



Submission in response to the Child Protection  
Legal Aid Services Review consultation and options  
paper

Prepared by Women's Legal Service Victoria  
for Victoria Legal Aid

December 2016

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## INTRODUCTION

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We thank you for the opportunity to comment on the Child Protection Legal Aid Services Review.

We support the purpose of the Review to identify deficiencies with the system informed by practice experience, and work with others to re-imagine the Victoria Legal Aid (**VLA**) Child Protection Program. As newcomers to the Child Protection Panel, we believe we can provide “fresh eyes” and perspectives on current practices in this area.

Our submission will focus on the following four areas that have a significant impact on the lives of women and their children:

1. Improving the breadth and quality of legal representation in child protection matters
2. Expanding client services, including establishing the following:
  - Client Support Service Pilot
  - Early Intervention Unit
  - Child Protection Health Justice Partnership
  - Duty-lawyer service for parents in confined environments
3. Improving Child Protection training in the following ways:
  - Multidisciplinary training for legal and non-legal child protection service providers
  - Development of a Workplace Development Strategy
4. Developing improved processes

## **WOMEN'S LEGAL SERVICE VICTORIA**

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Women's Legal Service Victoria (WLSV) is a state-wide community legal centre (CLC) that has been providing free legal services to women for over 30 years. We specialise in issues arising from relationship breakdown and violence against women. WLSV provides free and confidential legal information, advice, referral and representation to women in Victoria.

Our principal areas of work are family violence (principally family violence intervention orders), family law, crimes compensation and child protection. In particular, WLSV operates a daily child protection duty lawyer service at the Moorabbin Children's Court.

WLSV contributes to the development of law and policy by challenging laws that unfairly impact on women experiencing violence and relationship breakdown and informing and advancing policy initiatives that promote the rights of women.

We also deliver training programs and share our expertise with other professionals regarding effective responses to violence, relationship breakdown, and child protection.

## **OUR ROLE IN THE CHILD PROTECTION SYSTEM**

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Since 2015, WLSV has participated in the VLA child protection pilot program. As part of this program, WLSV lawyers attend Moorabbin Justice Centre as child protection duty lawyers before the Children's Court. WLSV lawyers provide advice, representation and referrals to women when they first come to Moorabbin Children's Court for a child protection issue, and then continuing legal assistance with ongoing casework as required.

Most if not all of our child protection have complex needs. For example, the demographics of our Child Protection Pilot clients include<sup>1</sup>:

- 58% were aged between 18-34
- 93% were recorded as receiving low or no income
- 48% were at risk of homelessness
- 38% identified as having a disability
- 75% have experienced family violence
- 8% identified as of Aboriginal or Torres Strait Islander descent
- 12% were born in non-English speaking countries
- 4% lived in a regional, remote or rural location

Our lawyers have cross-jurisdictional experience (in the practice areas identified at page 4) and so they are able to help clients address legal issues across different areas of the law that may not otherwise have been identified.

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<sup>1</sup> Figures are based on four quarters of reporting from Oct/Nov 2015 – September 2016.

## SUMMARY OF RECOMMENDATIONS & ENDORSEMENTS

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### Recommendations

#### Improving the breadth and quality of legal representation in child protection matters

- Recommendation 1 (*Option 43*): That VLA work with CLCs to identify areas of unmet child protection legal need, and what resources and supports are required to deliver quality child protection services.

#### Expanding client services

- Recommendation 2 (*Option 2*): That VLA establish a pilot Client Support Service.
- Recommendation 3 (*Option 20*): VLA should pilot an early intervention unit featuring a team of lawyers and/or appropriately qualified, culturally diverse non-legal advocates, to assist and support children, young people and parents in the pre-litigation and early-litigation phase.
- Recommendation 4 (*Option 21*): That VLA establish a health justice partnership pilot through a CLC that provides early advice and support to pregnant women who are or may be the subject to an unborn report. This should draw on existing models of health justice partnerships that already have established best practice.
- Recommendation 5 (*Option 39 - 40*): That VLA implements processes to provide parents serving a term of imprisonment or receiving involuntary mental health treatment access to legal advice related to child protection and, where eligible, representation.
- Recommendation 6 (*Option 41*): VLA should develop an internal intake protocol for use across program areas to improve referral pathways to legal and non-legal services.
- Recommendation 7 (*Option 42*): VLA should develop an intake protocol for use by the Child Protection Program to encourage earlier identification of legal problems and improve referral pathways for clients with complex needs.

