



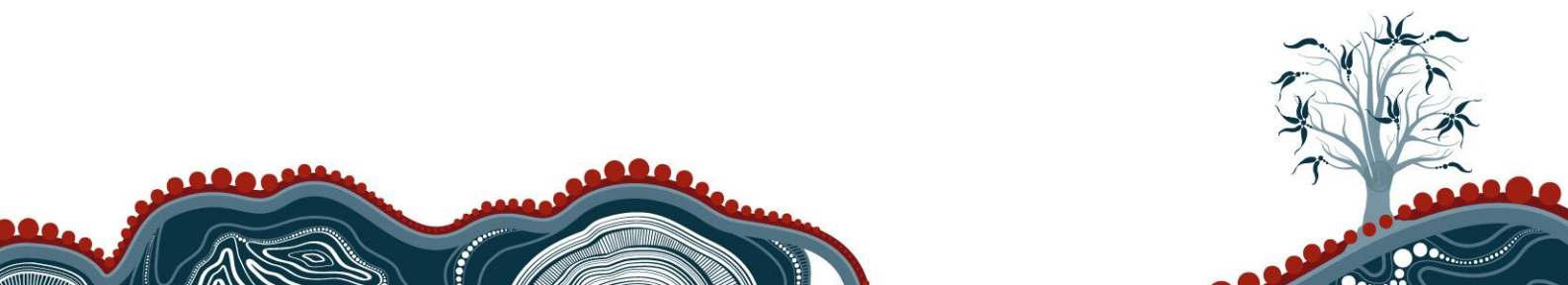
Victorian
Aboriginal
Legal Service

VALS Submission to the Inquiry into Legal Privilege and Integrated Legal Assistance Services

August 2026

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EXECUTIVE SUMMARY

VALS welcomes the opportunity to provide feedback to the Victorian Law Reform Commission (VLRC) Inquiry on Legal Privilege and Integrated Legal Assistance Services.

As an Aboriginal Legal Service, our aim is to promote social justice and the rights of Aboriginal people, and ensure that our people enjoy their rights, are aware of their responsibilities under the law and have access to appropriate advice, assistance and representation. Providing culturally safe and holistic wrap around legal services is core to our mandate and values.

Through our experience of over 50 years working with communities, we see firsthand how the legal system perpetrates racism and violence against Aboriginal people every day. Since invasion, the colonial legal system has intentionally criminalised non-legal issues such as poverty, mental health and homelessness; and by purpose and design, has continued to draw people into contact with the legal system, often on the basis of broader systemic and social challenges. For many of our clients, contact with the legal system is yet another racist and culturally unsafe experience.

We believe that integrated multidisciplinary teams are critical to provide a culturally safe, trauma-informed, holistic and person-centred legal service to our communities. In this way, we are able to support our clients to navigate an otherwise unsafe system and respond to intertwined legal and non-legal issues. An integrated model also aligns with Aboriginal approaches to social and emotional wellbeing, which encompass the importance of connection to land, water and skies, culture, spirituality and ancestry, and how these affect the wellbeing of the individual and the community.¹ Finally, integration supports a person-centred approach, which prioritises individualised support that centres the client as an individual human being, not as a legal matter.²

In recent years, VALS has moved from a loosely integrated model to a service that now incorporates both closely and loosely integrated teams. All of our legal teams are closely integrated, with community and social services staff embedded in the teams to provide critical support to clients alongside our lawyers. Many of these staff are Aboriginal and essential in providing a culturally safe service. Greater levels of integration within our Legal Practice have significantly enhanced our capacity to achieve better outcomes for our clients.

Although there is increasing awareness of the benefits of integrated legal assistance services, the law on legal privilege continues to operate on the basis of segregation, compartmentalisation and isolation. In many services, risks arising from the current law either prevent further integration or expose clients to the risk of losing legal privilege. This is yet another example of a colonial legal concept that does not work for Aboriginal communities, and which has not evolved to reflect the demand and need for holistic, culturally safe and trauma-informed legal services.

In the era of Treaty and truth-telling - when Aboriginal communities in Victoria are demanding transformation and an end to the racism being perpetrated by the legal system - the VLRC Inquiry presents an important opportunity for significant reform in this area of the law. As outlined in Part

¹ Gee, G., Dudgeon, P., Schultz, C., Hart, A., & Kelly, K. (2014). Social and emotional wellbeing and mental health: An Aboriginal perspective. In P. Dudgeon, H. Milroy, & R. Walker (Eds.), *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice* (2nd ed.). Department of the Prime Minister and Cabinet, Australian Government, Canberra.

² See Framework for First Nations Cultural Capability in the Legal Profession, p. 10.



A of our submission, we propose a new and broad category of legal privilege, which would protect confidential communications taking place for the dominant purpose of obtaining integrated legal assistance services. The legal protection should attach to all confidential communications (verbal and written) between a client and the integrated legal assistance service, and should be limited to legal services under the National Access for Justice Partnership.

When a community member comes to VALS, they access a holistic and person-centred legal service which supports them to address both their legal needs as well as any non-legal needs that are connected to their legal matter. Our clients are often experiencing trauma and a range of other concerns including homelessness, disability, grief, physical and/or psychological harm. With this in mind, some of our clients may not always distinguish between a lawyer and a social services professional; each person is a staff member of their Aboriginal Legal Service and together they are supporting the person to address their legal and associated non-legal needs. When our clients are engaging with our integrated legal assistance service, their confidential information should be protected by legal privilege, regardless of which VALS staff member they share that information with.

Reforming the law on legal privilege is essential to ensure that Aboriginal people accessing integrated legal assistance services benefit from the full protection of legal privilege; and that more integrated services become available to support enhanced access to justice. In our view, this is the only way to provide comprehensive protection for confidential client information in a closely integrated legal assistance service, and to ensure that the service is culturally safe and trauma-informed.

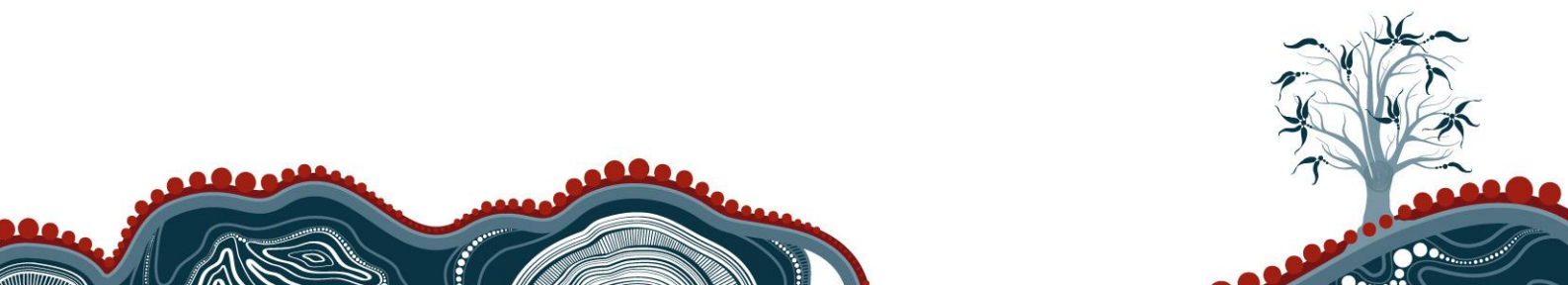
SUMMARY OF RECOMMENDATIONS

Recommendation 1. Any reforms relating to legal privilege in integrated legal assistance services must take into account that some services operate both closely and loosely integrated models alongside each other.

Recommendation 2. The Evidence Act should be amended to extend legal privilege so that it protects confidential communications between clients and integrated legal assistance services, for the dominant purpose of obtaining integrated legal assistance services. The following confidential communications (both written and verbal) should be protected, provided that they are for the dominant purpose of obtaining integrated legal assistance services:

- Confidential communications between a client and lawyer;
- Confidential communications between a client, lawyer and community/social services support staff;
- Confidential communications between a client and community/social services support staff;
- Confidential information that is being used by the lawyer or community/social services worker to advocate on behalf of the client to another party or organisation.

Recommendation 3. For the purposes of the new category of legal privilege, integrated legal assistance services should be defined as integrated legal services under the National Access for Justice Partnership, including Aboriginal and Torres Strait Islander Legal Services, Community



Legal Centres, Women's Legal Services, Family Violence Prevention and Legal Services and Victoria Legal Aid.³

Recommendation 3. Any reforms must not erode the existing protection provided by legal privilege under both common law and the Evidence Act 2008 (Vic).

³ [National Access to Justice Partnership agreement – November 2024](#)



DETAILED SUBMISSIONS

Part 1: VALS' model of culturally safe integrated legal assistance

The Victorian Aboriginal Legal Service (VALS) is an Aboriginal Community Controlled Organisation (ACCO) with 50 years of experience providing culturally safe legal and community justice services to our people across Victoria.

Our legal practice serves Aboriginal people of all ages and genders. We provide legal assistance to Aboriginal communities across Victoria, including in relation to: criminal matters, youth justice, child protection, family law, family violence, and a range of civil law issues, including coronial inquests and police and prison accountability.

