

ATTACHMENT "NR-2"

This is the attachment marked "**NR-2**" referred to in the witness statement Nicole Rich dated 6 August 2015.

Victoria Legal Aid supplementary submission – Family Law Legal Aid Services Review

29 June 2015

Dear Commissioners

Victoria Legal Aid (VLA) is pleased to provide you with a copy of the Final Report of our Family Law Legal Aid Services Review.

- We initiated the Review in July 2014 to ensure our Commonwealth family law legal aid services are fair, as widely available as possible and sustainable. The focus of the Review was to consider how VLA could consolidate what it was getting right in its approach to family law legal aid services and identify and address areas where service delivery is not efficient, of a high enough standard, or targeted to the right clients.

As part of the Review we mapped family law services across Victoria, analysed external information and research, met with over 50 stakeholders and received 29 written submissions in response to a public Consultation and Options Paper we released in January 2015. The Final Report sets out 35 actions that have been endorsed and will be implemented over the next three years. These actions aim to enhance client and community outcomes through improved client access and intake, improved service quality, timely intervention in legal problems across all family law programs, targeting intensive services to priority clients, and providing additional supports to Independent Children's Lawyers (ICLs).

As noted in the Final Report, the Review and consultations with stakeholders have primarily been concerned with legal aid services for matters dealt with in the Commonwealth family law jurisdiction, such as disputes about family separation and ongoing parenting arrangements for children, child support and ICLs. However, the Review also considered state-based family law services, namely regarding family violence intervention order and child protection matters, to the extent that these issues interact with other family law problems.

The Final Report also highlights the significant impact of family violence on families in the Commonwealth family law system and thus also on the work that lawyers in this jurisdiction undertake. The suite of changes committed to in the Final Report recognises this connection between family violence and other family law matters, including that client attendance at state Magistrates' Courts in relation to family violence intervention orders is increasingly a first point of contact for clients with the broader family law system.

A number of the actions VLA is committed to implementing as a result of the Review aim to better support families impacted by family violence. They include:

- VLA will review the way in which family violence duty lawyer services are provided with a view to enhancing intake opportunities at Magistrates' Courts for clients with family law legal needs by supporting lawyers to screen more consistently for family law need.
- In partnership with community legal centres, we will undertake a family violence to family law 'continuity of service delivery' pilot for high needs clients.
- The grant guideline restricting funding for representation at family law trials and final hearings for clients otherwise eligible for litigation funding will be removed. While a change to this guideline last year enabled funding for representation at final hearings for cases of serious family violence, this action will further support parties, including victims of family violence, who are currently legally assisted to prepare their family law dispute for trial but are required to represent themselves at the final hearing.
- We will expand eligibility guidelines for funding to participate in family mediation through VLA's Family Dispute Resolution Service, to include matters where there is or has been a risk of family violence. Currently, clients who have experienced or are at risk of experiencing family violence are eligible for funding, however this change will also expand eligibility for funding to alleged perpetrators of family violence. Given the effectiveness of legally-assisted and case managed family mediation in resolving matters safely and effectively, the Review found that expanding representation to alleged perpetrators, in cases assessed as suitable and safe for family dispute resolution, will promote safer and more child-focused outcomes without the need for court proceedings.
- We will expand the *Settled and Safe* preventative family law and family violence community legal education program to targeted regions across Victoria.

During the Review stakeholders expressed particular concern about the current grant guideline that restricts funding for representation at a family law final hearing. Submissions in response to the Consultation and Options Paper strongly supported the reintroduction of funding for representation at final hearings, which we have now committed to doing as listed above.

It is important to note, however, that following this change to VLA family law guidelines, there will continue to be a high number of self-represented litigants in the Commonwealth family law jurisdiction. This has been a long-standing issue in the family law system. Amongst other impacts, this means that parties may be left to directly cross-examine one another in family law court hearings and victims of family violence face cross-examination by, or having to cross-examine, the perpetrator of that violence.

This issue was most recently identified and discussed by the Productivity Commission in its report *Access to Justice*. The Productivity Commission also noted that the means (income and assets) test used by Legal Aid Commissions – which is one tool for determining eligibility for legal assistance – is restrictive. VLA has initiated a review of our means test to explore changes that could be made within the existing funding envelope to improve eligibility. Absent additional Commonwealth and State government funding for legal aid, though, our ability to broaden the means test and better address the issue of unmet demand for legal services is limited.

We are of the view that changes in legislation and court practices in the Commonwealth family law jurisdiction may also assist in reducing situations where victims of family violence face cross-

examination by, or having to cross-examine, the perpetrator of violence. Options to consider include: reducing the adversarial nature of court proceedings by broadening the role of judges to directly question parents; routing questions to witnesses through a third party; judge pre-approval of questions; having ICLs (where appointed) undertake cross-examination first to ensure most questions that the alleged perpetrator of violence might wish to canvass during cross-examination are already dealt with; and greater use of remote witness facilities. We would strongly support a Commonwealth review into the issue of direct cross-examination in the Commonwealth family law courts with a view to identifying appropriate legislative and/or practice reforms and any investment required to support such reforms.

We acknowledge that the issue of direct cross-examination in family law matters must be addressed at the Commonwealth level. However, many of the families in the family law system impacted by this issue are also those who also seek assistance from the State family violence jurisdiction. Thus we believe it is appropriate that the Commission consider what role the State can play in advocating for improvements at the Commonwealth level.

Yours faithfully

Bevan Warner
Managing Director

More information

Read about VLA's [Family Law Legal Aid Services Review](#).



Family Law Legal Aid Services Review

Final Report

June 2015

Victoria Legal Aid

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EXECUTIVE SUMMARY

Victoria Legal Aid (VLA) undertook a Family Law Legal Aid Services Review (the Review) to ensure that family law legal aid services are fair, as widely available as possible, and sustainable.

The focus of the Review has been to consider how VLA can consolidate what it is getting right in its approach to family law legal aid services, and to identify and address areas where service delivery is not efficient, of a high enough standard, or targeted to the right clients. It was not an objective to reduce the overall amount spent on family law matters but rather to utilise the available funds in the most effective and efficient manner.

This Final Report completes the Review. It sets out the actions for change that VLA has determined it will adopt in response to the Review.

VLA undertook considerable consultation with internal and external stakeholders as part of the Review. The Review and consultations have primarily been concerned with legal aid services for matters dealt with in the Commonwealth family law jurisdiction, such as disputes about family separation and ongoing parenting arrangements for children, child support and Independent Children's Lawyers (ICLs). The Review has also considered State-based family law services, namely family violence intervention orders (FVIO) and child protection matters, to the extent that these issues interact with other family law problems. The Review has covered a range of services provided by VLA's staff practice, private practitioners and community legal centres (CLCs), including legal information, advice, duty lawyering and ongoing assistance to clients under a grant of aid.

The first stage of the Review involved mapping VLA family law services, identifying areas for improvement, and undertaking preliminary discussions with key stakeholders to elicit their insights about how services might work better. A key theme that emerged during preliminary discussions with stakeholders was the importance of relationship building and integrated service delivery across all agencies that work with families. A related theme was the importance of clear referral pathways for clients. The importance of place-based service planning and outreach to make services more accessible to clients, and quality standards across legally aided work was also emphasised during stakeholder discussions. Stakeholders further highlighted the need for clearer processes and revised eligibility requirements for obtaining grants of aid.

Key issues identified in this first stage informed a Consultation and Options Paper (the second stage of the Review), which was publicly released in January 2015. The Consultation and Options Paper presented a number of options for reform, with feedback sought from the public and other stakeholders.

Twenty-nine written submissions were received from external stakeholders in response to the Consultation and Options Paper. These submissions are published on the VLA website. Submissions were also received from VLA staff and further consultation meetings were also held with a number of external stakeholders.

Responses to the Consultation and Options Paper were comprehensive, thoughtful and for the most part positively framed. The number and quality of submissions received was pleasing and the feedback has informed our thinking about the changes required and actions to be adopted.

This report sets out 35 actions for change that VLA will take. These actions aim to enhance client and community outcomes through improved client access and intake, improved service quality, timely intervention in legal problems across all family law programs, targeting intensive services to priority clients, and providing additional supports to ICLs. The actions reflect the future direction of

VLA's family law services as part of an ongoing process to embed greater accountability and better service delivery across legally aided services.

The suite of changes also recognise the connection between family violence and other family law matters, in particular that client attendance at the state Magistrates' Courts in relation to FVIOs is increasingly a first point of contact for clients with the broader family law system. The increase in active policing in this area and consequent increase in FVIO matters in Victoria has had a significant impact upon family law matters and will continue to do so into the future. Family violence affects many families, particularly those in the family law system, and its impacts on our clients and the work that lawyers do in this area should not be underestimated.

There have been some concerns expressed in the submissions in relation to the impact of any proposed changes to legal aid services on the family law system as a whole. There is concern that the system, including courts, support services and legal services are stretched to the limit and that any changes may further overburden an already overwhelmed system. The actions we propose to adopt are aimed at making more efficient use of available resources and better assisting families to resolve matters at the earliest possible point. It is intended that these actions will assist the system as a whole and provide a well-designed framework for assistance and resolution of matters that is robust in the face of changing levels of funding or system pressures over time.

