

## Access to Justice Review – Government Response

The Access to Justice Review identified ways to help Victorians, especially the most disadvantaged and vulnerable in our community, to navigate the legal system and to resolve everyday legal issues. The Government's response to the recommendations of the Review is set out below. The Government's response should be read in light of its commitment to the following principles, which are consistent with findings of the Review:

- in a time of increasing demand and funding scarcity, the overarching purpose of the proposed reforms is to achieve the most efficient and effective use of resources for legal assistance services to the community;
- decisions regarding funding allocations to legal assistance providers will be based on evidence of community legal need and consistent with government priorities for legal assistance;
- the role of system manager for the legal assistance sector, proposed for Victoria Legal Aid, is to co-ordinate, and not diminish, the autonomy and independent governance of community legal centres. As Victoria Legal Aid assumes the role of system manager, increased accountability and transparency mechanisms will be implemented to ensure all Victorians are served by a strong and diverse legal assistance sector;
- the community control of Aboriginal Legal Services (Victorian Aboriginal Legal Service, and the Aboriginal Family Violence Prevention and Legal Service Victoria) and their role in securing self-determination for Victoria's Aboriginal communities is paramount - the desired policy outcome is co-ordination between Victoria Legal Aid and Aboriginal Legal Services to maximise efficient and effective service provision to the Koori community;
- establishment of a primary entry point for legal information and legal assistance services is intended to enable better co-ordination and use of resources across the State. It is not intended that Victoria Legal Aid be the only entry point to legal information and legal assistance services - there must also be a 'no wrong door' approach to assisting the most vulnerable people who might not seek assistance from any such entry point;
- establishment of a primary entry point for legal information and legal assistance services should not detract from the capacity of Community Legal Centres and Aboriginal Legal Services to provide resources targeted to their communities; and
- collaboration is vital to effective service planning for legal assistance services in Victoria.

Recommendation	Government response
<b>Chapter 1- Understanding legal needs</b>	
<p><b>Recommendation 1.1 Establish the Victoria Law Foundation as a centre for excellence for data analysis and research on access to justice</b></p> <p>The Victorian Government should establish the Victoria Law Foundation as Victoria’s centre for excellence for data analysis, research, and evaluation on access to justice, legal assistance, and civil justice issues. This role would require refocusing the Victoria Law Foundation’s existing functions. The Foundation should be appropriately funded to fulfil its new role.</p> <p>The Victorian Government should seek amendments to the <i>Victoria Law Foundation Act 2009</i> (Vic) to reflect its primary focus on research, and the necessary skills and experience that should be considered in the appointment of Victoria Law Foundation Board members.</p>	<p>Agree</p>

Recommendation	Government response
<b>Chapter 2- Accessible information about legal issues and services</b>	
<p><b>Recommendation 2.1 Make Victoria Legal Aid the primary information entry point</b></p> <p>Victoria Legal Aid should become the primary entry point for information about legal issues and services in Victoria. In this role, as well as creating legal information materials in-house, Victoria Legal Aid should become the central co-ordinator of legal information across Victoria to:</p> <ul style="list-style-type: none"> <li>• minimise duplication and gaps in legal information materials available in Victoria;</li> <li>• co-ordinate the development and dissemination of legal information materials across Victoria, including specialised materials that are created by community legal centres to meet their communities' needs;</li> <li>• work with providers of legal information to 'up-scale' existing resources, including tailoring them to particular parts of the community;</li> <li>• ensure that legal information materials meet best practice and accessibility standards, including the provision of materials in plain-language, Easy English, and languages other than English; and</li> <li>• track the quality, consistency, and currency of legal information materials, and develop strategies to promote relevant standards.</li> </ul> <p>Victoria Legal Aid and the Victoria Law Foundation should work together to fill gaps in the legal information that Victoria Legal Aid currently maintains, including by using legal resources developed by the Victoria Law Foundation. The Victoria Law Foundation's understanding of the legal information available in Victoria and expertise in plain-language should inform the co-ordination and development of legal information materials by Victoria Legal Aid. Victoria Legal Aid should build on the strengths that the Victoria Law Foundation has developed in digital marketing, plain-language and accessible legal information, and give this work a broader reach.</p> <p>To ensure efficiency in the system and clarity for the public, the Victoria Law Foundation's <i>Everyday-Law</i> website should no longer operate in parallel with Victoria Legal Aid as an aggregator site for information about legal issues for the public. The Foundation might choose to continue to provide civics education about the justice system, such as through its school law program and Law Week, but it should no longer provide plain-language training or community legal education on specific legal issues.</p> <p>Providers of specialist legal information should continue to produce legal information materials, which should be linked to from Victoria Legal Aid's website.</p>	<p>Agree, except that Victoria Law Foundation should continue to provide plain-language training.</p>