Our legal service includes multidisciplinary teams across all practice areas. Lawyers work closely with a range of support staff who provide non-legal culturally safe support and advocacy to our clients. These staff help our clients navigate the legal system and connect them with the support services they need to address legal concerns, as well as non-legal issues related to their legal matter. Most of these roles are Aboriginal-identified roles and they provide critical cultural support to our clients and non-Aboriginal staff. For the purposes of this submission, we refer to non-legal roles at VALS as “community/social services staff.”

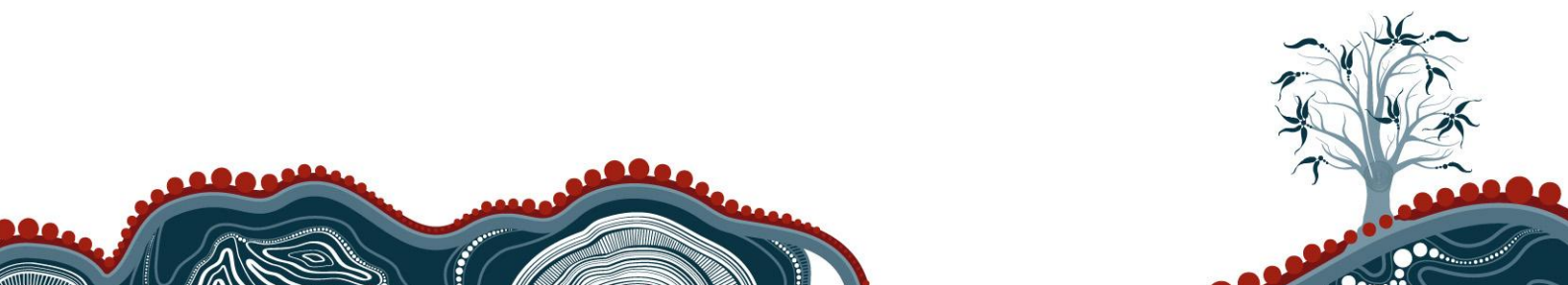
The community/social services staff embedded into our legal teams include:

- Client Service Officers (CSOs)
- Aboriginal Community Engagement (ACE) Workers
- Youth Access and Inclusion Service (YAIS) Workers
- Family Support and Advocacy Officer
- Social and Emotional Wellbeing (SEWB) Community Support Officer (Mental Health Practice)
- Community Engagement and Support Officer (Disaster Rights Practice)
- Family Violence Support Practitioners

In recent years, our Legal Practice has shifted from a loosely integrated model to a closely integrated model, whereby lawyers and community/social services staff share confidential client information and there is no information barrier within each legal team, or between legal teams.

Sometimes our clients communicate with a lawyer and social services professional at the same time; sometimes they communicate separately with a lawyer; and sometimes they communicate separately with a community/social services staff member. On every occasion, community members are accessing an integrated legal assistance service that is providing holistic and culturally safe legal services and supporting the client to address underlying issues that have triggered contact with the legal system.

Our legal practice adopts a closely integrated model in both our central office as well as our Regional Hubs in Bendigo, Mildura, Shepparton, Warrnambool, Werribee and Morwell. In the Regional offices, CSOs work closely with lawyers from our Criminal Practice and Aboriginal Families Practice.



Cultural Safety

For many of our clients, engaging with the legal system is a harmful experience that exposes them to racism and systemic discrimination. At VALS, it is critical to provide a culturally safe legal service, which can help clients to navigate an otherwise unsafe system; and supports clients to address both the legal and non-legal issues that have brought them into contact with the legal system.

In 2024-25, VALS led the development of the Framework for First Nations Cultural Capability in the Legal Profession, which affirms that “all First Nations peoples living in Victoria deserve legal assistance and representation which enables them to make informed choices, respects, appreciates, and upholds their cultural rights and needs, and contributes to improved legal outcomes.”⁴

Under this Framework, cultural safety is described as follows:

*Cultural safety is multifaceted. It is an environment in which First Nations peoples feel welcome, where First Nations histories are visible, First Nations identities are supported, and First Nations experiences are respected. The client should feel that their Indigenous identity is valued – they should feel safe from cultural abuse and racism, whether overt or covert. The service provider should also have self-awareness about their own cultural values and biases, and the power dynamics of colonisation and its ongoing effects on the relationship between First Nations and non-First Nations peoples. Cultural safety creates a space for those who are often silenced to voice their concerns. The extent to which cultural safety is present is determined by the First Nations person on the receiving end of the interaction or service.*⁵

Cultural safety is also about trust. Many of our clients have high levels of distrust in the legal system based on previous experiences of violence and racism. When a client comes to VALS, we support them in a way that builds trust. Often this requires the presence of an Aboriginal CSO, and it may often involve the client meeting separately with the CSO.

Aboriginal staff at VALS are critical to the culturally safe model of legal services that we have developed over the past 50 years. For decades, CSOs have provided cultural support to clients and non-Aboriginal staff. In recent years, we have enhanced this model by embedding Aboriginal community/social services staff across all of our teams. Our Practice experience demonstrates that the best way to provide a culturally safe legal service is through multidisciplinary teams that work together to provide legal, social services and cultural support.

Overview of Legal Practice areas

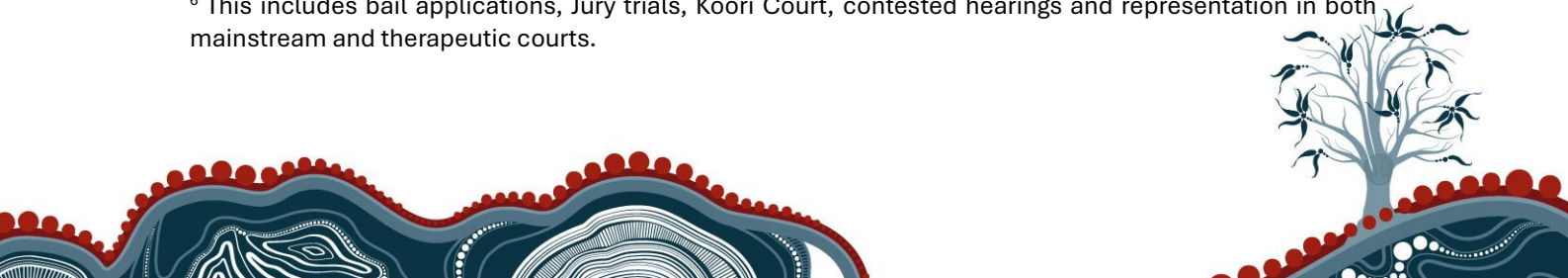
Criminal Law Practice

Our Criminal Law Practice provides legal assistance and representation for Aboriginal people involved in court proceedings charged with a criminal offence.⁶ We aim to understand the

⁴ Framework, p. 6.

⁵ Framework, p. 9.

⁶ This includes bail applications, Jury trials, Koori Court, contested hearings and representation in both mainstream and therapeutic courts.



underlying reasons that have led to the offending behaviour and ensure this informs the best outcome for our clients. Our Criminal Law Practice includes both lawyers and CSOs, who work together to provide culturally safe and holistic care to our clients.

Our CSOs are identified roles who act as key connectors for our clients and local communities to VALS legal assistance. CSOs assist clients to attend court, arrange legal representation, advocate on the client's behalf, and assist them in their communications with lawyers and to understand court processes and orders. This culturally safe support is invaluable to those who attend court or need legal assistance, which can be a traumatising and triggering experience for our community. Following the assessment of non-legal need and identification of risk, the CSOs also provide short term intensive case work, whilst ensuring active/warm referrals for ongoing case management as needed.

Balit Ngulu

Balit Ngulu is our dedicated legal practice for Aboriginal children and young people. This team provides legal advice and representation for clients in criminal proceedings and intervention order matters, as well as where child protection, or a section 18 authorised service⁷ is involved.

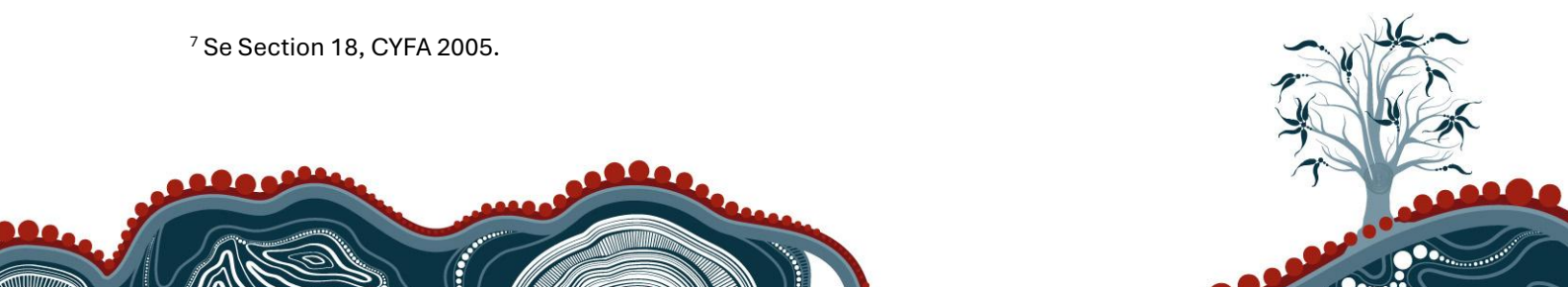
Balit Ngulu is designed to be trauma informed and provide holistic wraparound culturally safe support for our youngest clients. To achieve this, lawyers work closely with ACE workers, who work with clients to develop and implement plans that keep them safe, support their diversion from the justice system, and build their resilience and wellbeing. This includes wrap-around case management and advocacy, cultural support planning and supporting them in court and to participate in other legal and non-legal proceedings. Our ACE workers are identified roles.

