, such as the creation of checklists and other tools, from the CECFW, WLSV and the Commission for Children and Young People.

The LIV also supported this, noting that it would assist practitioners, and suggested increasing fees to encourage work outside court. The Children’s Court of Victoria noted the need for cases to be properly prepared and encouraged processes for contact to take place away from court.

The fees for a child protection grant of assistance include a sum for preparation. This fee is payable for work done away from Court. Current practice standards, which set out the expectations, have not been effective in ensuring that the services provided meet these expectations.

In order to ensure greater interaction prior to court, this will be a requirement for claiming the second part of the preparation fee. To ensure that this happens, the fee will be split in half. Lawyers will need to have a case strategy recorded on their file before claiming this part of the preparation fee.

Checklists and templates will help lawyers in this task, but will not be mandatory for panel firms.

### Timely provision of reports by the DHHS

In most instances, the DHHS is required to provide reports three days before a court hearing. These reports are important because they set out the concerns that the DHHS say place a child at risk of harm and that justify intervention into the family.

The Consultation and Options Paper noted that in most cases reports are provided late, generally at court. This means that cases are delayed, and that children must attend at court or be interrupted during the day to provide instructions. It also means that parents are given limited time, or privacy, to consider often confronting materials.

The Consultation and Options Paper proposed that the requirement that lawyers request an order for costs, when the DHHS does not provide a report on time, be strengthened.

Lawyers pointed to the failure of the DHHS to deliver reports before court, as required by law, as an obstacle in obtaining meaningful instructions prior to the court date. While this alone does not account for the overall need for lawyers to increase their contact with clients away from Court (see previous section), it is also true that this issue hinders their ability to do so consistently and effectively.

The DHHS is aware of the widespread practice of providing reports on the day of court. In our consultations, the DHHS noted its high file loads and unallocated cases as being the chief cause of the delay in providing reports on time. The DHHS also suggested that the format of reports may contribute to the problem. It says that it is unable to address the problem of delay without additional resources.

The failure by the DHHS to comply with the law shifts the burden, and the cost, to the rest of the system. It creates delays at Court and puts pressure on everyone involved. Most importantly, it disadvantages children – who are required to attend court to give their lawyers instructions – and their families.

Most reports are prepared by the day of Court – meaning that the late provision of reports is a matter of prioritisation, not just resources. A culture has developed at most court locations that accepts the late delivery of reports, removing the incentive for the DHHS staff to comply with the legal timeframe. This practice is not consistent with a client-centred system.

A way to improve the timeliness of reports is by cost orders. It is already a condition of a grant of assistance that lawyers must make an application for costs where a case is adjourned due to the actions of another party, such as the DHHS.

Practitioners report variously that:

* they make these applications, but magistrates have different attitudes to this
* the making of costs orders appears to have no impact on the conduct of the DHHS, who attribute the delay to staff shortages
* lawyers do not make these applications, as the local magistrate does not grant the costs order
* all occasions are used to try to improve the client’s circumstances rather than delay matters, and that any new orders negotiated on the day undermine the merit of the costs application. This was also included in the LIV submission.

This may account for the small number of costs orders. In 2015/16 there were fewer than 80 orders to 18 firms totalling $25,000.

While the reasons given by lawyers are understandable, the outcome is that poor practices remain entrenched. A joint effort by VLA, Child Protection Panel lawyers, the DHHS and the Court, is required to change practices. The timely provision of reports, and early preparation by lawyers (Action 22), will reduce the time spent at Court. We will work with partners to improve timeliness, including a review of the format of reports to make them easier to complete. We will also ensure that the legal aid guidelines make the requirement to apply for costs more explicit and discourage the current practices.

Many of the submissions supported a review of the approach to costs applications to improve timeliness (Option 32), including VLA staff, the Commission for Children and Young People and the Children’s Court of Victoria.

**Action 21**

With its partners, Victoria Legal Aid will develop a case preparation checklist to assist practitioners in the preparation of matters.

**Action 22**

The case preparation fee will be split, with half to be payable for each of the following:

• the development and maintenance of a case strategy

• work performed away from Court, including taking instructions and providing advice and engaging in negotiations.

The practice standards will be amended to make the expectations for claiming these fees clearer.