Summary of changes

Access and Intake

VLA's proposed approach to improving client access to family law services includes enhancing its engagement with the community sector, and making available tools and training that support appropriate legal referrals by community support agencies. These resources will be complemented by outreach to increase networks across the sector, build relationships and embed referral practices.

The second limb of this approach includes delivering tools and training to family lawyers so that they can better identify other non-legal services required by their clients and provide appropriate referrals to relevant support services.

The approach aims to improve early identification of legal and non-legal issues for clients and provide for more streamlined referrals, so that clients get the help they need at the earliest possible opportunity. This approach also aims to better link the legal and broader community sectors for the benefit of both sectors and clients.

The duty lawyer service at the Family Law Courts is a key aspect of access and intake into family law services. The duty lawyer service is often the first point of contact that family law clients have with the legal system. VLA intends to further investigate and scope an Early Intervention Unit along the lines of the model adopted by Legal Aid NSW to ascertain whether a similar model is a viable strategy for enhancing duty lawyer services in the Victorian context.

Better access to legal information and advice for Aboriginal and Torres Strait Islander clients in Victoria is a priority. VLA has recently developed a Reconciliation Action Plan, which includes considering the recruitment of Aboriginal Field Officers.

Action 1: VLA, in consultation with community agencies, service providers and CLCs, will develop a family law screening tool for community and support workers.

Action 2: VLA, in consultation with community agencies and CLCs, will develop and deliver training that supports the use of a family law screening tool for non-legal support workers so that they can better assist clients to identify pathways for family law help and resolution of family law matters.

Action 3: VLA, in consultation with community agencies and CLCs, will scope appropriate sites for outreach services at points of early contact for clients and assess resource requirements for providing those services.

Action 4: VLA, in consultation with CLCs and community agencies, will review current referral pathways to identify gaps and further develop relationships with key service providers to support early and appropriate referrals.

Action 5: VLA will expand the *Settled and Safe* program to targeted regions across Victoria.

Action 6: VLA, in consultation with community agencies, Family Law Pathways Network and CLCs, will develop or adopt referral or other tools for family lawyers to support early identification of non-legal service support requirements for clients and referral to appropriate services.

Action 7: VLA, in consultation with private practitioners and CLCs, will develop and deliver training to family lawyers on related areas of law, so that they can better assist clients and provide appropriate advice and referrals.

Action 8: VLA, in consultation with the Family Law Courts and CLCs, will further investigate the viability of establishing an enhanced duty lawyer service based on the Legal Aid NSW Early Intervention Unit. This project will include further considering the role of Information and Referral Officers at Court.

Action 9: VLA will continue to implement its Reconciliation Action Plan commitments, including as they relate to family law needs.

Quality

VLA's proposed approach to improving the quality of family law legal aid services is to support and incentivise lawyers to better prepare and conduct or litigate matters, and to better equip lawyers to provide services to disadvantaged clients with complex needs.

VLA proposes to develop and promote tools that further guide and assist family lawyers to provide high quality services. We are also proposing clarification of the practice standard requirements for preparation and changes to the preparation fee for court hearing grants. Working with stakeholders including the Victorian Bar to establish a preferred list of barristers is proposed to ensure greater accountability around briefing practices, and that competent counsel are engaged to represent family law clients.

VLA's priority clients are particularly vulnerable to experiencing multiple legal problems, and face the most significant barriers to accessing legal services and the family law system. The quality of legal services can be improved by equipping lawyers undertaking legally-aided work to provide services in ways that are responsive to the needs of disadvantaged members of the community. It is essential that legally-aided lawyers (including ICLs) provide services in a culturally appropriate way to Aboriginal and Torres Strait Islander clients and clients from culturally and linguistically diverse (CALD) backgrounds and have an understanding of the particular needs of clients with a disability.

VLA proposes to deliver cultural awareness training, develop and implement a culturally responsive framework for VLA's Family Dispute Resolution Service, and work with the Federation of Community Legal Centres to pilot a service model that enhances continuity of service delivery for clients with

needs across the family law and family violence jurisdictions. These initiatives will be considered alongside VLA's organisation-wide Reconciliation Action Plan.

Action 10: VLA will establish a working group that includes private practitioners, community legal centres and staff lawyers to develop a suite of quality tools to assist practitioners in the preparation of matters for hearing. These tools could be either optional or mandatory for those who conduct legal aid work.

Action 11: The current preparation fee for trials will be divided into two components:

1. An evidence analysis, merits assessment and case strategy fee (\$534 being three hours at \$178.00) to cover the work involved for a lawyer or barrister undertaking this assessment with the fee payable upon practitioner declaration that evidence is on the file that the assessment has been conducted prior to final hearing (which can be subject to audit via the existing audit process);
2. The remainder of the fee to be a general lump sum fee to cover other preparation undertaken by a lawyer.

Action 12: The VLA Practice Standards for s.29A panels will be amended to clearly state the preparation requirements of family lawyers for mediations and trials, and VLA will use the existing audit process to monitor compliance.

Action 13: VLA, in consultation with the Victorian Bar, private practitioners and community legal centres, will establish a preferred list of barristers to be briefed in legally aided family law matters.

Action 14: VLA will review existing training on cultural awareness, disability and mental health issues and adapt or develop new training to be delivered to lawyers doing legal aid work.

Action 15: VLA, in collaboration with community-based and academic partners, will develop and implement a culturally responsive framework for the VLA Family Dispute Resolution Service (FDRS).

Action 16: VLA, in partnership with community legal centres, will undertake a family violence to family law 'continuity of service delivery' pilot for high needs clients.

Timely Intervention

The Review has identified opportunities for further investment in timely intervention to reduce the number of disputes escalating to litigation. Feedback received from stakeholders during preliminary consultations supported the importance of identifying the need for legal intervention before a matter reaches crisis point, and progressing a matter quickly once an issue is identified.

VLA proposes four new approaches to enhance timely intervention in family law matters:

- investigating the value of providing legal services on site at one or more Family Relationships Centres (FRCs) with the aim of assisting a broader range of clients with complex needs
- conducting a pilot where a legally-assisted mediation service is made available at the Federal Circuit Court to provide an additional opportunity for proceedings to settle before a final hearing
- better utilising FVIO duty lawyer services at Magistrates' Courts as a client access and intake point into further required family law legal services

- re-introducing the advice and negotiation grant to assist settlement of some or all family law disputes prior to formal mediation or litigation.

Action 17: VLA, in consultation with FRCs and CLCs, will investigate the value of trialling a new legal service at one or more FRC, including an evaluation of previous pilots of legal assistance to clients of FRCs and review of current service arrangements undertaken by other legal service providers.

Action 18: VLA will conduct a court based mediation pilot. The pilot could involve VLA employing a mediator to conduct mediations at the court. The pilot could also trial having a VLA FDRS case manager on call to assess suitability for mediation. The likely site for such a pilot is the Federal Circuit Court at Dandenong.

Action 19: VLA will review the way in which family violence duty lawyer services are provided with a view to enhancing intake opportunities at Magistrates' Courts for clients with family law legal need by supporting lawyers to screen more consistently for family law need.

Action 20: An advice and negotiation grant will be reintroduced for limited matters, with the fee to be deducted from the preparation fee for dispute resolution or litigation (as relevant) if the matter proceeds to that stage.

Who gets an intensive service?

VLA proposes a suite of changes to re-calibrate intensive service delivery and enhance assistance for vulnerable clients with complex needs. These changes include clarifying and simplifying existing guidelines in the light of feedback that they have become too complex and may be deterring private practitioners from taking on legal aid cases.

VLA proposes to refine its priorities for family law litigation funding and ease restrictions on trial representation funding so that priority clients are provided a full service through to final hearing. VLA further proposes to re-introduce funding for some property matters, recognising that there is a strong social and economic rationale for assisting with these matters. Other guideline amendments proposed expand eligibility relevant to family dispute resolution, family violence matters and Recovery Order hearings.

VLA is also proposing a pilot expanded FDRS duty lawyer scheme to consider its impact on costs and early resolution of disputes for clients who may not be able to participate in dispute resolution without the assistance of a lawyer.

Recognising that many people are not eligible for intensive family law legal services, a number of options relevant to providing targeted and effective services to self-represented litigants (SRLs) were considered as part of this Review. It is acknowledged that VLA, the Courts and other legal and support organisations have provided various services to SRLs in the past and that a more coordinated, evidence-based approach to assisting this client group is required. VLA proposes to review existing resources and approaches in collaboration with the sector, and address gaps and duplication in family law legal information and support as required.

Action 21: VLA will establish a reference group that includes private practitioners, CLCs and VLA staff lawyers, to review grant guidelines related to family law dispute resolution and litigation and make recommendations about:

1. Re-drafting the guidelines so that they are easier to understand and apply.

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2. Re-drafting the guidelines to reflect the case management, hearing models, and practices of the Family Law Courts.
 3. Developing checklists to assist practitioners in applying for grants of aid and assess the merits of a matter.

Action 22: VLA will prioritise funding for family law litigation for cases where:

1. A party has a particular vulnerability, such as a mental health issue, cognitive impairment, language barrier, literacy issues, drug and alcohol issues, or an acquired brain injury AND the particular vulnerability impacts on either:
 - a. The ability of the party to conduct their own litigation; and/or
 - b. The ability of a child subject to the proceedings to maintain a meaningful relationship with one or more parties to the proceedings.
- or
2. A child's wellbeing or safety is at risk of harm from being subjected to, or exposed to, abuse, neglect or family violence to the extent that Orders made in the proceedings are likely to significantly limit the relationship between the child and one or more parties to the proceedings and/or to make a change in residential arrangements for the child.