Recommendation	Government response
<p><b>Recommendation 2.2 Expand Victoria Legal Aid’s website and Legal Help service</b></p> <p>Victoria Legal Aid should expand its website to become the primary entry point for online information about legal issues and services in Victoria. The website should feature a live web-chat service, a comprehensive service directory, other interactive diagnostic tools where appropriate, and information in a wide range of languages and in accessible formats. It should be integrated with Victoria Legal Aid’s Legal Help telephone line.</p> <p>Victoria Legal Aid should expand its Legal Help telephone line to support its website. The expansion should include extended hours of operation and greater integration with its website.</p> <p>Victoria Legal Aid should continue to explore the ways in which technology can support its role.</p>	Agree
<p><b>Recommendation 2.3 Victoria Legal Aid’s role in co-ordinating legal information</b></p> <p>Community legal centres should continue to develop legal information materials in response to problems identified through service provision to their local communities, supported by and in collaboration with Victoria Legal Aid.</p> <p>Victoria Legal Aid, as the primary entry point and co-ordinator of legal information, should work with other providers of legal information and peak bodies to develop legal information materials, and to determine the best ways to tailor and disseminate materials to hard-to-reach groups in the Victorian community. Victoria Legal Aid should monitor legal information materials and provide assistance to update those materials where to do so would assist legal information providers.</p> <p>Victoria Legal Aid should provide leadership and assistance to legal information providers to ensure the provision of plain-language and accessible materials across Victoria.</p> <p>Legal information materials that are produced by providers other than Victoria Legal Aid, such as community legal centres, should be linked from Victoria Legal Aid’s website, and disseminated and ‘up-scaled’ by Victoria Legal Aid where appropriate.</p>	Agree
<p><b>Recommendation 2.4 Making information about courts and tribunals more accessible</b></p> <p>Victorian courts and tribunals should continue to be the main providers of information about their jurisdictions, processes, procedures, fees, and forms.</p> <p>Victorian courts and tribunals are encouraged to consider ways to make their websites and legal information materials more accessible. Such communication tools could include the provision of information in languages other than English, in plain-language, and in Easy English format.</p> <p>Noting the varying accessibility to the general community of information in current court websites, the Victorian courts are encouraged to consider ways to make their websites more consistent in presentation and standards, including by exploring options for a more integrated approach.</p>	The Government encourages the courts and the Victorian Civil and Administrative Tribunal to support this recommendation

Recommendation	Government response
<b>Chapter 3- Diversion from civil litigation and the triage models</b>	
<p><b>Recommendation 3.1 Improving the triage capacity of legal service providers and the courts</b></p> <p>Victoria Legal Aid should lead work, in collaboration with other service providers, to improve referral pathways between service providers, courts, and tribunals. This work should include expanding access to online booking systems to community legal centres, improving the transparency of eligibility criteria across the legal assistance sector, and developing an online database of available services that can be accessed by service providers, courts, and tribunals.</p>	Agree
<p><b>Recommendation 3.2 Improving referral practices by the courts and VCAT</b></p> <p>The courts, especially the Magistrates' Court, and the Victorian Civil and Administrative Tribunal, consider implementing the following measures to improve triage capacity and accessibility for users:</p> <ul style="list-style-type: none"> <li>• ensuring that all staff understand the important role that courts and the Victorian Civil and Administrative Tribunal play in performing triage and are equipped to assist users to connect with appropriate services within, and outside, the courts and the Victorian Civil and Administrative Tribunal;</li> <li>• strengthening and formalising relationships and referral protocols with key external agencies, service providers, complaint-handling bodies, and alternative dispute resolution providers;</li> <li>• developing an integrated and multi-jurisdiction service delivery model for registries at suburban and regional court locations to ensure that people accessing these venues, regardless of the type of matter, are adequately supported;</li> <li>• utilising opportunities presented by information and communication technology to enable online referrals at an early stage, and improve the accessibility of services at court and Victorian Civil and Administrative Tribunal venues; and</li> <li>• consider future information technology requirements that would be needed to support improved referrals and integrated multi-jurisdiction service delivery when undertaking strategic planning.</li> </ul>	The Government encourages the courts and the Victorian Civil and Administrative Tribunal to support this recommendation
<p><b>Recommendation 3.3 Including information in court and tribunal documents to support referrals</b></p> <p>The courts and the Victorian Civil and Administrative Tribunal should consider measures to improve the accuracy, transparency and currency of information about available services and options for dispute resolution contained in court and tribunal documentation. It would be desirable to work with service providers and the Department of Justice and Regulation for this purpose.</p>	The Government encourages the courts and the Victorian Civil and Administrative Tribunal to support this recommendation

Recommendation	Government response
<p><b>Recommendation 3.4 Supporting integrated service delivery</b></p> <p>The Victorian and Commonwealth Governments should seek to identify ongoing funding for integrated services where there are demonstrated legal needs for tailored or targeted services to reach particular client groups. Such services require cross-portfolio co-ordination between justice and human services areas. Certainty of funding would help legal service providers build long-term collaborative relationships with non-legal service providers, and provide more effective services to vulnerable and disadvantaged members of the community.</p> <p>The Victorian and Commonwealth Governments should seek to identify ongoing funding to proven programs that employ secondary consultation by non-legal workers, in order to improve the capacity of non-legal workers to identify legal problems, strengthen referral pathways, and expand the reach of legal assistance to people who would not otherwise access it.</p>	Agree
<p><b>Recommendation 3.5 Including legal triage in the Support and Safety Hubs</b></p> <p>The Victorian Government should ensure that the design of the Support and Safety Hubs recommended by the Royal Commission into Family Violence includes legal professionals to perform legal triage, to provide legal information, education, and referrals to people experiencing family violence, and to build the capacity of non-legal personnel working in the Hub to identify legal problems.</p>	Agree
<p>The Department of Justice and Regulation should facilitate further work between legal assistance service providers and other service delivery areas of the Victorian and Commonwealth Governments to identify other sites where effective legal triage would support community welfare outcomes.</p>	Agree
<p><b>Recommendation 3.6 Including legal triage in the design of the Pride Centre</b></p> <p>The Victorian Government should include legal triage and services in the proposed Pride Centre, in order to provide tailored and specialist legal information, education, referrals, and legal advice to lesbian, gay, bisexual, trans and gender diverse, and intersex (LGBTI) people and to deliver LGBTI cultural competency training to legal service providers.</p>	Agree

