

**Promoting
First Nations self-determination,
victim survivor participation and
restorative justice:
ALRC Justice responses to sexual
violence inquiry**

May 2024



Acknowledgement of Country

This submission was written on the lands of the Wurundjeri and Bunurong peoples of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present. We also acknowledge the strength and resilience of First Nations women in the face of colonisation and their resistance and endurance of higher rates of sexual violence than non-indigenous women.



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Recommendations to promote First Nations self-determination, victim survivor participation, and restorative justice in responses to sexual violence

Informed by our work across Victoria with victim survivors, as well as with people accused and convicted of using sexual violence, we put forward recommendations to promote First Nations self-determination, victim survivor participation, and restorative justice in responses to sexual violence.

Recommendation 1

VLA supports the primacy of the views of Aboriginal Community Controlled Organisations and First Nations people with lived experience contributing to this inquiry and values their leadership in providing self-determined and community led solutions to responding to sexual violence. We offer the below recommendations in that spirit and drawing from the experience of our First Nations clients.

Promote and strengthen the right to self-determination in response to sexual violence and in the criminal justice system including by:

- Recognising the importance and value of self-determined and community led services and responses across all areas of the justice system
- Transferring resources and power to First Nations communities and Aboriginal Community Controlled Organisations working with victim survivors
- Establishing a First Nations sexual assault service, which is needed to provide a culturally safe and appropriate service for First Nations women who have experienced sexual violence.

Recommendation 2

Strengthen the accountability and transparency in the justice system, to enable First Nations victim survivors to report experiences of sexual violence. This includes by:

- Establishing an independent police oversight authority as proposed by the Yoorrook Justice Commission
- Strengthening First Nations led oversight and accountability across the justice system, including in custodial services, the courts, prosecution agencies, legal aid and the legal profession

Recommendation 3

Amend sentencing laws to enable the consideration of cultural context for First Nations people. We recommend amending sentencing laws in line with recommendation 37 of the Yoorrook Justice Commission.

Recommendation 4

Ensure the cultural competence of all people working in victims' support services and in custodial settings.

Recommendation 5

Ensure access to culturally safe court processes.

Recommendation 6

Ongoing funding for the Victims Legal Service and implementation of nation-wide specialist legal assistance services for victim survivors of sexual violence. This should include consideration of and investment in service coordination to deliver the benefits observed through Victoria's VLS.

Recommendation 7

Supporting expansion of the VLS to a more comprehensive, holistic service for victim survivors, including legal advice and representation to make sure victim survivors can understand and exercise their rights in relation to confidential communications, access to intermediaries, right to privacy, options for compensation and restorative justice.

Recommendation 8

The Commonwealth Attorney-General should lead work to establish national guidelines and standards for victim survivor focused restorative justice programs that respond to sexual violence. An evidence-based practice model with the following features should be promoted:

- a specialist response, which includes facilitator skill, knowledge and experience
- vigilant use of screening (relating to suitability, not just eligibility)
- the use of experts (in sexual violence and the dynamics of violence) throughout the process
- flexibility and responsiveness to participant needs
- timing appropriate to victim survivor readiness
- parallel participation in a targeted sexual violence treatment program for people who have used sexual violence.

Recommendation 9

Enact legislation enabling the use of restorative justice to respond to sexual violence, including in connection with criminal prosecutions, in all jurisdictions. At a minimum, legislation must include provisions that create a strict privilege applying to restorative justice processes.

Recommendation 10

In each jurisdiction, establish and fund community-based therapeutic programs for people who have used sexual violence. Programs must be culturally safe, available in a range of community languages and appropriate for people with different access needs, including people with cognitive disabilities.

Introduction

Victoria Legal Aid (**VLA**) welcomes the opportunity to contribute to the Australian Law Reform Commission (**ALRC**) inquiry into Justice Responses to Sexual Violence. We recognise that victim survivors often have negative experiences of justice responses to sexual violence and that systems must be improved to achieve better outcomes and minimise re-traumatisation. We support reform and innovation that better enables victim survivors of sexual violence to access justice responses that meet their needs, including but not limited to criminal justice responses. This should include:

- self-determined responses to sexual violence for First Nations victim survivors
- specialist, coordinated legal assistance for victim survivors, and
- access to restorative justice.

We note that the ALRC intends to have regard to previous inquiries and reports on this subject, including the 2021 Victorian Law Reform Commission (**VLRC**) inquiry into justice system responses to sexual violence. VLA made a detailed submission to the VLRC inquiry. Given the relatively short time that has elapsed since the VLRC reported, much of the material we contributed to the VLRC inquiry remains relevant. We request that the ALRC have regard to our submission to the VLRC and the final report by the VLRC, and would be happy to elaborate on any issues of interest to the ALRC.

We note that the vast majority of the VLRC's recommendations have still not been progressed. This lack of action is a missed opportunity to create meaningful change in justice responses to sexual violence within Victoria.