Funding in such circumstances would extend to both parties in the matter (subject to other guideline requirements).

Action 23: The guideline restricting funding for representation at final hearing for clients otherwise eligible for litigation funding will be removed.

Action 24: Litigation grants for property matters will be reintroduced when the dispute also involves children and:

- the parent is seeking to retain the family home and will receive no payment; or
- the matter involves a superannuation split and/or a pool of equity less than \$50,000 (excluding superannuation).

Action 25: The funding requirement that respondents to a court application may only be granted aid to seek an adjournment, if parties have not attended the VLA FDRS, will be removed.

Action 26: The guideline removing eligibility for aid will be amended so that it does not exclude funding on the basis of breaches of Victorian family violence safety notices or intervention orders.

Action 27: Eligibility for VLA FDRS will be expanded to include:

- matters where there is or has been a risk of family violence (i.e. both victims and perpetrators are eligible)
- matters where the proposal or conduct of a party substantially prejudices the ability of a child to maintain a meaningful relationship with one or both parents.

Action 28: VLA will review the Recovery Order guideline to determine if a subsequent hearing fee is required.

Action 29: VLA will pilot an expanded duty lawyer (or Family Law Legal Service-type) scheme to represent clients at the VLA FDRS (including clients currently eligible for a grant of aid), to determine if such a scheme is effective and economic, and enables more clients to access the service.

Action 30: VLA, in collaboration with relevant stakeholders, will review existing self-represented litigant resources to identify and address quality and accessibility issues and gaps and duplication in content, and develop or diversify family law legal information and other resources as required to support self-represented litigants.

Independent Children's Lawyers

Feedback received about ICLs during this Review's preliminary consultations was generally positive, however a number of suggestions were made about how the ICL role could be more effectively and efficiently administered. Concerns were expressed by stakeholders about the lack of an instructing fee to enable instructing in complex matters, the rigidity of the current guideline requiring ICLs to appear as solicitor advocates in final hearings and the delays sometimes caused when parents struggle to pay for required assessments when there is no disbursements available to cover this cost under the existing guideline.

VLA proposes to better facilitate cost recovery in relation to the funding of ICLs to offset introducing a limited grant for ICLs to instruct in proceedings. VLA also proposes to enhance training for ICLs to build their capacity to appear at hearings.

Action 31: VLA will develop more structured guidelines for seeking contributions and costs to recover the costs of the ICL where appropriate.

Action 32: A grant for disbursements will be introduced for ICLs seeking assessment reports, applicable where there are legally aided parties or self-represented litigants are unable to pay the cost of the report.

Action 33: A limited grant for ICLs to instruct in proceedings will be introduced.

Action 34: The current guideline will be amended to continue to allow for, but no longer require, ICLs to appear at final hearing as solicitor advocates.

Action 35: VLA will provide training to ICLs to build their capacity to appear at their own hearings.

About Victoria Legal Aid

Victoria Legal Aid (VLA) is an independent statutory authority established to:

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

VLA is the biggest legal service in Victoria, providing legal information, education and advice for all Victorians.

VLA helps people with legal problems involving family breakdown, child protection, family violence, criminal matters, social security, mental health, discrimination, guardianship and administration, fines, immigration, tenancy and debt. We provide:

- free legal information through our website, our Legal Help telephone service, community legal education, publications and other resources
- legal advice and minor assistance through our Legal Help telephone service, duty lawyer service and advice appointments on specific legal issues
- grants of legal aid to pay for legal representation by a lawyer in private practice or a VLA staff lawyer
- a family dispute resolution service for disadvantaged separated families.

Our clients are people who are socially and economically disadvantaged, people with a disability or mental illness, children, the elderly, people from culturally and linguistically diverse backgrounds and those who live in remote areas.

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

The structure of this report

To keep this report concise, details of each issue and option in the Consultation and Options Paper, which form the basis of this report, are not reiterated. For further background information about the issues discussed in this Report, please refer to the Consultation and Options Paper.

This report is presented under five main issues or themes that are aligned with, but do not exactly replicate the Consultation and Options Paper. The report is structured in this way to reflect synchronicities across issues that were highlighted by stakeholder feedback. For each theme, a brief summary of why the issue is a priority is provided. The proposed approach to this issue is then outlined. The proposed approach sections include a discussion of some of the key points made by stakeholders in their submissions and key strategies that VLA will progress. Actions are listed alongside the relevant strategy.

Abbreviations

CALD	Culturally and linguistically diverse
CLC	Community legal centre
CLE	Community legal education
FDRS	Family Dispute Resolution Service
FRC	Family Relationship Centre
FVIO	Family Violence Intervention Order
FVPLS Victoria	Aboriginal Family Violence Prevention and Legal Service Victoria
ICL	Independent Children's Lawyer
QPILCH	Queensland Public Interest Law Clearing House
OPA	Office of the Public Advocate
SRL	Self-Represented Litigant
VLA	Victoria Legal Aid
VALS	Victorian Aboriginal Legal Service

Access and Intake

Effective access and intake into family law legal help is crucial. Early identification of legal issues and early provision of legal advice means that clients and their families have the opportunity to resolve a matter without the need for protracted legal proceedings. Effective access and intake can also assist in de-escalating volatile situations, mitigating safety concerns and avoiding related legal problems such as police charges. For example, in their submission the Salvation Army states that “many legal issues escalate because clients either do not know where to go for help or do not have the capacity to seek legal help in the face of other pressing priorities.”¹

Proposed approach

Victoria Legal Aid’s (VLA) proposed approach to improving client access to family law services includes enhancing its engagement with the community sector, and making available tools and training that support appropriate legal referrals by community support agencies. These resources will be complemented by outreach to increase networks across the sector, build relationships and embed referral practices.

The second limb of this approach includes delivering tools and training to family lawyers so that they can better identify other non-legal services required by their clients and provide appropriate referrals to relevant support services.

The approach aims to improve early identification of legal and non-legal issues for clients and provide for more streamlined referrals, so that clients get the help they need at the earliest possible opportunity. This approach also aims to better link the legal and broader community sectors for the benefit of both sectors and clients.

The duty lawyer service at the Family Law Courts is a key aspect of access and intake into family law services. The duty lawyer service is often the first point of contact that family law clients have with the legal system. VLA intends to further investigate and scope an Early Intervention Unit along the lines of the model adopted by Legal Aid NSW to ascertain whether a similar model is a viable strategy for enhancing duty lawyer services in the Victorian context.

Better access to legal information and advice for Aboriginal and Torres Strait Islander clients in Victoria is a priority. VLA has recently developed a Reconciliation Action Plan, which includes considering the recruitment of Aboriginal Field Officers.

Support early identification of legal and other service needs, and improve referral practices across the legal and community sectors

The Consultation and Options Paper suggested that a tool be developed to assist community agencies to identify family law issues so that clients can be referred to a legal service at the earliest possible opportunity.

In the submissions received in response to the Consultation and Options Paper, there was general support for such a tool. MacKillop Family Services stated in their submission that:

Family support workers would benefit from further training to identify and understand legal issues, as one of the range of complexities a family might be experiencing, and provide earlier

¹ Salvation Army, Submission dated 16 February 2015, p.2.

referrals. In our view, providing tools and techniques that assist support workers to identify and assist families to achieve better outcomes are to be welcomed.²

It was also suggested that VLA could use or adapt existing tools such as the National Legal Health Check³ to meet the needs of family law clients. Ringwood Family Relationship Centre suggested that a working group, inclusive of legal and non-legal service providers such as counsellors, be established to inform the development or adaptation of the tool.⁴

It is acknowledged that the development of a simple and effective family law identification and referral tool may appear to be a relatively straightforward task but in practice it may take longer than anticipated and be more involved especially in the area of appropriate referrals. This work would need to be done in conjunction with other agencies and other actions proposed in this section.

Consultations undertaken and submissions received as part of this Review also suggested that in addition to the tool, community support workers be provided with training relevant to family law issues. In particular, community legal centres (CLCs) noted the need for such training and the importance of nurturing working relationships between support agencies and lawyers. It was suggested that VLA and CLCs could work together to provide training in this area.

The Salvation Army noted in their submission that “standardised family law training for community services staff would not replace the need for professional advice, but would produce better assessments, interventions and referrals to specialised legal support when needed.”⁵

Legal Aid NSW provides training for community workers through a series of webinars and face to face training.⁶ This model facilitates broad-reaching engagement with the community sector, especially in regional areas.

It was further suggested in submissions that place-based service planning and outreach be considered to support the tool and training. Some submissions emphasised that while useful, the tool and training alone would not achieve the desired aim of enhancing client access. The reason provided for this was that personal contact across the sector is key to building the relationships and knowledge base required for lawyers and community agencies to embed good referral practices. Submissions also noted that place-based service delivery also provides the most timely access to family law advice for clients. As stated by MacKillop Family Services: “better outcomes can be achieved for clients through seamless service delivery, reducing the need for clients to ‘retell their story’ and providing a single site for client planning and service delivery.”⁷

As part of this overall strategy VLA could also promote the services of Legal Help and duty lawyers to community agencies.