**Action 23**

Victoria Legal Aid will work with the DHHS, the Children’s Court of Victoria, the Magistrates’ Court of Victoria and others to improve the timeliness of the provision of reports by the DHHS.

**Action 24**

Practitioners will be required to seek costs where the DHHS fails to provide a report within the legal timeframes.

## Interim appearances

A grant of legal assistance includes up to four attendances at Court in relation to the interim stage. Lawyers need to get approval from VLA for any extra attendances at Court in relation to the one matter (this is done through applying for an extension on the grant). This must include an explanation about why there are extra hearings.

There were different views about whether this should be reduced (Option 30). VLA staff felt that there should not be a change, as the number was reasonable and a change would impose a significant burden both on lawyers and VLA Assignments staff. The VALS and the FVPLS pointed out that often multiple appearances were required for reasons outside of the client’s control, such as delays in access to services. The LIV and private practitioners made similar points in opposition to a change.

The CECFW supported the change as a move away from court-based activity. The Children’s Court of Victoria and the Commission for Children and Young People supported the change if it leads to cases being dealt with more efficiently.

We looked again at our data. It shows that in 2015/16 the number of hearings claimed by lawyers was:

|  |  |
| --- | --- |
| **Total number of interim hearings claimed** | **Percentage of cases** |
|  | 35 |
|  | 25 |
|  | 16 |
|  | 14 |
| 5 or more | 10 |

This suggests that no change is currently required.

The introduction of docketing in metropolitan Melbourne involves greater case management by magistrates and may have an impact on the number of hearings per matter over time – this will need to be monitored. An examination of the reasons for extensions on grants will help identify common causes and decide whether improvements might be made in the future.

## Conciliation conferences

Conciliation conferences are held in cases in the Children’s Court before they go to a final hearing. They are an attempt to resolve the dispute by agreement. Currently, once a grant of legal assistance is approved, the grant provides for up to two conferences to be claimed. A third and additional conferences can be sought by seeking an extension on the grant.

Concern was raised during the consultation about the number of conciliation conferences. It was proposed that lawyers be required to get an extension of the grant of assistance for a second conciliation conference (Option 31).

We examined our data on conciliation conferences and found that in 2015/16 around half of the matters for which VLA received a payment claim included a payment for a conciliation conference. Of those matters, 75% had only one conciliation conference, and a further 22% (790) had two conferences. Fewer than 100 matters involved three or more conferences.

This does not support a view that the numbers of conferences are excessive. The additional burden of lawyers applying for extensions for a second conference, and VLA assessing these requests, is likely to outweigh any potential saving.

Once again, the introduction of docketing across metropolitan Melbourne may have an impact on the conduct of cases and the number of conciliation conferences. It has been reported that some requests to the Court for a second conference have been refused.

A review of conciliation conferences, conducted on behalf of the Children’s Court of Victoria, found that on the whole the process is effective. A number of actions were made to further improve the process. This included a process for ongoing evaluation of the conference system. The Court reports that the number of conferences that are adjourned, due to the failure of one party to attend, has dropped greatly.

While it does not appear that there is an immediate need for VLA to make changes here, VLA should monitor the conciliation conference process, and liaise with the Court, to identify any significant changes that may occur over time. As with interim appearances, this could include VLA reviewing the reasons lawyers are requesting additional conferences (beyond the two automatically provided for under a grant).

Another issue concerning conciliation conferences that arose during the Review was the payment of the directions hearing fee following a conciliation conference. The fee structure for conciliation conferences allows for:

* preparation: $225 (1.5 hours)
* appearance at the conference: $601 (4 hours)
* directions hearing: $168.

Three hours are set aside for the conferences, but most take between two and two and a half hours. If they take longer than three hours, an hourly fee is paid. A directions hearing is conducted immediately after the conference, to advise the Court of any orders and to set the date for any future hearing. VLA also pays a settlement fee if the matter is resolved. The appearance at Court is generally brief. In these circumstances, it does not seem that the payment of the additional appearance fee for the directions hearing is necessary, and it therefore should be removed.

A further issue raised was the level of preparation for conciliation conferences. We were told that conferences often do not start on time, as lawyers need to take instructions. This may be caused by the late delivery of the DHHS report or because a barrister is appearing and they have not met the client.

