

February 2019

# Equal justice for a strong, healthy and resilient Latrobe Valley





### **Acknowledgement of country**

The Gippsland Legal Assistance Forum proudly acknowledges the Traditional Owners and custodians of the land on which we are fortunate to live and work, the Gunaikurnai people, and we acknowledge the Boon Wurrung people of the Kulin nation.

We pay our respects to Elders past and present, and emerging leaders. We acknowledge that sovereignty was never ceded and recognise the ongoing resistance, strength, and resilience of Aboriginal and Torres Strait Islander peoples in Victoria and Australia.

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## Use of client stories

We use client stories throughout this report to demonstrate the key issues the community is facing. The case studies are deidentified where necessary in accordance with legislative obligations and are from the local region. Our clients have consented to their use.

# About us



Established in early 2017, the Gippsland Legal Assistance Forum (GLAF) has the following founding members of its Steering Committee:



## Aims

The GLAF aims to:

1. Act as a contact point for legal services assisting disadvantaged and vulnerable individuals in the region
2. Be the primary contact for jurisdictional and collaborative planning being overseen by Victoria Legal Aid and the Federation of Community Legal Centres
3. Provide a forum to enable legal services and communities of interest to exchange information and identify local issues requiring support or response
4. Build the capacity of legal services across the region
5. Coordinate the promotion of legal services and the delivery of community legal education across the region.

## 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.

VLA is 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 with a disability or mental illness, children, the elderly, people from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander peoples, and those who live in remote areas. VLA can help people with legal problems about criminal matters, family separation, 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 line, community legal education, publications and other resources
- legal advice through our Legal Help telephone line and free clinics on specific legal issues
- minor assistance to help clients negotiate, write letters, draft documents or prepare to represent themselves in court
- advocacy to people diagnosed with mental health issues, including cognitive neurological, intellectual and psychosocial disabilities, through our Independent Mental Health Advocacy service
- grants of legal aid to pay for legal representation by a lawyer in private practice, a community legal centre or a VLA staff lawyer
- a family mediation service for disadvantaged separated families
- funding to 40 community legal centres and support for the operation of the community legal sector.

VLA has 15 offices in metropolitan and regional Victoria. People living in regional and remote communities can feel isolated and find it difficult to access legal assistance. Our regional offices play a vital role in servicing the community, providing professional and timely advice to those living in rural and remote parts of Victoria. There are two VLA offices in Gippsland, including one in the Latrobe Valley located in Morwell and one in Bairnsdale.



*Sharing stories, finding solutions*

Established over 16 years ago, Djirra (formerly the Aboriginal Family Violence Prevention and Legal Service Victoria) is an Aboriginal community-controlled organisation with state-wide reach specialising in family violence. Djirra is dedicated to assisting Aboriginal people who experience family violence and sexual assault – predominantly women and children. We provide culturally safe and holistic legal and non-legal support to Aboriginal women and Aboriginal victims/survivors of family violence, including sexual assault.

Djirra provides frontline legal assistance through our Aboriginal Family Violence Legal Service Program, wrap-around support through our Koori Women's Place, outreach and specialist support programs to women in prison, and a range of early intervention prevention programs, community education and wellbeing workshops. We also undertake policy and advocacy work to identify systemic issues for reform and strengthen Aboriginal women's access to justice, safety and equality. Protecting and promoting Aboriginal women's wellbeing and safety is our core business.

The Aboriginal Family Violence Legal Service provides advice, court representation and ongoing casework in the areas of:

- family violence intervention orders
- child protection
- family law
- victims of crime assistance
- where resources permit, other civil law matters connected with a client's experience of family violence such as: police complaints, housing, Centrelink, child support and infringement matters.

Djirra's Aboriginal Family Violence Legal Service is open to Aboriginal men, women and children who have experienced or are at risk of family violence or sexual assault, as well as non-Aboriginal carers of Aboriginal children who are victims/survivors of family violence. This program is not gender specific, however at last count 95 per cent of our clients were Aboriginal women.

Djirra's Aboriginal Family Violence Legal Service has a holistic, intensive client service model where each client is assisted by a lawyer and paralegal support worker to address the multitude of interrelated legal and non-legal issues our clients face. Paralegal support workers, many of whom are Aboriginal women, provide additional emotional support, court support and referral to ensure the client is linked into culturally safe counselling and support services to address the underlying social issues giving rise to the client's legal problem and experience of family violence. This may include assistance with housing, drug and alcohol misuse, social and emotional wellbeing, parenting, financial and other supports.

Djirra has an office in Bairnsdale servicing the East Gippsland region and, in January 2019, opened a new office in Morwell to service the Latrobe Valley. As an Aboriginal community-controlled organisation, Djirra is directed by an Aboriginal Board and has a range of systems and policies in place to ensure we provide culturally safe services in direct response to community need.



Gippsland Legal Community Service (GCLS) is a not for profit community legal centre, auspiced by Anglicare Victoria. Our Guiding Principles, in seeking to promote, protect and enhance the legal rights and responsibilities of vulnerable individuals and groups in Gippsland, are:

**Vision** A just community

**Values** Justice – as our primary commitment – advocacy and education

Access – for the Gippsland community

Excellence – in the delivery of all services

Respect – for all

Inclusivity – understanding, appreciating and respecting difference

Empowerment – community and individual engagement

**Mission** Promote, protect and enhance the legal rights and responsibilities of vulnerable groups and individuals in Gippsland

**Objectives** Promote justice to those experiencing disadvantage by educating, agitating for reform and advocacy

Value and promote accessibility

Strengthen and expand our connection with the Gippsland community

Demonstrate the value, reliability and integrity of the service through accountability.

In achieving our vision and mission, we work in the following areas:

### **Legal Information, Advice and Representation, can be provided in the following areas of law:**

Family law, family violence, intervention orders, victims of crime assistance, mental health law and tribunal advocacy, fines and infringements, debt and tenancy.

### **Legal Education**

GCLS provides a range of both Community Legal Education and Professional Legal Education, within the Gippsland region. This includes, our court room drama programs for schools based on sexting, consent and culpable driving.

### **Access to Justice**

GCLS undertakes and supports a range of programs and campaigns which seek to increase the communities' access to justice in Gippsland by agitating and advocating for law and legal process reform.

Our main office is located in Morwell, and we provide our range of services throughout Gippsland.



Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service (VALS) is an Aboriginal community-controlled organisation. It was established in 1972 by committee and incorporated in 1975. The VALS is committed to caring for the safety and psychological well-being of clients, their families and communities and to respecting the cultural diversity, values and beliefs of clients. The VALS vision is to ensure Aboriginal and Torres Strait Islander Victorians are treated with true justice before the law, our human rights are respected, and we have the choice to live a life of the quality we wish.

We operate in several strategic forums which help inform and drive initiatives to support Aboriginal and Torres Strait Islander people in their engagement with the justice, and broader legal system, in Victoria. We have strong working relationships with the other five peak Aboriginal community-controlled organisations in Victoria and we regularly support our clients to engage in services delivered by our sister organisations. Our legal practice spans across Victoria and operates in the areas of criminal, civil and family law (including child protection and family violence).

Our 24-hour support service is backed up by the strong community-based role our Client Service Officers play in being the first point of contact when an Aboriginal or Torres Strait Islander person is taken into custody, through to the finalisation of legal proceedings. Our community legal education program supports the building of knowledge and capacity within the community, so our people can identify and seek help on personal issues before they become legal challenges.

We seek to represent women, men and children who come to us for assistance in their legal matters and are only hindered in doing this where there is a legal conflict of interest and we cannot act. If this is the case, we provide warm referrals to other suitable legal representatives, which include Victoria Legal Aid, Djirra, community legal centres and private practitioners as appropriate.

# Executive summary

## **Collectively, we aim to promote access to justice for those who would not otherwise have the means to protect their legal rights or respond to claims about their legal responsibilities.**

Our experience and data indicate that the justice system is failing to meet the needs of the Latrobe Valley community. There is increasing legal need, lack of access to justice, and poorer outcomes for our clients in the Latrobe Valley when compared to Melbourne or other regional centres.

When people miss out on early legal support and associated non-legal support services, it increases their vulnerability and risk of having legal problems. Legal problems can also cause adverse health and social consequences, such as stress-related illness, physical ill health, relationship breakdown, loss of income, or financial strain. Ensuring that vulnerable members of the community have timely access to justice and support for their complex needs is a crucial factor in building strong and resilient communities.

We support the attention being given to community-led regional planning and investment in the Latrobe Valley to promote economic and social growth. It provides a unique opportunity to address these issues.

This report highlights a way forward to reduce rates of family violence, support families to care for their children, provide safe and stable housing, reduce delays in the courts and contribute to a stronger Latrobe Valley community for everyone.

## **Investing in community services to strengthen family and community wellbeing**

The Latrobe Valley has high rates of child vulnerability. In Morwell and Churchill, 35.8 per cent and 29.5 per cent of children are developmentally vulnerable respectively, compared with the Victorian average of 7.9 per cent. The numbers of child protection substantiations, protection applications and children in out-of-home care in the Latrobe Valley are among the highest in the state. Aboriginal and/or Torres Strait Islander children are overrepresented in the child protection system and out of home care. They are 8.3 times more likely to be the subject of a child substantiation than non-Aboriginal children in Victoria.

We provide legal assistance to individuals and families in the child protection system to help them to resolve their legal issues. Legal assistance, crucially, involves linking clients into non-legal support services. We know that when parents are supported to access services, they are more likely to address child protection concerns and care for their children safely in the family home.

We are, however, seeing six to twelve-month wait times for our clients to access support services in the Latrobe Valley, meaning they cannot address the non-legal issues that may be impacting on or exacerbating their child protection problems. The recent introduction of legislative permanency time frames mean that delays can have significant adverse impacts on the outcome of a client's legal matters, for example precluding family reunification.

We recommend mapping of service demand and gaps in the Latrobe Valley, so that waitlists are addressed, services are resourced to intervene earlier, and timelier, specialised, and more culturally safe legal and non-legal support is available for families.

## **Responding to family violence**

The Latrobe local government area has the highest rates of family violence incidents per population in the State.

For women experiencing family violence, limited access to family violence services or affordable housing in the Latrobe Valley may see them and their children continue to experience family violence and increases the risk of homelessness. For those who use violence, there are six to twelve month waits for access to Men's Behaviour Change programs.

Connecting legal assistance services into the new Inner Gippsland Orange Door (including Aboriginal community-controlled legal services) is one practical and holistic way legal problems can be identified and addressed early and in conjunction with a person's non-legal problems.



### **Supporting access to social and quality housing**

We assist tenants facing eviction and at risk of homelessness. Housing issues that we see occurring state-wide are more prevalent in the Latrobe Valley. Tenancy issues can be caused by, or exacerbate, related legal and non-legal issues. We are seeing seemingly minor legal issues escalating when individuals experience risk of or actual homelessness and/or other tenancy problems.

Regulations are failing to ensure that landlords maintain properties in good repair, tenants rarely assert their legal rights for fear of being evicted, and the lack of accommodation impacts on compliance with bail conditions. For many tenants, these issues mean living in housing that is sub-standard, insecure and unsafe, or having to wait far longer than they should for an essential repair.

We recommend planning for future accommodation needs and increasing the social housing stock in the region, as well as setting out clear minimum requirements for rental property standards in Victoria.