#### Improving child protection training

- Recommendation 8 (*Options 14, 23 & 24*): Introduce minimum requirements for Child Protection Panel lawyers who represent children and young people. WLSV supports the requirement that Child Protection Panel lawyers be required to undertake training in the following:
  - trauma informed practice
  - capacity assessments for children, young people and parents

- cultural awareness training
- Recommendation 9 (*Option 25*): Child Protection Panel lawyers should have to complete a minimum number of child protection related hours of Professional Legal Education ('PLE') each year. VLA should work with its partners to ensure that the PLE is in line with best practices models, well-attended by practitioners on the Child Protection Panel, has curriculum and training resources for future use, and is inter-disciplinary.
- Recommendation 10 (*Option 34 & 38*): VLA should host multi-disciplinary forums for child protection professionals, which should be organized with input from multi-disciplinary training experts, such as WLSV, given its experience running *Safe & Protected* and its unique cross-sector perspective.
- Recommendation 11 (*Option 49*): We recommend that a workforce development strategy be established. We recommend that the work undertaken by the Children's Court Multi-disciplinary Training Board and WLSV in delivering the *Safe & Protected* training event be considered a best practice model for multi-disciplinary workforce development.
- Recommendation 12 (*Option 35*): A telephone advice service staffed by highly experienced lawyers may be useful to support Child Protection Panel lawyers. However, developing and delivering best practice training for Child Protection Panel lawyers should be treated as a higher priority.
- Recommendation 13: Training should be provided for non-legal advocates and support workers working with child protection clients.

#### Developing improved processes

- Recommendation 14 (*Option 15 & 16*): VLA develops and maintains plain-language information about the child protection system that can be easily understood by children, young people, parents, and clients with a cognitive impairment.
- Recommendation 15 (*Option 36*): VLA should work with the court to establish regular court user meetings, designed to improve service delivery, at all headquarter courts.
- Recommendation 16 (*Option 27*): VLA should create a case preparation checklist with its partners. Evidence of the use of this tool, or a similar document would be required on the file.
- Recommendation 17 (*Option 28*): Clarify the practice standards for child protection matters as they relate to the conduct of child protection matters. This would include requirements concerning the preparation of matters and their service to clients, both prior to and at each court event.
- Recommendation 18 (*Option 44*): State-wide duty lawyer guidelines should be created for the

child protection duty lawyer service.

- Recommendation 19 (*Option 33*): VLA should:
  - work with the Victorian Bar in relation to ensuring benchmarking and appropriate training for barristers practicing in child protection; and
  - create a preferred barristers list for child protection matters to ensure that counsel briefed in matters are suitably qualified and experienced in the child protection jurisdiction.
- Recommendation 20 (*Option 31*): Lawyers should not be required to seek an extension of the grant of assistance for a second conciliation conference.
- Recommendation 21 (*Option 32*): VLA should not review the requirement that Child protection panel lawyers make an application for costs where an adjournment is due to DHHS failing to provide a report in accordance with legislated timeframes. Instead DHHS processes need to be reviewed to ensure that the Department is providing reports in accordance with court orders.

### **Endorsement of FVPLS Victoria submission in relation to service provision to Aboriginal and/or Torres Strait Islander clients**

In addition, we have reviewed a draft of the Family Violence & Protection Legal Service (**FVPLS**) Victoria's submission to this review, and endorse its submission in relation to the following:

- Option 9: VLA to work with local communities, the Victorian Aboriginal Legal Service (**VALS**) and FVPLS Victoria to increase the number of Aboriginal and/or Torres Strait Islander children, young people and parents seeking legal advice at the early stage of child protection intervention
- Option 10: VLA provide additional resources to VALS and FVPLS Victoria to enable them to train more staff to deal with child protection matters
- Options 11, 41 and 48: Supporting Aboriginal children, young people and parents being "offered the opportunity" for representation by an Aboriginal legal service provider and improving referral pathways
- Option 12: Grants of aid be made available for Aboriginal children, young people and parents where a child is placed in out-of-home care and the issue of parental or sibling contact is in dispute
- Option 13: Grants for the attendance of lawyers at Aboriginal family-led decision making



meetings

We further endorse FVPLS Victoria as the appropriate organisation to deliver services contemplated under options 19, 20, 21, 22 and 39 to Aboriginal women and other Aboriginal victims/survivors of family violence or sexual assault.

## **1 – IMPROVING BREADTH & QUALITY OF ACCESS TO LEGAL REPRESENTATION**

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We support the expansion of community legal centre (**CLC**) provision of child protection legal services, particularly alongside family violence and family law services, where there is sufficient expertise and capacity to do so. We submit that CLCs are particularly well suited to provide child protection legal services for a variety of reasons. One key reason is that many CLCs have a professional culture and skills mix particularly suited to assisting vulnerable clients with complex needs, such as clients with child protection issues. For example many CLCs, including WLSV, ensure their employees take a trauma-informed approach to assisting victim survivors of family violence, work from an empowerment model of legal service delivery, foster strong referral pathways into support services, and aim to provide holistic wrap-around services (for example WLSV employs both a social worker and financial counselor).

Following from this, we support Option 43 of the Consultation Paper, being that VLA work with CLCs to identify areas of unmet legal need, and what resources and supports are required to deliver quality child protection services.