For the same reasons as set out above regarding general preparation, the preparation fee is to be paid for work done before the court date. This includes meeting with the client and preparing the information exchange document. There will need to be clear evidence on the lawyer’s file of preparation before Court where the preparation fee is claimed.

**Action 25**

The appearance fee for the post Conciliation Conference Directions Hearing will be removed.

**Action 26**

The conciliation conference preparation fee will be split, with half to be payable for each of the following:

• the development and maintenance of a case strategy

• work performed away from Court, including taking instructions and providing advice and engaging in negotiations.

The practice standards will be amended to make the expectations for claiming these fees clearer.

## Agents and Barristers

The use of agents – arranging a solicitor from another firm to attend at Court – was identified as a risk to the quality of the service provided. Children or parents are required to meet a new person at Court and retell their story.

There were many reports of agents being engaged at short notice and having limited information. The Children’s Court of Victoria said that this "growing practice impacts on the quality of legal representation, undermines the capacity of the legal representative to provide useful or detailed information to the Court and to assist in informed decision-making". It believes that it "can result in unnecessary adjournments or cases incapable of being resolved due to a lack of proper instructions". The Court supported the introduction of guidelines regarding the use of agents, as did the Commission for Children and Young People.

The frequent use of agents is undesirable and not consistent with the idea of continuity of legal representation. Guidelines could set out the way in which this is done (Option 26).

Harrison and Grimberg said that VLA could not determine how a lawyer engages an agent. VLA staff and the LIV were concerned to ensure that any guidelines acknowledge the need to engage agents to deal with urgent matters such as breach proceedings. The FVPLS agreed with the concerns about agents but said that due to its size and the state-wide service it provides, it also needs to use agents. It has a limited number of firms that it will ask to assist where necessary. This form of pre-existing arrangement makes it easier to maintain high-quality services.

It seems that greater clarity is required about the use of agents. The creation of guidelines will reinforce the practice standards that apply to the use of agents and barristers. They will need to take into account urgent situations that arise.

Barristers acting in child protection matters also need specialist skills and legal knowledge. There are only a small number of barristers who regularly appear in child protection cases. Some only occasionally go to the Children’s Court.

All of the submissions that dealt with this issue agreed on the need to better ensure the quality of barristers who were engaged (Option 33). It was suggested that VLA work with the Victorian Bar to increase the number of barristers doing this work and to increase the overall skill level. This may also include more child protection lawyers appearing in contested interim and final hearings.

**Action 27**

Victoria Legal Aid will work with its partners to develop guidelines on the process of engaging other lawyers to appear as the agent of a lawyer acting pursuant to a grant of assistance.

**Action 28**

Victoria Legal Aid will work with its partners including the Victorian Bar to strengthen briefing practices and advocacy in child protection.

## Telephone advice service for lawyers

During our initial consultations, some lawyers, particularly those practising on their own or as the only experienced child protection lawyer in their office, felt they might benefit from a telephone advice service through which they could discuss issues or test ideas with other practitioners.

It was not clear how complex it might be to establish such a service, however, or what the level of usage would be. Our Consultation and Options Paper asked about the viability of such a service or other alternatives (Option 35).

A range of stakeholders supported a telephone advice service, including the CECFW, the WLSV and the Commission for Children and Young People. However, the LIV already provides a similar service, and proposed that VLA work with the LIV to avoid duplication. VLA staff, while seeing the positives, also identified some potential problems. This includes managing conflicts and information barriers.

The provision of this service may be costly, depending on the level of demand, which remains unknown. Recruiting sufficiently experienced lawyers to staff the service and dealing with potential conflicts are potentially significant challenges.

On balance, while there is a role for a service of this nature, it is of lower priority. Without extra funding, we do not propose that any further action be taken to progress this at present. We note, however, that we have proposed the creation of regional networks and court user groups (see Actions 19 and 20).

# Client access

## Improving access to lawyers

The consultations highlighted that some people in the child protection system have difficulty getting access to lawyers.

For example, people in prison or mental health facilities are often excluded from participating in proceedings. They cannot get to Court and so they do not get help from a duty lawyer. Cases may be adjourned while more information is obtained about how long the person may be held and what their view is about the case.

Similarly, there are different approaches in each region about how and when children see their lawyer. In some cases, DHHS staff take children to visit their lawyer, in others the lawyers have to visit the children at school or another nominated place.