### **Improving timely access to the courts**

We are seeing overwhelming demand in the Latrobe Valley law courts which is resulting in long delays. The number of finalised family violence intervention order applications has increased by 50 per cent in five years. There is not enough physical space in the courts to hear more matters and delays in the Latrobe Valley are significant. Some lawyers are having to discuss legal issues with clients in public areas, which do not provide a confidential or suitable environment.

For those who have been charged, timely resolution is central to procedural fairness and equality before the law – concepts which underpin rule of law in Australia and are central to access to justice. Delays also impact considerably on victims, children and others affected by legal proceedings.

For many court users, coming to court is the first time they have contact with legal or social support services, which provides an opportunity for the process to be an intervention for positive change in their lives. We want to see additional resourcing to increase capacity at the Latrobe Valley law courts in the face of increasing demand.

# Summary of recommendations

## **Address Latrobe Valley legal need, by:**

Explicitly including addressing legal need and access to justice issues as a priority in local regional planning documents and government funding and policy decisions.

## **Invest in community services to strengthen family and community wellbeing, by:**

Completing a map of service demand and gaps in the region to inform a focused response to address service waitlists, provide funding to services to intervene earlier, and ensure timely support is available.

## **Support culturally safe service provision, by:**

Investing in culturally safe legal assistance providers, including Aboriginal community-controlled legal services, and specialist support services to deliver more legal and support services and outreach to the Aboriginal community in the Latrobe Valley, including early intervention services to prevent legal problems from escalating.

Providing training and professional development to improve the cultural competency of all practitioners in the community service and justice sector delivering services in the Latrobe Valley.

## **Strengthen the response to family violence, by:**

Establishing a clear legal intake, triage and referral process in The Orange Door (including to culturally safe and community-controlled legal services).

Funding Aboriginal community-controlled organisations and cooperatives to increase their family violence service and support delivery to the Aboriginal community in the Latrobe Valley and recognising the right for Aboriginal victim survivors to access services from Aboriginal community-controlled legal services.

## **Support access to safe, affordable, quality housing, by:**

Including an explicit focus in the Latrobe Valley economic development agenda on addressing affordable housing issues in the Latrobe Valley, including planning for future accommodation needs and increasing the social housing stock.

Improving compliance with rooming house registration requirements, including registration of unregistered rooming houses, to make sure the regulations are operating as they should.

Introducing clear requirements under the new Victorian laws for minimum rental property standards, covering health and safety, security and privacy and energy efficiency.

## **Improve direct access to the courts, by:**

Providing additional resourcing to increase capacity at the Latrobe Valley Magistrates' Court and Koori Court in the face of increasing demand, including to increase the size and improve the space of the courts to accommodate more services and additional lists to meet demand; and for magistrates, prosecutors and legal assistance services (including culturally safe legal services).

Investing in support services that sit alongside the criminal law court process so that accused at the Latrobe Valley Magistrates Court can access non-legal support services available at other Magistrates' Courts.

Exploring options with key stakeholders including GLAF members, Victoria Police Prosecutions, the DHHS and the Magistrates' Court to improve listing practices.

# Introduction

Access to justice, including upholding individuals' rights and responsibilities, underpins rule of law in Australia. When access to justice is delivered appropriately and effectively, it contributes to better health and wellbeing for individuals and communities and it can break cycles of inter-generational disadvantage.

Yet in many cases, vulnerable people are missing out on timely and effective access to justice, increasing their risk and vulnerability.<sup>1</sup>

GLAF members aim to promote state-wide access to justice for those who would not otherwise have the means to protect their legal rights or respond to claims about their legal responsibilities. Legal assistance is crucial in this regard, but legal aid representation is only available for eight per cent of Australians, despite 14 per cent of the population living under the poverty line,<sup>2</sup> let alone many more people who cannot realistically afford to pay for a lawyer.

Systemic lack of access to justice includes challenges accessing legal information, inability to access support services to prevent exacerbation of problems, inability to resolve legal problems in a timely way (i.e. where there are court delays), the inability to afford private legal advice or assistance to navigate the formal justice system, and the particular impact that laws, practices and decision-making can have on vulnerable groups within the community.

In the case of family violence, lack of access to justice increases vulnerability and the risk of additional harm to women and children. It also contributes to cycles of intergenerational trauma and disadvantage within communities and disproportionately affects particular communities.

Your ability to access legal help and justice also continues to be linked to the region and jurisdiction in which you live.<sup>3</sup>

There are critical gaps in access to and attainment of justice in parts of Victoria. This is particularly evident in regional and rural areas, where there are 'hotspots' of high legal need. One such regional area is the Latrobe Valley, where high rates of family violence, crime, and child protection notifications show that significant disadvantage and child vulnerability intersects with greater, and increasing, legal need.<sup>4</sup>

Limited availability of services and significant demand sees many people unable to access the supports they need, particularly families facing disadvantage and with complex needs. For people experiencing family violence, limited access to family violence services, men's behaviour change services or affordable housing may see them, and their children, continue to experience family violence and increases the risk of homelessness. For parents whose children have been removed, the inability to access mental health, disability, or drug and alcohol services diminishes the likelihood of children returning to the family home and parents being able to care for their children in a safe and nurturing home environment.

For certain groups, including Aboriginal women and particularly those experiencing family violence, intersecting forms of discrimination compound barriers to accessing justice and support. A lack of access to culturally safe and specialist services in these instances can exacerbate under-reporting, leaving Aboriginal women feeling they have nowhere to turn for support and forcing experiences of family violence 'underground' to the detriment of the safety of women, children and communities.

Often due to lack of support, more people are entering the justice system than previously and becoming entrenched in the system. As noted in the State Government's Access to Justice report, vulnerability to legal problems is cumulative: each time a person experiences a legal problem, the likelihood of experiencing an additional problem increases.<sup>5</sup>

1 Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No. 72, Canberra, 2014) Vol 2, 639.

2 Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No. 72, Canberra, 2014) Appendix H.

3 Victoria Legal Aid, *Research Brief: Hotspots of legal need*, (Victoria Legal Aid, 2014) 8.

4 Ibid.

5 Department of Justice and Regulation (VIC), *Access to Justice Review Volume 1 Report and Recommendations*, (2016) 57.

Just as social and health problems can exacerbate legal problems, legal problems can cause adverse health and social consequences, such as stress-related illness, physical ill health, relationship breakdown, loss of income, or financial strain.<sup>6</sup>

For many court users, coming to court is the first time they have contact with legal or social support services, which provides an opportunity for the process to be an intervention for positive change in their lives. Timely legal and non-legal assistance and support is crucial to preventing problems from becoming entrenched and reaching crisis point.

Economic disadvantage can also increase vulnerability to legal problems.<sup>7</sup> There is a risk that economic development challenges facing the Latrobe Valley will exacerbate the community's vulnerability to legal problems. These challenges include the closures of Hazelwood Power Station and the Carter Holt Harvey Timber Mill and high levels of unemployment.

In response to these economic development challenges, substantial investment is flowing into the region. GLAF members support this investment and the attention to regional planning and the voice of regional communities in investment decisions, often via structures like the Latrobe Valley Authority and the Gippsland Regional Partnership. This work is focused on strategic planning, supporting community development initiatives and building strong and resilient communities, which is essential if the Latrobe Valley is to respond to the pressing economic development challenges.

This agenda, however, should also take into account the need to prevent the exacerbation of legal problems so that people can achieve meaningful change in their lives. This will be important for achieving economic development that is sustainable and equitable, and important if existing legal need is not to be exacerbated.

This snapshot report highlights how the justice system is currently failing to meet the needs of the community in the Latrobe Valley. It also explores how to respond to the issues affecting legal need and access to justice in the Latrobe Valley.

Additional resourcing of early intervention and service planning that takes account of access to justice (including diverse needs of particular cohorts) will be essential to improve access to and timeliness of support and increase provision of legal and non-legal services.

Ultimately this is about reducing rates of family violence, supporting families to care for their children, providing safe, clean and stable housing so people can provide a home for their family, and responding to disadvantage in a comprehensive way to sustainably tackle crime rates.

A comprehensive and effective economic development plan for the Latrobe Valley should therefore take vulnerability into consideration, including legal need, if the plan for the region is to effectively respond to the suite of challenges facing the region.

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6 C. Coumarelos, et al., *Legal Australia-Wide Survey: Legal Need in Victoria*, (Law and Justice Foundation of New South Wales, 2012) 20-23.

7 Ibid, 82.

# Access to justice and legal need in the Latrobe Valley

The Latrobe Valley is a region in Gippsland, Victoria, home to approximately 164,719 people. It comprises three Local Government Areas (LGAs) in the region of Gippsland: the Baw Baw Shire, Wellington Shire and City of Latrobe.<sup>8</sup> The major towns in the region and population levels are outlined below.

**Table 1:** LGAs, major towns and population within the Latrobe Valley

LGA	Major towns	Population
Latrobe	Morwell, Moe, Traralgon	73,257
Baw Baw	Warragul	48,479
Wellington	Sale	42,983

As part of VLA's provision of legal assistance in the Latrobe Valley, it funds private practitioners and community legal centres (CLCs) to deliver legal assistance. The main CLC in the region is Gippsland Community Legal Service (GCLS). Djirra (formerly the Aboriginal Family Violence Prevention Legal Service) and the Victorian Aboriginal Legal Service (VALS) deliver services in the region largely through funding separate to that provided by VLA.

The services VALS and Djirra provide to Aboriginal and/or Torres Strait Islander individuals and families in the region are limited due to resource constraints. VALS currently has one full time employee in the Latrobe Valley region, being a Client Services Officer (CSO). The CSO is not a legal role, but a community services role. The purpose of the CSO is to assist Aboriginal clients in the area with day-to-day aspects of dealing with legal matters, such as attending court.

VALS currently has one criminal lawyer on circuit to the region, who also assists Aboriginal people in the region with family and civil law matters. VALS' family lawyers service the courts in person on an as-needed basis, but there is no VALS duty lawyer. Similarly, VALS will assist Aboriginal clients attending the Latrobe Koori Courts but does not have capacity to supply a duty lawyer to the Koori Court.

Djirra opened an office in Morwell in January 2019, staffed by a Senior Lawyer and Paralegal Support Worker who service the Latrobe Valley region. Djirra's Morwell staff provide holistic legal advice, representation and ongoing casework in family violence, child protection, family law and victims of crime matters, and where resources permit other civil law issues such as debt and infringements, tenancy, police complaints and more. Djirra's paralegal support worker provides additional non-legal support and referral to assist with safety, risk assessment, counselling and socio-economic issues underlying our clients' legal issues. This includes financial assistance through the provision of family violence flexible support packages.

In addition, Djirra has long delivered a suite of early intervention prevention programs across the state and periodically brings these programs to communities across the Latrobe Valley. Djirra's early intervention prevention programs include Sisters Day Out, Dilly Bag and Young Luv which support Aboriginal women's resilience and break down barriers to reduce vulnerability to violence and strengthen Aboriginal women's connection to culture, identity and wellbeing.

<sup>8</sup> The 'Latrobe Valley' is not a clearly defined area. In line with current descriptions of the Latrobe Valley by the State Government (including the Latrobe Valley Authority and Regional Development Victoria), we are using the term to encompass the Latrobe City, Baw Baw and Wellington LGAs. For more information, see: <https://lva.vic.gov.au/about-the-authority/>

## Legal services in the Latrobe Valley

VLA data on legal assistance services provided in the Latrobe Valley indicates high legal need. In the 2017-18 financial year, VLA provided 8,783 total legal services<sup>9</sup> in the Latrobe Valley, including:

- 2,740 substantive grants of aid;
- 3,942 legal advice and information services; and
- 2,101 duty lawyer services at court.<sup>10</sup>

Of these services, the majority were delivered in the Latrobe LGA (5,334), with 1,908 in the Baw Baw LGA and 1,541 in the Wellington LGA.