Early intervention is the primary focus of the program and diverting young people away from the criminal legal system remains a key priority. Balit Ngulu continues to achieve positive outcomes, diverting young people away from the criminal legal system through advocacy for non-court dispositions such as police cautions, Aboriginal Youth Caution program and the Children's Court Youth Diversion Program. This is possible because of the referrals and supports established in the community, largely led by our ACE workers and Youth Pathways Coordinators.

Our *Strong Voice, Strong Futures* (SVSP) program also works with young people involved with or at risk of involvement with the legal system by providing personalised education and/or employment pathway planning, support and coordination. Our Youth Pathways Coordinators support our clients to meaningfully engage in education, training and employment. Some SVSP clients also have legal matters, in which case the Youth Pathways Coordinator works collaboratively with the client's Balit lawyer and ACE worker.

Balit Ngulu also runs the Youth Access and Inclusion Service (YAIS), previously known as the Disability Advice Response Team (DART), in partnership with Melbourne City Mission to assist young people who come into contact with the criminal legal system and may have a disability. The Service supports the client with screening, assessment and if needed, support through the NDIS process. YAIS workers support the young person in completing required disability screening and provide support to access key information and services.

⁷ See Section 18, CYFA 2005.



Aboriginal Families Practice

The Aboriginal Families Practice provides legal information, advice, litigation representation and lawyer assisted dispute resolution in family law, child protection, and family violence. We provide child and family focused assistance, supporting people through the trauma of legal proceedings or state intervention in a culturally safe and respectful way. The Aboriginal Families Practice operates with a CSO (Aboriginal-identified role) embedded in the team, working alongside our lawyers to provide culturally safe legal assistance.

Civil & Human Rights Practice

The Civil & Human Rights Practice provides access to justice for our clients in civil justice issues linked to human rights. This includes consumer issues, infringements, tenancy issues, coronial matters, discrimination issues, working with children checks, employment matters and mental health tribunal matters. In our regional offices, the Regional Practice Leads for the Civil & Human Rights Practice work closely with the regional CSOs, which are Aboriginal identified roles.

The Mental Health Practice operates with a SEWB Community Support Officer (Aboriginal-identified role) integrated into the legal team. The SEWB Community Support Officer provides culturally appropriate support and guidance to Aboriginal clients navigating the mental health system. This includes attending Mental Health Tribunal hearings as a support person and advocating on behalf of the client with other services and organisations.

Our Disaster Rights Practice includes a Community Engagement and Support Officer, who engages with Aboriginal communities to identify disaster-related legal needs and provide culturally appropriate and trauma-informed assistance, including information, resources and referrals.

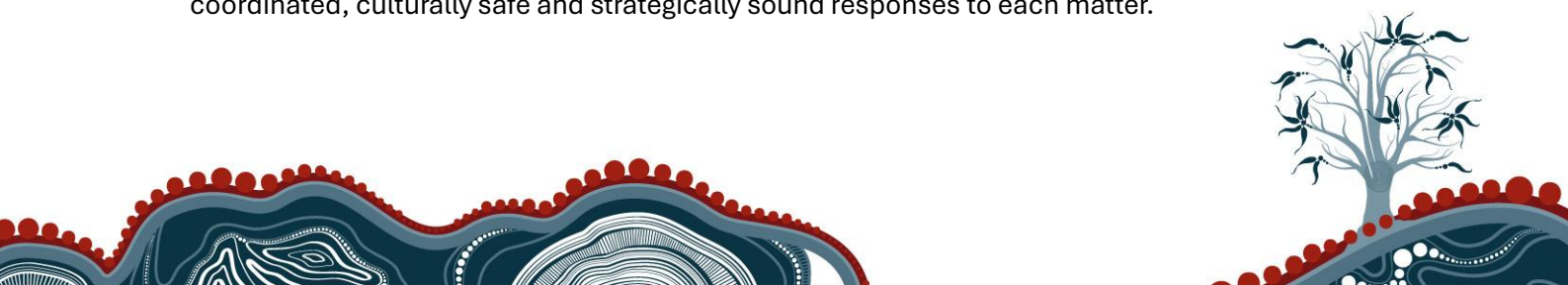
Wirraway Police and Prison Accountability Practice

Our Wirraway Police and Prison Accountability Practice provides legal advice and conducts case work and civil litigation for Aboriginal people who have experienced policing and prison harms. This includes complaints, court proceedings against the State for negligence, excessive use of force and unlawful detention, and coronial inquests arising from deaths in custody and police contact deaths.

A Family Support and Advocacy Officer (Aboriginal-identified role) is embedded in the Wirraway Practice, to provide support, assistance, and advocacy support to bereaved families throughout the coronial process. This includes providing culturally appropriate support services and guidance to families, and also involves liaising with the Coroners Court.

Family Violence Service

VALS is in the process of establishing a Family Violence Service which will work at the intersection of family violence, criminal law, and systemic injustice for Aboriginal people across Victoria. The work sits at the front line of criminal law matters which also include family violence, cases of misidentification and family violence intervention order proceedings. The service has been designed to respond to that complexity with a multidisciplinary model that brings together legal, social work and cultural expertise. Lawyers and non-legal staff will work side by side to deliver coordinated, culturally safe and strategically sound responses to each matter.



The new Family Violence Service will include a number of non-legal roles:

- ACE workers, who are Aboriginal staff who specialise in family violence and help clients understand legal processes, strengthen their safety, connect them to culturally appropriate supports and assist them with emotional and practical needs that arise during family violence and misidentification matters.
- Family Violence Support Practitioners who provide culturally grounded social work support, case management and trauma informed practice for clients affected by family violence.

Overview of Community Justice Programs

Alongside our closely integrated Legal Practice, we also provide a range of Community Justice Programs (CJP). Our CJP team is staffed by community/social services staff who provide critical and legal-adjacent services to our clients and community. This includes the Custody Notification System (CNS),⁸ Ngang Gak,⁹ Local Justice Worker Program (LJWP),¹⁰ Victoria Police Electronic Referral System (V-PeR),¹¹ Aboriginal Community Justice Reports (ACJR), Bail and Remand Program¹² and the Baggarrook Women's Transitional Housing program.¹³ All roles in the CJP team are Aboriginal-identified roles.

CJP is loosely integrated with the Legal Practice. Currently, legal services and CJP services are delivered apart, but through the same entry point. Often clients may access services from both the Legal Practice and CJP, for example:

⁸ The CNS provides critical support to Aboriginal people when they are first taken into police custody. The *Crimes Act 1958* requires that Victoria Police notify VALS within 1 hour of an Aboriginal person being taken into police custody in Victoria. Once a notification is received, VALS contacts the relevant police station to conduct a welfare check and facilitate access to legal advice if required.

advocacy work undertaken by the CNS team is pivotal in ensuring that community members are accessing legal advice early and in a timely manner, and medical treatment and overview where required.

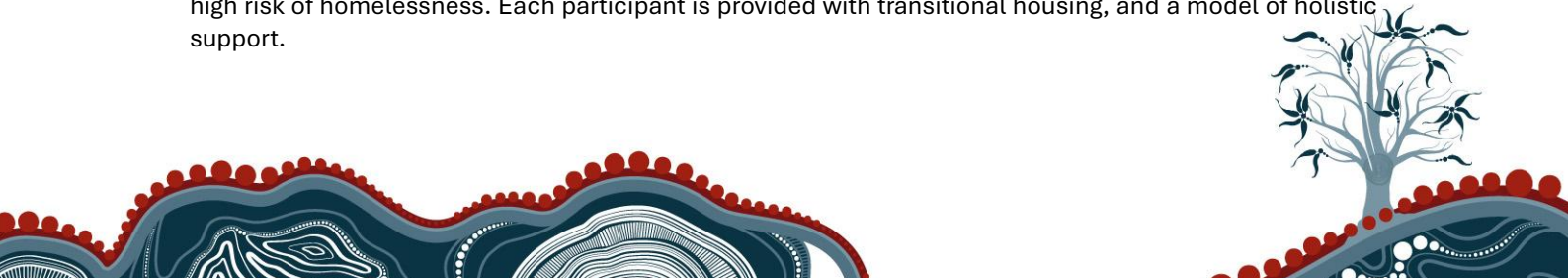
⁹ Ngang Gak means 'Listening' in Wurundjeri language. This program provides a therapeutic wraparound service for the whole family. By supporting Aboriginal children aged 10-14 and their families with Cultural Identity, education, employment, health, family and community connections. The program aims to support young people stay engaged in their education, community and culture to help build strong futures.