If it is to become more client-focussed, the child protection system must make it easier for people to participate. The Consultation and Options Paper suggested that we work with the Children’s Court of Victoria, DHHS, Corrections, the Mental Health Tribunal and others to introduce the use of videoconferencing to improve access for clients (Options 39 and 40). It also suggested that there be clear and consistent processes to help children in out of home care see their lawyer (Option 46).

There was strong support for the modification of processes to allow parents in custody or a mental health facility access to the duty lawyer service. Eight submissions (including the Children’s Court of Victoria) and VLA staff supported this. One submission questioned this option, concerned that lawyers may not be able to act on instructions gained from a telephone conversation where they had not previously met the person.

The use of videoconferencing from prisons and mental health facilities has greatly expanded in recent years. The law now requires most criminal cases in the Magistrates’ Court of Victoria for people in custody to be dealt with by videoconference. Lawyers are able to communicate with their clients in custody using their computer or smartphone. The Mental Health Tribunal regularly conducts hearings by videoconference.

An issue that also arose during the consultations was the difficulty in having representation for a parent who does not have capacity to give instructions, due to their mental health or a cognitive impairment. There has been some doubt about whether the Children’s Court can appoint a litigation guardian for an adult, unlike the clear power to order that a child may be represented on a ‘best interests’ basis. The Office of the Public Advocate has called for the introduction of a litigation guardian scheme. This will require additional funding, and potentially a change in the law to make the position clear. While VLA would not necessarily be the body responsible for managing a litigation guardian scheme, we support the introduction of a process.

There needs to be more consistent processes across Victoria to support children having contact with their lawyer. Increased use of videoconference facilities could be part of this. There was support for this from a number of stakeholders, including Grandparents Victoria and the Commissioner for Children and Young People. Many of the responses said that while videoconferencing was helpful, it should not be used to replace face-to-face contact.

Technology could also be used to increase involvement of people who cannot attend court, for example where an urgent application is heard by a regional court that is distant from the parents’ home (Option 47). There was support for the use of videoconference facilities from VLA staff, Grandparents Victoria, the FINV, the LIV and the Commission for Children and Young People. The DHHS has indicated that it is willing to investigate this.

**Action 29**

Victoria Legal Aid will work with the Children’s Court of Victoria, the Magistrates’ Court of Victoria, the DHHS, Corrections, the Mental Health Tribunal and others to implement the use of videoconferencing or other technology for the purpose of providing advice and, where eligible, representation to people in custody or a mental health facility, who may otherwise be excluded from participating in child protection proceedings.

**Action 30**

Victoria Legal Aid will work with the 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.

## Increasing the number of service providers

There are not enough providers of child protection legal services in regional Victoria. This makes it difficult for people to get the legal help they need. We canvassed this issue in detail in the Consultation and Options Paper, and asked what steps we should take to increase the number of lawyers in child protection.

Increasing the number of CLCs in child protection may be part of the solution (Option 43).

We conducted a two-year child protection pilot with WLSV and LCCLC. Feedback about the pilot services was positive. CLCs often deliver a range of services and are able to address a number of client needs, for example debt problems, family violence and family law proceedings. An independent evaluation of the pilots found that they have been successful in increasing access to services, and the evaluation supports the ongoing funding of these services.

An increase in the number of CLCs providing child protection legal services was supported by several stakeholders, including the WLSV, Youthlaw, the FINV and the Commission for Children and Young People. The Commission noted the benefits of the holistic service that is delivered by CLCs. The LIV suggested that where CLCs could not fill service gaps, fees may need to be increased to attract more private practitioners to do this work.

One issue identified during the consultation was the need to adequately support CLCs as they expand into this area. They may not have delivered child protection services, and it is often difficult to find staff with this experience. A lesson from the pilots is that VLA staff are needed to support CLC staff in the early stages of the process. Arrangements for adequate training support must be included in the design of any future initiatives.

A second issue concerns the method of payment to CLCs. While private practitioners doing child protection work are paid via grants of legal assistance for each individual case, CLCs are paid a lump sum under a contractual model to provide a certain level of services. Where a CLC’s client has a grant of legal assistance, the CLC can also get paid for expenses associated with the case (for example commissioning an expert medical report or briefing a barrister). The VALS said that it would be able to provide more services if it was able to claim its professional costs, as well as expenses, under a grant of assistance. These issues will need to be considered further, together with the evaluation of the pilots, when considering other CLCs who might do this work.