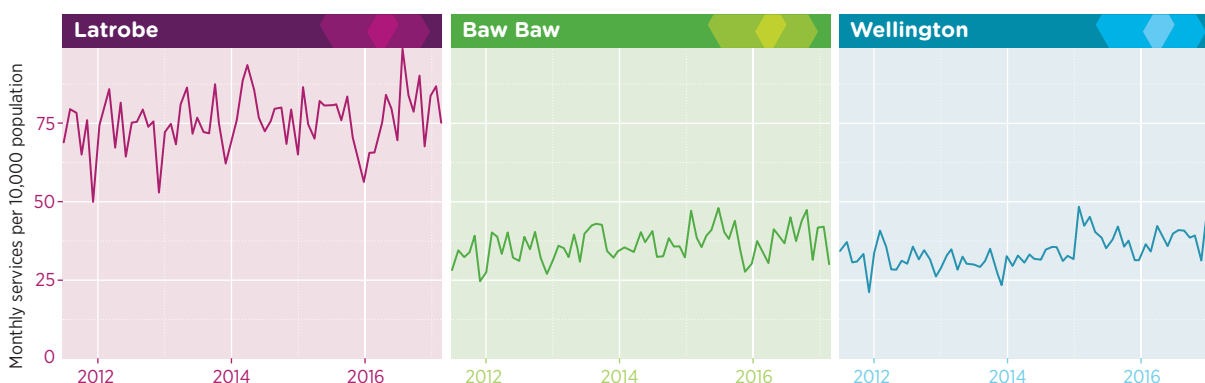
The following table provides a breakdown of the services provided for legal issues that VLA commonly assists with in the Latrobe Valley and are discussed in this report.

**Table 2:** Legal services provided in child protection, family violence intervention orders, tenancy and summary crime matters in the Latrobe Valley in 2017-18

Matter	Duty lawyer	Advice and information	Substantive grant	All legal services (incl. minor files)
Child protection	223	178	772	1,173
Family violence	581	466	107	1,154
Tenancy	4	176	0	180
Summary crime	1,128	726	1,408	3,259

The following graphs show the monthly services provided per 10,000 population over the last five years (and includes VLA delivered services as well as those delivered by private practitioners and CLCs). These graphs show a high and increasing rate of service provision in the Latrobe LGA when compared with a lower and steadier, but still increasing, rate of service provision in Baw Baw and Wellington LGAs. The GCLS saw a 500 per cent increase in demand in the 2015-2016 year on the previous year, with 70 per cent of clients seeking assistance in the areas of family violence and family law.<sup>11</sup>

**Figure 1:** All legal problems; monthly services provided per 10,000 population, by year



<sup>9</sup> Services include in-house duty lawyer services, legal advice, legal information, minor work files, and substantive grants of assistance provided by CLC lawyers and private practitioners.

<sup>10</sup> Duty lawyer services include services provided by VLA staff and private practitioners but not CLCs.

<sup>11</sup> Gippsland Community Legal Service, *Submission to the Australian Government Parliamentary Inquiry to Consider Family Violence in the Family Law System*, (2017) 2.

## Legal need in the Latrobe Valley

Legal need can be measured in a few ways. The Need for Legal Assistance (NLAS) Capability indicators are proxy measures for people likely to require legal assistance when encountering a legal problem based on the number of people with a low income and low level of education.<sup>12</sup> They show a high rate of people being likely to require legal assistance in the Latrobe Valley. The Latrobe LGA has the tenth highest rate of legal need in Victoria.<sup>13</sup>

**Table 3:** Number of people, and rate per 100 people, likely to require legal assistance in the Latrobe Valley, according to NLAS Capability indicators; Rate of Aboriginal and Torres Strait Islander people likely to require legal assistance

LGA	Number of people	Rate per 100 people	Rate of Aboriginal and Torres Strait Islander people likely to require legal assistance
Latrobe	5,619	12.1	0.7
Baw Baw	2,625	8.9	0.4
Wellington	2,792	10.5	0.6
Victoria	3,678	7.4	0.3

Aboriginal and/or Torres Strait Islander communities in the region experience high levels of legal need. According to the 2016 ABS census, there were 1,180 Aboriginal and/or Torres Strait Islander people living in the Latrobe Valley, making up 1.6 per cent of the Latrobe Valley population. This is double the state average, with Aboriginal and/or Torres Strait Islander people making up 0.8 per cent of Victoria's overall population.

Victoria Police are required to notify VALS whenever they arrest an Aboriginal and/or Torres Strait Islander person. In 2017-18, police made 600 notifications to VALS in the Latrobe Valley region, which shows there is very high legal need in the region (particularly when considering population size).<sup>14</sup>

In the same period, there were only 17 civil law inquiries to VALS from the Latrobe Valley postcodes, indicating that there is low awareness among the Aboriginal community of the types of legal assistance available for tenancy and debt issues.

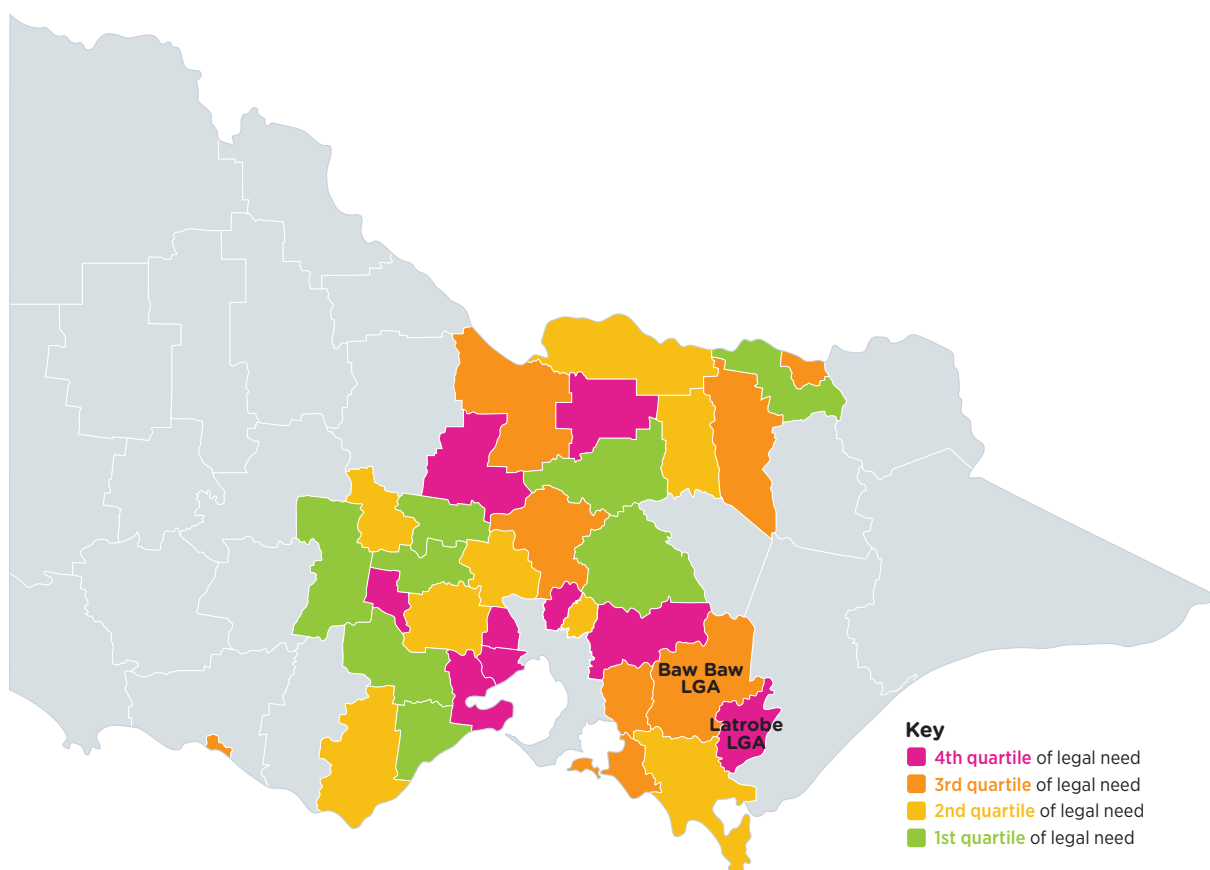
<sup>12</sup> Law and Justice Foundation of New South Wales, 2018 Collaborative Planning Resource, (Law and Justice Foundation of NSW, 2017) <<https://public.tableau.com/profile/law.and.justice.foundation.of.nsw#!/vizhome/2018CPRPrioritygroupsbyLGAAllAustralia/Home>>.

<sup>13</sup> Ibid.

<sup>14</sup> This number does not include Aboriginal people from the Latrobe Valley arrested in other regions, as the information is collated from the police station postcode.

The map below uses the NLAS capability indicators to categorise LGAs accordingly to their predicted level of need (the coloured quartiles) and comparative LGAs (according to geographic areas: Major cities; Inner Regional; Outer Regional). There are four categories of legal need: '1' being the lowest level of need and '4' being the highest.

**Figure 2:** Quartiles of predicted legal need in Inner Regional Victoria, based on NLAS capability indicator data



The map shows that compared with similar regional LGAs in Victoria, the Latrobe LGA (inner regional) is the fourth quartile of legal need, the highest level (coloured pink). Within their categories, the Latrobe Valley LGAs are high on the tally of need: Latrobe experiences the highest level of legal need compared to similar inner regional areas and Wellington experiences the third highest level of legal need compared to similar outer regional areas. Baw Baw is in the third quartile of need (second highest) in the inner regional area.

GLAF has undertaken forecasting of legal service demand to inform regional service planning. The forecasting shows that demand will continue to grow for all legal matters, with the demand most notable in the Latrobe LGA and particularly for family violence legal services. Increases are also evident in summary crime matters in the Baw Baw and Wellington LGAs.



## Drivers of legal need

Legal need in the Latrobe Valley is driven by the level of disadvantage, rates of crime, family violence, child protection notifications, and unemployment (in addition to education and income levels). Some groups, such as Aboriginal and/or Torres Strait Islander communities, are more likely to experience higher levels of legal need and multiple, complex legal problems due to historical policies of dislocation, child removal and colonisation.

The data in the table below demonstrates the prevalence and concentration of legal need and access to justice issues in the Latrobe Valley. This data is supported by the practice experience of our lawyers who bear witness to the growing legal need in the region and its impact on the health and wellbeing of clients and the broader community.