WLSV lawyers currently undertaking child protection work offered the following feedback on what support would assist them now in undertaking their work:

- **IT and administrative support:** while ATLAS operation has improved significantly over the course of the pilot, there are still technical issues with it, and data entry into program is highly administrative. Where child protection legal service programs are funded in other CLCs, it is likely to be cost-effective to fund a higher level of administrative support than was included in the pilot programs.
- **Need for mentorship & continual training:** Not all CLCs will have a senior practitioner with extensive child protection experience for those “curly” practice questions. One lawyer suggested it may be useful to have a “child protection hotline” to a person within VLA with significant experience. However, the difficulty with managing conflicts in such cases was noted.

<p><b>Recommendation 1 (Option 43):</b> VLA work with CLCs to identify areas of unmet child protection legal need, and what resources and supports are required to deliver quality child protection services.</p>
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## 2 – EXPANDING CLIENT SERVICES

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### Client Support Service Pilot

Many clients involved in child protection proceedings require non-legal support to navigate the child protection system and get them the help they need. Duty service lawyers often do not have time to address their client's multiple non-legal needs. These needs can be very complex - creating a significant gap in support.

It is for these reasons that WLSV strongly supports the establishment of a pilot Client Support Service, through which non-legal advocates or social workers work alongside lawyers who are assisting children, young people and parents in accordance with a grant of legal assistance. The pilot service should be available to all clients accessing the Child Protection Duty Lawyer Service.

In our experience, an integrated lawyer and social worker model means that clients feel more supported, and often achieve better legal outcomes. For example, our highly successful Stepping Stones project integrates legal and financial counselling services for women who have experienced financial hardship in the context of family violence. This service has recently been expanded to include a social worker, who will service the whole of the WLSV legal practice, including its child protection clients, on an 'as needed' basis.

Anecdotal evidence indicates that the integrated model has been beneficial for not only assisting clients but also capacity building.

*'When social workers work with duty lawyers we are able to better help clients. I can support clients through the crisis and stress of the legal process. In addition, the two services learn from each other and support each other.'* – WLSV social worker

WLSV has put in place clearly defined intake guidelines and referral processes for its social worker and ongoing legal service. This ensures limited service resources are allocated with efficiency and purpose. WLSV recommends that the Client Support Service Pilot establish similar processes.

<b>Recommendation 2 (Option 2):</b> VLA establish a pilot Client Support Service.
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### How to reach child protection clients earlier

The Child Protection Duty Lawyer Service is critical for access to justice in child protection matters. However, the nature of the service means that children and parents often only have access to legal support once they have reached crisis point – a court hearing. The court environment is highly stressful. As a result, it can often be difficult to establish rapport and trust with a client while at court, fully explain court processes, hear client histories, get fulsome instructions, and provide non-legal support. The expectation that all of this can be done within a thirty-minute duty lawyer appointment is unrealistic.

Rather than allowing a matter to reach the late stage of child protection proceedings before the Children's Court, parents/primary caregivers should be given the opportunity of obtaining early legal advice. In WLSV's experience an early intervention approach, where possible, has resulted in safer arrangements for children and reduced trauma (noting the trauma associated with a child's removal), and may result in a more efficient allocation of state and federal resources as opposed to the costs of removing a child from her family and moving her into out-of-home care.

Therefore, WLSV supports the establishment of an Early Intervention Unit (**EIU**) to increase legal support for people in the child protection system before court. A combined structure that provides support for legal and non-legal needs provided by lawyers and social workers would help address clients' multiple areas of disadvantage. It would also help to increase continuity of service, which is particularly important when assisting clients with complex needs.

We note the following feedback in relation to the NSW EIU pilot, which cautions against assuming that clients with complex needs will seek help early. Rather, the NSW pilot suggests that the EIU should aim to "timely assistance to high-needs clients at whatever point it was sought."<sup>2</sup>

*This takes us to a note of caution for the notion of early intervention in terms of aiming to provide less intensive intervention before the problem escalates — particularly as it relates to service provision to people with complex needs. The caution arises from the observation that the types of people who present for early assistance may differ from those who do not. We know from previous research that people with complex needs tend not to seek help until crisis point ... If agencies are focused on service provision before the crisis hits, there is a risk that target clients who 'don't come in early' will be missed.*

*Returning to the EIU duty service at Parramatta. A feature that is critical to this duty service as a legal assistance service to disadvantaged clients, is its availability at times, and at a site, of 'crisis' (e.g., when someone is seeking a recovery order at the Family Law Courts). The EIU duty service aimed to and indeed did reach some clients 'early'. More critically, however, the EIU duty service provided timely assistance to high-needs clients at whatever point it was sought. For some this was not until a point of crisis (such as when a child was taken), not before it. This evaluation has illustrated how timely assistance, even late in the process, may still be the earliest assistance available to some clients in their particular situations, and how timely assistance can assist clients to progress and potentially resolve matters earlier than may have otherwise occurred."*

These comments suggest that innovative methods could be used to bring the EIU service to clients, for example by way of a health justice partnership (see below).