Recommendation	Government response
<b>Chapter 4- Alternative dispute resolution</b>	
<p><b>Recommendation 4.1 Referral and screening for alternative dispute resolution</b></p> <p>Public bodies, including the courts and the Victorian Civil and Administrative Tribunal (VCAT), that use alternative dispute resolution, consider developing written guidelines (if they have not already done so), to aid decision making, and promote transparency and consistency, in relation to potential referrals to alternative dispute resolution. Guidelines would list matters to be considered when deciding whether to refer a matter or class of matters to alternative dispute resolution.</p>	<p>Agree</p> <p>The Government also encourages the courts and the Victorian Civil and Administrative Tribunal to support this recommendation</p>
<p>Organisations that provide alternative dispute resolution, including the Dispute Settlement Centre of Victoria, should consider developing written screening guidelines (if they have not already done so) to help them assess the suitability for alternative dispute resolution of the matters referred to them.</p>	<p>Agree</p>
<p>Courts and VCAT consider working with industry ombudsmen to explore whether methods could be developed to identify matters where a litigant might benefit from a referral to an industry scheme, and whether procedures could be implemented to prompt registry staff, judicial officers, or tribunal members to consider whether those disputes could be referred to the scheme as a form of alternative dispute resolution.</p>	<p>The Government encourages the courts and the Victorian Civil and Administrative Tribunal to support this recommendation</p>
<p><b>Recommendation 4.2 Courts and VCAT using alternative dispute resolution</b></p> <p>Courts consider continuing to use judicial registrars to conduct mediation and judicial resolution conferences where resources permit.</p>	<p>The Government encourages the courts to support this recommendation</p>
<p>Courts and the Victorian Civil and Administrative Tribunal (VCAT) consider developing a framework to facilitate communication regarding best practice in relation to alternative dispute resolution. Courts and VCAT consider whether there are legislative changes that they might suggest to the Victorian Government that would enhance the use of alternative dispute resolution in their jurisdictions.</p>	<p>The Government encourages the courts and the Victorian Civil and Administrative Tribunal to support this recommendation</p>
<p>Courts and VCAT consider inviting industry and government ombudsmen and regulators to exchange ideas about their use of alternative dispute resolution.</p>	<p>The Government encourages the courts and the Victorian Civil and Administrative Tribunal to support this recommendation</p>

Recommendation	Government response
<p><b>Recommendation 4.3 Expanding alternative dispute resolution at VCAT</b></p> <p>The Victorian Civil and Administrative Tribunal (VCAT) consider partnering with the Dispute Settlement Centre of Victoria to provide expanded alternative dispute resolution services. In particular, the Review recommends that VCAT's Short Mediation and Hearing program be expanded, including into regional areas.</p>	<p>Agree</p> <p>The Government also encourages the Magistrates' Court of Victoria to support this recommendation</p>
<p><b>Recommendation 4.4 Government dispute resolution</b></p> <p>Ministers should make a public commitment to alternative dispute resolution, and communicate an expectation to their departments that disputes should be prevented, and that alternative dispute resolution, when appropriate, should be used when disputes arise.</p>	<p>Agree</p>
<p>The Victorian Secretaries Board should lead the creation of a culture of good dispute resolution in the Victorian Public Service.</p>	<p>Agree</p>
<p>The Victorian Government should consider amending the <i>Model Litigant Guidelines</i> to create a stronger expectation that alternative dispute resolution processes will be attempted unless that would be unreasonable or inappropriate in a particular case. The Victorian Government should also consult with other jurisdictions that are bound by similar guidelines.</p>	<p>The Victorian Government will give consideration to amending the Model Litigant Guidelines</p>
<p>The Department of Justice and Regulation should establish a whole-of-government community of practice to encourage sharing of knowledge and ideas about good dispute resolution and complaint-handling practices. The group could be supported by the Victorian Ombudsman.</p>	<p>Agree</p>
<p>The Victorian Government should consider seeking amendments to the <i>Wrongs Act 1958 (Vic)</i> to broaden the protection given to apologies by providing that an apology does not constitute an admission of liability, and is not admissible as evidence of fault or liability. The categories of dispute to which the protection applies should be broadened beyond those involving death or serious injury.</p> <p>Agencies should also develop policies on the making of apologies, with the aim of increasing their use in appropriate circumstances</p>	<p>The Victorian Government will give consideration to amending the <i>Wrongs Act 1958</i></p>
<p>Those agencies that believe they would benefit from doing so should develop their own dispute management plans, having regard to the guidance given by National Alternative Dispute Resolution Advisory Council.</p>	<p>Agree</p>

Recommendation	Government response
<p><b>Recommendation 4.5 Data and evaluation of alternative dispute resolution</b></p> <p>Public bodies that use alternative dispute resolution, including courts and the Victorian Civil and Administrative Tribunal (VCAT) could develop strategies to identify gaps in data identification, collection, and analysis that affect the capacity to evaluate and report on the use of alternative dispute resolution.</p> <p>All public bodies, including courts and VCAT, that offer alternative dispute resolution services that are not already regularly evaluated, consider commissioning regular independent evaluations of the service that is conducted either internally by those bodies or under their auspices.</p> <p>Evaluations of ADR conducted by or at the request of the courts and VCAT must be conducted having due regard to the independence of judicial officers and VCAT Members</p>	Agree
<p>The Dispute Settlement Centre of Victoria's services should be independently evaluated on a regular basis, and a program evaluation should also occur periodically. The aim of the evaluation would be to assess the accountability, accessibility, independence, fairness, efficiency, and effectiveness of the alternative dispute resolution program.</p>	Agree
<p><b>Chapter 5- Victorian Civil and Administrative Tribunal (small civil claims)</b></p>	
<p><b>Recommendation 5.1 Modernising user services at VCAT</b></p> <p>The Victorian Government should provide financial support to the Victorian Civil and Administrative Tribunal to fully implement the recommendations of the Tribunal's customer service review and better utilise online technology to provide more accessible, user-focused, and responsive administrative services.</p> <p>To provide greater clarity, the Victorian Government should seek amendments to the <i>Victorian Civil and Administrative Tribunal Act 1998</i> (Vic) to provide that service of documents may occur by email.</p> <p>The Victorian Civil and Administrative Tribunal consider developing improved processes for parties to receive documents by email.</p>	Agree