We support the development of a national approach to responses to sexual violence in which best practice is identified and promoted. In particular, as this submission will outline, there are three key areas of emerging practice and new opportunities for innovation that should be promoted at the national level. These are:

1. Self-determination in justice system responses, including findings and recommendations from the Yoorrook Justice Commission
2. The establishment and operation of the Victims Legal Service, and opportunities to expand this specialist service model to provide more comprehensive services, as well as opportunities to adopt the service model nationally
3. The need for restorative justice to be a visible, accessible option available to all victim survivors. Restorative justice is not currently an established component of the criminal justice system's response to sexual violence in any jurisdiction other than the ACT.

Our approach to justice responses to sexual violence

The ALRC states it will take a trauma-informed, holistic, whole-of-systems and transformative approach to this inquiry. In our view, a holistic approach to sexual violence must recognise and embed a range of interventions that work to address the root causes of sexual violence. These interventions should be grounded in the understanding that sexual violence is a form of gendered violence,¹ often characterised by the use of dominance, control and the abuse of power, to which gender inequality and other intersecting forms of inequality and discrimination contribute.² Interventions should be informed by: changing social attitudes to promote gender equality; education to promote respectful intimate relationships; and addressing service gaps to ensure that victim survivors can receive the help and support they need, and those who are at risk of using sexual violence can access appropriate support including behaviour change initiatives.

Justice responses to sexual violence must be suitable for the range of contexts within which sexual violence occurs, including within institutions and workplaces and, importantly, when sexual violence is perpetrated by someone known to the victim survivor, which is the case for the majority of instances of sexual violence.³ Justice responses to sexual violence must appropriately respond to sexual violence that occurs within the context of family violence, and be informed by the knowledge that sexual violence may be used alongside other tactics of power and control in the context of family violence.⁴

The diversity of experiences and needs of victim survivors must be understood, reflected and recognised in the justice system, including any reforms and changes. There must be access to appropriate programs, services and programs for all who need them. First Nations communities must be resourced and supported to determine justice responses to sexual violence that meet the needs of First Nations victim survivors.

Recognising that victim survivors are diverse and have different justice needs, there must be a suite of options so that victim survivors can choose the response that best meets their needs. These avenues should include access to family violence intervention orders, criminal justice responses (including options to restrict disclosure of confidential communications), access to compensation,⁵ and alternative justice mechanisms such as restorative justice and truth-telling processes.

When victim survivors choose to pursue a criminal justice response, the criminal justice system must be impartial, fair, flexible and offer genuine opportunities for victim participation. Reforms that improve victim survivors' experience and capacity to participate meaningfully in criminal proceedings can and should proceed in ways that do not infringe the rights of an accused person. The rights and

¹ Men are responsible for the majority of sexual violence, while the majority of victim survivors of sexual violence are women: Australian Bureau of Statistics *Personal safety, Australia: Rates of physical and sexual assault, family and domestic violence, economic and emotional abuse, stalking, sexual harassment, and childhood abuse* (2023). Men are also responsible for most of the sexual violence used against members of trans and gender diverse communities: Michael Flood, *Who uses domestic, family and sexual violence, how, and why?: The state of knowledge report on violence perpetration* (Queensland University of Technology, 2022); and against children and young people: Australian Bureau of Statistics *Personal safety, Australia: Rates of physical and sexual assault, family and domestic violence, economic and emotional abuse, stalking, sexual harassment, and childhood abuse* (2023).

² OurWatch *Change the Story* (2023)

³ Australian Institute of Health and Welfare, *Sexual assault in Australia* (2020).

⁴ ANROWS *Intimate partner sexual violence: Research synthesis* (ANROWS, 2019).

⁵ In Victoria, for example, this can include an acknowledgment by the State (through the Victims of Crime Assistance Tribunal) that they have been a victim of crime, as well as financial assistance to support recovery and healing and direct compensation from the offender through a Restitution and Compensation Order.

interests of victim survivors and of people accused of or found guilty of sexual offences are not mutually exclusive. All participants in the justice system benefit if the system is made less traumatising, more accessible and right-respecting. Victim survivors should be able to fully participate in a trauma-informed, fair and effective criminal justice system. A fair system is a criminal justice system that also protects the rights of accused people and promotes rehabilitation in order to prevent future offending.

Ongoing training and education on the nature and dynamics of gender-based violence and in trauma-informed approaches must be a regular feature of practice for legal system personnel who are involved in sexual violence responses. Those involved in the justice system must have comprehensive understandings of the nature and prevalence of sexual violence in the community, the effects of trauma, how to reduce risks of further traumatisation and how to identify and counter misconceptions of sexual violence. These understandings must be embedded in all parts of the criminal justice system.

We support responses to sexual violence that are informed by data and robust evaluation, to support a clear understanding of the prevalence, drivers and impacts of sexual offending to ensure the responses are appropriate and effective.