**Table 4:** Latrobe Valley data driving legal need

<b>Disadvantage</b>	The Socio-Economic Indexes for Areas (SEIFA) ranking for Latrobe in 2016 shows that it was one of the most disadvantaged LGAs in Victoria (number seven). <sup>15</sup> Gippsland records one of the highest percentages of children with families reporting financial hardship. <sup>16</sup>
<b>Gambling</b>	DHHS data shows the Latrobe LGA has high rates of economic losses due to gambling. In 2015-16, the total amount of money lost on electronic gaming machines located in the Latrobe LGA, per head of adult population, was \$769.00. This is the fourth highest loss per head of adult population in the state. <sup>17</sup> The total gambling loss for the Latrobe LGA was over \$110 million.
<b>Crime</b>	The Latrobe LGA has the second highest rate of criminal incidents per 100,000 population (12,896.1) in the state, after Melbourne.  The Latrobe Valley more broadly (including the Baw Baw and Wellington LGAs) recorded 15,407 criminal incidents in 2017-18. <sup>18</sup>
<b>Family violence</b>	The Latrobe LGA has the highest rates of family violence incidents per population in the state (3482.4 per 100,000 population).  In 2017-18, the Latrobe Valley (including the Baw Baw and Wellington LGAs) recorded 4,271 family incidents. <sup>19</sup>  Aboriginal women are 25 times more likely to be killed or injured as a result of family violence in Victoria than non-Aboriginal women. In Djirra's on-the-ground experience, highly disproportionate rates are also reflected in the Latrobe Valley.

<sup>15</sup> Department of Health and Human Services (Vic), *Homelessness and housing reform Inner Gippsland*, (Victorian Government, 2016) 4.

<sup>16</sup> Department of Education and Early Childhood Development, *The state of Victoria's children report: A report on how children in regional and rural Victoria are faring*, (2011) 28.

<sup>17</sup> DHHS, Total Gambling Losses 2015-16, Service data.

<sup>18</sup> Crime Statistics Agency (Vic), *Explore crime by location*, (Updated 18 July 2018) <<https://www.crimestatistics.vic.gov.au/explore-crime-by-location>>

<sup>19</sup> Crime Statistics Agency (Vic), *Victoria Police, Family incident rate per 100,000 population and number of incidents by local government area*, (Updated 18 July 2018) <<https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/victoria-police>>

<p><b>Aboriginal and/or Torres Strait Islander incarceration</b></p>	<p>Aboriginal people in Victoria are more than 12 times more likely to be incarcerated than non-Aboriginal people.<sup>20</sup></p> <p>The rates of Aboriginal incarceration in Victoria are consistent with national levels, which state that Aboriginal and Torres Strait Islander men are 11 times more likely to be incarcerated than non-Indigenous men, while Aboriginal and/or Torres Strait Islander women are 15 times more likely to be incarcerated. In Victoria, 1 in 10 women in prison identify as Aboriginal – the fastest growing prison population.<sup>21</sup> Almost 90 per cent of Aboriginal and Torres Strait Islander women in prison have experienced family violence, sexual abuse or both – and many have experienced multiple forms of abuse over many years.<sup>22</sup></p> <p>In 2017, the rate for Aboriginal and/or Torres Strait Islander people was 1,833.9 per 100,000 adults compared with 145.4 for all Victorians.</p> <p>Although this data is state-wide, the high population of Aboriginal people in the Latrobe Valley and our experience of high legal need among Aboriginal communities in the region reflects this data.</p>
<p><b>Child protection reports</b></p>	<p>While the rate of child protection reports in a single year across Victoria is just over 30 per 1,000 Victorian children, in the Gippsland region this rate is more than doubled, at 66 per 1,000 children.<sup>23</sup></p> <p>Aboriginal children are 8.3 times more likely to be the subject of a child protection substantiation than non-Aboriginal children in Victoria. In 2015–16, there were 80 substantiations per 1,000 children, more than double the rate of 38 per 1,000 in 2007–08.<sup>24</sup> As at 30 June 2016, there were 1,876 Aboriginal children in out-of-home care, representing a 24 per cent increase in 12 months and the highest number of children in care over the last decade.<sup>25</sup></p> <p>Although this data is state-wide, the high population of Aboriginal people in the Latrobe Valley and our experience of high legal need among Aboriginal communities in the region reflects this data, as do recent reports of the Commission for Children and Young People.</p>
<p><b>Substantiated emotional and physical harm</b></p>	<p>Gippsland has had the highest rates of substantiated emotional harm (6.5 per 1,000 population) and physical harm (4.5 per 1,000 population) for children, compared with the mean metropolitan rates (2.8 per 1,000 population and 1.8 per 1,000 population respectively).<sup>26</sup></p>
<p><b>Children on a protection order and in OOHC</b></p>	<p>Gippsland has had the highest rates of children on a Protection Order (11.4 per 1,000 population), and the highest rates of children and young people in out-of-home care (9.7 per 1,000 population).<sup>27</sup></p>

20 Australian Bureau of Statistics, *Prisoners in Australia*, Cat. No. 4517.0, (2017).

21 Ibid.

22 Corrections Victoria, *Prisoner Experiences of Family Violence*, (6 September 2016), 2016, 5.

23 P. Cummins, D. Scott and B. Scales, *Report of the Protecting Victoria's Vulnerable Children Inquiry Volume 1*, (Department of Premier and Cabinet 2012) xxxii.

24 Victorian Government, *Victorian Government Aboriginal Affairs Annual Report*, (2017) 11.

25 Ibid.

26 Department of Education and Early Childhood Development, above n 16, 97. NB: More recent is difficult to obtain because limited data is available on the regional location of child protection reports and substantiations, as this information is generally reported at a state-wide level.

27 Ibid.

<p><b>Unemployment</b></p>	<p>The Latrobe-Gippsland region has an unemployment rate of 6.9 per cent, compared to the Victorian unemployment rate of 6.6 per cent; within the Latrobe LGA it rises to 9.5 per cent.<sup>28</sup></p> <p>The unemployment rate is almost three times higher for Aboriginal Victorians than the general Victorian population (16 per cent compared to six per cent).<sup>29</sup></p>
<p><b>Low education attainment</b></p>	<p>A high percentage of people in the Latrobe LGA have not completed Year 12 (62.4 per cent).<sup>30</sup></p> <p>A low percentage of people have completed a higher education qualification (26.9 per cent) compared with all Victoria (45.7 per cent).<sup>31</sup></p>
<p><b>Low income</b></p>	<p>In the 2016 ABS census, the median weekly household income is \$1,078 in the Latrobe LGA. Around 28 per cent of households are on a weekly income of less than \$650, and just over nine per cent of households are on weekly income of more than \$3,000, showing that the region is significantly disadvantaged with respect to income, compared with the Victorian median weekly household income.<sup>32</sup></p> <p>The median weekly household income for Aboriginal people living in the Latrobe Valley was \$917, which is lower than the Victorian average of \$1,200.</p>
<p><b>Low income families with children</b></p>	<p>About 13.6 per cent of low income families in the Latrobe LGA, those with incomes under \$33,761 per annum and receiving the Family Tax Benefit, have children under 16 years of age.<sup>33</sup> This is a high percentage given the highest rate for an LGA in the state is 15.2 per cent.</p>

Broader economic change is also on foot in the Latrobe Valley. Closures and changes in local industries are creating challenges for the region's economy and community. The closures of the Hazelwood Power Station and Carter Holt Harvey Timber Mill, for example, have resulted in hundreds of workers losing employment and entering the local labour market at the same time.<sup>34</sup>

The social, economic, political and cultural conditions in which people live can shape their health and wellbeing. Experience of low socioeconomic status, social disadvantage, unemployment and poor housing can increase the risk of ill health and poor health outcomes.<sup>35</sup> GLAF members are particularly concerned about the correlation of high rates of unemployment (9.5 per cent) with the other drivers of legal need identified in the table above, given that individuals who are unemployed and experiencing disadvantage are more likely to have unmet legal needs and experience poorer health outcomes.<sup>36</sup>

28 REPLAN Economy, *Latrobe (C) (Vic.) Economy Profile*, (June 2018). <<https://www.economyprofile.com.au/Latrobe/trends/unemployment>>

29 Victorian Government, above n 24, 12.

30 DHHS Service Data, *Relevant statistics by LGA, Economics, employment and education*.

31 Australian Bureau of Statistics, *2016 Census QuickStats, Latrobe (C) (Vic.)*, (2016). <[http://www.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/LGA23810?opendocument](http://www.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/LGA23810?opendocument)>

32 Ibid.

33 Ibid.

34 Regional Development Victoria, *Latrobe Valley Industry and Employment Roadmap*, (State Government of Victoria, 2012), 8.

35 Australian Institute of Health and Welfare. *Australia's health 2016*. Australia's health series no. 15. Cat. no. AUS 199. (Canberra: AIHW 2016), 131.

36 Productivity Commission, above n 1, 107.

Legal problems have a range of adverse health and social consequences, including stress-related illness, physical ill health, relationship breakdown, loss of income, or financial strain.<sup>37</sup> In the Legal Australia-Wide Survey, family-related legal problems contributed to stress-related illness in 40.1 per cent of cases. Physical ill health was commonly reported for legal problems related to the category of family-related legal problems (33.4 per cent), and about half (55.9 per cent) of family legal problems resulted in income loss or financial strain.<sup>38</sup>

Higher rates of legal need and disadvantage in the Latrobe Valley are also intersecting with higher levels of child vulnerability. How well children develop in their early years, linked to their socio-economic circumstances, sets the foundation for their health and wellbeing in adulthood.<sup>39</sup> In addition to the high rates of substantiated emotional and physical harm and children in the child protection system outlined in Table 4, data from the 2015 Australian Early Development Census show children in the Latrobe Valley are far more likely to be developmentally vulnerable compared with the Victorian or Australian average.

In Victoria, the percentage of children who are developmentally on track (for the physical health and wellbeing domain in 2015) is 80.9 per cent. However, in the Latrobe LGA this drops to 71.9 per cent and in the town of Morwell it drops to 56.4 per cent. Similarly, in Victoria 7.9 per cent of children are developmentally vulnerable and in Morwell this rises to 35.8 per cent.<sup>40</sup> Table 5, below, provides more detail about child vulnerability in some of the main communities within the Latrobe LGA.

**Table 5:** Physical health and wellbeing domain results – showing national, state/territory, LGA and suburb levels (2015)<sup>41</sup>

Region	Developmentally on track (%)	Developmentally vulnerable (%)
Australia	77.3	9.7
Victoria	80.9	7.9
Latrobe (LGA)	71.7	15.6
Boolarra/Yinnar/ Hazelwood	81.1	7.5
Churchill	59.0	29.5
Moe/Hernes Oak	71.6	11.0
Morwell	56.4	35.8
Traralgon	77.8	6.0

37 C. Coumarelos et al., above n 6, 82.

38 Ibid, 86.

39 Australian Institute of Health and Welfare, above n 35, 131.

40 AEDC, *Community Profile 2015 Latrobe*, VIC, (2016) 35.

41 Ibid.

## Regional priorities

The Victorian government recognised that the economic challenges facing the region would have several additional effects on the community, including losing friends and family who are forced to move to find new employment, social isolation, financial stress and family breakdown, flow on effects to local industry and businesses, and at a community level the additional pressure on community organisations and the health system.<sup>42</sup> There has been significant investment in the Latrobe Valley region in recent years to respond to these challenges.

The economic development agenda is being driven by Regional Development Victoria (and the Gippsland Regional Partnership) and the Latrobe Valley Authority, as well as other local bodies such as the Latrobe Health Assembly. The Latrobe Valley Authority supports workers and businesses affected by the closure of the Hazelwood Power Plant and Mine, builds infrastructure that meets community needs and creates jobs, and works collaboratively with the community. Similarly, the Gippsland Regional Partnership priorities are focused on:

- diversifying the local economy and industry;
- improving skills and education opportunities;
- boosting tourism;
- developing new energy technologies;
- family and community wellbeing.<sup>43</sup>

These bodies, through programs such as the Worker Transition Service, Back to Work Scheme, and Economic Facilitation Fund, have already seen many families supported to access education and employment opportunities.