To support the work of the EIU, we encourage further training and education within the community and with service providers about early intervention strategy. One example of a relevant resource is the DVD titled *Looking After Family* produced by Northern Rivers Community Legal Centre.<sup>3</sup> Such education is particularly important within Aboriginal and Torres Strait Islander communities

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<sup>2</sup> Page 35, see: [http://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0003/15969/Evaluation-of-Family-Law-Early-Intervention-Duty-Service.pdf](http://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0003/15969/Evaluation-of-Family-Law-Early-Intervention-Duty-Service.pdf)

<sup>3</sup> <https://www.youtube.com/watch?v=BPGryanFJWA&feature=youtu.be>

in which there is a historical mistrust of government institutions and child protection in particular.

In terms of service design, we submit that VLA is best resourced (particularly in terms of state-wide legal needs and service data) to make an assessment as to how an EIU service should be delivered and managed. However, we particularly support an EIU service design that focuses on greatest legal need, aims to fill service gaps, and builds on the strengths of existing services. For example, VLA may not be best-placed to assist CALD and ATSI communities, which in our view are best serviced by multicultural and Aboriginal community-controlled services, respectively. Therefore, one option for these communities may be to provide additional funding to existing organisations to create their own culturally appropriate EIUs. We note Minerva Community Services report on the *Development of a Service Model for Prevention and Early Intervention of Family Violence among the Karen and the Karenni Communities in Geelong*,<sup>4</sup> which sets out one approach for service design for CALD communities.

**Recommendation 3 (Option 20):** VLA should pilot an early intervention unit featuring a team of lawyers and/or appropriately qualified, culturally diverse non-legal advocates, to assist and support children, young people and parents in the pre-litigation and early-litigation phase.

#### Pilot Health Justice Partnership for women who are subject to an unborn report

Women who are subject to an unborn report often face a protection application soon after giving birth. DHHS states that:

“The intent of the legislation is to prevent future harm and reduce the likelihood of child protection intervention after the child’s birth by working earlier and in partnership with the mother and appropriate support services to address the need or risk factors...The guiding practice principle is one of supportive intervention, rather than interference with the rights of the pregnant woman.”<sup>5</sup>

However, in our experience supportive arrangements are generally not put in place during pregnancy, and women face a protection application after giving birth. We agree with VLA that there is a significant legal need in this area. For example, the Royal Women’s Hospital has previously stated that it deals with around three women a week who are in this position.

Drawing on our experience, as set out in Case Studies A and B below, we submit that a key to addressing this need is an early intervention approach to child protection. One method to achieve this would be through the establishment of a health justice partnership. Working with , for example, hospitals and rehabilitation centres to improve referral pathways for women who might face child protection issues will not only help women to get early access to legal advice – it also have the potential to build the capacity of partner services to respond to child protection issues.

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<sup>4</sup> [http://barwoncasa.org/sites/default/files/karen\\_karenni\\_report\\_final.pdf](http://barwoncasa.org/sites/default/files/karen_karenni_report_final.pdf)

<sup>5</sup> <http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/intake/unborn-child-reports>

**Case Study A: Stacey's story: On the impact of facing a protection application right after giving birth, rather than supportive arrangements in place during pregnancy**

Stacey was in an abusive relationship and gave birth to Jeremy. Jeremy sustained a permanent physical injury as a newborn and the father was sentenced to imprisonment. By consent, Jeremy was placed on a Permanent Care Order interstate.

Six years later, Stacey met her new partner Jarrod, who was supportive and loving and had 2 children of his own in his care. Stacey and Jarrod decided to have a baby and Stacey gave birth to Millie. At the hospital, the Department of Health & Human Services (DHHS) issued a protection application by emergency care on the basis of the history regarding Jeremy. Stacey was not notified that DHHS were involved until she was in hospital and was served with the court documentation the day after giving birth. Stacey, who was exhausted from just giving birth, felt immense additional stress and anxiety due to this application and the prospect of having to attend court.

While pregnant and attending all antenatal appointments, Stacey received no referrals or notice of DHHS's intention to make the application. Stacey agreed to parenting courses and at all times engaged and co-operated with DHHS. There was no need for litigation and an early intervention unit would have benefited Stacey and her family.

**Case study B: Nella's story**

Nella had a history of substance abuse and lived a transient lifestyle. When she discovered that she was pregnant, she stopped taking illicit substances and temporarily moved in with her mother. She received no contact from DHHS whilst pregnant and attended one antenatal appointment. Nella referred herself to Narcotics Anonymous and sought assistance from the Department of Housing for accommodation.

Eventually, Nella gave birth to Noah, a healthy boy. Whilst in the hospital, DHHS protective workers attended the hospital asking that Nella complete a urine screen. They also asked Nella about her accommodation, past transient life style and past drug use. Nella was exhausted, anxious and did not welcome the protective workers line of questioning. The following day, DHHS issued a protection application by emergency care alleging that Nella was uncooperative and summarised Nella's past history. Despite Noah's perfect health (drug free), DHHS sought that Noah be placed in the care of his maternal grandmother, prohibiting Nella from residing with Noah until she completed a series of clean urine screens.