¹⁰ The LJWP provides crucial culturally safe support to Aboriginal people aged 18 and over who are navigating the community corrections and justice systems. Local Justice Workers work holistically with participants to support the successful completion of mandated Community Corrections Orders (CCOs) and the resolution of outstanding fines or warrants. LJWs facilitate referrals to ongoing support services to create pathways out of the criminal legal system.

¹¹ The Victoria Police Electronic Referral (V-PeR) program involves a partnership between VALS and Victoria Police to support Aboriginal people across Victoria to access culturally appropriate services. Individuals are referred to VALS once they are in contact with police, and VALS provides support to that person to access appropriate services, including in relation to drug and alcohol, housing and homelessness, disability support, mental health support.

¹² The Bail and Remand program is currently being established and will provide culturally informed short-form bail reports to provide bail decision makers with strengths-based information about the person's background, cultural context, risks and available supports. The program also provides intensive bail case coordination for people on bail.

¹³ The Baggarrook program is an intensive support program for women transitioning from custody that are at high risk of homelessness. Each participant is provided with transitional housing, and a model of holistic support.



- Our CNS provides critical support to Aboriginal people when they are first taken into police custody. Our Custody Notification Officers (CNOs) provide support to Aboriginal people in police custody, including checking on their health and wellbeing and also facilitating access to legal advice if required. A CNO client may also access services from our Legal Practice if they require ongoing legal advice or representation.
- Our Wirraway Practice may provide legal assistance to a client regarding their rights while detained in custody. Wirraway may then refer the client to Baggarook, to access intensive support as they transition out of custody.

Currently, both the Legal Practice and CJP use the same database, but there are access barriers which prevent CJP staff from accessing legal files and vice-versa. Balit Ngulu and the Criminal Practice are able to access CNS files if required, as this information is often pertinent to the subsequent legal assistance being provided.

We are also in the process of setting up a formal information barrier between the Legal Practice and selected CJP programs (Baggarook, LJWP, ACJR and the Bail and Remand Program). This will ensure both electronic separation as well as separate office space, in addition to policy guidance, training and monitoring to ensure that the information barrier is effective.

Part 2: Responses to consultation questions

1. ***Integrated legal assistance services involve the delivery of legal and social services by professionals working for the same organisation or partnership. Loosely integrated legal assistance services impose strict information barriers between lawyers and social service professionals providing services to clients. Closely integrated legal assistance services promote the joint delivery of legal and social services to clients at the same time, sometimes after obtaining client consent to potentially compromise privilege. How easy or difficult is it to implement these two models of integrated legal assistance services in practice?***

Distinguishing between closely and loosely integrated models

The Consultation Paper makes a clear distinction between closely and loosely integrated legal assistance services. As outlined above, VALS has both a closely and loosely integrated model operating side by side. This is also the case for other CLCs and indicates that the distinction between closely and loosely integrated legal assistance services is not always clearcut.

Implementing a closely integrated legal assistance service

Previously, the Legal Practice at VALS operated as a loosely integrated legal assistance service, with access barriers preventing our community/social services staff from accessing legal files. Our CSOs sat within the CJP team and provided support to clients without being integrated into the Legal Practice. However, there were many challenges with this approach including communication barriers and the lawyers not properly understanding the CSO role.

When we re-launched Balit Ngulu in 2021, our goal of providing a trauma informed and holistic, culturally safe support for our youngest clients meant that we needed to design a multidisciplinary team that could provide wraparound support to clients. The success of this model provided a blueprint for our Practice, and since then, we have re-structured almost all of our legal teams so that they are closely integrated. We are currently considering how we will structure the new specialist Family Violence Team.



Although closely integrated teams entail some risks, including potential loss of legal privilege, this model has significant benefits for our clients (discussed above and further below) and we are currently managing these risks through a range of strategies including clearly defined roles; training and policies; we let clients know that information is shared between legal and non-legal in our closely integrated Legal Practice.

As noted above, clients sometimes meet separately with a community/social services worker, without a lawyer present. This is essential both to provide a culturally safe service; but also to ensure that we are flexible for our clients, who may not always be able to attend a meeting at a specific time when the lawyer is available. Although community/social services staff do not provide legal advice, they may discuss some details of a legal matter with a client and it is possible that a client may prefer to or inadvertently share confidential information with community/social services staff.

Additionally, some of our clients may not initially distinguish between their lawyer and the community/social services staff member; from their perspective, they are receiving holistic support from VALS as a legal service. In practice, it may be challenging for clients to understand that they can share confidential information when they meet jointly with the lawyer and community/social services staff; but they are unable to discuss the same issues or share additional confidential information when they meet separately with the community/social services staff member because those conversations are not subject to privilege.

Implementing a loosely integrated legal assistance service

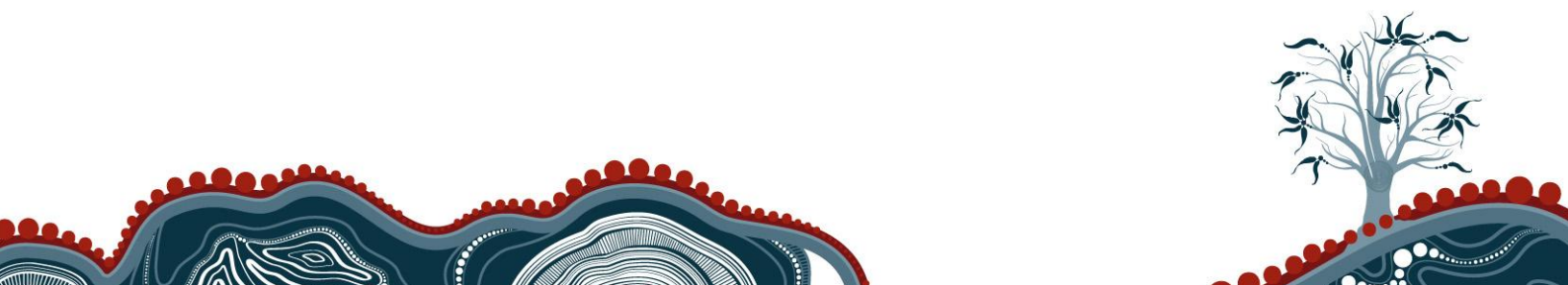
While our Legal Teams are closely integrated and operate without information barriers, our CJP Team is loosely integrated with the Legal Practice: clients may access services from both teams within VALS, but there is an access barrier to prevent CJP staff from accessing legal files.

One of the key interfaces between the Legal Practice and CJP is the CNS. As noted above, clients of the CNS regularly become clients of Balit Ngulu or the Criminal Practice if charges are laid against the client. In some instances, CNS clients will also receive legal services from Wirraway if they have a legal claim or complaint regarding their treatment in police custody. Currently, the access barrier is one way, in that Balit Ngulu and the Criminal Practice can access CNS files regarding their clients; but the CNS team cannot access the legal files for any of their clients.

One of the challenges we face in this area is that communications between the client and the CNO are not protected by legal privilege even though these communications are taking place just after the client has been arrested, at a time when the client is highly vulnerable. Recently, we received a request to disclose CNO file notes to an external defence lawyer. Our CNOs explain to clients that their communications are not protected by legal privilege, however, some clients may not comprehend this given they are in a highly dynamic and stressful environment.

RECOMMENDATIONS

Recommendation 1. Any reforms relating to legal privilege in integrated legal assistance services must take into account that some services operate both closely and loosely integrated models alongside each other.



2. What are the benefits of integrated legal assistance services for clients, service providers and the justice system? Do you have case studies, examples or other evidence you can share?

As outlined above in Part 1, we believe that closely integrated multidisciplinary teams are critical to provide a culturally safe, trauma-informed, holistic and person-centred legal service to Aboriginal communities across Victoria.

Since invasion, the colonial legal system has intentionally criminalised non-legal issues such as poverty, mental health and homelessness; and by purpose and design, has continued to draw people into contact with the legal system, often on the basis of broader systemic and social challenges. This legacy is particularly prominent in the current political climate.

The vast majority of our clients have multiple intersecting legal and non-legal issues. There are often many different compounding drivers of contact with the legal system that are interconnected and require a holistic response. Integrated services provide better outcomes for our clients as they allow our staff to work collaboratively together to identify and resolve issues in a way that is both holistic and person-centred. As noted in the Framework for First Nations Cultural Capability in the Legal Profession, a person-centred approach “stresses the importance of individualised and tailored support that centres the client as an individual human being, and not as a matter to be addressed.”¹⁴ This could encompass understanding a client’s family dynamics, or their wider aspirations following the resolution of their matter.”¹⁵

Wraparound services ensure people are supported to reduce contact with the justice system and address the drivers of contact. This achieves better outcomes for our clients and has flow on effects, including keeping them safer and connected to their communities and culture, which in turn benefits everyone in their communities. By supporting clients to address the underlying drivers of contact with the criminal legal system, we hope to prevent future cumulative and compounding criminalisation, and to decrease overrepresentation of Aboriginal people across all areas of the criminal legal system.