The Latrobe Health Assembly and recently appointed Latrobe Health Advocate also play a key role in driving systemic change to improve family and community health and wellbeing, including through the development of the Latrobe Health Innovation Zone. The Latrobe Health Advocate's initial priorities are addressing drugs and alcoholism, mental health and improvements to palliative care. The Latrobe Health Assembly has a similar focus on drugs and alcohol, mental health, and safe families.

These priorities are clearly important, but they do not explicitly mention legal need in the community or access to justice or recognise the links between these economic and health priorities and the legal issues people face. They could benefit from recognition that legal problems can exacerbate, or be exacerbated by, social and economic challenges.

## Looking forward

The GLAF members provide legal assistance to the most vulnerable individuals and families in the Latrobe Valley. They are often experiencing more than one of the problems above and require a coordinated response to resolve their problems and prevent them from becoming entrenched.

In our experience, many of these problems are exacerbated by substantial delays in the justice system and gaps in non-legal service provision. These issues are detailed in this report.

For example, families cannot access housing or emergency accommodation to prevent homelessness. Parents wanting to address their mental health, disability, or drug and alcohol issues so they can provide a safe home for their children, cannot access services and resolve the concerns of the child protection agency. There are long wait lists for hearings in the local Magistrates' Court. This is forcing clients to make difficult decisions to forgo their rights to procedural fairness to resolve their problems more quickly. Isolation and public transport difficulties exacerbate these issues.

<sup>42</sup> Regional Development Victoria, above n 34, 9.

<sup>43</sup> Gippsland Regional Partnership, Our Regional Priorities and Outcomes, 2017.  
<<https://www.rdv.vic.gov.au/regional-partnerships/gippsland/priorities>>

These issues are already prevalent, as this report documents, and have a wider impact on the health and wellbeing of the entire community.

In this context, it is imperative that timely assistance to individuals and families in the community is available to prevent legal and non-legal problems from escalating, reaching crisis point and becoming entrenched.

We would like to see the link between legal problems and social problems explicitly recognised in local regional planning documents. To ensure sustainable and equitable economic development, it is critical that legal need and access to justice issues are accepted as a central part of the focus on economic development and community health and wellbeing in the Latrobe Valley, including in regional planning documents and priorities.

Explicitly addressing access to justice needs in government funding and policy decisions for the Latrobe Valley will ensure government is effectively responding to the suite of challenges the community is facing, which are at risk of exacerbation given current economic development challenges.

### **Recommendation**

**Explicitly include addressing legal need and access to justice issues as a priority in local regional planning documents and government funding and policy decisions.**

# Investing in community services to strengthen family and community wellbeing

GLAF members provide legal assistance to individuals and families to help them to resolve their legal issues. Legal assistance, crucially, involves linking clients into non-legal support services that help people address the underlying causes of their legal issues.

We are, however, seeing extensive wait times for our clients to access community support services in the Latrobe Valley, meaning they cannot address non-legal issues such as being at risk of, or using, family violence, insecure housing, mental ill-health, disability, or drug or alcohol dependence that may be impacting on or exacerbating their legal problems.

These issues are exacerbated in the region by there also being fewer services, transport difficulties, increased social isolation and greater levels of disadvantage.<sup>44</sup>

Early intervention services for families and individuals experiencing vulnerability are cost effective and provide a demonstrable return on investment,<sup>45</sup> but are currently insufficient to service the level of need in the Latrobe Valley. Investing in tailored early intervention approaches for particular groups also significantly increases impact and effectiveness, for example Aboriginal community-controlled organisations are best placed to address the needs of Aboriginal communities.

## Increasing demand

Child protection notification reports are generated when a child has come to the attention of child protection authorities within the Department of Health and Human Services (DHHS). Substantiated reports are those where reported incidents have been verified.

The Gippsland region has high rates of substantiated emotional and physical harm, children on a protection order, and children and young people in out-of-home care in Victoria (see Table 4).<sup>46</sup> Aboriginal and Torres Strait Islander children and young people are overrepresented in the child protection system.

Often families in the child protection system experience intersecting issues. VLA data shows that a small but significant proportion of our clients require assistance with child protection, family law and family violence issues, which often intersect with alcohol and other drug issues, disability, and/or mental health issues.<sup>47</sup> Djirra data similarly shows that the majority of Aboriginal clients have multiple, complex legal issues across family violence, child protection and/or family law, victims of crime and other civil and criminal law issues, as well as a range of interlocking socio-economic issues such as experiences of racism and discrimination, financial hardship and poverty, unemployment, housing instability or homelessness, disability, mental health issues, alcohol and other drug issues, challenges accessing culturally safe and accessible services and education.

A review of Aboriginal children in out of home care showed that 88 per cent of children had experienced family violence and 87 per cent were exposed to parental alcohol and / or substance use.<sup>48</sup> As detailed earlier, Aboriginal children are significantly over-represented in the child protection system.

44 N. Arefadi and T.G. Moore, *Reporting the Health and Development of Children in Rural and Remote Australia*, (The Centre for Community Child Health at the Royal Children's Hospital and the Murdoch Children's Research Institute, 2017) 25.

45 J.W. Toumbourou et al., *Strengthening prevention and early intervention services for families into the future*, (Deakin University and FRSA 2017) 3.

46 P. Cummins, D. Scott and B. Scales, above n 23; Department of Education and Early Childhood Development, above n 16, 97.

47 VLA, *Submission to the Family Law Council's Terms of Reference for the inquiry into Families with Complex Needs*, (2015).

48 Commission for Children and Young People, *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 2016) 10.

Research strongly suggests that experiences of adversity, vulnerability and disadvantage in early childhood can have lifelong consequences for social, emotional and physical health and development.<sup>49</sup> It is now well recognised that the early years of a child's life is when there is significant opportunity for health, education and support services to make a substantial impact, and that strategies aimed at the early years of a child's life – and which promote prevention or early intervention – have the most enduring outcomes and are most cost effective.<sup>50</sup>

Coordinated and specialised wrap-around supports are also crucial to addressing protection concerns given the increasingly complex needs of families, including difficulties caring for their children. We know that when parents are supported to access services, they are more likely to address child protection concerns and keep their children safely in their home.<sup>51</sup> In the case of Aboriginal people and families, we know that family violence is the single biggest driver of children being placed in out-of-home care.<sup>52</sup> Ensuring Aboriginal victim survivors of family violence (predominantly women) have access to wrap-around and holistic support from Aboriginal community-controlled organisations is essential to enabling victim survivors to maintain safe care of their children, within family, connected to culture and identity.

Reports have continually showed, however, the inability of the child protection system to respond to the level of demand and growing complexity of children and families' needs.<sup>53</sup> Increasing child protection notifications have raised the threshold for service intervention and community services, including Child FIRST and Family Services, are being expected to manage higher risk, more complex cases of child and family vulnerability.

This has led to children and families who could benefit from early intervention missing out on services as demand overloads the system, leaving them vulnerable to ending up in statutory or tertiary systems which could have been avoided.

## Limited access to services

Most concerning is how long wait times and the lack of local human service agencies in the Latrobe Valley can affect child protection justice outcomes.

We are seeing wait times of four to six months for intake into residential rehabilitation programs for clients with alcohol and other drug issues and eight weeks for intake into a Therapeutic Day Rehabilitation Program in the region. Combined with the strict 12 or 24-month legislative time frames for parents to address safety concerns before the Children's Court can no longer reunite children with their parents, these delays are working against children safely returning home.

At present there is only one residential rehabilitation program that is in the area for clients with alcohol and other drugs issues. In addition, parenting support services are often unavailable, and our clients frequently sit on waiting lists for extended periods of time for parenting assessment services in Melbourne. Currently the Queen Elizabeth Centre in Melbourne has only nine places per year allocated to Gippsland for their residential parenting program.

49 Centre on the Developing Child, *Applying the Science of Child Development in Child Welfare Systems*, (Harvard University 2016); J. Shonkoff, W. Boyce and B. McEwen, Neuroscience, molecular biology, and the childhood roots of health disparities: building a new framework for health promotion and disease prevention. *Journal of the American Medical Association*, (2009) Vol 301: 2252–2259; J. Currie, M. Rossin-Slater, *Early-Life Origins of Lifecycle Wellbeing: Research and Policy Implications* (Department of Economics, University of California, 2014).

50 A. Blakester, 2006, Practical Child Abuse and Neglect Prevention a Community Responsibility and Professional Partnership, (2006) 14(2) *NCPC Newsletter*, 2 – 10.

51 DHHS, *Cradle to Kinder Evaluation Summary*, (Victorian Government, 2017).

52 Commission for Children and Young People, above n 48.

53 See Ombudsman Victoria, *Own motion investigation in Child protection – out of home care*, (2010) 12; Victorian Auditor General, *Residential Care Services for Children* (March 2014).



## Sarah's story

Sarah is an Aboriginal woman with two young children. She has been raising the children on her own.

A few years ago, Sarah developed a drug addiction. She lost her rental accommodation and multiple reports were made to the DHHS. The children were removed from her care and placed in separate foster care placements.

After securing a placement for drug treatment, Sarah completed treatment for her addiction. The children returned to her care and the DHHS withdrew with no orders in place. Sarah moved to the Latrobe Valley and connected with social groups in the local Aboriginal community.

A couple of months after the children had returned to Sarah's care, the DHHS became concerned that Sarah was using drugs again. When picked up by police, she was not drug tested, nor was she found to be in possession of any illicit substances at the time. Sarah had started a new course of prescription medication that day and was concerned about an adverse reaction.

The children were again removed by the DHHS. Neither of the carers were Aboriginal. Sarah nominated a relative to care for the children, however the DHHS said they deemed the relative unsuitable. Sarah's relative states they had not been contacted by the DHHS for any assessment.

Sarah was allowed one supervised visit per week. The children were placed in new schools and were having no contact with any Aboriginal family or community activities. Sarah was concerned that the children were becoming withdrawn.

The DHHS did not support reunification and were seeking permanent care orders for the children on the basis that Sarah had not addressed her addiction issues. This is even though Sarah completed several drug screens requested by the DHHS. No drug and alcohol support services for Sarah were proposed or arranged.

Sarah's lawyer asked the DHHS to provide information outlining their efforts to place the children with Aboriginal carers and continue the children's contact with the community. This information was not provided, despite the children being in out of home care for several months. Neither child was provided with a Cultural Support Plan by the DHHS.

The lack of access to support services is exacerbated for Aboriginal and/or Torres Strait Islander children and families by poor compliance with the legislated Aboriginal Child Placement Principle (ACPP) and other key processes such as meaningful Cultural Support Plans for children and – as outlined above – strong referral pathways and protocols to specialist Aboriginal community-controlled legal assistance services or other culturally competent services to enable families to obtain early, culturally safe and preventative legal advice.<sup>54</sup>

We continue to see how Aboriginal children and families in the Latrobe Valley struggle to access culturally appropriate services that address intergenerational trauma and prevent the exacerbation of legal problems. Appropriate resourcing is one part of this picture, strong partnerships and referral protocols are another. For example, VLA's recently appointed Aboriginal Community Engagement (ACE) Officer in the Gippsland region refers clients to Aboriginal community-controlled organisations to provide legal services to Aboriginal and Torres Strait Islander community members.