² MacKillop Family Services, Submission dated 16 February 2015, p.1.

³ <http://legalhealthcheck.org.au/index.html>

⁴ Ringwood Family Relationship Centre, Submission dated January 2015, p.1.

⁵ Salvation Army, above n 1, p.3.

⁶ <http://news.legalaid.nsw.gov.au/link/id/z54f3d2af0e50d084Pzzzz51539329ad01b755/page.html#z54f38099cf e70051>

⁷ MacKillop Family Services, above n 2, p.2.

There was general support in the submissions received for the expansion of VLA's *Settled and Safe* preventative family law and family violence community legal education (CLE) program, with some reservations expressed in terms of the program's effectiveness across the state, in particular in regional areas. The program will be expanded to identified regions with consideration given to settlement services infrastructure in those areas.

It was also suggested in the Consultation and Options Paper that a tool be developed for family lawyers to assist them to identify relevant non-legal services for clients, for example support services or family mediation services, and to make better referrals to appropriate services.

The submissions received generally supported this option. The Federation of Community Legal Centres noted that CLCs have experience in providing such referrals and suggested that VLA and CLCs meet regularly to share information and referral resources.⁸ Other submissions emphasised the importance of keeping shared referral information up to date.

The Salvation Army noted that while some lawyers were aware of clients' broader support needs and made appropriate referrals, a "standardised screening and referral tool may help duty lawyers quickly screen for other issues and make appropriate referrals."⁹ Footscray Community Legal Centre and Wyndham Legal Service supported the option of a standardised tool but noted that local connections and trust build the best warm referrals.¹⁰

It was suggested that existing Family Law Pathways Network kiosks in the Family Law Courts be used as a point of referrals at court. This service provides referrals and can make appointments with support services for clients. Family Law Pathways Network has also developed the iRefer Vic App, which provides up to date information on referrals for related family law services such as housing, family violence services, financial assistance, disability supports and drug and alcohol counselling. This app could form part of a referral tool for lawyers in a non-court setting.

It was further suggested in the Consultation and Options Paper that training be provided to family lawyers in related areas of law, for example child protection, so that they can better assist clients and provide appropriate advice and referrals.

There was general support in the submissions for this proposal. It was emphasised in some submissions that this training be made available through podcasts or webinars so that it was accessible to lawyers practising in regional areas.

Action 1

VLA, in consultation with community agencies, service providers and CLCs, will develop a family law screening tool for community and support workers.

Action 2

VLA, in consultation with community agencies and CLCs, will develop and deliver training that supports the use of a family law screening tool for non-legal support workers so that they can better assist clients to identify pathways for family law help and resolution of family law matters.

⁸ Federation of Community Legal Centres, Submission dated February 2015, p.5.

⁹ Salvation Army, above n 2, p. 3.

¹⁰ Footscray Community Legal Centre and Wyndham Legal Service, Submission dated 16 February 2015, p.4.

Action 3

VLA, in consultation with community agencies and CLCs, will scope appropriate sites for outreach services at points of early contact for clients and assess resource requirements for providing those services.

Action 4

VLA, in consultation with CLCs and community agencies, will review current referral pathways to identify gaps and further develop relationships with key service providers to support early and appropriate referrals.

Action 5

VLA will expand the *Settled and Safe* program to targeted regions across Victoria.

Action 6

VLA, in consultation with community agencies, Family Law Pathways Network and community legal centres, will develop or adopt referral or other tools for family lawyers to support early identification of non-legal service support requirements for clients and referral to appropriate services.

Action 7

VLA, in consultation with private practitioners and CLCs, will develop and deliver training to family lawyers on related areas of law, so that they can better assist clients and provide appropriate advice and referrals.

Enhance duty lawyer services

The Consultation and Options Paper considered a variety of options for enhancing duty lawyer services at Family Law Courts.

One option VLA proposed was that consideration be given to adopting an Early Intervention Unit modelled on the Legal Aid NSW Early Intervention Unit. The Unit differs from the traditional duty lawyer service model in a number of ways. Lawyers who work in the Unit do not also work in the Legal Aid NSW general family law casework staff practice and the Unit is separated from the staff practice by information barriers, which means that conflict issues with the staff practice do not arise, enabling the Unit to help a greater number of clients. Unit lawyers specialise in 'early intervention lawyering', attempting to resolve urgent issues for the client on the day and/or clarify and narrow the issues in dispute ahead of next steps, which may include a warm referral for ongoing casework assistance under a grant of aid.

An additional aspect of the Unit is that it employs an information and referral officer who makes appropriate referrals for clients who require ongoing assistance. The officer can also make arrangements for a legal aid application to be completed and on occasion will submit the application for the client, meaning private lawyers who receive a referral from the information and referral officer are aware of whether aid has been granted or an application made, and whether the matter has been assessed as having merit.

There was qualified support for this proposal in responses to the Consultation and Options Paper. Caution was expressed in some submissions about the potential to fragment service delivery and undermine expertise essential for identifying issues and remedies which is gained through regular casework, by separating early intervention unit lawyers and/or information and referral officers from broader family law practice.

An alternative option VLA proposed was that consideration be given to adopting the Queensland Public Interest Law Clearing House (QPILCH) Self Representation Service model of expanded duty lawyer services. Although there was some support for this model, Justice Connect (the Victorian equivalent of QPILCH) stated that in their experience family lawyers do not engage with pro bono services and that such a model would be unlikely to work.¹¹ Accordingly, VLA does not consider this to be a viable option.

A third option VLA proposed was that the existing duty lawyer service be enhanced by recruiting Information and Referral Officers, who would provide legal information and referrals for clients at Court. There was mixed support for this approach, with common feedback that it was unclear how it would work in practice.

Action 8

VLA, in consultation with the Family Law Courts and CLCs, will further investigate the viability of establishing an enhanced duty lawyer service based on the Legal Aid NSW Early Intervention Unit. This project will include further considering the role of Information and Referral Officers at Court.

Increase access by Aboriginal and Torres Strait Islander clients to family law services

It was suggested in the Consultation and Options Paper that VLA develop closer partnerships with Victorian Aboriginal and Torres Strait Islander legal services to meet unmet demand for family law services in Aboriginal communities. It was further suggested that, following the lead of the NSW and ACT Legal Aid Commissions, VLA consider employing Aboriginal Liaison Officers to support this process.

In its submission in response to the Consultation and Options Paper, the Victorian Aboriginal Legal Service (VALS) supported cultural awareness training for VLA staff and the option of employing more Aboriginal staff.¹² VALS suggested that further work on employing Aboriginal Liaison Officers be done in collaboration with VALS and Aboriginal Family Violence Prevention and Legal Service (FVPLS).¹³

FVPLS did not support this option.¹⁴ They submitted that there is a general mistrust amongst Aboriginal clients of mainstream services and that existing Aboriginal legal service providers are best placed to provide legal services to Aboriginal clients.

There was general support for the proposal in other submissions, with some concern expressed about regional impacts and the need for broad consultation.

VLA has recently developed a Reconciliation Action Plan. That plan includes a broad range of commitments including ongoing knowledge sharing and support for VALS and ongoing support to FVPLS to deliver high quality legal services to its clients as well as researching and documenting the benefits and challenges of establishing Aboriginal Field Officers roles within VLA and/or regional Aboriginal legal services.

¹¹ Justice Connect, Submission dated 16 February 2015, p.3.

¹² Victorian Aboriginal Legal Service Cooperative, Submission dated 16 February 2015, p.1.

¹³ Ibid.

¹⁴ Aboriginal Family Violence Prevention and Legal Service Victoria, Submission dated February 2015, p.4.

Action 9

VLA will continue to implement its Reconciliation Action Plan commitments, including as they relate to family law needs.

Quality

A high quality of service provision is essential to ensuring good outcomes for clients. It is important that the quality of legally aided services is consistently high regardless of whether the service is delivered by a staff lawyer, a private practitioner or a community legal centre.

Quality service provision facilitates efficient resolution of disputes, which benefits clients and the justice system. The quality of the legal service provided to a client starts at the preparation stage. Early analysis and case strategy development are essential to identification of key issues, narrowing the issues in dispute and ensuring appropriate resolution. If the issue is not settled, good preparation ensures that the matter progresses in a focused way.

A key aspect of quality service provision is providing services that are culturally appropriate to VLA's priority clients, many of whom experience multiple disadvantage and have complex needs.

While there was a generally held view, expressed during consultations and throughout submissions, that legally aided work is of a good quality, concerns were articulated about the standard of some legally aided work.

Proposed approach

VLA's proposed approach to improving the quality of family law legal aid services is to support and incentivise lawyers to better prepare and conduct or litigate matters, and to better equip lawyers to provide services to disadvantaged clients with complex needs.

VLA proposes to develop and promote tools that further guide and assist family lawyers to provide high quality services. We are also proposing clarification of the practice standard requirements for preparation and changes to the preparation fee for court hearing grants. Working with stakeholders including the Victorian Bar to establish a preferred list of barristers is proposed to ensure greater accountability around briefing practices, and that competent counsel are engaged to represent family law clients.