A closely integrated model is essential for providing a culturally safe legal service. Aboriginal staff help our clients to feel confident and build trust with their lawyer. Our community/social services worker can also help to break down barriers by explaining the legal process and supporting clients to engage more broadly with the legal system, including courts and police.

The following case studies highlight the way that our integrated Legal teams operate to support our clients:

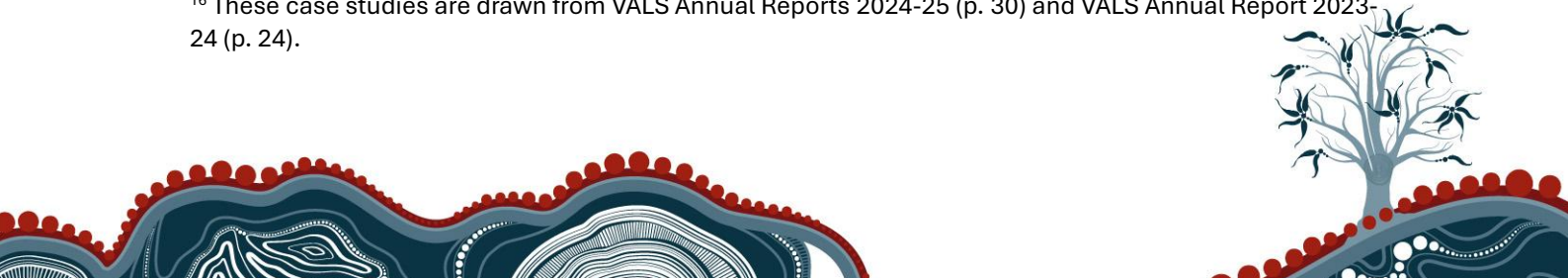
Balit Ngulu¹⁶

Sam*

¹⁴ Australian Commission on Safety and Quality in Health Care, Australian Commission on Safety and Quality in Health Care. (n.d.). *Personcentred care*. Retrieved April 16, 2025, from <https://www.safetyandquality.gov.au/our-work/partnering-consumers/person-centred-care>

¹⁵ Framework, p. 10.

¹⁶ These case studies are drawn from VALS Annual Reports 2024-25 (p. 30) and VALS Annual Report 2023-24 (p. 24).



In February 2025, Sam*, a 15-year-old young person, was referred to Balit Ngulu after being charged with multiple serious offences. Although Sam had no prior convictions, they had previously completed a Children's Court Youth Diversion in late 2024.

Following intake, Sam was connected with our Balit Ngulu ACE worker. The ACE worker quickly established a strong and trusting relationship with Sam, which led to high engagement over the following months. Together, they identified key goals, with Sam expressing a strong desire to return to school as a priority.

Re-engaging Sam with education required significant advocacy. The ACE worker established a care team and led the coordinated effort involving the school, Koori Education Support Officer, and Sam's family. Despite initial resistance from the school, persistence to develop a plan led to Sam successfully enrolling in their preferred school. This outcome was a major milestone for Sam and a testament to the ACE worker's dedication and culturally safe approach.

The support provided by Balit Ngulu was deeply appreciated by both Sam and their family and was formally acknowledged by the Magistrate in the Koori Court. The Magistrate commended the work of the ACE worker, expressing hope that more young people could access similar support and that ACE workers could remain engaged with young people for longer periods.

In the end, Sam was sentenced to a five-month Good Behaviour Bond. The Magistrate recognised Sam's genuine efforts to make positive life changes and engage in pro-social activities such as school. Since the finalisation of their matter, Sam has had no further contact with police.

Before closing Sam's file, the ACE worker ensured they were connected with ongoing community supports, reinforcing Balit Ngulu's commitment to long-term positive outcomes for Aboriginal young people.

PI*

PI* was 17 years old and was taken into custody following breach of bail conditions. In the absence of further offending, Victoria Police made an application to revoke PI's bail, and this application was granted by the Presiding Magistrate.

Following this refusal of bail, Balit Ngulu lawyers listed an application for bail in the Supreme Court of Victoria. The Balit Ngulu ACE worker continued to support PI in the community. The care team was well serviced with appropriate cultural and therapeutic supports, the ACE worker assisted with vocational opportunities - e.g. construction white card, court assistance and cultural support. These were the identified gaps in the current care plan and within the care team.

In the decision to grant bail, the judge noted the following: that breaking the cycle of offending does not occur in custody and that the availability of new wrap around supports in the community should be utilised and could be the difference for the young person turning their life around.¹⁷ This decision has been published and will serve as an authority that other lawyers across the state can rely on in their advocacy for Aboriginal children and bail applications.

¹⁷ *Re application for bail by PI [2023] VSC 481*



Criminal Practice¹⁸

This following case study demonstrates the strength of VALS' Regional Hub model – whereby lawyers and CSOs work hand-in-hand with external services to achieve life-changing outcomes.

Adam*

Adam* first sought assistance from a regional VALS office in mid-2023. He faced a series of low-level offences, including theft and breach of bail, compounded by substance use and unstable housing. Police also laid an assault charge which, through the advocacy of our lawyer, was ultimately withdrawn. By mid-2024, further charges were laid, including family violence and dishonesty offences. The Department of Families, Fairness and Housing became involved due to concerns about mutual drug use and violence.

At the contested hearing, our lawyer successfully negotiated the withdrawal of the most serious allegations, ensuring the outcome reflected our client's early admissions. With coordinated support from our regional family lawyer, Client Service Officers, and external agencies (Dardi Munwurro, DFFH, and Gunditjmarra Family Violence Services), our client engaged with treatment programs and began rebuilding stability.

In late 2024, when his nine-year-old son was excluded from the mother's care, the child was placed with our client. Despite being charged with breaching a Family Violence Intervention Order due to caring for his son, the matter was ultimately proven and dismissed. Today, Adam* is substance-free, the sole carer of his son, and is seeking custody of his youngest child.

Wirraway Police and Prison Accountability Practice¹⁹

Coronial Inquest into the passing of Heather Calgaret

The Wirraway Practice acted in the 2024 Coronial Inquest into the passing of Heather Calgaret. Heather was a proud Yamatji, Noongar, Wongi and Pitjanjatjara woman and mother of four, who passed away in custody in November 2021.

This was the first inquest in which VALS had a dedicated Aboriginal Family Advocacy and Support Officer. This role made the world of difference to the family in being holistically supported throughout the Inquest and ensuring that the voices of Heather's family members were heard in the Inquest.

The Family Advocacy and Support Officer ensured Heather's family were linked in with services, sat with them throughout the Inquest, advocated for Court processes to be culturally appropriate for the family, and helped all family members to tell their stories throughout the Inquest to the Court and in public advocacy.

¹⁸ This case study is from the VALS Annual Report 2024-25 (p. 35)

¹⁹ This case study is from VALS Annual Report 2023-24 (p. 29).



Mental Health Practice

Alex*

Alex is a 29-year-old client of the VALS Mental Health Practice. They had been placed on an Inpatient Treatment Order due to their ongoing struggles with bipolar disorder. They live in a regional town in Victoria and maintain strong ties to their family and community. They have been experiencing frequent mood swings, episodes of mania, and periods of depression that significantly impair their ability to function and make decisions regarding their health and safety.

Their mental health history began in their early twenties when they started experiencing mood instability. They were initially diagnosed with bipolar disorder after several manic episodes and hospitalisations due to psychosis.

Despite their diagnosis, they often resisted taking medication and attending regular therapy, as they felt that these treatments did not align with their cultural beliefs or values. They have had difficulties engaging with mental health professionals who did not understand the cultural significance of community and spiritual practices in their life. Their family, while supportive, struggled with understanding mental health care and how best to support them.

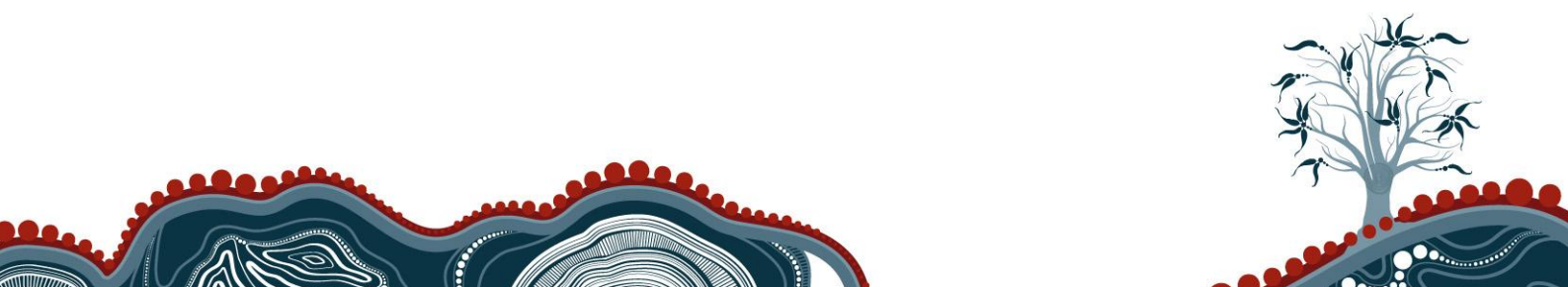
Alex's legal team alongside the SEWB worker represented them at a Mental Health Tribunal hearing to have the Inpatient Treatment Order revoked and successfully changed to a Community Treatment Order (CTO). This empowered the client to have control of the next steps in their journey, with guidance and support from the SEWB worker.