Recommendation	Government response
<p><b>Recommendation 5.2 Develop an online system for the resolution of small civil claims</b></p> <p>The Victorian Government should:</p> <ul style="list-style-type: none"> <li>• establish an Online Dispute Resolution Advisory Panel with terms of reference to oversee the introduction and evaluation of an online dispute resolution system for small civil claims in Victoria and make recommendations about the possible future expansion of online dispute resolution to other jurisdictions in Victoria;</li> <li>• provide pilot funding, and, subject to evaluation, ongoing funding, for the development and the implementation of a new online system for the resolution of small civil claims in Victoria; and</li> <li>• introduce legislation to facilitate the use of the new online system for the resolution of small civil claims.</li> </ul>	Agree
<p><b>Recommendation 5.3 Increase the threshold amount for small civil claims</b></p> <p>The Victorian Government should seek amendments to the definition of small civil claims in the <i>Victorian Civil and Administrative Tribunal Act 1998</i> (Vic) to refer to a claim where the value of the goods or services in dispute is an amount not exceeding \$15,000, in order to take into account changes to the market value of goods and services, and align the definition with the current fee structure</p>	Agree
<p><b>Recommendation 5.4 Simplifying service requirements at VCAT</b></p> <p>The requirement for applicants to serve supporting documentation on respondents for small civil claims in the Civil Claims List should be removed to reduce the complexity and difficulty of procedures for parties</p>	Agree
<p><b>Recommendation 5.5 Allowing the standard amount of time to request reasons at VCAT</b></p> <p>The Victorian Government should introduce legislation to seek to repeal the current requirement that a party must request written reasons before or at the hearing at which oral reasons are given (in item 4J of Schedule 1 of the <i>Victorian Civil and Administrative Act 1998</i> (Vic)), in order to ensure that parties to small civil claims have a reasonable opportunity to request written reasons for a decision. This would mean that parties would be subject to the general rule applicable to decisions of the Victorian Civil and Administrative Tribunal, which requires written reasons to be requested within 14 days of the giving of oral reasons.</p>	Agree
<p><b>Recommendation 5.6 Improving transparency about complaints at VCAT</b></p> <p>The Victorian Civil and Administrative Tribunal consider publishing information about the number and nature of complaints made about mediators, staff, processes or procedures in the previous year, and the outcome of investigations, in its annual report, in order to enhance user confidence in its ability to respond to complaints and to improve its operations</p>	The Government encourages the Victorian Civil and Administrative Tribunal to support this recommendation

Recommendation	Government response
<p><b>Recommendation 5.7 Strengthening quality assurance at VCAT through peer review</b></p> <p>The Victorian Civil and Administrative Tribunal consider strengthening its formal quality assurance processes by instituting a process whereby the conduct of hearings and decisions by non-judicial Members are regularly peer reviewed, to improve the quality and consistency of decisions</p>	<p>The Government encourages the Victorian Civil and Administrative Tribunal to support this recommendation</p>
<p><b>Recommendation 5.8 Facilitating earlier and cheaper resolution of motor vehicle disputes</b></p> <p>The Victorian Government should make the following changes to reduce the difficulties faced by parties in resolving disputes about defective motor vehicles:</p> <ul style="list-style-type: none"> <li>• propose legislation for compulsory conciliation of motor vehicle disputes by Consumer Affairs Victoria before a claim can be made to VCAT; and</li> <li>• fund Consumer Affairs Victoria to provide a conciliation service for motor vehicle disputes, including to undertake a technical assessment to assist in dispute resolution</li> </ul>	<p>For further consideration</p>
<p><b>Recommendation 5.9 Making the enforcement of VCAT orders simpler</b></p> <p>The Victorian Government should seek amendments to the <i>Victorian Civil and Administrative Tribunal Act 1998 (Vic)</i> to simplify the process for enforcing the Victorian Civil and Administrative Tribunal's (VCAT) orders by:</p> <ul style="list-style-type: none"> <li>• deeming a monetary order of VCAT to be an order of the appropriate court, similar to section 71 of the <i>ACT Civil and Administrative Tribunal Act 2008 (ACT)</i>;</li> <li>• enabling the Victorian Civil and Administrative Tribunal to reopen or renew a proceeding where there has been a problem with enforcement, similar to section 133 of the <i>Queensland Civil and Administrative Tribunal Act 2009 (Qld)</i>; and</li> <li>• repealing section 122 of the Victorian Civil and Administrative Tribunal Act so that parties are not directed to the Supreme Court of Victoria to seek enforcement of a non-monetary order, but instead, in exceptional circumstances, seek enforcement using the Victorian Civil and Administrative Tribunal's existing contempt powers.</li> </ul> <p>In addition, the Victorian Civil and Administrative Tribunal's processes and systems could be improved to allow orders to be registered digitally at the appropriate court, in order to eliminate some of the procedural steps that a successful party currently has to take to enforce a monetary order.</p>	<p>Agree</p>