VLA's priority clients are particularly vulnerable to experiencing multiple legal problems, and face the most significant barriers to accessing legal services and the family law system. The quality of legal services can be improved by equipping lawyers undertaking legally-aided work to provide services in ways that are responsive to the needs of disadvantaged members of the community. It is essential that legally-aided lawyers (including Independent Children's Lawyers (ICLs)) provide services in a culturally appropriate way to Aboriginal and Torres Strait Islander clients and clients from culturally and linguistically diverse (CALD) backgrounds and have an understanding of the particular needs of clients with a disability.

VLA proposes to deliver cultural awareness training, develop and implement a culturally responsive framework for our Family Dispute Resolution Service (FDRS) (formerly known as Roundtable Dispute Management), and work with the Federation of Community Legal Centres to pilot a service model that enhances continuity of service delivery for clients with needs across the family law and family violence jurisdictions. These initiatives will be considered alongside VLA's organisation-wide Reconciliation Action Plan.

Support and incentivise lawyers to better prepare and conduct or litigate matters

Stakeholders consulted during this Review expressed concerns about the standard of trial preparation in some family law proceedings, including the quality of analysis, drafting, case strategies, articulation of issues in dispute, the standard and timing of briefs to counsel, the basis for orders sought, and the evidence used to support the orders sought.

Similar concerns were expressed in response to VLA's recent review of criminal trial funding. In response VLA has developed a suite of criminal law quality tools that are now compulsory for staff lawyers and highly recommended to private practitioners. The development and use of tailored quality tools to complement existing practice standards and compliance systems, could also assist family lawyers. The quality tools could take the form of checklists, precedents and guides for grant of aid applications, preparation for final hearings, evidence requirements, merits assessment and case strategy formulation.

Stakeholders generally supported the development of quality tools, however concerns were raised that the requirement to use such tools would act as a further hindrance to private practitioners undertaking legal aid family law work. Some stakeholders proposed alternative mechanisms for ensuring quality, such as a quality review group. Such a group could form the basis for the development of the quality tools.

Another issue raised by stakeholders in relation to quality was that while a preparation fee is available for lawyers assisting clients to access family mediation through VLA's FDRS to prepare for a family law trial, some lawyers were often not ready to proceed with the mediation or when the matter was listed, causing delay and unnecessary costs for the court and for the client.

One option proposed in the Consultation and Options Paper was to make payment of the preparation fee contingent on proof of preparation for either mediation or trial. Responses to these proposals were mixed. Concerns were expressed about the costs associated with monitoring compliance and the risk that lawyers would be deterred from engaging in legally aided work if more onerous reporting requirements were introduced. However, there was also support for the option of a component of the preparation fee for trials in particular to be more clearly directed to important aspects of preparation such as evidence analysis so long as it gave practitioners flexibility as to how this were undertaken or demonstrated. The Victorian Bar Council and Family Law Bar Association stated that:

The Bar supports the funding of advice on preparation of matters for trial, in particular on evidence. The funding model should be flexible...enabling it to be paid for either a written advice or a conference with counsel.¹⁵

VLA therefore proposes to divide the preparation fee for trials but not to make payment contingent on a newly introduced proof requirement such as a certificate of readiness for final hearing. For dispute resolution, it is proposed that instead of the payment being contingent on new requirements around providing proof of preparation, VLA clarify existing expectations around preparation in the VLA s.29A panels practice standards around family law alternative dispute resolution¹⁶ and compliance be monitored through the recently introduced quality audit process.

¹⁵ Victorian Bar Council and Family Law Bar Association, Submission dated 24 February 2015, p.5.

¹⁶ Practice Standards form a condition of membership of VLA's s.29A private practitioner panels:
<http://www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/panels/panels-conditions>.

Another option proposed in the Consultation and Options Paper for improving the quality of family dispute resolution legal services was to introduce a requirement on parties to exchange a short summary of the issues in dispute prior to a Conference. Stakeholder feedback on this option was mixed with some concerned that it could entrench a positional stance that is counter to the objectives of conferencing. An alternative option presented in submissions was that the FDRS case manager could prepare a short case summary, which would then be shared with the parties. However, this raises similar concerns to parties themselves exchanging summaries. At this stage, this option will not be taken further. However, the reintroduction of an early advice and negotiation grant could also aid better preparation, discussed in the Timely Intervention section.

There was a recurring theme in stakeholder feedback about the quality of advocacy provided by some barristers when matters get to trial. Stakeholders indicated that there was some excellent advocacy work done in legally aided matters and that the standard was generally good. However, instances of poor advocacy were leading to poor outcomes for clients, where the client may not even be aware that the outcome is poor because of their lack of knowledge of the legal system.

The Consultation and Options Paper proposed a preferred barristers list as a way to ensure greater accountability around briefing practices, and to ensure that competent counsel represent legal aid clients in family law matters.

Responses to this proposal were mostly supportive subject to any list being developed in a considered and consultative manner. Stakeholders emphasised that the process for establishing a preferred list should be transparent, include a regular review process and maintain flexibility to brief other barristers where a preferred list barrister is not available (for example in regional areas). The Law Institute of Victoria noted that this option:

ensures greater accountability around briefing practices, and to ensure that competent counsel represent legal aid clients in family law matters. ... We submit that any barrister endorsement process must be transparent and fair, and established in consultation with members of the Victorian Bar.¹⁷

Action 10

VLA will establish a working group that includes private practitioners, CLCs and staff lawyers to develop a suite of quality tools to assist practitioners in the preparation of matters for hearing. These tools could be either optional or mandatory for those who conduct legal aid work.

Action 11

The current preparation fee for trials will be divided into two components:

1. An evidence analysis, merits assessment and case strategy fee (\$534 being three hours at \$178.00) to cover the work involved for a lawyer or barrister undertaking this assessment with the fee payable upon practitioner declaration that evidence is on the file that the assessment has been conducted prior to final hearing (which can be subject to audit via the existing audit process);
2. The remainder of the fee to be a general lump sum fee to cover other preparation undertaken by a lawyer.

¹⁷ Law Institute of Victoria, Submission dated 16 February 2015, p.7.

Action 12

The VLA Practice Standards for s.29A panels will be amended to clearly state the preparation requirements of family lawyers for mediations and trials, and VLA will use the existing audit process to monitor compliance.

Action 13

VLA, in consultation with the Victorian Bar, private practitioners and CLCs, will establish a preferred list of barristers to be briefed in legally aided family law matters.

Better equip lawyers to provide services to disadvantaged clients with complex needs

Stakeholders provided feedback during the preliminary consultations on the need for VLA's FDRS to enhance the delivery of culturally appropriate services for Aboriginal and Torres Strait Islander clients and for clients from CALD backgrounds.

In response to the Consultation and Options Paper, stakeholders supported the development and roll out of cultural awareness training for VLA staff and a culturally responsive framework for family dispute resolution. The Office of the Public Advocate (OPA) also identified the need for other lawyers doing legal aid work to attend training on disability and mental health so that appropriate services are provided to clients who present with a disability or mental health issue. The OPA expressed concern that:

For parents who receive grants of assistance through private practitioners, we have some concerns about the quality and consistency of the representation. It seems most solicitors have little knowledge of disability or understanding of how disability can affect a parent going through a family law case.¹⁸

As discussed in the Access and Intake section, some stakeholders noted that family lawyers do not always understand other legal jurisdictions that are relevant to family law and impact family law clients. Conversely, it was also noted that non-family lawyers providing duty lawyers services at the Magistrates' Court for family violence intervention order (FVIO) matters do not always have an understanding of family law. The Magistrates' Court is the first point of contact with the legal system for many parents. The opportunity to detect family law needs, provide to or refer clients for more comprehensive family law advice and assist them early to navigate the broader family law legal system is often lost at this first point of contact. This is discussed further in the Timely Intervention section.

There was consensus amongst stakeholders that there are benefits to the client and better outcomes, when one lawyer is able to identify the interrelated legal matters a client presents with and ensure the client accesses relevant legal help.

CLCs provide duty lawyer services to a large number of clients in family violence matters. However, CLCs largely refer these clients to a private practitioner (or to VLA where there is no conflict of interest) for family law services. A pilot was proposed in the Consultation and Options Paper whereby one or more CLCs that already undertake family law casework be supported to provide additional ongoing family law services for clients they assist with a FVIO matter.

¹⁸ Office of the Public Advocate, Submission dated 16 February, p.1.

The Federation of CLCs acknowledged that “the Magistrates’ Court provides a good point of contact with vulnerable clients at which to identify that they have a need for family law advice”¹⁹ and were largely supportive of this option and emphasised the need for such a pilot to be adequately resourced. If the pilot demonstrates that such a model provides an effective use of resources by reducing demand for further casework services under a grant of aid, the approach could be further piloted with one or more CLCs that do not currently undertake family law casework. VLA agrees with the submissions from CLCs that training would need to be provided to ensure CLCs have adequate expertise to provide further services.

Action 14

VLA will review existing training on cultural awareness, disability and mental health issues and adapt or develop new training to be delivered to lawyers doing legal aid work.

Action 15

VLA, in collaboration with community-based and academic partners, will develop and implement a culturally responsive framework for the VLA FDRS.

Action 16

VLA, in partnership with CLCs, will undertake a family violence to family law ‘continuity of service delivery’ pilot for high needs clients.