The CTO allowed Alex to continue living in their community with ongoing monitoring and treatment, rather than being subject to long-term hospitalisation. The CTO required that they comply with regular visits to a community-based mental health team, take prescribed medication, and attend therapy sessions. The treatment plan also included cultural integration, substance use support, community and family support, and follow-ups and monitoring.

The legal team understood the importance of integrating cultural sensitivity into their treatment plan. Aboriginal people often view mental health differently, and traditional healing practices play a significant role in how mental health challenges are addressed.

The SEWB worker helped them access traditional healing practices that complemented their medical treatment, making them more open to the idea of ongoing treatment. Their family, community and community elders were consulted to ensure that their cultural practices were respected. The SEWB worker worked with Alex to provide culturally appropriate support and connect them with community-based healing practices.

Alex's progress under the CTO was mixed but generally positive and was able to be revoked after a period of around 8 weeks. By incorporating cultural practices into their treatment plan, they developed a greater sense of control and acceptance of their treatment, which led to better engagement with healthcare services. While there were setbacks, including occasional



episodes of non-compliance, their symptoms were more manageable than before, and they have remained out of the hospital.

This case highlights the importance of culturally competent care and community-based mental health services for Aboriginal clients. The CTO allowed them to remain connected to their family and community, while receiving the treatment necessary to manage their disorder. The involvement of the SEWB worker, community and culturally responsive healthcare professionals was key to their recovery journey.

3. Integrated legal assistance services may compromise a client's ability to retain legal privilege and expose their private information, including through the professional reporting obligations of social service professionals. Do you have case studies, examples or other evidence that indicate how easy or difficult it is for lawyers, social service professionals or clients to manage information disclosure requirements and requests in this context?

Currently, VALS is not impacted by any of the following reporting obligations or information disclosure requirements:

- Mandatory reporting obligations under the *Children, Youth and Families Act 2005* (Vic)
- Information sharing requirements under the *Child Wellbeing and Safety Act 2005* ²⁰ and the *Family Violence Protection Act 2008* ²¹
- Ethical obligations under codes of ethics or professional rules.²²

None of our community/social services staff have mandatory reporting obligations under the CYFA,²³ and VALS does not have information sharing obligations under either the *Family Violence Protection Act* or the *Child Wellbeing and Safety Act*.

However, all staff at VALS must comply with section 327 of the *Crimes Act 1958* (Vic), which makes it an offence for any adult to fail to disclose information to police where they hold a reasonable belief that a sexual offence has been committed against a child under 16 by an adult.

Although we would like to employ social workers in the future (including in the new Family Violence Specialist Legal Practice), we do not currently employ any staff with tertiary social work qualifications. We understand that currently there are no jurisdictions in Australia that require mandatory registration and regulation of social workers. Although South Australia passed legislation to implement mandatory registration of social workers, implementation of the Social Workers Regulation Scheme has been postponed by the Government.²⁴

²⁰ Part 6A creates the Child Information Sharing Scheme (CISS).

²¹ Part 5A- creates the Family Violence Information Sharing Scheme (FVISS)

²² Crimes Act section 327.

²³ We note that section 182(1)(g) of the CYFA foresees reporting obligations for certain community workers, however this section has not yet come into effect.

²⁴ See [Social Workers Registration Board | Social Workers Registration Board](#); P. Doherty, "[Child protection advocates slam decision to scrap SA social worker registration scheme](#)," (23 June 2026).



4. Should the law enhance protection for communications between clients, lawyers and social service professionals in integrated legal assistance service settings? Why or why not?

As outlined in Part 1, VALS strongly supports significant reform of the law on legal privilege. We believe that the current law is outdated and is yet another example of a colonial legal concept that does not work for Aboriginal communities. We strongly encourage the VLRC to think beyond the legalistic restrictions put in place by the current system and consider this issue in light of the experiences and needs of Aboriginal clients. For that purpose, we have developed a third option for consideration.

Reform Option 3

We propose a new and broad category of legal privilege that would attach to all confidential communications (verbal and written) between a client and the integrated legal assistance service, for the dominant purpose of obtaining integrated legal assistance services. This means that the following confidential communications (both written and verbal) would be protected, provided that they are for the dominant purpose of obtaining integrated legal assistance services:

- Confidential communications between the client and lawyer;
- Confidential communications between the client, lawyer and community/social services support staff;
- Confidential communications between the client and the community/social services support staff.
- Confidential information that is being used by the lawyer or community/social services worker to advocate on behalf of the client to another party or organisation.

We propose that a new and broad category of legal privilege should apply to Victorian integrated legal services that fall under the National Access to Justice Partnership, namely: Aboriginal and Torres Strait Islander Legal Services, Community Legal Centres, Women's Legal Services, Family Violence Prevention and Legal Services and Victoria Legal Aid.²⁵

The privilege should also apply to confidential communications with pro bono lawyers that are working with an integrated legal assistance service to provide services to a client, in the same way that legal privilege currently protects communications between a client and their lawyer (regardless of whether it's a VALS lawyer or a pro bono lawyer working with VALS).

Our responses to question 7 also apply to our proposed reform option 3.

We acknowledge that this proposal goes beyond the scope of what is proposed in the Consultation Paper. However, in our view, it is the only way to provide comprehensive protection for confidential client information in a closely integrated legal assistance service, and to support the provision of culturally safe and trauma-informed services.

The benefits of Reform Option 3

Given that the majority of our clients are facing multiple intersecting challenges – including insecure housing, limited financial resources, physical and/or mental disabilities, Sorry

²⁵ [National Access to Justice Partnership agreement – November 2024](#)



Business, family violence and trauma – many of our clients require support to address both legal and non-legal issues. As outlined above, it is often non-legal issues that push our clients into contact with the legal system and why they are seeking legal assistance. That is why we have developed our self-determined model of service delivery, for and by community, so there is a ‘no wrong door’ approach.

A new and broad category of legal privilege would alleviate the existing risk of possible subpoenas for information that is connected to legal matters but is not protected by the current law on legal privilege; and prevent our community/social services staff from being compelled to provide evidence. As discussed above, this includes confidential information that may be shared by a client with a CNO, just after the client has been arrested and is detained at a police station in a highly stressful, often racist and culturally unsafe space. As discussed, we do not believe that reform option 1 provides adequate protection for communications between a client and community/social services staff.

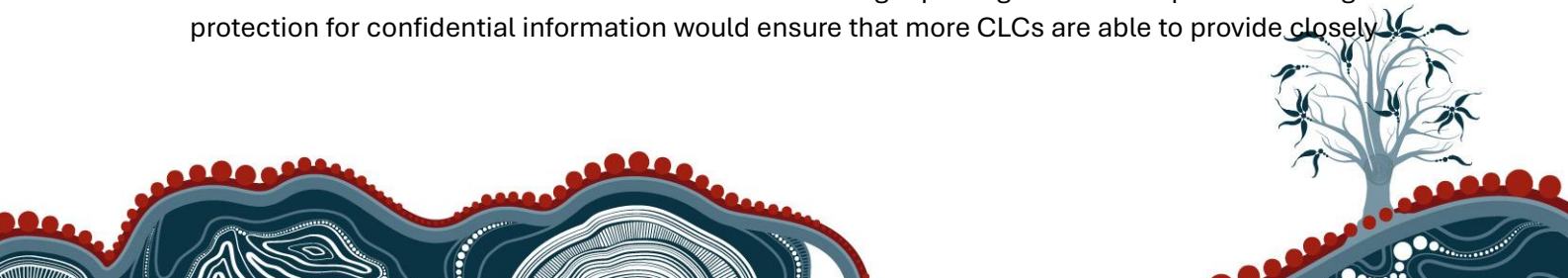
Protecting the client’s confidential information also increases the capacity of Aboriginal Legal Services to provide culturally safe services. As outlined above, our community/social services staff build trust with their local communities and act as a conduit between the lawyer and the client, as well as the legal service and the community at large. A client may disclose personal information to a CSO or ACE worker that they would not otherwise disclose to a non-Aboriginal lawyer due to cultural barriers. CSOs and ACE workers provide invaluable cultural and trauma-informed support to clients as they navigate the colonial legal system. This is the core strength of Aboriginal Legal Services, but it also places CSOs and ACE workers in a unique position of vulnerability under the current law.

Additionally, some of our clients may not initially distinguish between their VALS lawyer and their community/social services support worker. From their perspective, VALS is their lawyer and is supporting them to address their legal issues, as well as addressing associated non-legal needs. In our view, it is unrealistic and unfair to provide our clients with an integrated service and encourage them to build trust with their community/social services support worker; but at the same time discourage them from sharing confidential information with that Aboriginal worker. This is yet another example of an archaic legal concept that doesn’t reflect the known and accepted benefits of providing communities with a culturally safe and wrap around service.