Recommendation	Government response
<b>Chapter 6- Legal assistance to Victorians most in need</b>	
<p><b>Recommendation 6.1 Establish Victoria Legal Aid as the co-ordinating system manager for the legal assistance sector</b></p> <p>The Victorian Government should establish Victoria Legal Aid as the manager of Victoria’s publicly funded legal assistance system, to ensure that legal assistance resources can be allocated, and services designed and provided in a co-ordinated way, based on government priorities, and evidence of community needs.</p> <p>The Victorian Government should seek amendments to the <i>Legal Aid Act 1978</i> (Vic) to reflect Victoria Legal Aid’s:</p> <ul style="list-style-type: none"> <li>• co-ordination role as the State’s legal assistance system manager; and</li> <li>• graduated model of service provision for legal assistance, including its role as the primary entry point for the community to access information and help about legal issues</li> </ul>	Agree
<p><b>Recommendation 6.2 Establishing links to government priorities for legal assistance</b></p> <p>The Victorian Government should seek amendments to the <i>Legal Aid Act 1978</i> (Vic) to:</p> <ul style="list-style-type: none"> <li>• require Victoria Legal Aid to submit its corporate/strategic plan, annual budget and forward estimates to the Attorney-General for approval to ensure that there is clarity and agreement on priorities and outcomes sought (the Plan should take into account any Commonwealth grant requirements); and</li> <li>• require Victoria Legal Aid decisions about the allocation of resources to program areas to reflect the strategic plan approved by the Attorney-General.</li> </ul> <p>Victoria Legal Aid should continue to set the guidelines for eligibility for grants of legal assistance and make decisions on individual grant applications independently</p>	Agree

Recommendation	Government response
<p><b>Recommendation 6.3 The right skills and powers for the Victoria Legal Aid Board</b></p> <p>The Victorian Government should ensure that the Victoria Legal Aid Board has the right skills mix to fulfil its statutory duties and the proposed role of Victoria Legal Aid as co-ordinating system manager, by requiring that at least:</p> <ul style="list-style-type: none"> <li>• one Board member has legal practice experience in criminal defence matters;</li> <li>• one Board member has legal practice experience in another area of law relevant to Victoria Legal Aid’s practice; and</li> <li>• at least one Board member has substantial executive experience in public management.</li> </ul> <p>These requirements would be in addition to the current requirement for financial management skills.</p> <p>In addition, the Victorian Government should seek amendments to the <i>Legal Aid Act 1978</i> (Vic) to rename the Managing Director position as a Chief Executive Officer, and provide that this position should not be part of the Board, to ensure clarity of roles and reporting lines. An additional director position should be added to the Board so that it would continue to have seven members, following the commencement of amendments to the Legal Aid Act. These changes should not otherwise affect the employment of the incumbent in the Managing Director position.</p> <p>In the future, the Board should have power to appoint the Chief Executive Officer, with the approval of the Attorney-General, to ensure that the Board has the authority to match its responsibility for the management of the affairs of the organisation. The Board would then have responsibility for the management of the Chief Executive Officer. This change would support strong operational accountability and would help to balance the greater authority proposed for Victoria Legal Aid as co-ordinating system manager</p>	Agree
<p><b>Recommendation 6.4 Improving the transparency of Victoria Legal Aid’s operations</b></p> <p>The Victorian Government should seek amendments to the <i>Legal Aid Act 1978</i> (Vic) to require Victoria Legal Aid to publicly report its expenditure and organisational performance against indicators approved by the Attorney-General (at least on a quarterly basis) to improve the transparency of its operations.</p> <p>This information should be placed on the Victoria Legal Aid website. The publication of information would ensure that all legal assistance service providers have access to current financial and performance information, and prevent shocks to government and other legal assistance service providers if the financial or service provision position changes unexpectedly during the year</p>	Agree
<p><b>Recommendation 6.5 Improving Budget Paper 3 measures</b></p> <p>The Victorian Government should review the <i>Budget Paper 3</i> measures for Victoria Legal Aid to ensure that the measures reflect the current and future role of the organisation and that they include some quality measures</p>	Agree

Recommendation	Government response
<p><b>Recommendation 6.6 Making community legal centre funding more transparent</b></p> <p>The Victorian Government should specify a minimum aggregate budget allocation to community legal centres when providing funding for Victoria Legal Aid to administer. This would support productive working relationships between Victoria Legal Aid and community legal centres by removing perceptions that Victoria Legal Aid might give preference to its in-house practice when making decisions about funding.</p> <p>The Victorian Government should develop a provision for Victoria Legal Aid to seek approval to vary this in a situation of market failure where there is an area of acute need and no community legal centre capability or service. This should be done transparently, consultatively, and with the approval of the Department of Justice and Regulation</p>	Agree
<p><b>Recommendation 6.7 Longer-term funding to facilitate service delivery</b></p> <p>The Victorian Government should provide four-year funding allocations for legal assistance to improve the ability of legal assistance services (including community legal centres) to plan service provision. Greater funding certainty would also produce efficiencies by reducing the resources required to participate in short-term funding cycles. Where the necessary funding certainty can be provided by governments, Victoria Legal Aid should move to four-year funding agreements with the community legal centres it funds</p>	For further consideration
<p><b>Recommendation 6.8 Consolidating funding arrangements as appropriate</b></p> <p>The Victorian Government should require State departments and agencies that provide funding to community legal centres to report such funding to the Department of Justice and Regulation. The department should provide this information to Victoria Legal Aid. The Government should encourage Commonwealth Government departments and agencies to provide similar information to Victoria Legal Aid about their funding to community legal centres to facilitate whole-of-system co-ordination by Victoria Legal Aid.</p> <p>The Government should work to consolidate as many State funding streams to community legal centres as possible, to reduce the burden on community legal centres of multiple application and reporting requirements. However, consolidation of funding streams should not discourage funding of the community legal sector to achieve outcomes across government.</p> <p>Funding agreements with community legal centres should require them to provide Victoria Legal Aid with a copy of their annual operating statements (which they are already required to produce as incorporated bodies) to ensure that Victoria Legal Aid has a clear picture about resourcing</p>	Agree