The ACE Officer also supports VLA to deliver culturally safe service provision, improve engagement and support members of the community who may not know when or how to seek legal assistance, and achieve positive outcomes for the client that reduce the likelihood of legal problems escalating.

<sup>54</sup> Commission for Children and Young People, *In the child's best interests, Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria*, (Commission for Children and Young People, 2015).

## Looking forward

The government's *Roadmap for Reform* has been crucial to improving system operation and supports for children and families. There was welcome investment in community and social services in the Latrobe Valley in 2018, including to improve the response to child protection demand. It is, however, important that investment in the region also specifically includes a focus on access to justice issues. Services operating over capacity, long wait times and families being unable to access timely and appropriate supports impede on access to justice in the Latrobe Valley.

GLAF members are seeing the detrimental impact on children and families and are concerned that existing issues will be exacerbated if the response to regional and service planning does not consider child and family vulnerability and service demand. We suggest that a map of service demand and gaps in the region could inform a focused response to address waitlists, provide funding to services to intervene earlier, and ensure timely support is available.

We also see significant opportunities to strengthen referral pathways to culturally safe and specialist supports to ensure timely connection of Aboriginal and/or Torres Strait Islander people – particularly Aboriginal victim survivors of family violence – with trusted Aboriginal community-controlled organisations, including early preventative legal advice and assistance.

As a priority, GLAF members would like to see greater investment in culturally safe and specialist Aboriginal legal assistance providers and specialist support services, in recognition of the right to self-determination of Aboriginal communities, to deliver more legal and support services and outreach to the Aboriginal community in the Latrobe Valley, including early intervention services to prevent legal problems from escalating.

We would also like to see a greater focus on training and professional development to improve the cultural competency of all practitioners in the community service and justice sector delivering services in the Latrobe Valley.

### Recommendations

**Complete a map of service demand and gaps in the region to inform a focused response to address service waitlists, provide funding to services to intervene earlier, and ensure timely support is available.**

**Invest in culturally safe and specialist Aboriginal legal assistance providers and specialist support services to deliver more legal and support services and outreach to the Aboriginal community in the Latrobe Valley, including early intervention services to prevent legal problems from escalating.**

**Provide training and professional development to improve the cultural competency of all practitioners in the community service and justice sector delivering services in the Latrobe Valley.**

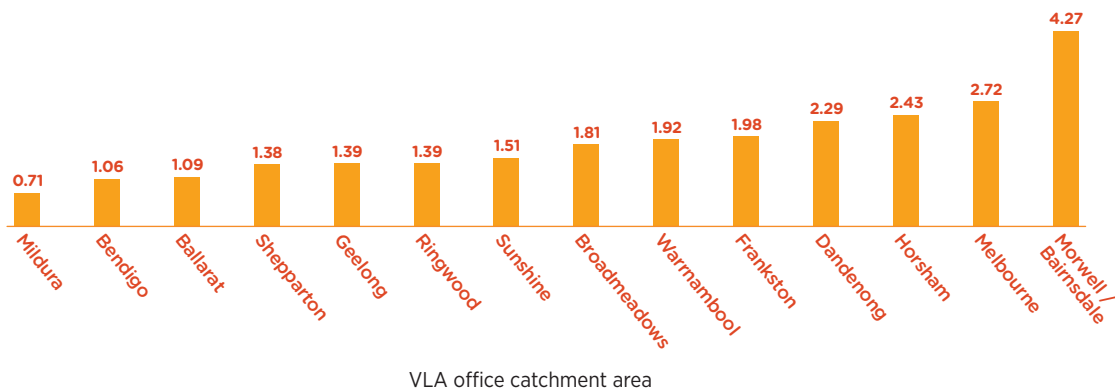
# Responding to family violence

The Latrobe LGA has the highest rate of family violence incidents per population in Victoria (3,482.4 per 100,000 population). In 2017-18, the Latrobe Valley (including the Baw Baw and Wellington LGAs) recorded 4,271 family violence incidents.<sup>55</sup>

In addition, the number of family violence incidents at which at least one child was recorded as present has also increased, by approximately 66 per cent between July 2008 and June 2014, from 424 to 704.<sup>56</sup>

VLA data of family violence services, including grants of legal assistance, shows that there were 720 services provided in 2017-18. The graph below shows that the number of legal aid family violence intervention order services provided to young people aged 10 to 17 years per 1,000 young people (4.27 services) is much higher in Gippsland (Morwell/Bairnsdale) than the Victorian average, which is 1.8 services per 1,000 young people.

**Figure 3:** Total VLA Family Violence Intervention Order services provided per 1,000 young people aged 10-17 years, 2016-17, by VLA office catchment area



We are also seeing higher numbers of family violence intervention orders being taken out against children in the Latrobe Valley law courts and higher numbers of children being charged for breaching family violence intervention orders; higher than Melbourne.

The Department of Justice and Regulation has also reported that between 2008-09 and 2013-14 in Victoria, the number of police family violence incidents across the state relating to those identifying as Aboriginal doubled from 1,064 to 2,135, an increase of 100.6 per cent, compared to a 53.6 per cent increase in non-Aboriginal family violence incident reports.<sup>57</sup>

Further, of the 2,135 family incident reports made by Aboriginal people in 2013-14, around a third (704 reports) had children recorded as present. The number of family violence-related assaults involving an Aboriginal or Torres Strait Islander person as the offender increased by 243 per cent from 2008-9 to 2013-14.

GLAF members' practice experience shows that these issues are prevalent in the Latrobe Valley, where we see high levels of family violence legal need amongst the Aboriginal communities.

<sup>55</sup> Crime Statistics Agency (Vic), above n 19.

<sup>56</sup> Ibid.

<sup>57</sup> Royal Commission into Family Violence, *Final Report Volume 5*, (2016) 11.

## Current response

Improving community service coordination and engagement is particularly relevant for our clients using or experiencing family violence in the Latrobe Valley, who are typically facing a range of problems (often combined with alcohol/drug use, mental health problems and intergenerational trauma) that cross over multiple legal jurisdictions (child protection, family law, family violence, criminal and tenancy law). Women experiencing family violence can also struggle to access legal assistance for their divorce or family law property matters, as these are usually not available through legally aided services.

Our clients using or experiencing family violence have limited options for accessing support. High levels of demand, limited resources and an inadequate number of services (including culturally safe and specialist services) mean that our clients cannot access local community services to address their needs or resolve their own legal problems. We are seeing wait times of six to twelve months for clients to access Men's Behaviour Change programs and a dearth of culturally tailored programs for men. There are also no services in the region specifically for children and young people accused of using family violence in the home.

Aboriginal women experiencing family violence face additional compounding barriers to accessing legal assistance and allied supports, including fear of child removal and mistrust of police and the legal system due to the history of colonisation and ongoing systemic discrimination and over-representations in the criminal justice and child protection systems.

VLA is responding to demand for family violence legal assistance by adding family violence lawyers to the local teams to assist those affected by family violence in Gippsland. Specialist family violence Aboriginal community-controlled legal assistance providers are best placed to respond to these needs and build the trust necessary to provide effective outcomes for Aboriginal women experiencing violence. Djirra is responding by establishing a new, permanent presence in Morwell with a lawyer and paralegal support worker embedded in community to provide culturally safe, specialist and holistic support to Aboriginal victims/survivors of family violence.

However, the family violence response in the Latrobe Valley needs a significant injection of resources to reduce system congestion and improve the availability of legal and non-legal support services. Improving service accessibility will also be essential if clients are to navigate the different parts of the system, access the right intervention at the right time, and identify pathways to other service providers. This will ultimately achieve better outcomes for victims of family violence.

The establishment of The Orange Door in the Inner Gippsland region is a welcomed addition and while tasked with improving coordination of community services and the response to family violence, it may also serve to exacerbate levels of demand as The Orange Door provides a visible touch point for services in the community.

## Looking forward

Connecting legal assistance services to The Orange Door is one way that legal problems could be identified and addressed early and in conjunction with non-legal problems. As the major entry point for family violence enquiries, and a consolidation of local services, improving the early identification in The Orange Door of the need for legal triage will assist clients to get the help they need at the earliest possible opportunity, and better link the legal and community sectors. The provision of legal advice through appropriate referral from The Orange Door is important for early intervention and resolution of legal disputes, de-escalation of violence, awareness of legal obligations for perpetrators of family violence and to reduce future offending.

Many of our clients have limited understanding of legal rights and processes and may not describe their issues in a way that allows for easy identification of legal avenues to resolve their problems. For example, child protection involvement is often not understood (by clients, as well as non-legal professionals) to be a legal issue until it is very late in the process of child protection involvement and Children's Court proceedings have been started to remove a child from their family.

Instances of family violence will also often trigger several immediate and emerging legal issues, both related to and beyond family law (tenancy, civil debt, and criminal charges are examples of this). By facilitating connections with The Orange Door, a legal response could enhance safety and longer-term preventative outcomes.

As noted above, fear of child removal is a profound deterrent for Aboriginal people – particularly women – to report family violence and access supports, with family violence being the single greatest driver of Aboriginal children being placed into out-of-home care. The Orange Door model, with co-location of community-based child protection and perpetrator services, and shared client database and broad information sharing procedures, runs the risk of alienating Aboriginal women experiencing violence, putting Aboriginal women and children at greater risk.

For Aboriginal people engaging with The Orange Door, it is imperative that they have early access to culturally safe and specialist legal assistance from Aboriginal community-controlled organisations given the risk of non-engagement with services creating unintended, adverse impacts for Aboriginal people, families and communities.

We commend the Victorian government for incorporating Aboriginal positions and organisations within The Orange Door and carefully considering cultural safety within hub design. The Orange Door must be grounded in self-determination for Aboriginal and/or Torres Strait Islander peoples, which the Government has already embraced as a design principle, but which must be implemented in practice. We also note that ongoing resourcing for complimentary, culturally specific entry points to the family violence system will remain essential for a ‘no wrong door’ approach to supporting the safety of Aboriginal women and children and other groups who may be less likely to approach a ‘mainstream’ hub model. Multiple access points for Aboriginal people experiencing family violence are crucial given the difficulties they can have accessing services described above.

Additional funding to local Aboriginal community-controlled organisations and services that provide assistance to Aboriginal and/or Torres Strait Islander people experiencing family violence would also make sure there are options for victims, perpetrators and their families to access culturally appropriate assistance at different venues according to their preference.

### Recommendations

**Establish a clear legal intake, triage and referral process in The Orange Door (including to culturally safe and community-controlled legal services).**

**Fund Aboriginal community-controlled organisations and cooperatives to increase their family violence service and support delivery to the Aboriginal community in the Latrobe Valley and recognise the right for Aboriginal victim survivors to access services from Aboriginal community-controlled legal services.**

# Supporting access to safe, affordable, quality housing

GLAF members provide legal assistance and representation to tenants at the Victorian Civil and Administrative Tribunal's (VCAT) Morwell venue - mostly seeking to prevent evictions where there is a real risk of homelessness. We prioritise tenants who are at risk of eviction, living with disability (including mental illness), or who are otherwise socially and economically disadvantaged.

Tenancy issues that occur state-wide are more prevalent in the Latrobe Valley due to the high concentration of social and economic disadvantage.

There is significant unmet legal need for tenancy issues.<sup>58</sup> Many tenants do not seek timely legal advice when they face a tenancy issue, often because they lack legal knowledge, or are unaware they have rights as tenants or that there is a legal solution to their problem.<sup>59</sup>

Tenancy issues can be caused by, or exacerbate, related legal and non-legal issues. We are seeing seemingly minor legal issues escalating when individuals experience risk of or actual homelessness and/or other tenancy problems.