Nella was devastated and still trying to comprehend that she was not going home with Noah. She left hospital, made her way to Court and was notified of the conditions sought by DHHS. Nella was furious and realized that she was now homeless with no supports in place. Nella was unable to maintain her composure, feeling overwhelmed and hopeless she subsequently swore at the DHHS workers.

The outcome of this court case would have been vastly different had an EIU been established.

We therefore support the establishment of a Health Justice partnership pilot through a CLC, which provides early advice and support to pregnant women who are or may be the subject of an unborn report. This will allow women who may be subject to an unborn report to obtain legal advice and referrals as early as possible, so that they have the chance to get support and address the reasons for the report or risk of report in the months before their child is born.

When developing the pilot program, VLA should be conscious of not ‘reinventing the wheel’. Instead it should draw from the experience of existing health justice partnerships that provide holistic, preventative legal and support services within the maternal and child health sector. One example is the MABELS (Mothers And Babies Engaging & Living Safely) Project, which places a community lawyer and family violence advocate at Maroondah and Yarra Ranges “Sleep and Settling Centres” to be able to provide primary caregivers (mainly women) with legal advice, information and referrals on a range of legal matters.<sup>6</sup> Maternal care nurses and other healthcare staff members are provided with training in order to identify referral opportunities to the service. Working within the healthcare system, MABELS enables women to receive advice and assistance at a much earlier point than they may have otherwise. This approach is based on research that people are twice as likely to consult with a non-lawyer about legal matters at first instance.

**Recommendation 4 (Option 21):** That VLA establish a health justice partnership pilot through a CLC that provides early advice and support to pregnant women who are or may be the subject to an unborn report. This should draw on existing models of health justice partnerships that already have established best practice.

#### Duty Lawyer Service expanded to parents in confined environments

The nature of the Child Protection Duty Lawyer Service is dependent on a mother coming to court. This means that there are a large number of women who are falling through the gaps because they are in a confined environment and do not have access to legal advice about child protection. As Case Study C shows, this can create significant barriers to access to justice for women in prison or involuntary mental health treatment.

#### **Case Study C: Katie’s story: Parents in confined environments need access to legal support**

Katie is currently serving a term of imprisonment for recklessly causing injury, among other charges. At the time of the arrest, Katie had a 1-year-old child called Natalie. Natalie was placed in the care of the maternal grandparents.

Katie contacted our service and notified us that she had no contact with Natalie for over 2 years and that she still had another 3 years left of her sentence. She had tried to contact DHHS over 20 times to clarify contact arrangements but was never able to speak directly to the protective worker in charge.

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<sup>6</sup> <http://www.eclc.org.au/what-we-do/partnerships-and-projects/mabels/>

WLSV contacted the court and obtained a current copy of the children's court order, which allowed for weekly telephone contact. We contacted the DHHS and eventually spoke with the protective worker to clarify why Katie's contact was not occurring. Within days, Katie spoke with Natalie on the telephone and has been every week since contacting us.

As Case Study C demonstrates, intake processes need to be reviewed to improve referral pathways for people who have been identified as having a potential child protection problem.

The Review consultation paper suggests partnering with existing legal and mental health services that currently provide support to women in confined environments. However, these lawyers and support workers may not have the child protection training so they may be unable to identify and respond to child protection issues that arise. Therefore, training of these workers would be required, and this should be conducted in-line with our recommendations in Part 3.

Given the difficulties in accessing documents while detained, for example, clients may not know when their next court date is, may not have been served with court reports or may not realise whether there are contact conditions that need to be enforced. Further, they may have greater difficulty locating and accessing appropriate or fulsome support services. Women in prison are often incredibly disadvantaged and so phone advice may not be sufficient. For all of these reasons, attending on detained clients in person is preferable. Alternatively, video-conferencing for client-lawyer meetings should be made available as an alternative to telephone contact. For example, WLSV provides appointments by way of video-conference to clients in Tarrengower Prison by way of its LINK program.

We support the expansion of a Child Protection Duty Lawyer Service to women in confined environments, where lawyers are given the contact details of women in confined environments with child protection matters by DHHS. These duty lawyers should then be guided by internal intake protocols as to contacting these clients and providing them with advice on legal and non-legal services. Given the particular difficulties in assisting a client in a confined environment, there should be more flexibility in service provision requirements for lawyers who are acting for clients that are in confined environments.

**Recommendation 5 (Option 39 - 40):** That VLA implements processes to provide parents serving a term of imprisonment or receiving involuntary mental health treatment access to legal advice related to child protection and, where eligible, representation.

More broadly we also support the development by VLA of internal intake protocols to improve legal need assessment and referrals.

**Recommendation 6 (Option 41):** VLA should develop an internal intake protocol for use across program areas to improve referral pathways to legal and non-legal services.



**Recommendation 7 (Option 42):** VLA should develop an intake protocol for use by the Child Protection Program to encourage earlier identification of legal problems and improve referral pathways for clients with complex needs.