Finally, we also believe that it is unrealistic and burdensome to expect our clients to understand complex colonial legal concepts such as if/when a communication may or may not be protected, when they are already grappling with many legal and non-legal challenges. For example, our client meets with their lawyer and CSO to discuss their legal matter, but then meets separately with the CSO to get help with a rental application. This issue is not related to their legal matter, but given the client was just discussing their legal matter with the lawyer and CSO, the client shares additional confidential information with the CSO.

Without legal protection, staff can be risk-averse and avoid sharing information. This reduces the benefits of integrated services for clients. The risk is particularly present in the child protection space where case managers are intimately involved with legal issues.

Finally, it is clear that many CLCs are hesitant to adopt a closely integrated legal assistance model because of the risks associated with loss of legal privilege. More comprehensive legal protection for confidential information would ensure that more CLCs are able to provide closely



integrated models of assistance, which increases the capacity of these services to address both legal needs as well as the factors contributing to contact with the legal system.

RECOMMENDATIONS

Recommendation 2. The Evidence Act should be amended to extend legal privilege so that it protects confidential communications between clients and integrated legal assistance services, for the dominant purpose of obtaining integrated legal assistance services. The following confidential communications (both written and verbal) should be protected, provided that they are for the dominant purpose of obtaining integrated legal assistance services:

- Confidential communications between a client and lawyer;
- Confidential communications between a client, lawyer and community/social services support staff;
- Confidential communications between a client and community/social services support staff;
- Confidential information that is being used by the lawyer or community/social services worker to advocate on behalf of the client to another party or organisation.

Recommendation 3. For the purposes of the new category of legal privilege, integrated legal assistance services should be defined as integrated legal services under the National Access for Justice Partnership, including Aboriginal and Torres Strait Islander Legal Services, Community Legal Centres, Women's Legal Services, Family Violence Prevention and Legal Services and Victoria Legal Aid.²⁶

Recommendation 4. Any reforms must not erode the existing protection provided by legal under both common law and the Evidence Act 2008 (Vic).

5. Are you in favour of establishing: (a) a social service professional privilege that would enhance protection for communications between clients and social service professionals in loosely integrated legal assistance service settings and/or (reform option 1); (b) a new category of legal privilege that would enhance protection for communications between clients, lawyers and social service professionals in closely integrated legal assistance service settings (reform option 2)? Why or why not?

Our response to Question 4 outlines our proposal for a new and broad category of legal privilege (reform option 3) which would attach to all confidential communications (verbal and written) between a client and the integrated legal assistance service, which are for the dominant purpose of obtaining integrated legal assistance services.

We acknowledge that this proposal goes beyond the reform options set out in the Consultation Paper. However, we are concerned that the proposed reforms in the Consultation Paper entail

²⁶ [National Access to Justice Partnership agreement – November 2024](#)



several risks, and do not provide adequate protection for clients accessing Aboriginal Legal Services.

Challenges with reform options 1 and 2

Reform option 1: a new social services professional privilege which would apply alongside legal privilege in loosely integrated services and provide additional protection to confidential communications between clients and social service professionals in those settings.

Reform option 2: a new category of legal privilege would extend protection to all confidential communications (written and verbal) between a client and lawyer, regardless of whether a community/social services worker is present and/or creates documents that detail or refer to those confidential communications.

In our view, there are several risks with the following reform options set out in the Consultation Paper.

Firstly, in closely integrated legal assistance services, reform option 2 does not provide adequate protection to confidential communications taking place between a client and social services legal professional. For example, communications between a client and CNO officer just after the client has been arrested would not be covered by reform option 2.

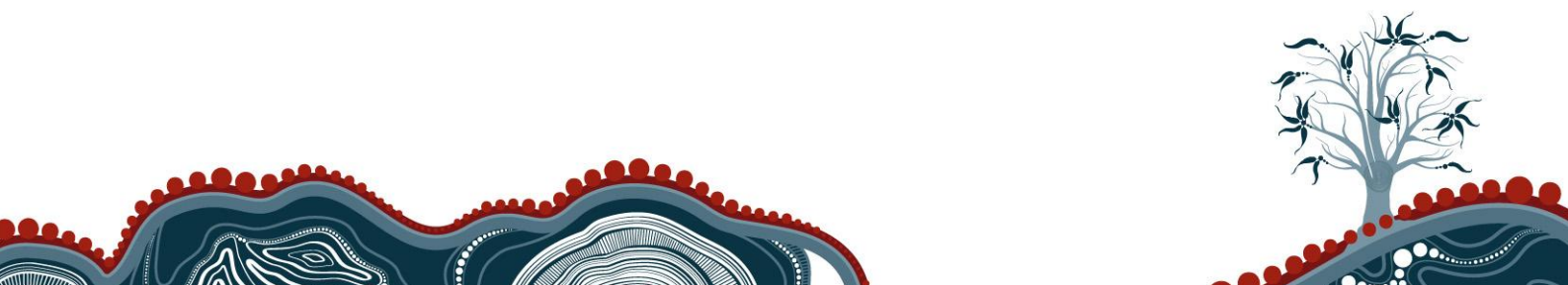
Secondly, many integrated legal assistance services have both closely and loosely integrated models, however the Consultation Paper seems to only contemplate reform option 1 in loosely integrated services. To ensure equality across the CLC sector, reform option 1 would have to apply to services that have both closely and loosely integrated models operating side-by-side.

However, if reforms options 1 and 2 apply alongside each other in closely integrated services; this would be overly complicated and confusing (both for staff and clients) in much the same way that the current law is not clear.

For example, at VALS, reform option 1 would attach to confidential communications between a client and community/social services worker within the CJP Team; as well as confidential communications between a client and community/social services worker within the Legal Practice. However, some confidential communications between a client and community/social services worker within the Legal Practice would also be covered by reform option 2. Therefore, it may be unclear whether a communication between a client and community/social services worker is covered by reform option 1 or reform option 2. This complicated matrix of protection would be even more complicated if reform option 1 is not absolute; and it may even create the unintended risk of undermining the protection provided by legal privilege.

6. If you support a social service professional privilege for loosely integrated legal assistance service settings, do you have a view on the scope, elements, eligibility requirements or implications of the privilege? If so, what is it?

As outlined above, we propose an extension of legal privilege that would protect confidential communications between clients and staff at integrated legal assistance services, for the



dominant purpose of integrated legal assistance services. We believe that this approach will provide better outcomes for our clients than establishing a social service professional privilege.

Nevertheless, we have considered the scope, elements, eligibility requirements and implications of a social service professional privilege (reform option 1). In our view, there is a serious risk that a social service professional privilege which is not absolute will undermine the existing protection provided by legal privilege. Accordingly, we strongly recommend that a social service professional privilege should only be considered if it:

- Applies to investigative bodies and courts
- Is absolute
- Attaches to confidential communications (both written and verbal)
- Attaches to communications between client and social services professional (including community/social services staff employed at VALS, as described above)
- Only applies in an integrated legal assistance service (as defined under National Access to Justice Partnership).

We acknowledge that an absolute privilege may conflict with mandatory reporting and information sharing obligations. However, as outlined above, in a closely integrated Aboriginal Legal Service such as VALS, clients may share confidential information about their legal matter directly with Aboriginal community/social services workers for a number of reasons; and it is critical that this information is protected. Displacing mandatory reporting and information sharing obligations is preferable in this case.

7. If you support a new category of legal privilege for closely integrated legal assistance service settings, do you have a view on the scope, elements, eligibility requirements or implications of the privilege? If so, what is it?

As outlined above, we propose an extension of legal privilege that would protect confidential communications between clients and staff at integrated legal assistance services, for the dominant purpose of obtaining integrated legal assistance services.

Although we do not think that reform option 2 goes far enough in providing protection for Aboriginal clients accessing integrated legal assistance services, we have also considered the scope, elements, eligibility requirements and implications of this proposal.

Reform option 2 would extend legal privilege in integrated legal assistance services to include confidential communications between a client, lawyer and social services professional for the purpose of accessing legal assistance services. We are concerned that there would still be uncertainty around which communications between the client and social services professional would be privileged.

However, we acknowledge that reform option 2 would provide better protection than the current law provided that it:

- Does not undermine the existing protection provided by legal privilege
- Protects clients before courts and investigative bodies
- Applies to all confidential communications (written and verbal)
- Is absolute, in that it displaces mandatory reporting, Information Sharing and ethical obligations of social services professionals



- Includes strict exceptions that mirror the existing exceptions under legal privilege (common law and Evidence Act)
- Extends to confidential information that is being used by a social services professional to advocate on behalf of a client to another organisation
- Protects confidential communications that are for the dominant purpose of obtaining integrated legal assistance services
- Applies to Victorian integrated legal assistance services that fall under the National Access to Justice Partnership
- Applies to Federal Courts sitting in Victoria, including in family law proceedings
- Does not apply to integrated legal services in commercial contexts.

Scope

Should the privilege protect clients before courts and investigative bodies?

Currently, legal privilege is protected under both common law (which primarily protects client information from disclosure to government investigative bodies) and the *Evidence Act* (which primarily protects client information from disclosure to courts). Reform option 2 would likely be established under the *Evidence Act*, but it must provide protection against disclosure to both investigative bodies and courts.

Should the privilege be absolute?