Timely Intervention

Timely intervention refers to identifying and resolving family law issues as early as possible so that they are less likely to lead to protracted court proceedings. There will always be some family law issues that will require court intervention, however experience across the sector demonstrates that early identification of family law disputes and early legal intervention, such as negotiation and mediation, is an effective and cost efficient way of resolving disputes. This approach is reflected in family law policy over the past decade, including in the National Partnership Agreement on Legal Assistance Services (‘National Partnership Agreement’).

Proposed approach

The Review has identified opportunities for further investment in timely intervention to reduce the number of disputes escalating to litigation. Feedback received from stakeholders during preliminary consultations supported the importance of identifying the need for legal intervention before a matter reaches crisis point, and progressing a matter quickly once an issue is identified.

VLA proposes four new approaches to enhance timely intervention in family law matters:

- investigating the value of providing legal services on site at one or more Family Relationships Centres (FRCs) with the aim of assisting a broader range of clients with complex needs
- conducting a pilot where a legally-assisted mediation service is made available at the Federal Circuit Court to provide an additional opportunity for proceedings to settle before a final hearing

¹⁹ Federation of Community Legal Centres, above n 8, p. 5.

- better utilising FVIO duty lawyer services at Magistrates' Courts as a client access and intake point into further required family law legal services
- re-introducing the advice and negotiation grant to assist settlement of some or all family law disputes prior to formal mediation or litigation.

Investigate the value of a new legal service at Family Relationship Centres

Family dispute resolution is an effective pre-court tool for resolving family law matters. VLA provides dispute resolution services through the VLA Family Dispute Resolution Service (FDRS) (formerly known as Roundtable Dispute Management). However, many families access mediation services provided by FRCs.

Feedback from FRCs as part of this Review was that for most of their clients, mediation without legal assistance leads to settlement. Legally-assisted mediation can enable participation and achieve higher resolution rates for clients with complex needs.

An option proposed in the Consultation and Options Paper for these clients was to review whether VLA should trial making legally-assisted mediation available at FRCs (with another option being to expand eligibility for the VLA FDRS, discussed in the Who Gets an Intensive Service? section). The response from stakeholders to this option was mixed. Some FRCs indicated support for this approach. Others raised concerns about the potential duplication of services and queried who would provide such assistance. Some CLCs noted that they currently provide legal services to clients at FRCs.

Those stakeholders with direct experience of legally-assisted dispute resolution services being provided through FRCs, were strongly supportive of this option. They emphasised that such a service enables a particular group of clients (who might otherwise be excluded) timely access to a dispute resolution service. The Federation of Community Legal Centres also noted that CLC services provided at FRCs benefit from the concurrent availability of VLA services so that each party to mediation can be provided with advice.²⁰

VLA proposes to examine whether such a service would reduce the need for parties to attend a further VLA FDRS conference and avoid court proceedings, the extent to which such a model may be more or less effective than referring parties to the VLA FDRS, and if such a service was trialled where and by whom it might be delivered. This examination would include an evaluation of previous pilots to assess their effectiveness in settlement and reducing further legal involvement. It would also cover a review of current service arrangements in light of the potential for duplication otherwise in terms of legal service provision to FRCs and of services between VLA FDRS and FRCs. It would also assess what might be the optimal model for service delivery.

Action 17

VLA, in consultation with FRCs and CLCs, will investigate the value of trialling a new legal service at one or more FRC, including an evaluation of previous pilots of legal assistance to clients of FRCs and review of current service arrangements undertaken by other legal service providers.

²⁰ Federation of Community Legal Centres, above n 8, p. 7.

Pilot conducting mediations at Court

The Consultation and Options Paper canvassed the possibility of a court ordered mediation pilot based on the Court Ordered Mediation Pilot in NSW. Several stakeholders in the preliminary consultations suggested that this would be a worthwhile pilot to conduct.

A similar service in Victoria could create a new pathway (in addition to VLA's Family Dispute Resolution Service) for families that have not previously accessed (or have been exempted from) mediation or have had the benefit of court assistance and family reports to provide them with the opportunity to resolve disputes prior to a final hearing.

This proposal was strongly supported by stakeholders. However, stakeholders questioned whether such a pilot would duplicate the VLA FDRS. Efforts to minimise duplication would need to be addressed in the design phase, including most likely by conducting the mediations on site at the court and within set stages or timeframes in relation to a family law proceeding. A pilot would provide insight into whether a broader range of clients than currently access the FDRS were able to access mediation through the court based process.

Action 18

VLA will conduct a court based mediation pilot.

The pilot could involve VLA employing a mediator to conduct mediations at the court. The pilot could also trial having a VLA FDRS case manager on call to assess suitability for mediation. The likely site for such a pilot is the Federal Circuit Court at Dandenong.

Better utilise the Magistrates' Court for client intake into family law services

Increasingly, FVIO applications at Magistrates' Courts are the first point of contact into the legal system for many parents in Victoria who also need family law services. Feedback received from stakeholders during preliminary consultations identified the Magistrates' Courts as a point of intervention to screen for family law issues and provide required referrals for clients that is not being used as effectively as it could be.

Recent VLA research also shows that approximately 12% of our family and children's law client base over a five year period received more than one family law service and within that group the most common cluster of legal issues was a parenting dispute with a family violence issue in the one year prior.²¹ This provides some support for the feedback from stakeholders about the importance of the Magistrates' Court as a point of intervention for family law clients.²²

²¹ Victoria Legal Aid Submission (April 2015) "Families with complex needs: Submission to the Family Law Council's Terms of Reference" p.10 and 11

²² Recent research has also highlighted the importance of the Magistrates' Court as a point of intervention in relation to the issue of economic abuse: Camilleri, Corrie and Moore (2015) "Restoring Financial Safety: Legal Responses to Economic Abuse". This research examined 25 cases of people who had taken out intervention orders in the Magistrates' Court and involved the client being interviewed by a lawyer about all of the issues involved in their matter. The research identified that economic abuse was often underreported and not well understood. Again, this suggests that services provided in the Magistrates' Court could function as a more effective entry point into family law assistance.

Most stakeholders supported, in principle, the option in the Consultation and Options Paper of greater intake of family law matters at the Magistrates' Courts. Stakeholders raised a number of concerns about how this might work in practice. Issues identified included the existing heavy work load of family violence duty lawyers, that the primary focus of legal services at the Magistrates' Courts should be on addressing the family violence issue not resolving parenting disputes, the importance of not overloading clients with information, and whether family violence duty lawyers had adequate knowledge of family law to provide family law legal advice.

When considering changes to the provision of duty lawyer services at Magistrates' Courts, VLA will take into account the current demands on family violence duty lawyers. Amongst other things, VLA proposes to develop a guide for duty lawyers that allows for basic screening of family law issues, a guide to appropriate referrals, and complementary training.

Action 19

VLA will review the way in which family violence duty lawyer services are provided with a view to enhancing intake opportunities at Magistrates' Courts for clients with family law legal need by supporting lawyers to screen more consistently for family law need.

Reintroduce an advice and negotiation grant

There was a view among stakeholders that when matters are scheduled at the VLA FDRS, little progress on issues is made until the mediation date. In initial consultations for this Review, some stakeholders recommended that VLA consider re-introducing the advice and negotiation grant. Practitioners who have used the grant when it was previously available found that it encouraged early resolution of matters and the settlement of dispute by consent orders without the need for a further grant of aid. They also provided feedback that disputes can escalate while parties become frustrated waiting for their dispute resolution conference.

The majority of submissions in response to the Consultation and Options Paper supported reintroducing the grant. As Inner Melbourne Community Legal stated "an advice and negotiation grant would assist to ensure that clients are provided with proactive legal assistance when there is still a possibility of early resolution."²³ Hume-Riverina Community Legal Service also submitted that this would be the most effective way to prepare clients for family dispute resolution, rather than a limited exchange of issues, and better supports practitioners to undertake this early work.²⁴

VLA proposes to reintroduce the grant if early advice and negotiation is demonstrated. If the matter does not resolve, the grant would be deducted from the preparation component of the next grant (dispute resolution or litigation).

Action 20

An advice and negotiation grant will be reintroduced for limited matters, with the fee to be deducted from the preparation fee for dispute resolution or litigation (as relevant) if the matter proceeds to that stage.

²³ Inner Melbourne Community Legal, Submission dated 16 February 2015, p.6.

²⁴ Hume Riverina Community Legal Service, Submission undated, p.5.

Who gets an intensive service?

A key objective of the Review is to identify, in the context of limited funding, how the most comprehensive family law services can be targeted to the most vulnerable Victorians, whilst ensuring access to legal support for all Victorians who need it. A key aspect of this objective is considering priorities for grant funding for a lawyer to represent a client in their family law matter (for both dispute resolution and particularly court litigation), as a lawyer undertaking family law casework for a client is the most resource intensive legal service provided by VLA.

VLA guidelines determine priority matters for dispute resolution and litigation funding. This Review is an opportunity to reflect on whether the guidelines in their current form achieve desired outcomes and direct funds in the most cost effective way. It is also an opportunity to consider whether existing services are reaching priority clients.

Proposed approach

VLA proposes a suite of changes to re-calibrate intensive service delivery and enhance assistance for vulnerable clients with complex needs. These changes include clarifying and simplifying existing guidelines in the light of feedback that they have become too complex and may be deterring private practitioners from taking on legal aid cases.