Recommendation	Government response
<p><b>Recommendation 6.9 Improving co-ordination across departments</b></p> <p>The Victorian and Commonwealth Governments should improve co-ordination on policy and legislative initiatives that are likely to affect demand for legal assistance services by establishing relevant cross-portfolio committees involving, at a minimum, the justice and human services portfolios, and others as necessary. This co-ordination would also support integrated service design and provision to meet the needs of vulnerable and disadvantaged members of the community. The Victorian Department of Health and Human Services, and the Department of Justice and Regulation should commence these co-operative arrangements at the State-level, even if agreement cannot be reached with the Commonwealth</p>	Agree
<p><b>Recommendation 6.10 Maximising the value of legal assistance services through purchasing arrangements</b></p> <p>Victoria Legal Aid should continue to explore innovative purchasing arrangements and, where appropriate, trial alternative arrangements to maximise the public value of legal assistance services and to meet (or better meet) legal needs in the community. New approaches might include bulk tendering or greater use of fixed fee arrangements</p>	Agree
<p><b>Recommendation 6.11 Continuing to improve the simplified grants process</b></p> <p>Victoria Legal Aid should continue to refine the process for lawyers to assess their client's eligibility for a grant of legal assistance by:</p> <ul style="list-style-type: none"> <li>• reviewing compliance issues and restitution notices to identify any recurring problems in the application of the guidelines, and to determine whether the guidelines should be clarified or simplified, or if more education about the guidelines is required; and</li> <li>• ensuring that there is a mechanism for lawyers to check their assessment with Victoria Legal Aid, and/or to have Victoria Legal Aid make the decision if the private practitioner is uncertain about the application of the guidelines, and promoting awareness of this mechanism with the private profession.</li> </ul> <p>Having undertaken this work, where there are breaches of the guidelines, Victoria Legal Aid should pursue restitution to maintain the integrity of the guidelines.</p> <p>Victoria Legal Aid should also review the efficiency and practicality of compliance mechanisms associated with the grants process</p>	Agree

Recommendation	Government response
<p><b>Recommendation 6.12 Ensuring efficient and effective corporate services at Victoria Legal Aid</b></p> <p>Victoria Legal Aid should review, and consider re-allocating resources between, its Strategic Communications, and its Performance, Evaluation and Project functions, to ensure that they are efficient and effective in meeting the current and future needs of the organisation</p>	Agree
<p><b>Recommendation 6.13 Making distinctive contributions through policy work</b></p> <p>Victoria Legal Aid should consider introducing a ‘distinctive contribution’ criterion to its internal guidance for policy and law reform work. This principle would help to guide the efficient use of resources by ensuring that there is consideration of whether Victoria Legal Aid would be making a distinctive contribution to the policy discussion before proceeding to allocate resources to policy or law reform work</p>	Agree
<p><b>Recommendation 6.14 Ensuring Victoria Legal Aid Chambers provides maximum value for money</b></p> <p>Victoria Legal Aid should commission an independent review of the model for Victoria Legal Aid Chambers and consider whether the model maximises value for money in advocacy services. The review should include consideration of an alternative model based on the Public Defenders in other Australasian jurisdictions, some of which have more institutional separation from the Legal Aid Commission and a number of more senior advocates.</p> <p>Victoria Legal Aid should obtain agreement from the Department of Justice and Regulation to the terms of reference for the independent review, and consult with the Attorney-General about the implementation of its findings</p>	Agree
<p><b>Recommendation 6.15 Making purchasing of advocacy services accountable</b></p> <p>Victoria Legal Aid should take the following steps to support transparency and accountability of its purchasing decisions in relation to advocacy services:</p> <ul style="list-style-type: none"> <li>• review its fees paid to barristers from the private Bar each quarter to monitor distribution and inform its briefing processes;</li> <li>• scope options for producing more activity costing data in relation to in-house advocates to inform Victoria Legal Aid’s value for money assessment and support the culture of accountability within the organisation; and</li> <li>• ensure that its policy and fee structure for briefing counsel are publicly available.</li> </ul>	Agree

Recommendation	Government response
<p><b>Recommendation 6.16 Improving and demonstrating the quality of legal assistance</b></p> <p>Victoria Legal Aid should continue to develop its mechanisms to assess the quality of legal assistance work carried out in-house, by private practitioners and by community legal centres. These mechanisms should include peer assessment of advocacy skills in-court, using sampling and a risk-based regulation approach.</p>	Agree
<p>The Victorian Government should request the Victorian Bar to allow Victoria Legal Aid's in-house counsel (at least those who have signed the Bar Roll), to participate in the Indictable Crime Certification process in recognition of the Bar's important contributions to raising advocacy standards in the legal profession</p>	Agree, subject to further consultation with the Victorian Bar.
<p><b>Recommendation 6.17 Reviewing fee schedules for grants of legal assistance</b></p> <p>Victoria Legal Aid should establish a mechanism for regular and transparent reviews of fee levels and structures for grants of legal assistance. Reviews should occur at intervals of no more than three years</p>	Agree
<p><b>Recommendation 6.18 Supporting efficiency and accountability in legal assistance</b></p> <p>Victoria Legal Aid should develop a purchasing model, taking into account price, quality, and broader elements of public value, to be approved by the Department of Justice and Regulation. Victoria Legal Aid would maintain discretion about the purchasing decisions it makes on the basis of this model. This model should take into account the need for Victoria Legal Aid to maintain a minimum of 15-20 per cent market share of grants of legal assistance to fulfil the broader government interest in competition and having a public provider of legal assistance services. It might be appropriate for the working market share to be greater than this range, when other policy and practical factors are taken into account.</p> <p>Where Victoria Legal Aid relies on assumptions in its modelling, these assumptions should be rigorously tested at regular intervals, such as through an internal audit. Given the relevance of these assessments to the main purchasing choices of the organisation, the Victoria Legal Aid Board should approve a forward schedule for the audits</p>	Agree