While CLCs may help increase the number of service providers, they will not solve the problem of access in all regions. There may not be a CLC in the area to take on this work, or there may be a need for more than one extra provider.

However, it was not clear that the level of fees under an individual grant was the issue. Rather, it appeared that the smaller volume of work in regional areas made it harder and less attractive for practitioners to dedicate the time and effort to becoming a proficient child protection practitioner.

A similar model to that being proposed above to support more CLCs taking on child protection work might also be explored to encourage private practitioners in some regional areas to take on this work.

**Action 31**

Victoria Legal Aid will continue funding Women’s Legal Service Victoria and Loddon Campaspe Community Legal Centre to provide child protection services and work with community legal centres to identify other geographical areas where CLCs may address unmet need.

**Action 32**

Victoria Legal Aid will explore alternative funding arrangements for private practitioners in regional areas to increase the number of Child Protection panel firms in areas of unmet need.

## Removing the means test

The Consultation and Options Paper asked whether we should remove the means test for a grant of assistance for child protection cases. It was suggested that this would make access easier and that as most people already qualify, it would not have a significant financial impact. However, there's no way of accurately assessing how many people don't meet the means test.

It was also noted that the means test is not applied to child protection matters by legal aid providers in a number of countries with similar systems. This issue will be considered further in the currently running VLA Means Test Review.

# Improving processes

## Duty lawyer service

The duty lawyer service is currently the main way that people first come into contact with child protection legal services.

There were over 2,000 duty lawyer services delivered by VLA staff lawyers in 2015/16. There were a similar number delivered by the private practitioner duty lawyer (PPDL) service, costing around $450,000.

### Duty lawyer guidelines

Despite the significant effort involved, and the importance of the service, there are no guidelines that explain the nature of the service, state who is eligible for the service or ensure consistency of access and quality across Victoria.

The introduction of clear duty lawyer guidelines (Option 44) was supported by the CECFW, the WLSV, the LIV and the Commission for Children and Young People. VLA staff also noted the advantages of guidelines but stressed the need for them to be clear and take into account the need for regional variation.

The PPDL service has a clear structure in metropolitan Melbourne, and accounts for most of the payments for the PPDL. However, almost half of all child protection cases are in regional locations. The PPDL service in regional areas has developed without a clear framework. As a result, there are different rostering and payment arrangements in different places. This leads to inconsistent treatment of our private practitioner partners and clients.

A review of the entire PPDL scheme (including the criminal law PPDL service) is being conducted by VLA’s Legal Practice Directorate. This will identify the elements for designing a PPDL service – allowing VLA Program Managers to work with VLA Regional Managing Lawyers to develop PPDL arrangements that meet local needs. This flexibility is important in child protection, as the arrangements in Melbourne cannot be directly transferred to regional areas. The review of the PPDL scheme will allow for more appropriate arrangements to be put in place in regional areas (Option 45).

### Allocating a client to a duty lawyer

There are also very different arrangements across Victoria around how clients come into contact with a duty lawyer.

In metropolitan Melbourne, the DHHS notifies VLA of all protection applications made to the Children’s Court and VLA provides a duty lawyer from the pool of lawyers who are rostered to provide help on that day.

In a number of regional areas, the DHHS allocates some or all matters directly to lawyers. This can make it difficult to ensure that all parties have a lawyer, particularly in areas where there are a small number of firms on the VLA Panel. In addition, it creates a perception that the lawyers are chosen because they will not advocate as strongly on behalf of their client.

The proposal that a consistent arrangement for the allocation of matters be implemented across Victoria (Option 48) was supported by the Children’s Court of Victoria, the Commission for Children and Young People, the LIV and the CECFW.

The DHHS agreed that it should not be allocating matters to lawyers and that all matters should be referred through VLA. This is consistent with the role of VLA as the coordinator of services in this area and with the proposal to improve the quality of representation for children.