### 3 – IMPROVING CHILD PROTECTION TRAINING

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#### Quality support for child protection lawyers

We agree that child protection lawyers working in the child protection system need ongoing support and professional development, to ensure quality service delivery. WLSV supports VLA playing a more active role in supporting lawyers working in the child protection system (Option 37), particularly early on in their career. This could include coordinating the provision of more professional education, research and the preparation of materials and tools that assist lawyers to perform their work.

WLSV provides legal services and professional development in the intersecting areas of child protection, family law and family violence. Through our Safer Families program, WLSV increases the capacity of lawyers to deliver quality legal services to survivors of family violence and their children. Evaluations have shown that the program achieves practice improvements that result in safer outcomes for clients.

Recent research shows:

- there is a lack of cross-professional training for lawyers in the areas of family violence, family law and child protection
- there is a lack of lawyers practising in all of these areas; limiting their ability to assist clients to understand the complexities of the different jurisdictions
- families have to repeat their story, engage new legal representatives, and re-litigate risks issues in different forums.<sup>7</sup>

Our experience shows that holistic legal assistance to clients in the child protection system, particularly those experiencing family violence, is crucial to ensuring client-focused practice, and early and timely intervention.

WLSV's Safer Families program also includes training on trauma informed practice, and mentoring support for lawyers. WLSV is currently seeking funding from VLA to expand the program to include child protection and family law. The expanded program will therefore include best practice strategies to work with clients in the intersecting areas of family violence, family law and child protection.

We recommend that support provided to lawyers working in the child protection system reflect an integrated response to clients' legal needs. Therefore, education and support must also advance skills and knowledge in the areas of family violence and family law, and how these jurisdictions

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<sup>7</sup>Family Law Council, *Families with complex needs and the intersection of family law and child protection system – Interim Report 2015*; page 97

intersect. Further, the professional education must include trauma informed practice and how to use a strengths based approach. WLSV's Safer Families program is an effective model for how professional development can be provided to child protection lawyers.

**Recommendation 8 (Options 14, 23 & 24):** Introduce minimum requirements for Child Protection Panel lawyers who represent children and young people. WLSV supports the requirement that Child Protection Panel lawyers be required to undertake training in the following:

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

**Recommendation 9 (Option 25):** Child Protection Panel lawyers should have to complete a minimum number of child protection related hours of Professional Legal Education ('PLE') each year. VLA should work with its partners to ensure that the PLE is in line with best practices models, well-attended by practitioners on the Child Protection Panel, has curriculum and training resources for future use, and is inter-disciplinary.

#### Multi-disciplinary training forums

We agree that forums which bring together a cross sector of professionals provide a means to improve understanding and expertise in child protection. However, a forum of this type must be clear that its scope is limited to promoting and strengthening integrated practice.

Multi-disciplinary training opportunities are needed. WLSV recently developed and delivered a two-day training event, *Safe & Protected: multidisciplinary response to family violence*, for professionals working within the child protection system. Further details are in the Case study D, overleaf.

The program improved participants' skills and knowledge in responding to the complexity of family violence, and rectified knowledge and practice gaps that existed in the management of child protection matters involving family violence. The evaluation from the training event shows the greatest strength of the program was its inter-disciplinary design. It provided extensive opportunities for participants to engage across professions in small discussion-based settings. It is a format that requires participants' reflect on and challenge cultural norms that impact inter-professional collaboration in the child protection system.

**Recommendation 10 (Option 34 & 38):** VLA should host multi-disciplinary forums for child protection professionals, which should be organized with input from multi-disciplinary training

experts, such as WLSV, given its experience running *Safe & Protected* and its unique cross-sector perspective.

### Workforce Development Strategy

While a multi-disciplinary workforce development strategy is essential to redress the complex challenges faced by professionals within Victoria's child protection system, we oppose the development of a Centre of Excellence at a tertiary institution. Our recent experience of managing the *Safe & Protected* training event for practitioners in the Children's Court showed that workforce development is most effective when it is designed and delivered by the sectors and professions it seeks to reach and reform.

The evaluation of *Safe & Protected* showed that the involvement throughout of professionals from the target audiences was instrumental to its success. Indeed, the evaluation found "...the processes that underpinned program development and project management... be regarded as a best practice model for future initiatives of this type".

While tertiary institutions have a crucial role to conduct research that informs professional practice, the multi-disciplinary workforce development needs of professionals working in the child protection system cannot be met by an academic institution. In an area as complex as child protection, multi-disciplinary workforce development must be driven by the sectors that have expertise in the nuances of day-to-day professional practice. Importantly, a practice-driven approach to workforce development also means that emerging issues identified by practitioners, particularly in relation to cultural norms, are more readily integrated into workforce development strategies.

**Recommendation 11 (Option 49):** We recommend that a workforce development strategy be established. We recommend that the work undertaken by the Children's Court Multi-disciplinary Training Board and WLSV in delivering the *Safe & Protected* training event be considered a best practice model for multi-disciplinary workforce development.