Supporting tenants to know their rights and seek legal advice at earlier stages would significantly help prevent the exacerbation of legal and non-legal problems, including through timely referral to appropriate services.

If we are to achieve access to justice for tenants, particularly vulnerable individuals and families wanting to live in safe, secure and affordable housing, improvements are needed to:

- Ensure access to safe, suitable housing; and
- Protect tenants' existing rights.

## Limited access to social and quality housing

There are 2,164 social housing dwellings and 1,310 social housing applicants waiting on the Victorian Housing Register for Inner Gippsland (Morwell).<sup>60</sup> DHHS data shows that 79.3 per cent of rental housing in the Latrobe Valley is categorised as affordable; however, 28.9 per cent of households experience rental stress.<sup>61</sup>

Access to safe, affordable and secure housing can positively affect many aspects of individuals' lives. The positive flow-on effects of secure housing for health and wellbeing are becoming recognised. Security of housing tenure is linked to less residential mobility and increased workforce participation, which in turn leads to residents feeling more in control, more settled and less stressed, and able to focus on things such as relationships, career progression or their children's education.<sup>62</sup>

However, these benefits of secure housing also depend on the quality of the housing. Housing needs to be secure, safe, clean and functional.<sup>63</sup> Conversely, limited access to safe, affordable and quality housing can contribute to chronic stress, child neglect, social exclusion and financial hardship.<sup>64</sup> This can exacerbate legal problems for families with complex needs or experiencing disadvantage.

Improving the social housing stock and crisis accommodation options in the Latrobe Valley would significantly support clients at risk of or experiencing homelessness. The lack of availability of accommodation in the Latrobe Valley can, for example, increase homelessness or impact on compliance with bail conditions if our clients are experiencing homelessness. It can also have negative implications for clients who have experienced, or are experiencing, family violence and are unable to access appropriate housing.

58 This was identified in GLAF's Legal Needs Assessment conducted in 2018.

59 C. Coumarelos et al., above n 6, 28 and 30. This is also supported by research in other jurisdictions that shows tenants have limited knowledge or understanding of their rights, for example, see Community Action for Safe Apartments and Community Development Project, *Tipping the Scales: A report of Tenant Experience in Bronx Housing Court*, (2013).

60 DHHS, *Victorian Housing Register and transfer list*, (March 2018) <<http://housing.vic.gov.au/public-housing-waiting-list>>

61 Calculated as 'low income households that spend more than 30 per cent of income on rent payments'.

62 E. Robinson and R. Adams, *Housing stress and the mental health and wellbeing of families*, Australian Family Relationships Clearinghouse Briefing, (Australian Institute of Family Studies, 2008).

63 M. Shaw, Housing and public health, *Annual Review of Public Health*, (2004) 397-418.

64 E. Robinson and R. Adams, above n 62.

## Ben's story

Ben was a VLA client with serious mental health issues who had trouble when he went off his medication on the advice of his local doctor. His mental health seriously deteriorated and resulted in behaviours that damaged his own properties. While unwell he drove his car erratically, causing a number of accidents.

Ben was charged and placed on remand. He was unable to get bail as he had no accommodation and no accommodation was available to him. Ben is now back on his medication. His mental health has improved, and he poses no threat. However, court delays and the lack of housing options mean he will continue to spend extended time on remand.

The lack of alternative affordable accommodation in the Latrobe Valley also contributes to tenants agreeing to poor quality housing for fear of homelessness. Our practice experience indicates that tenants rarely assert their legal rights for fear of being evicted if they raise their concerns with their landlords.<sup>65</sup> For many tenants this means living in housing that is sub-standard, insecure and unsafe, or having to wait far longer than they should for an essential repair.

## Protecting tenants' rights

GLAF members are aware of several concerning issues that impinge on the rights of our clients to live in safe and well-maintained homes in the Latrobe Valley, including poor practices by both private landlords and public housing providers.

Poor quality rental housing, lack of social housing and poorly regulated rooming houses are some of the key issues we are seeing. GLAF members frequently assist tenants who have signed fixed term tenancy agreements for properties with structural repair issues they are unaware of, or that have been promised to be repaired, such as mould and ventilation problems and malfunctioning appliances such as heaters, air conditioners or hot water systems.

Once the tenancy begins, individuals are bound to the agreement for the duration of the fixed term. The obligation on landlords to maintain properties in 'good repair'<sup>66</sup> can be influenced by the state of the property at the time the agreement is entered into. We have seen that when this happens, requests for maintenance and repairs can be refused on tenuous grounds which leaves tenants in unsafe and poor-quality housing. The duty on a landlord to *begin* and *maintain* the premises in good repair is fundamental.

Under Victorian law a landlord may also seek compensation from a tenant for any financial loss incurred as a direct result of a breach of the law or the tenancy agreement. Tenants may be liable to repay costs incurred by a landlord when they have failed to take reasonable care to avoid damaging the property,<sup>67</sup> not left the premises in a reasonably clean condition,<sup>68</sup> or installed fixtures without the consent of the landlord.<sup>69</sup> Our lawyers in the Latrobe Valley report multiple instances of unfair claims for compensation purported under these laws when repairs have previously been requested by the tenant but have not been carried out.

65 This is also supported by the practice experience of other service providers, see: Justice Out West, *Legal needs and barriers to accessing the justice system in Brimbank*, (2013) 34; Choice Australia, National Shelter, National Association of Tenant Organisations, *DISRUPTED: The consumer experience of renting in Australia*, (2018) 4.

66 *Residential Tenancies' Act 1997* (Vic) (RTA), s68.

67 *Ibid*, s61.

68 *Ibid*, s63.

69 *Ibid*, s64.

The case study below demonstrates these issues and their impact on one of our clients.

### **Jessie's story**

Jessie and her partner requested maintenance to the house they were renting which the landlord did not carry out. Around the same time, they were given a new lease which they believed included unfair terms. Jessie did not want to sign the lease as it was drafted, and the landlord served them with an eviction notice (with no reason) with 60 days' notice. By that time, the lease had become periodic, so according to law the tenants should have had 120 days' notice. The notice to vacate therefore did not comply with the legislative requirements.

During the process of eviction, Jessie and her partner discussed with the real estate agent the cost of cleaning and some minor repairs they agreed they were responsible for. They agreed to pay \$600 out of their bond. However, the landlord dismissed the agent and brought a compensation application to VCAT against the tenants for \$4,000 alleging major damage to the property. The technical requirements of the legislation were confusing for Jessie; however, Jessie's lawyer contested the claim and made counter application to say the landlord did not make the repairs which Jessie had previously requested.

Jessie and her partner ended up paying only \$400 out of their bond - less than they would have had the agent not been dismissed.

GLAF members also provide assistance to clients in the Latrobe Valley who are evicted for non-payment of rent. Late payments are commonly caused by a person experiencing a temporary crisis or financial difficulty and can often be resolved through referral to appropriate supports, with a sensible degree of flexibility to make up payments. We know that referrals to services and supports (such as Tenancy Plus) are also far more cost effective compared with the cost of a tenant being evicted and entering the homelessness transitional/crisis support sector, which has been estimated by the DHHS at \$34,000.<sup>70</sup> Yet these services are often unable to meet demand. For this reason, among others, the assistance a tenant may receive varies greatly depending on their location and tenure type.

### **Looking forward**

We are pleased to note the Government's passing of legislation that includes the introduction of minimum standards for rental properties and look forward to working with the State Government to develop the forthcoming regulations pertaining to the standards. These should include provisions relating to:

- health and safety (including weather and vermin proof, adequate lighting and ventilation, electricity connections, and hot and cold water);
- security and privacy (including locks and curtains);
- energy efficiency and environmental impact (including appropriate insulation and heating and cooling).

In addition, improving adherence to current regulations and standards where they exist is critical to ensure that vulnerable individuals and families in the Latrobe Valley can access suitable housing. For example, GLAF members want to see improved compliance with rooming house registration requirements, including registration of unregistered rooming houses, to make sure the regulations are operating as they should.

<sup>70</sup> DHHS, *The case for change*, (DHS 2011).





## Supporting access to safe, affordable, quality housing

Better coordination of tenancy services, and the removal of the service distinction between private and public tenant type, would enable more timely and effective housing support for vulnerable tenants.

The adoption of these recommendations across Victoria would have significant benefit for individuals and families experiencing multiple and intersecting forms of disadvantage in the Latrobe Valley. Considering the economic development challenges facing the region, ensuring access to safe and suitable housing and affording tenants greater protections when they face financial hardship will reduce the likelihood of legal problems accumulating for families.

### Recommendations

**Include an explicit focus in the Latrobe Valley economic development agenda on addressing affordable housing issues in the Latrobe Valley, including planning for future accommodation needs and increasing the social housing stock.**

**Improve compliance with rooming house registration requirements, including registration of unregistered rooming houses, to make sure the regulations are operating as they should.**

**Introduce clear requirements under the new Victorian laws for minimum rental property standards, covering health and safety, security and privacy and energy efficiency.**

# Improving timely access to the courts

The Latrobe Valley Law Courts is a multi-jurisdictional court complex with six courtrooms, located in Morwell. Specialist services include a Court Integrated Services Program team, Mental Health Liaison, Housing Officer, and Koori Court in the Magistrates', Children's and County Courts. Latrobe Valley has 13 registrars, five trainee court registrars, four support staff and 10 specialist staff. Four magistrates cover the entire Gippsland region (including Bairnsdale, Sale, Wonthaggi and Korumburra).

The main challenge recently faced by courts in the region has been the increase in family violence intervention order applications. The number of applications finalised in the period 2011-12 to 2015-16 has increased by 51 per cent (from 3,753 to 7,345 applications).<sup>71</sup>

Finalisation of criminal cases has also increased, from 6,200 to 8,718 over five years, which equates to a 29 per cent increase.<sup>72</sup>

Gippsland has the third highest number of child protection applications finalised (1,554) in the Children's Court in Victoria.<sup>73</sup> It has the second highest number of family violence intervention orders finalised in the Children's Court in the state (335), after Heidelberg.<sup>74</sup>

This demand is putting pressure on the courts and resulting in court delays and pressure on current listing practices. For those who have been charged, timely resolution is central to procedural fairness and equality before the law – concepts which underpin rule of law in Australia and are central to access to justice.

## Insufficient resourcing and poor infrastructure

Insufficient resourcing is one factor significantly reducing the capacity of courts and tribunals to deliver timely justice in the face of increasing demand for services.

This is exacerbated by the poor infrastructure, including a lack of holding capacity at the Latrobe Valley law courts. There are only two interview rooms for all Court Integrated Services Program (CISP) workers, duty lawyers, private lawyers, Magistrates' Court and County Court and Corrections to use each day. The County Court sits most weeks at the Latrobe Valley law courts. On alternate Thursdays there is a committal mention list, sex offences list, fast tracking and remands. In each of these lists there is an increased likelihood to have clients on remand and in custody.

Our recent experience is that clients are being held at Sale and Traralgon police stations due to there being no room in the Morwell cells for them. This delays a lawyer being able to see the client and, if they are newly on remand, access a CISP assessment so that a bail application is ready the same day. As a result, more cases are being adjourned to enable an assessment on another date or to apply for bail without CISP services in place.