VLA worked with the DHHS to implement this change in the Bendigo region two years ago, introducing an allocations protocol to ensure all matters came through the local VLA office for allocation. This has had some success but concerns remain that the DHHS does not always follow the protocol. VLA has also raised this issue with other local DHHS offices but the responses have varied considerably.

We therefore consider that to effectively implement this change, we should introduce a condition for a grant of legal assistance that the case was allocated by VLA.

In developing consistent allocations protocols and this condition on grants of assistance, we have noted the need to consider issues such as whether a client has previously been assisted by a panel firm and wishes to be assisted by the same lawyers.

We also note that, as discussed earlier, the allocations process should include a clear requirement and process to give Aboriginal and/or Torres Strait Islander children, young people and parents the choice of being assisted by an Aboriginal legal service.

Similarly, to promote continuity of representation (see the earlier discussion), preference will be given to practitioners on both the Child Protection and Youth Crime Panels when referring children and young people. Such a process would not be introduced immediately, giving child protection lawyers time to apply for admission to the Youth Crime Panel if they wish.

### Payment for the first court appearance after the initial duty lawyer service

Not all clients are eligible for a grant of assistance for ongoing legal help after their duty lawyer service. However, where they are, their lawyer will appear for them at the first court date after the initial duty lawyer appearance (which is called the first return date).

Cases rarely resolve at the first return date and are typically adjourned for a conference or further hearing. The Consultation and Options Paper therefore asked whether there should be an adjustment in the payment for a lawyer’s appearance on the first return date, particularly to reflect that this may be more administrative in nature than substantive.

There was strong feedback that the first return date is not necessarily an administrative appearance, and that there are a wide range of possible outcomes. Having considered this issue further, we agree. Further, it would be difficult to pay a different fee depending on the lawyer specifying the nature of what occurred at the first return date in each individual matter. It would cost more to administer such a system than simply to pay the same fee for each first return date appearance as is currently the case, understanding that some appearances are more complex than others.

As discussed above, the number of interim hearings being claimed by lawyers under grants of assistance is also generally low. In the circumstances, no change is proposed.

**Action 33**

Victoria Legal Aid will develop state-wide duty lawyer guidelines for the child protection duty lawyer service, with flexibility to accommodate different regional requirements.

**Action 34**

Victoria Legal Aid will develop a consistent allocations process across the state under which VLA is responsible for referring children, young people and parents to a child protection lawyer and will introduce a condition for a child protection grant of legal assistance that the case was allocated by VLA.

**Action 35**

The Victoria Legal Aid lawyer allocations process will include a preference to firms on both the Child Protection Panel and the Youth Crime Panel when referring children and young people.

**Action 36**

The Victoria Legal Aid lawyer allocations process will give Aboriginal and/or Torres Strait Islander children, young people and parents the choice of being represented by an Aboriginal legal service, where one is available.

1. *Charter of Human Rights and Responsibilities Act 2006* (Vic). [↑](#footnote-ref-1)
2. “Always was, always will be Koori children – systemic inquiry into services provided to Aboriginal children and young people in out-of-home-care in Victoria”, commission for Children and Young People, 2006 [↑](#footnote-ref-2)
3. IMHA is VLA’s [Independent Mental Health Advocacy service](http://www.imha.vic.gov.au/about-us). The Speaking from Experience group is an advisory group of people with lived experience of the mental health system who provide advice to the service to ensure that it is client focused. [↑](#footnote-ref-3)
4. Marina Lalayants, Meaghan Baier, Anne Benedict and Diana Mera, “Peer Support Groups for Child Welfare–Involved Families”, Journal of Family Social Work, Volume 18, 2015 – Volume 5 [↑](#footnote-ref-4)
5. Royal Commission into Family Violence (Victoria) 2016, <http://www.rcfv.com.au/> [↑](#footnote-ref-5)
6. Victorian Ombudsman ‘Reporting and Investigating Allegations of Abuse in the Disability Sector’, 2015, <https://www.ombudsman.vic.gov.au/getattachment/45e28c63-24b0-4efd-b313-85f4f6e44d3f> [↑](#footnote-ref-6)
7. “.as a good parent would…” Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual exploitation whilst residing in residential care, Commission for Children and Young People, 2015, <https://ccyp.vic.gov.au/assets/Publications-inquiries/as-a-good-parent-would.pdf> [↑](#footnote-ref-7)