VLA proposes to refine its priorities for family law litigation funding and ease restrictions on trial representation funding so that priority clients are provided a full service through to final hearing. VLA further proposes to re-introduce funding for some property matters, recognising that there is a strong social and economic rationale for assisting with these matters. Other guideline amendments proposed expand eligibility relevant to family dispute resolution, family violence matters and Recovery Order hearings.

VLA is also proposing a pilot expanded FDRS duty lawyer scheme to consider its impact on costs and early resolution of disputes for clients who may not be able to participate in dispute resolution without the assistance of a lawyer.

Recognising that many people are not eligible for intensive family law legal services, a number of options relevant to providing targeted and effective services to self-represented litigants (SRLs) were considered as part of this Review. It is acknowledged that VLA, the Courts and other legal and support organisations have provided various services to SRLs in the past and that a more coordinated, evidence-based approach to assisting this client group is required. VLA proposes to review existing resources and approaches in collaboration with the sector, and address gaps and duplication in family law legal information and support as required.

Clearer guidelines

Submissions in response to the Consultation and Options Paper expressed strong support for simplified grant guidelines. One private practitioner stated that the guidelines needed a complete overhaul as there were many inconsistencies.²⁵ Another private practitioner submitted that the guidelines were in his view unfair, bewildered clients and deeply frustrated judicial officers.²⁶ Some submissions noted the drop off in private practitioners doing legal aid work especially in regional

²⁵ Legro Lawyers, Submission dated 9 February 2015, p.2.

²⁶ Peter Lynch, Submission dated 21 April 2015, p.2.

areas. It was suggested that re-writing the guidelines to make them less complex and easier to apply may result in private practitioners reconsidering legal aid work.

The Federation of Community Legal Centres also noted that if the guidelines were easier to understand and apply, the referrals process would work more effectively, as CLCs and others would be able to refer clients to VLA and private lawyers who undertake legal aid work with more confidence in a predictable outcome.²⁷

Action 21

VLA will establish a reference group that includes private practitioners, CLCs and VLA staff lawyers, to review grant guidelines related to family law dispute resolution and litigation and make recommendations about:

1. Re-drafting the guidelines so that they are easier to understand and apply.
2. Re-drafting the guidelines to reflect the case management, hearing models, and practices of the Family Law Courts.
3. Developing checklists to assist practitioners in applying for grants of aid and assessing the merits of a matter.

Priorities for litigation funding

In the Consultation and Options Paper VLA proposed, based on stakeholder feedback during the preliminary consultations, that priority for litigation funding be given to matters where:

1. The client has a particular vulnerability, such as a mental health issue, cognitive impairment, language barrier, literacy issues, drug and alcohol issues, or an acquired brain injury;
2. The matter involves allegations of family violence and/or child abuse, where the outcome of the matter would significantly impact the relationship between a parent and the child/ren because one parent is likely to have limited or no time with the child/ren or there is likely to be a change in residence; and/or
3. The proposal or conduct of a party substantially prejudices the ability of a child to maintain a meaningful relationship with one or both parents.

The submissions in relation to this proposal were generally supportive of these priorities, however various further refinements to the priorities were suggested. Some concern was also expressed that the proposal was narrower than current guidelines. There were also concerns expressed that paragraph 2 of the proposed option was too narrow to protect victims of family violence. For example, Inner Melbourne Community Legal stated that it was not clear if the proposal applied to both parents and raised the possibility that under the above priorities one parent could lose funding in the middle of a matter as the matter evolved if it became clear that a change in residence or limited or no time was not going to be ordered.²⁸

VLA acknowledges that the proposed priorities are potentially more restrictive than the current guideline. This was a deliberate attempt to target intensive litigation assistance to the most vulnerable clients and enable trial representation funding to be restored for all funded litigation matters (see below). The proposals apply to both parties so it is proposed that funding will generally

²⁷ Federation of Community Legal Centres, above n 8, p. 8.

²⁸ Inner Melbourne Community Legal, above n 21, p.8.

be available on the basis that both parties are funded, subject of course to the usual merits and means tests.

Based on the stakeholder feedback received, VLA proposes further amendment to the above priorities for litigation funding but notes also that this action sets out only a general guide as to the litigation funding priorities VLA will adopt. Further refinement may be required prior to formal adoption as a grant eligibility guideline. Key stakeholders will be consulted in relation to the proposal prior to it being formally adopted.

Action 22

VLA will prioritise funding for family law litigation for cases where:

1. A party has a particular vulnerability, such as mental health issue, cognitive impairment, language barrier, literacy issues, drug and alcohol issues, or an acquired brain injury AND the particular vulnerability impacts on either:
 - a. the ability of the party to conduct their own litigation; and/or
 - b. the ability of a child subject to the proceedings to maintain a meaningful relationship with one or more parties to the proceedings.

or

2. A child's wellbeing or safety is at risk of harm from being subjected to, or exposed to, abuse, neglect or family violence to the extent that Orders made in the proceedings are likely to significantly limit the relationship between the child and one or more parties to the proceedings and/or to make a change in residential arrangements for the child.

Funding in such circumstances would extend to both parties in the matter (subject to other guideline requirements).

Less restrictive trial representation funding

Stakeholders have expressed particular concern about the current guideline that restricts funding for representation at a final hearing.

The submissions in response to the Consultation and Options Paper for this Review supported the reintroduction of funding for representation at final hearings. There was also acknowledgement in the submissions that the reintroduction of funding for final hearings will have a significant cost impact and that this may mean that less people receive litigation grants. Stakeholders suggested that they would rather less people receive the grant so that the most vulnerable clients are supported through the whole litigation process.

Action 23

The guideline restricting funding for representation at final hearing for clients otherwise eligible for litigation funding will be removed.

Re-introduce litigation grants for property matters

Submissions in response to the Consultation and Options Paper supported the re-introduction of grants of aid for property matters. Springvale Monash Legal Service stated that there was a strong social and economic rationale for providing assistance in these matters. As it stated:

Property division can have significant impact on the financial stability of families. It is well documented that eroding financial stability may cause negative impact on health and wellbeing

and other social factors. There are broader community implications including increased pressure on the welfare system.²⁹

The Australian Institute of Family Studies longitudinal study of separated families also identified the importance of settling property matters. In that study it found that most parents settled things between themselves but there were concerns raised about how well informed parents were and the basis for those agreements.³⁰

There was some concern expressed that the proposed amount of the equity pool limiting eligibility for property matters set out in the option in the Consultation and Options Paper was too small and that it would restrict access to aid. This concern was particularly raised by the Law Institute of Victoria stating the amount was too low and that VLA could recoup funds by making repayment a requirement of the grant.³¹

In light of the concern expressed in relation to the proposed equity pool it is proposed that the pool be \$50,000 excluding superannuation (the option proposed in the Consultation and Options Paper was for the pool to be \$50,000 including superannuation). This recognises that parties may have superannuation that they are not able to access and therefore it is not a financial resource that they can use to fund their legal proceedings. Recent research also highlights the importance of being able to address property or financial matters in the family violence context, noting that economic abuse may involve disputes over only small amounts or debts, but that these small amount disputes have a major impact for the parties involved.³²

There was also concern expressed by stakeholders that funding property matters should not be at the expense of funding children's matters. We propose to clarify under this action that funding for property matters will only be available where there are related children's matters.

Action 24

Litigation grants for property matters will be reintroduced when the dispute also involves children and:

- the parent is seeking to retain the family home and will receive no payment; or
- the matter involves a superannuation split and/or a pool of equity less than \$50,000 (excluding superannuation).

Other guideline amendments

There was support for other specific guidelines to be amended. In particular, it was suggested that the requirement that respondents to a court application may only be granted aid to seek an adjournment if the parties have not already attended VLA FDRS, be removed for the reasons outlined in the Consultation and Options Paper. As noted in that paper, an additional factor supporting this change is that the VLA Practice Standards for s.29A panels now require practitioners

²⁹ Springvale Monash Legal Service, Submission undated, p.10.

³⁰ Australian Institute of Family Studies, Longitudinal Study of Separated Families: Post-separation parenting, property and relationship dynamics after five years', p.92.

³¹ Law Institute of Victoria, above n 17, p.8.

³² Camilleri, Corrie and Moore (2015) above n 22.

to consider if a matter is appropriate for dispute resolution at appropriate times and retain evidence of this on the file.

It was also suggested that the guideline restricting funding on the basis of breaches of Victorian family violence safety notices or intervention orders be removed. Stakeholders provided feedback that these guidelines were having an adverse impact on the court process and the administration of justice. In particular, it was suggested that police charges in relation to breaches of Victorian family violence safety notices or intervention orders in the Magistrates' Court are being adjourned to enable the continuation of legal aid funding for the family law matter. The Magistrates' Court has expressed concern about this practice and the negative impact on its court lists. This guideline may also be having the perverse effect of making the victim of family violence less safe as the opposing party loses their lawyer and is no longer receiving legal advice.

There was also strong support in the submissions for eligibility for the VLA FDRS to be expanded. Submissions noted the importance of both parties being represented in family violence matters. In accordance with National Partnership Agreement priorities, family dispute resolution services should remain more widely available than litigation funding, but where relevant the family dispute resolution guidelines should also be consistent with the litigation funding guidelines in line with the actions proposed earlier to re-draft the guidelines so that they are easier to understand and apply. This is therefore reflected in the action proposed below.