As noted above, there are very limited exceptions to legal privilege, including:

- communications made for the purpose of facilitating a fraud, crime, civil offence²⁷ or abuse of power²⁸
- when there is an overriding public interest.²⁹
- To avoid the probable commission of a serious criminal offence;
- To prevent imminent serious physical harm to the client or to another person.³⁰

A new category of legal privilege must mirror the strict exceptions under the current law. We strongly oppose a new category of legal privilege that is qualified, as this would erode the existing protection for our clients. As discussed further below, this means that the new category of legal privilege would displace mandatory reporting and information sharing requirements.

Elements

²⁷ *R v Cox and Railton* [1884] 14 QBD 153; *Hodgson v Amcor Ltd*; *Amcor Ltd v Barnes (No 2)* [2011] VSC 204, [67]. See also, *Evidence Act 2008* (Vic) s 125.

²⁸ *Evidence Act* s. 125.

²⁹ *R v Bell* (the Family Court had ordered a woman to return her child to her ex-husband on the basis that it was in the child's best interests, but she had failed to comply. The High Court then compelled the woman's lawyer to reveal the woman's address, even though she had given it to him in confidence); *Ex parte Lees* [1980] HCA 26; (1980) 146 CLR 141, 151–52 [12] (Stephen J), see also 161 [7] (Wilson J); *Commissioner Australian Federal Police v Propend Finance Pty Ltd* [1997] HCA 3; (1997) 188 CLR 501, 563 (Gummow J), 583 (Kirby J).

³⁰ Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015



Which communications should be protected?

Currently, the *Evidence Act* protects confidential communications (written and verbal) with third parties for the purpose of litigation, but only confidential documents prepared by third parties for the purpose of legal advice.

We recommend that reform option 2 should protect all confidential communications (written and verbal) between the client, lawyer and social services professional. It should also extend to confidential information being used by the lawyer or social services professional to advocate on behalf of the client to a third party.

For example, the SEWB Officer in our Mental Health Practice may verbally share confidential information when advocating on behalf of a client to help them secure accommodation. Supporting a client to obtain secure accommodation is often a critical component of a holistic approach, which supports the client to address their legal needs (in this case, a treatment order before the Mental Health Tribunal). This communication should be protected by the new category of legal privilege.

What should confidential mean?

We agree that information shared between a client, lawyer and social services professional is likely to be considered confidential. Privilege should also protect confidential information if the social services professional is using that information to advocate on behalf of the client to another organisation.

What should the purpose of the communications be?

Currently, the law protects confidential communications between a client and their lawyer if it is for the dominant purpose of obtaining legal advice or preparing for litigation. We support the proposal that the new legal privilege should protect confidential communications between a client, lawyer and social services professional if it is for the dominant purpose of obtaining integrated legal assistance services.

What should integrated legal assistance services mean?

As indicated above in our response to question 4, any expansion of legal privilege in Victoria should only apply to Victorian integrated legal services that fall under the National Access to Justice Partnership, namely: Aboriginal and Torres Strait Islander Legal Services, Community Legal Centres, Women's Legal Services, Family Violence Prevention and Legal Services and Victoria Legal Aid.³¹

The privilege should also apply to confidential communications with pro bono lawyers that are working with an integrated legal assistance service to provide services to a client, in the same way that legal privilege currently protects communications between a client and their lawyer.

Should there be a safety exception?

We do not support any kind of safety exception that lowers the threshold below what is currently established under common law or legislation. As above, we strongly recommend that any

³¹ [National Access to Justice Partnership agreement – November 2024](#)



exceptions to a new category of legal privilege must be framed narrowly in the same terms as the existing exceptions.³²

Accordingly, a new category of legal privilege would displace the reporting and information sharing obligations of social services professionals in closely integrated legal assistance services, including: mandatory reporting under the CYFA³³; disclosure requirements under the Child and Family Violence Information Sharing Scheme³⁴; and ethical obligations under codes of ethics or professional rules.³⁵ We support this approach as a new category of legal privilege must mirror and extend the existing law, otherwise there is a clear risk of eroding the existing protection for clients.

We recognise that this may create tension for social services professionals between their existing legislative/ethical obligations and a new category of legal privilege. However, imposing exceptions that are broader than the existing legal privilege entails a clear risk of undermining the current law.

Eligibility Requirements

If the definition of “integrated legal assistance services” is based off the National Access to Justice Partnership, we believe that the category of services that would benefit from this new legal privilege would be sufficiently clear, without requiring an additional accreditation requirement. Although there is a risk of costly litigation to test the parameters of the new legal privilege, it is more likely that litigation will test other elements of the privilege; not the definition of “integrated legal assistance services.” However, given that CLCs already have an accreditation process and it may be possible to simply add this aspect to the existing framework without creating an additional cost or administrative load.

Implications of the privilege

Inconsistency with other jurisdictions

We accept that a new category of legal privilege under Victorian legislation may create challenges for integrated legal assistance services that operate across state-borders, as the new legal privilege would not apply in other jurisdictions. In our view, this challenge is overridden by the overarching benefit in providing adequate legal protection for clients accessing integrated services; and the known benefits of integrated services for access to justice for our clients.

Regarding Federal Courts sitting in Victoria, there will be significant confusion and challenges if the new category of legal privilege may not apply in family law proceedings. However, our

³² As above: communications made for the purpose of facilitating a fraud, crime, civil offence or abuse of power; when there is an overriding public interest; to avoid the probable commission of a serious criminal offence; to prevent imminent serious physical harm to the client or to another person.

³³ *Children, Youth and Families Act 2005* (Vic) s 184(1). Certain people must report concerns if they believe that a child is in need of protection (as defined under the Act). This includes health personnel (nurses, doctors, midwives, psychologist) as well as teachers and “a person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services...” See s. 182.

³⁴ *Child Wellbeing and Safety Act 2005* (Vic) pt 6A; *Family Violence Protection Act 2008* (Vic) pt 5A.

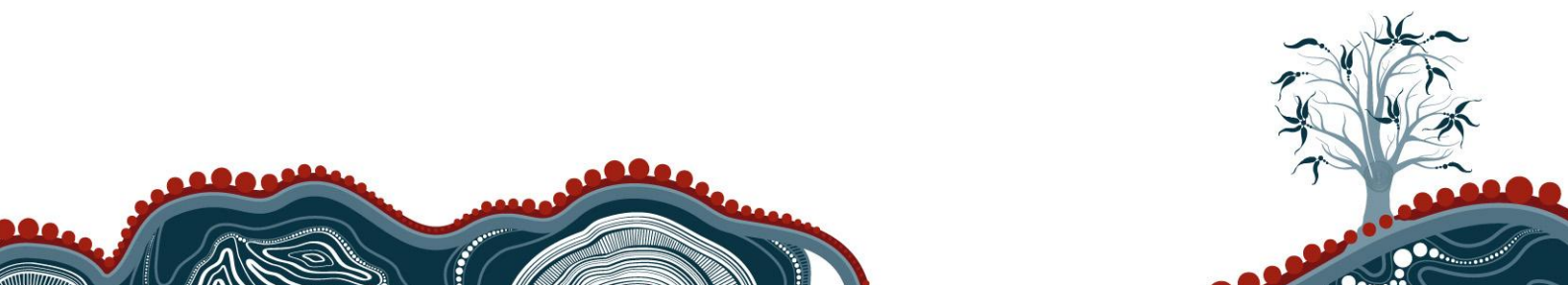
³⁵ For example, Australian Association of Social Workers, *Australian Association of Social Workers Code of Ethics* (Report, 2020) rr 5.4.5 and 10.3



understanding of s. 79 of the Judiciary Act is that the laws relating to evidence “shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.” It appears that the gap in Victorian law (which the VLRC Inquiry is seeking to address) is also replicated in federal law, and therefore the new category of legal privilege could be “picked up” and applied in federal courts sitting in Victoria.

Financial burden

Training would be required if a new category of legal privilege is introduced. However, training is currently already operating as a critical risk mitigation strategy for integrated legal assistance services, including VALS. Although there may be some financial implications, this is not a serious concern and should not be used as reason not to implement a new legal privilege.



Acknowledgement

VALS pays our deepest respect to traditional owners across Victoria, in particular, to all Elders past, present and emerging. We also acknowledge all Aboriginal and Torres Strait Islander people in Victoria and pay respect to the knowledge, cultures and continued history of all Aboriginal and Torres Strait Islander Nations.

We pay our respects to all Aboriginal and Torres Strait Islander Elders who have maintained the struggle to achieve justice.

Across Australia, we live on unceded land. Sovereignty has never been ceded. It always was and always will be, Aboriginal land.

Contributors

Thanks to the following staff members who collaborated to prepare this submission:

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- Bonina Challenor, Acting Managing Lawyer, Mental Health Practice
- Tali Rechtman, Disaster Rights Practice Lead

Note on Language

Throughout this document, we use the word 'Aboriginal' to refer to Aboriginal and/or Torres Strait Islander people, communities and organisations. VALS acknowledges that there are many Aboriginal people in Victoria who have Torres Strait Islander heritage, and many Torres Strait Islander people who now call Victoria home.