#### **Case study D: *Safe & Protected*: multidisciplinary response to family violence as an example of best practices multi-disciplinary training**

This training program was delivered in October 2016 to more than 158 professionals who work within the statutory child protection system in Victoria.

WLSV worked closely with the Multidisciplinary Training Board (**MDTB**), the Project Manager at the Children's Court of Victoria, subject matter experts, and specialist area family violence training providers for the duration of the project, including program delivery.

The program aimed to improve practitioners' skills and knowledge in responding to the complexity of family violence within the Children's Court Family Division, and support participants to examine cultural norms and work together to address issues that families face

within the child protection legal system. It sought to rectify knowledge and practice gaps that exist in the management of child protection matters involving family violence.

Panel presenters and workshop facilitators were experts in their field, and the range of perspectives they represented enabled a rich exploration of complex topics. For example, one session titled ‘Diverse priorities, one goal’ provided 8 interdisciplinary groups to undertake a case study analysis, through which they could reflect on how family violence cases interact with the child protection system, the impact on individuals, and so understand each other’s roles in responding to family violence.

Within just a few weeks, we have already seen evidence of the application by participants of the training content from *Safe & Protected*, which is an extremely promising sign of substantive change attributable to the event.

#### Worker line for child protection lawyers

Another option supported by the WLSV child protection legal unit was the proposal of a telephone advice service for child protection workers (Option 35). While lawyers discussed the value of having an experienced child protection lawyer to call on with difficult questions, they at the same time queried how conflicts of interest would and could be managed within such a service. The view was that this service would only be effective if it was run by highly experienced lawyers with a sufficient amount of practice experience. They also deemed this service to be secondary to ensuring improved training opportunities for child protection lawyers.

**Recommendation 12 (Option 35):** A telephone advice service staffed by highly experienced lawyers may be useful to support Child Protection Panel lawyers. However, developing and delivering best practice training for Child Protection Panel lawyers should be treated as a higher priority.

#### Training for non-legal support services

WLSV believes that creating better-integrated services leads to better outcomes for families dealing with child protection matters. For example, above we have supported recommendations for both a client support service pilot, and a health justice partnership pilot. However, for both of these projects we believe that one essential element is the training of non-legal advocates on legal aspects of child protection. Ideally, this would enable workers to identify legal issues early and make appropriate referrals. A “power with” delivery model could be used to ensure that the training is an opportunity to learn from each other, establish relationships and identify opportunities for working better together.

**Recommendation 13:** Training should be provided for non-legal advocates and support workers working with child protection clients.



## 4 – DEVELOPING IMPROVED PROCESSES

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### Plain-language information for children, young people and parents

We support the need for plain-language information for clients, which takes into account factors such as low levels of literacy. The child protection process needs to be transparent and easily understandable to children, young people and parents. At present, information that is available online or hard copy is very complex and detailed, which is alienating and difficult to comprehend for clients. The child protection process is already a highly stressful environment and every avenue should be taken to make it as clear and understandable for clients.

The WLSV supports a human-centered design approach to this work, so that clients are put first and involved in designing the information. As such, we support the proposal to involve children, young people and parents in the co-design process.

**Recommendation 14 (Option 15 & 16):** VLA develops and maintains plain-language information about the child protection system that can be easily understood by children, young people, parents, and clients with a cognitive impairment.

### Court user meetings

WLSV lawyers have been attending the Moorabbin Children’s Court user meetings as part of our pilot program. In our experience these meetings have been useful for bringing up issues particular to that court in a small group environment. WLSV supports the establishment of regular court user meetings, as they help improve the running of the court. They also mean that best practices can be put in place, and issues are addressed as they arise at a court level.

**Recommendation 15 (Option 36):** VLA should work with the court to establish regular court user meetings, designed to improve service delivery, at all headquarter courts.

### Case Preparation Checklist

WLSV supports the creation of a case preparation checklist for Child Protection Panel lawyers. Not only would this be useful for learning, but would also improve the service that is provided to clients.

**Recommendation 16 (Option 27):** VLA should create a case preparation checklist with its partners. Evidence of the use of this tool, or a similar document would be required on the file.

### Clarify practice standards

WLSV supports practice standards for child protection matters being clarified and this should be incorporated into training. At the WLSV we are developing an internal best practice approach to Child Protection through our pilot program. For example, we ensure that we call our clients and stay abreast of their situation outside of their court dates. We work to minimize a client re-telling her story by ensuring that, wherever possible, the same lawyer attends all appearances and conferences. Given our cross-jurisdictional experience, we are able identify and act in associated family violence and family law matters and make appropriate non-legal referrals (including to our in-house social-worker and financial counsellor). Following on from this, we encourage a holistic response to our client's needs.

**Recommendation 17 (Option 28):** Clarify the practice standards for child protection matters as they relate to the conduct of child protection matters. This would include requirements concerning the preparation of matters and their service to clients, both prior to and at each court event.