Recommendation	Government response
<p><b>Recommendation 6.19 Victoria Legal Aid and national benchmarking</b></p> <p>Victoria Legal Aid should work with other Australian legal aid commissions to establish consistent definitions and methodology for the benchmarking of legal assistance services and administrative costs. The initial focus should be on comparisons with Legal Aid New South Wales and Legal Aid Queensland, and ensuring that benchmarking with those jurisdictions is in place within 12 months. This analysis would provide the Victoria Legal Aid Board and government with comparative measures over time to review Victoria Legal Aid's performance</p>	Agree
<p><b>Recommendation 6.20 Appropriate proportion of Commonwealth funding required</b></p> <p>The proportion of Commonwealth Government funding for legal assistance should be returned to a minimum of 40 per cent (noting that in 1999–2000 it provided 46.6 per cent levels and that it now provides only 31.2 per cent).</p> <p>The Victorian Government should seek a formalised and transparent funding model with the Commonwealth Government with indexation that considers appropriate factors relevant to specific areas of service provision; and to develop a mechanism to take appropriate account of population growth, service demand and cost/price factors</p>	Agree
<p><b>Recommendation 6.21 Increasing State funding for legal assistance</b></p> <p>The Victorian Government should seek to identify additional funding for legal assistance, with priority for duty lawyer services, family violence-related legal services, Aboriginal legal services, and integrated service provision partnerships.</p>	Agree
<p>The Victorian Government should consult with the Legal Services Board and Victoria Legal Aid about the possibility of increasing the proportion of the Public Purpose Fund that can be distributed Victoria Legal Aid from 35 per cent to 40 per cent, before seeking amendments to section 143 of the <i>Legal Profession Uniform Law Application Act 2014</i> (Vic) to achieve this.</p>	Agree
<p>The Victorian Government should also seek amendments to section 144 of the <i>Legal Profession Uniform Law Application Act</i> to ensure that the purposes for which the Victorian Legal Services Board may provide grants includes innovation in legal assistance services and the justice system, without limiting the Board's general discretion.</p>	Agree

Recommendation	Government response
<p><b>Recommendation 6.22 Appropriate Commonwealth-State funding arrangements</b></p> <p>The Victorian Government should work with the Commonwealth, and other States and Territories to negotiate a National Agreement under the Intergovernmental Agreement on Federal Financial Relations to secure appropriate recurrent funding for ongoing community legal needs. Consideration should be given to including funding for Aboriginal and Torres Strait Islander legal services as part of the proposed Agreement. The new arrangements should replace the National Partnership Agreement at the conclusion of the term of the current Agreement.</p>	Agree
<p>Until a National Agreement can be negotiated, the Victorian Government should seek improved efficiency in the administrative, consultative, and reporting arrangements established by the Commonwealth Government, to ensure that key performance indicators and measures are practical, appropriate, and align with the objectives, principles and guidelines established under the Intergovernmental Agreement on Federal Financial Relations</p>	Agree

Recommendation	Government response
<b>Chapter 7 – Pro bono legal assistance</b>	
<p><b>Recommendation 7.1 Costs orders in pro bono cases</b></p> <p>Parties represented on a pro bono basis should be able to obtain an order for costs, as an exception to the indemnity principle.</p> <p>The Victorian Government should seek amendments to the <i>Civil Procedure Act 2010 (Vic)</i> to allow an order for costs to be made in favour of a party represented on a pro bono basis, whether or not the party has a legal liability to pay its lawyers.</p> <p>Alternatively, the courts consider amending their rules to allow an order for costs to be made in favour of a party represented on a pro bono basis, even if the party has no liability to pay legal costs.</p> <p>The Victorian Government should consult with the courts about the implementation of one of these options</p>	<p>Agree, noting that the Supreme Court of Victoria has recently amended its rules in relation to pro bono costs orders, consistently with the recommendation</p>
<p><b>Recommendation 7.2 Criteria for protective costs orders in pro bono cases</b></p> <p>The Victorian Government should seek amendments to the <i>Civil Procedure Act 2010 (Vic)</i> to specify clearly the criteria to be taken into consideration by the courts in determining protective costs order applications in public interest litigation.</p>	<p>Agree</p>
<p>The Victorian Government should consider amending the <i>Model Litigant Guidelines</i> to provide guidance for government departments and agencies in responding to applications for protective costs orders.</p>	<p>The Victorian Government will give consideration to amending the Model Litigant Guidelines</p>
<p><b>Recommendation 7.3 Reviewing the availability of disbursements funding for pro bono cases</b></p> <p>The Department of Justice and Regulation should undertake a review of the availability and operation of disbursements funding for pro bono cases to determine whether and how such mechanisms could be better utilised to assist pro bono work</p>	<p>Agree</p>