There were also concerns expressed in submissions from VLA staff in relation to the Recovery Order guideline. Under this guideline a lump sum fee is payable for one return date in Court. The guideline was developed to reflect the practice that because Recovery Orders for the return of children are urgent matters, final orders are made on the first date they are listed. However, there has been a change in this practice. Judicial officers are now routinely ordering section 11F reports prior to the making of any order. A section 11F report is a short form family report prepared by a family consultant. There is currently no provision in the guideline for a subsequent hearing fee and this leaves clients to represent themselves on the return date.

Action 25

The funding requirement that respondents to a court application may only be granted aid to seek an adjournment, if parties have not attended the VLA FDRS, will be removed.

Action 26

The guideline removing eligibility for aid will be amended so that it does not exclude funding on the basis of breaches of Victorian family violence safety notices or intervention orders.

Action 27

Eligibility for VLA FDRS will be expanded to include:

- matters where there is or has been a risk of family violence (i.e. both victims and perpetrators are eligible)
- matters where the proposal or conduct of a party substantially prejudices the ability of a child to maintain a meaningful relationship with one or both parents.

Action 28

VLA will review the Recovery Order guideline to determine if a subsequent hearing fee is required.

Pilot an expanded duty lawyer service to represent clients at the VLA FDRS

Submissions in response to this option were generally supportive and there was particularly strong support from stakeholders in regional areas. Women's Legal Service Victoria, which is currently involved in providing duty lawyer-type services at VLA FDRS through its related organisation, Family Law Legal Service, noted the important role this service plays and supported increased client access.³³

The Federation of Community Legal Centres did not support this option and suggested that VLA instead consider funding roles at CLCs to undertake this service.³⁴ However, this approach is not likely to be as cost effective or feasible given services to family dispute resolution clients are currently provided primarily by the VLA in-house practice and private practitioners and alternate service providers are required to represent more than one party to a mediation. Further, a pilot would contemplate CLC involvement in any case. An expanded duty lawyer service is thus VLA's preferred model to pilot.

Footscray Community Legal Centre and Wyndham Legal Service suggested that different CLCs be rostered to deliver the pilot.³⁵ As noted above, VLA supports CLC involvement in a pilot and will consider how best to effect this as part of the implementation phase.

Action 29

VLA will pilot an expanded duty lawyer (or Family Law Legal Service-type) scheme to represent clients at the VLA FDRS (including clients currently eligible for a grant of aid), to determine if such a scheme is effective and economic, and enables more clients to access the service.

Expand and diversify family law legal information to support self-represented litigants

SRLs take up a disproportionate amount of time and resources in family law courts. It is generally agreed that there will always be SRLs in the family law system and that, ideally, there should be services available to assist them.

One option proposed in the Consultation and Options Paper was to pilot a QPILCH-type service, providing additional discrete task assistance for SRLs. In the submissions received there was some support for this proposal, however concerns were expressed about the capacity of clients to engage with such a service. Significantly, the National Pro Bono Resource Centre and Justice Connect did not support this option on the basis that genuine discrete task assistance is difficult in family law matters.³⁶ In light of these concerns, VLA does not propose to progress this option.

Another option is to establish a student legal clinic model to provide assistance to family law clients in preparing documents. There was mixed support for this option also, and significant concerns were raised in relation to quality, liability issues and the required level of supervision. In light of these concerns, VLA does not propose to progress this option.

The Consultation and Options Paper proposed that there be a review of existing SRL resources to identify and address any gaps and duplication of information. There was also support for this option

³³ Women's Legal Service Victoria, Submission dated 16 February 2015, p.8.

³⁴ Federation of Community Legal Centres, above n 8, p. 7.

³⁵ Footscray Community Legal Centre and Wyndham Legal Service, above n 10, p.5.

³⁶ Justice Connect, above n 11, p.3; National Pro Bono Resource Centre, Submission dated 12 February 2015, p.4.

in the submissions received. Some stakeholders noted that current family law legal information is pitched at too high a level for some SRLs and that any review should extend to the quality and accessibility of content, and identification of gaps. It was also suggested that the review of existing information be undertaken in collaboration with relevant stakeholders.

VLA is currently in the process of conducting a review of VLA's CLE family law resources. This review could also include considering the efficacy of VLA's previous initiatives to support SRLs and a consideration of relevant academic literature regarding best practice approaches to service provision for SRLs.

It was further proposed in the Consultation and Options Paper that family law legal information that targets SRLs be expanded and diversified as required. General support for this option was expressed in the submissions received. This may mean an increase in online CLE provided by VLA and CLCs in relation to family law, and/or a series of online videos providing basic family law information and conflict resolution options. Videos could be modelled on existing information sessions and would require minimal new content.

A collaborative review of existing resources and addressing any gaps would have the added benefit of encouraging a coordinated approach to the provision of SRL resources and services in the future.

Action 30

VLA, in collaboration with relevant stakeholders, will review existing SRL resources to identify and address quality and accessibility issues and gaps and duplication in content, and develop or diversify family law legal information and other resources as required to support self-represented litigants.

Independent Children's Lawyers

ICLs represent children in their best interests in the Family Law Courts. They are appointed by the Court and are then funded by VLA. Under the relevant guideline, VLA does not require the child to apply for a grant of assistance, rather it funds on the basis of the Court's request and VLA's assessment that it is reasonable in the circumstances. The appointment as an ICL is a personal one (as opposed to, for example, appointment of a firm) and the ICL is required to make submissions to the Court in relation to the children's best interests.

Stakeholder feedback to this Review confirmed the research that ICLs perform an important role in the family law system and are highly valued by the Family Law Courts and the legal profession in general. Children and young people are priority clients for VLA. The provision of effective ICL services to ensure the best possible outcome for children in family law matters, will therefore remain a priority for family law legal aid services into the future.

Proposed approach

Feedback received about ICLs during this Review's preliminary consultations was generally positive, however a number of suggestions were made about how the ICL role could be more effectively and efficiently administered. Concerns were expressed by stakeholders about the lack of an instructing fee to enable instructing in complex matters, the rigidity of the current guideline requiring ICLs to appear as solicitor advocates in final hearings and the delays sometimes caused when parents struggle to pay for required assessments when there is no disbursement grant available to cover this cost under the existing guideline.

VLA proposes to better facilitate cost recovery in relation to the funding of ICLs to offset introducing a limited grant for ICLs to instruct in proceedings. VLA also proposes to enhance training for ICLs to build their capacity to appear at hearings.

Facilitate seeking contributions and costs

When an ICL is first appointed VLA routinely makes a request for a voluntary contribution from the parents to cover the costs of the ICL but the amount sought does not vary with capacity to pay. Contributions and costs orders are not regularly pursued even in cases where parents have the financial resources to pay. In the last three financial years a total of around \$190,000 was recovered by way of contributions and costs orders related to ICLs. Increased payments could help offset the costs of introducing some of the other ICL changes below.

In submissions following the release of the Consultation and Options Paper, it was suggested that VLA consider ways to more actively seek costs and contributions in appropriate matters from parties that have the capacity to pay. VLA agrees and proposes to develop and introduce more structured guidelines that facilitate better assessment of the parties' capacity to pay, requests for voluntary contributions to costs, and ICLs seeking costs orders.

Action 31

VLA will develop more structured guidelines for seeking contributions and costs to recover the costs of the ICL where appropriate.

Introduce a disbursement grant

ICL stakeholders provided feedback about the obstacles around organising required assessment reports when parents are not able to pay for these reports or they are reliant upon a parent's lawyers to pay. Currently the grant for a disbursement is made on the parent's grants file (if the parent is legally aided) and often there is a time delay in the payment of the accounts by lawyers. It was suggested that a disbursement be introduced to allow ICLs to efficiently progress matters in the best interests of children and avoid unnecessary adjournments by ensuring that reports are available when required.

Action 32

A grant for disbursements will be introduced for ICLs seeking assessment reports, applicable where there are legally aided parties or self-represented litigants are unable to pay the cost of the report.

Introduce a limited grant for ICLs to instruct in proceedings

The Consultation and Options Paper proposed that a limited grant be introduced to allow ICLs to instruct in complex matters because of the benefit for children of the ICL hearing and assessing direct evidence.

General support for this proposal was expressed during consultations and in submissions. Stakeholders provided feedback that if structured appropriately it is unlikely that such a fee would be abused. VLA agrees.

VLA proposes that this grant only be available in the most complex cases such as Magellan matters, or on the basis of genuine need. The grant would be structured as an hourly rate fee, payable on evidence of attendance at court. The fee would only be payable if the ICL personally attends at court (not another staff member of that firm or VLA). The fee may also be limited to the first day of hearing with extensions available on evidence of the requirement to attend further hearing days.

Action 33

A limited grant for ICLs to instruct in proceedings will be introduced.

ICLs as solicitor advocates

Continuity of representation is recognised as important to support the best interests of children. VLA's guideline requiring ICLs to appear as solicitor advocates at final hearing, reflects this recognition. However, it is apparent from the feedback to this Review that the current guideline has created considerable concern for ICLs and has led to some experienced ICLs not reapplying to the panel, due to the inflexibility of the guideline.

The option of providing additional advocacy training for ICLs was welcomed by stakeholders.

Action 34

The current guideline will be amended to continue to allow for, but no longer require, ICLs to appear at final hearing as solicitor advocates.

Action 35

VLA will provide training to ICLs to build their capacity to appear at their own hearings.