The lack of cells is also problematic for trials in the County Court. In a recent trial in the Latrobe Valley, a client was being transported back and forth to a correctional centre every day because of lack of capacity in the local cells. Invariably, this delayed the start of proceedings each day, but despite the judge's clear directions at the end of each day, nothing changed.

The lack of physical space does not support victim survivor safety at court and limits capacity to accommodate new court practice directions. For example, there are no safe or separate waiting rooms for victim survivors, meaning that they are required to wait in the same area as their alleged perpetrators. Court Services Victoria is re-establishing the Koori Family Violence Support Program to support Aboriginal and/or Torres Strait Islander victim survivors but to date workers are only funded in Mildura and Melbourne, despite the high level of family violence in the Latrobe Valley.

71 Magistrates' Court of Victoria, *Annual Report 2015-2016*, 38.

72 Ibid.

73 Children's Court of Victoria, *Annual Report 2016-2017*, 39.

74 Children's Court of Victoria, *Annual Report 2015-2016*, 16.

The Latrobe Valley Magistrates' Court (LVMC) is removing one adult summary crime mention list per week and replacing it with one fast-tracking mention list as one way to work through the backlog of cases in the courts. However, the court physically has no capacity to accommodate additional lists and the process does not consider the expected increases in demand for the coming two years.

Delays at the LVMC are contributing to delays in the Latrobe Valley County Court and affecting the listing practices in other courts. For example, Sale Magistrates' Court uses the same pool of Magistrates as the LVMC. At Sale Magistrates' Court, multi-day contests are run over multiple weeks. This means that witnesses are required to return multiple times over extended periods. We understand that this type of listing at Sale cannot be avoided because of delayed bookings in the LVMC. Further, in Sale the lack of physical court space results in lawyers meeting with clients in phone booths outside the court, which compromises confidentiality and the safety of clients.

Recent changes in court listing practices, implemented to address demand, have also resulted in additional matters being adjourned and inappropriate situations. For example, in Children's Court criminal matters, children and young people waiting for contest mentions are having their matter adjourned to the adult crime lists in the court instead of the children's criminal list, which is the preferred option to reduce the exposure of children and young people to adult offenders.

### Jonah's story

VLA assisted 14-year-old Jonah with an assault charge. At the first mention, the matter was immediately adjourned to a contest mention approximately four months later. The hearing, which is likely to take about two hours, was then delayed. It will be approximately 16 months from when the incident was first reported to police and 10 months from the first mention. This is a disproportionately long period in the life of a child for charges to remain unresolved.

Such examples are especially concerning given the requirement under section 23(2) of the *Charter of Human Rights and Responsibilities Act 2006* for an accused child to be brought to trial as quickly as possible. Long periods of bail with onerous conditions such as curfews can also impact disproportionately on children and young people. The longer a young person is on bail, the greater the opportunity to breach conditions of bail and become more deeply entrenched in the criminal justice system.

## Impact of delays and current listing practices on clients

Court delays have a concerning impact on the justice outcomes of our clients, notably in the criminal system, but also in relation to child protection matters. As detailed below, in practice it means our clients are:

- Pleading guilty when they may not have committed the crime to avoid disproportionately long periods in custody
- Spending unnecessarily long periods subject to bail conditions without having been charged
- Agreeing to unproven child protection claims to reduce the time without the children in their care
- Not accessing appropriate assessments where there are additional needs.

Significant court delays in criminal matters can undermine the right of an accused person to be presumed innocent until proved guilty.

For parents engaged in child protection proceedings, delays mean that parents are not contesting DHHS allegations that have resulted in the removal of their children in the hope that agreeing to the allegations means they will have their children back in their care sooner. In some cases, delays mean that children are removed from their parents for extended periods without any evidence being tested against their parents. Recently reduced court oversight means there is less ability for the court to ensure the DHHS is providing adequate supports to families.

## Katie's story

Katie's family came to the attention of the DHHS due to poor school attendance. DHHS became involved in Katie's family when she took her son, James, to the hospital after an accident. A hospital nurse thought they saw Katie acting inappropriately with James and alerted DHHS.

DHHS sought an Interim Accommodation Order that would require Katie to leave the family home. Katie wanted to contest the Interim Accommodation Order being made. However, she was told there would be a 12 month wait for a contested hearing by evidence, which would mean Katie was removed from the family home and her children for a full year while they waited for a hearing date to become available for what is intended to be a temporary order ahead of the full court matter.

The order was made for Katie to be out of the family home. Katie was not supported by DHHS to find accommodation during this time. She tried to live with her adult child and their children, but DHHS would not allow it due to the initial allegations against Katie. Katie became homeless and was living out of her car.

The matter was adjourned multiple times for conciliation conferences and DHHS could not present any evidence to suggest it was unsafe for Katie to live in the family home. Eventually DHHS dropped the case and withdrew from the family due to lack of evidence. By that time, Katie had been living away from her children and having limited contact with them for nearly 12 months, despite no claims being proven against her.

Long periods in custody or subject to bail conditions are also particularly problematic for people with mental health issues or disability, many of whom are not receiving the supports that they need, and disproportionately impact Aboriginal and/or Torres Strait Islander women, families and communities. They also increase the risk of child protection involvement and child removal.

Lack of access to services outlined earlier can exacerbate risks for clients. For example, lack of access to services can lead to extended detention in mental health services, prolonged custody without conviction, inability to obtain bail, homelessness, deterioration in health, increased risk of re-offending or engaging in unsafe behavior and family breakdown.

## Eli's story

Eli, a VLA client who is Aboriginal and itinerant, was in custody charged with summary offences. He was in poor mental health. There was no mental health nurse to conduct an assessment and a sentence indication proceeded before the Magistrate. The Magistrate had concerns regarding Eli's mental health and wanted to remand him for a two-week period so that further assessments could be conducted. However, the earliest date available was over five weeks later, at which time Eli was released on a community correction order with time served. It is likely that, had an earlier date been available, the same result would have been achieved and Eli could have avoided additional time on remand.

Delays at the LVMC also impact adversely on people who are not in custody. For example, a client was granted bail with conditions including: reporting several times per week; residing in a specified place, and not contacting specific individuals. An initial committal mention occurred 11 weeks after bail was granted. By the time of the two-day committal hearing, the client will have been subject to bail conditions for almost 12 months. This means individuals' rights are being impinged upon for lengthy periods without any evidence being tested or findings made against them. The system is not upholding the concept of procedural fairness or delivering timely justice, and the lengthy delays increase the risk a person will breach conditions and become further involved in the justice system when this could have been avoided.

### Dave's story

Dave was released on supervised bail after appearing at the Children's Court, with conditions including reporting three times per week, and complying with a curfew. Dave wished to contest one of his charges. Ten weeks after he was granted bail, a mention occurred, at which the matter was adjourned to a contest mention a further 20 weeks later.

The matter did not resolve at the contest mention. It was then listed for a contest 10 weeks later. The contest involves two narrow issues and is expected to take three hours. By this time, our client will have been subject to a curfew and other conditions for nine months.

It also means that clients, many who do not have access to cars and money for fuel and given that public transport is limited, are spending several hours travelling each day to answer bail. There can also be a lack of support networks and services in the location where they are ordered to live, which can result in reduced access to Centrelink, medical treatment, and other support services.

## Looking forward

GLAF members look forward to working with the courts and government to think collaboratively and innovatively about how to improve listing practices at the courts to meet demand.

The issues documented above demonstrate the need for additional resourcing, including Magistrates, prosecutors and legal assistance services, to increase capacity at the LVMC in the face of increasing demand. This should include resources to increase the size and improve the space of the courts to accommodate more services and additional lists to meet demand.

In addition, specialist and tailored court services are required to meet the high level of legal need in Aboriginal communities, particularly for victim survivors of family violence. Additional investment in specialist Aboriginal legal services, and improved cultural competency of mainstream providers, would enable earlier intervention and the prevention of the exacerbation of legal problems.

The Koori Court is an effective and invaluable resource for the region but remains inadequately funded to meet the level of legal need in Aboriginal communities. It offers an alternative and culturally relevant approach to sentencing by enhancing the ability of the Court to address the underlying issues that lead to a person's offending behaviour. VALS assists Aboriginal clients attending the Koori Court but does not have capacity to provide a duty lawyer on sitting days.

## Ricky's story

Ricky is an Aboriginal man with literacy issues, an intellectual disability, and escalating mental health issues. Ricky was expecting his first child with a partner when he was charged with drug related offences. Ricky's lawyer (from VALS) arranged for his plea and sentencing to take place at the local Koori Court, which was a more culturally appropriate environment for Ricky, and enabled him to participate in the legal and court process more fully. Ricky engaged throughout the sentencing process and made some frank admissions about the help he needed to try to make positive changes in his life. The Koori Court respected person and Elder were able to give Ricky information about a range of culturally appropriate services he could be linked in with to help reduce his offending behaviour.

Ricky was placed on a non-custodial sentence on this occasion and began engaging with some of the culturally appropriate services to which he had been referred. Ricky had developed a positive rapport with a worker in a local Aboriginal community-controlled service who subsequently moved on, which led to Ricky disengaging from that program. Subsequently, due to a further decline in his mental health, Ricky has re-offended and since spent time in custody following mainstream Court hearings.

Ricky's lawyer has observed Ricky's difficulties engaging in mainstream Court hearings and hopes further sentencing hearings can take place in the Koori Court, which provides a more appropriate forum for Ricky to engage in the process and gives him the best chance of taking steps to reduce his offending behaviour.

Additional resources for Aboriginal legal services, particularly VALS, would improve service provision to the Koori Court in Morwell, including their ability and capacity to provide a duty lawyer on sitting days.

## Recommendations

**Provide additional resourcing to increase capacity at the Latrobe Valley Magistrates' Court and Koori Court in the face of increasing demand, including to increase the size and improve the space of the courts to accommodate more services and additional lists to meet demand; and for magistrates, prosecutors and legal assistance services (including culturally safe legal services).**

**Invest in support services that sit alongside the criminal law court process so that accused at the Latrobe Valley Magistrates Court can access non-legal support services available at other Magistrates' Courts.**

**Explore options with key stakeholders including GLAF members, Victoria Police Prosecutions, the DHHS and the Magistrates' Court to improve listing practices.**

## Contact details

### **Victoria Legal Aid**

Gippsland Regional Office, Morwell/Bairnsdale

Phone: (03) 5126 6444

Fax: (03) 5126 6401

Email: [morwell@vla.vic.gov.au](mailto:morwell@vla.vic.gov.au)

4 Chapel St, Morwell VIC 3840

<https://www.legalaid.vic.gov.au/>

### **Djirra**

Freecall: 1800 105 303

Email: [info@djirra.org.au](mailto:info@djirra.org.au)

Aboriginal Family Violence and Prevention Legal Service at Djirra

246 Commercial Road (PO Box 620), Morwell VIC 3840

27 Pyke Street (PO Box 1281), Bairnsdale VIC 3875

<https://djirra.org.au/>

### **Gippsland Community Legal Service**

Freecall: 1800 004 402

Phone: (03) 5135 9550

Fax: (03) 5135 9510

Email: [gcls@anglicarevic.org.au](mailto:gcls@anglicarevic.org.au)

PO Box 619, Morwell VIC 3840

[www.gcls.org.au](http://www.gcls.org.au)

### **Victorian Aboriginal Legal Service**

Freecall: 1800 064 865

Phone: (03) 9418 5965

Fax: (03) 5133 9953

20 George Street, Morwell VIC 3840

<https://vals.org.au/>