Recommendation	Government response
<p><b>Recommendation 7.4 Clarity about unbundled pro bono legal services</b></p> <p>The Standing Committee of the Legal Profession Uniform Law (comprising the Attorneys-General of Victoria and New South Wales) should seek an amendment to the Professional Conduct Rules to support the provision of unbundled pro bono legal services. Issues to have regard to include:</p> <ul style="list-style-type: none"> <li>• practitioner liability;</li> <li>• inclusion and removal of practitioners from the court record; and</li> <li>• adequate disclosure and communication with clients and with opposing parties.</li> </ul>	Agree
<p><b>Recommendation 7.5 Priorities for pro bono work in the Government Legal Services Panel</b></p> <p>The Victorian Government should amend the requirements of the Victorian Government Legal Services Panel contract in the future to place greater weight on contributions that deliver pro bono services in areas of unmet legal needs that assist community legal centres and their clients</p>	Agree
<p><b>Recommendation 7.6 Promoting pro bono contributions</b></p> <p>The Victorian Government, the Law Institute of Victoria, Victorian Bar, Justice Connect and the Federation of Community Legal Centres should work together to develop and implement strategies to recognise and promote the pro bono contributions made by the legal profession each year, including during Law Week.</p> <p>The Attorney-General should work with professional associations to establish and sponsor a new pro bono contribution award or recognition scheme, which recognises innovative pro bono relationships between community legal centres and law firms</p>	Agree

Recommendation	Government response
<p><b>Recommendation 7.7 Connecting pro bono capacity and legal needs</b></p> <p>The Victorian Government, Justice Connect and the legal profession should work together to improve the exchange of information between, and awareness of the roles of, legal practitioners willing to perform pro bono work and the community organisations and community legal centres requiring pro bono legal assistance.</p> <p>Consideration should be given to:</p> <ul style="list-style-type: none"> <li>• developing an online tool or website portal whereby community legal centres or other organisations requiring pro bono assistance can advertise their need and be matched with legal practitioners who have the capacity to assist them;</li> <li>• refreshing the Attorney-General’s Community Partnerships Scheme; and</li> <li>• increasing the capacity of community legal centres to manage pro bono contributions</li> </ul>	<p>Agree</p>

Recommendation	Government response
<b>Chapter 8 – Self represented litigants</b>	
<p><b>Recommendation 8.1 Improving the way the courts work with self-represented litigants</b></p> <p>The courts and the Victorian Civil and Administrative Tribunal consider establishing a regular consultative forum on self-represented litigants that would allow the jurisdictions to co-ordinate their approaches to self-represented litigants, and share ideas and information.</p> <p>The courts and the Victorian Civil and Administrative Tribunal consider their strategies for:</p> <ul style="list-style-type: none"> <li>• education of judicial and quasi-judicial officers;</li> <li>• training of staff;</li> <li>• active case management of self-represented litigants;</li> <li>• access to mediation for self-represented litigants;</li> <li>• appropriate use of technology to assist self-represented litigants;</li> <li>• appropriate use of interpreters and spaces that are friendlier for culturally and linguistically diverse litigants;</li> <li>• better use of ‘support people’ to assist self-represented litigants; and</li> <li>• reviewing forms and information to make them more accessible for self-represented litigants.</li> </ul>	<p>The Government encourages the courts and the Victorian Civil and Administrative Tribunal to support this recommendation</p>

Recommendation	Government response
<p><b>Recommendation 8.2 Improving access to interpreters</b></p> <p>The Victorian Government should work together with the courts and the Victorian Civil and Administrative Tribunal to ensure that there is adequate availability of interpreters and that registry staff and judicial and quasi-judicial officers are educated to identify when the services of an interpreter are required.</p>	Agree
<p>Legal information should be published in plain-language, languages other than English and Easy English. Court orders should be drafted in plain-language where possible</p>	The Government encourages the courts and the Victorian Civil and Administrative Tribunal to support this recommendation
<p><b>Recommendation 8.3 Giving separate recognition to the role of support persons at VCAT</b></p> <p>The Victorian Government should seek amendments to section 63 of the <i>Victorian Civil and Administrative Tribunal Act 1998 (Vic)</i> to more explicitly acknowledge the role of support persons, as a role distinct from that of an interpreter or an advocate. For example, acting under such a provision, a judicial officer could allow a Koori Elder to sit at the bar table with a Koori person who is a party to the proceeding. Similar clarifying provisions should be considered for each Victorian court</p>	Agree
<p><b>Recommendation 8.4 Self Representation Service</b></p> <p>The Victorian Government should work with the Supreme, County and Children’s Courts, the Victorian Civil and Administrative Tribunal, and the community legal sector to establish a Self Representation Service, to be administered by a not-for-profit organisation. The model could be adapted for use in the different jurisdictions</p>	Agree

Recommendation	Government response
<p><b>Recommendation 8.5 Making it easier to navigate the Magistrates' Court</b></p> <p>The Victorian Government should work with the Magistrates' Court to develop materials, improve procedures and make increased use of technology to assist self-represented litigants in the Magistrates' Court.</p> <p>The Magistrates' Court consider taking practical steps to improve the experience of court users by improving:</p> <ul style="list-style-type: none"> <li>• listing practices;</li> <li>• signage;</li> <li>• public announcement systems;</li> <li>• provision of information in plain-language and languages other than English; and</li> <li>• waiting areas.</li> </ul> <p>The Court should seek to ensure that there are sufficient staff members available to assist court users with their enquiries and make appropriate referrals, and that all court staff and magistrates have received appropriate cultural awareness training</p>	<p>Agree</p> <p>The Government also encourages the Magistrates' Court of Victoria to support this recommendation</p>
<p><b>Recommendation 8.6 Legal support for bereaved families in the Coroners Court</b></p> <p>The Coroners Court consider establishing a relationship with relevant pro bono schemes to provide it with an opportunity to make referrals in relation to contested autopsy applications.</p> <p>In addition, the Government should work together with the Coroners Court to identify a suitable referral pathway for bereaved families at the Coroners Court. Once a suitable court support mechanism or services has been identified, the Government should assist to fund the service</p>	<p>For further consideration</p>