### State-wide duty lawyer guidelines

WLSV supports there being the consistent arrangements for duty lawyer services around Victoria. State-wide duty lawyer guidelines should exist as part of a best practice approach to Child Protection.

**Recommendation 18 (Option 44):** State-wide duty lawyer guidelines should be created for the child protection duty lawyer service.

### Mechanism for ensuring sufficient availability of experienced and qualified child protection barristers

Our experience is that in contested child protection matters (in which we brief counsel for appearance work), there is a lack of availability of barristers experienced in child protection and with appropriate skills. Our observation is that DHHS, as compared to other parties, is in a position to brief early, and as a consequence is able to secure more highly skilled child protection barristers. This results in a lesser availability of skilled child protection barristers for the other parties in such proceedings.

Therefore, while we support a VLA preferred barristers' list for child protection, we do this only if it is implemented in conjunction with benchmarking and training for the Victorian Bar in child protection overall. We hope that with these initiatives operating concurrently would result in an increase in barristers skilled in child protection for all parties, as well as an increase quality of service of counsel overall.



**Recommendation 19 (Option 33):** VLA should:

- work with the Victorian Bar in relation to ensuring benchmarking and appropriate training for barristers practicing in child protection; and
- create a preferred barristers list for child protection matters to ensure that counsel briefed in matters are suitably qualified and experienced in the child protection jurisdiction.

Conciliation conferences

WLSV does not support recommendations that lawyers should be required seek an extension of the grant of assistance for a second conciliation conference. In our experience, nature of the duty lawyer service is often highly stressful and confusing for child protection clients. Conciliation conferences are a chance to get clients out of the stressful court environment. It is a better space for negotiations, and is better for the needs of children, young people and parents.

**Recommendation 20 (Option 31):** Lawyers should not be required to seek an extension of the grant of assistance for a second conciliation conference.

**Case Study E: Charlie's story: Two conciliation conferences**

Charlie has four young children who were placed in out of home care for a period of 8 weeks. Prior to the out of home care placement, the children were on a family preservation order to Charlie, which was subsequently breached because of family violence and lack of engagement by Charlie.

At the first hearing, Charlie immediately began engaging with DHHS, and was fully compliant with court conditions and orders. By the third hearing, the children were removed from out of home care, and placed with the maternal grandmother (with Charlie living in). Charlie felt that the court environment was very stressful, and was not an appropriate environment to consider legal options and make informed conditions. She also disliked waiting for hours at a time whilst the lawyers were negotiating.

At the first conciliation conference, all parties agreed that Charlie had done exceptionally well, however DHHS were not prepared to agree to a final order returning the children to Charlie's care. DHHS wanted to see continuous engagement and thus a second conciliation conference was scheduled for 3 months' time. Charlie preferred the conciliation conference environment, explaining that she felt that it was a safe and secure place to talk about her children and the protective concerns, and understood the court process and legal advice she was receiving.

At the second conciliation conference, DSHS agreed to a family preservation order to the mother. The second conciliation allowed the parties to successfully negotiate a final outcome

where lawyers only have the one matter to deal with, in a stress-free environment (when compared to court).

### DHHS failing to provide reports in accordance with court orders

Consideration should be given to how DHHS may be incentivised to provide its reports in child protection matters in accordance with legislated timeframes. In our experience, DHHS reports are often provided late and not in accordance with set timeframes. One lawyer commented that she “is always given the DHHS report on the day of court” despite court orders ordering that reports be filed 2-3 days prior to the hearing. Ideally, the child protection system should not run according to “duty lawyer service timelines”. Rather, the system should provide child protection lawyers, and their vulnerable clients, sufficient time to properly read, understand, and then seek instructions on a complex report. Often, our lawyers contact DHHS requesting a copy of the report prior to the hearing, and documents are rarely forthcoming.

Currently, it is possible to adjourn a matter and seek costs where a DHHS report is submitted late. However, in practice, child protection lawyers are unlikely to consent to an adjournment as this will simply delay proceedings, create further uncertainty in the lives of vulnerable families with complex needs, and ultimately not be in the interests of the client. Lawyers are left speed-reading reports, advising clients then negotiating with other lawyers in an often hostile and stressful environment.

Therefore, while the requirement to seek costs for such adjournments should not be removed, we encourage VLA to work with DHHS to review its systems and practices to ensure that reports are submitted in a timely fashion. This would contribute to more efficient and effective court processes overall. DHHS needs to ensure it communicates what is a realistic timeframe for completion of a report as early in the court process as possible, and ensure it has the resources available to complete reports within those timeframes.

**Recommendation 21 (Option 32):** VLA should not review the requirement that Child protection panel lawyers make an application for costs where an adjournment is due to DHHS failing to provide a report in accordance with legislated timeframes.

Instead DHHS processes need to be reviewed to ensure that the Department is providing reports in accordance with court orders.

## CONTACT DETAILS

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We wish you well in this review, and are available to contribute further to the review process as required.

If you have any questions, please do not hesitate to contact:

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