How our work intersects with justice responses to sexual violence

VLA has Victoria's largest criminal defence practice specialising in sexual offences. Our in-house specialist Chambers advocates conduct a significant proportion of the sex offence trials across Victoria, providing us with an expert and unique contribution into the provision of advice and representation to people charged with sexual offending, and people subject to sex offender supervision order proceedings.

In addition, our Family, Youth and Children's Law directorate provides assistance in family law and family violence matters, prioritising women and children experiencing or at risk of experiencing family violence, which includes sexual violence.

VLA is one of the service partners in Victoria's Victims Legal Service (**VLS**), which assists victims of crime, including survivors of sexual violence, to seek financial assistance through the Victims of Crime Assistance Tribunal or compensation from the person who committed the crime. The VLS has also recently been extended to assist victim survivors of sexual violence seeking to protect their confidential communications from disclosure during criminal prosecutions.

We are uniquely positioned to provide policy advice informed by the experience of our clients, who include victim survivors of sexual violence, people accused of using sexual violence, and people found guilty of using sexual violence.

We are also committed to self-determination for First Nations communities. We are led by the work of Aboriginal Community Controlled Organisations, and by the expertise of VLA's First Nations Services directorate.



Terminology

People who experience sexual violence are diverse and have different preferences for the language they use to describe themselves. In this submission we will use the term ‘victim survivor’ to refer to people who have experienced sexual violence. This term is intended to reflect victim survivors’ resilience, and their lived experience of having sexual violence used against them. It is used to refer both to situations where no one has been convicted of a sexual offence against the victim survivor, and situations where a conviction has been made. Use of the term ‘victim survivor’ should not be taken to imply that another person is guilty of a criminal offence. In specific instances, the term ‘complainant’ is used to refer to victim survivors who participate in criminal prosecutions.

The term ‘person who has used sexual violence’ will be used to refer to a person who is responsible for sexual violence. In certain circumstances the term ‘accused person’ will be used to refer to someone who has been charged with a sexual offence, when no assumption of guilt or innocence is being made.

Self-determined responses to sexual violence

To address the systemic and structural barriers that exist for First Nations people in the current systems and frameworks used to respond to sexual violence offences, recommendations made by this inquiry must adhere to principles of self-determination. We support the advocacy and expertise of Aboriginal Community Controlled Organisations (**ACCOs**), in particular the Victorian Aboriginal Legal Service (**VALS**) and Djirra, to provide self-determined and community led solutions to responding to sexual violence. We value their leadership and the voices of First Nations people with lived experience contributing to this inquiry.

In Victoria, the Yoorrook Justice Commission has added to the decades of commissions, inquiries, coronial inquests and reports into the injustices faced by First Nations people and has provided robust recommendations to address systemic and structural barriers to address these. We support the detailed recommendations for transformative system reform and highlight recommendations to support a more self-determined, safe and holistic response to sexual violence for First Nations people. The recommendations we have highlighted draw on our understanding of the experiences of our First Nations clients.

Accountability and transparency in the justice system

We recognise that First Nations victim survivors of sexual violence face additional barriers to reporting and seeking help. We call for the systemic failures which lead to First Nations people's mistrust of police and other organisations to be addressed to enhance the safety and willingness of victim survivors to report violence and seek support. We recognise that improving accountability and transparency in the system, is essential to build trust and address failures.

First Nations victim survivors of sexual violence face barriers to seeking help that stem from systemic harms, including the ongoing impacts of colonisation, intergenerational trauma and racism. Further, evidence provided to the Yoorrook Justice Commission highlighted that First Nations victim survivors often do not report crime because they have high levels of distrust and fear of police. As the Yoorrook Justice Commission heard, some of the most significant harm First Nations people experience is at the hands of the State, including at the hands of police. Systemic failures which lead to mistrust must be addressed to enhance the safety and willingness for victim survivors to report violence and seek support.

ACCOs have continually highlighted that a lack of cultural safety and independence in the current police oversight system creates barriers to reporting police misconduct for First Nations communities.⁶ Improving the accessibility of the police oversight system to each member of the community is therefore integral to addressing these issues.

In addition to an independent police oversight agency, we support strengthening First Nations led oversight and accountability across the justice system, including in custodial services, the courts, prosecution agencies, legal aid and the legal profession.

⁶ Victorian Aboriginal Legal Service, *Reforming Police Oversight in Victoria* (Policy Brief, 2022) 3 and Victorian Aboriginal Legal Service, Submission to the Independent Broad-based Anti-corruption Commission Committee *Inquiry into External Oversight of Police*, 14.

The over-imprisonment of First Nations women

Many First Nations women in prison are victim survivors of physical, sexual and family violence.⁷ A self-determined response to sexual violence must seek to address the over-imprisonment of First Nations people, particularly women. We support recommendations made by the Yoorrook Justice Commission to reform sentencing to enable consideration of the cultural context for First Nations people. These recommendations include introducing a statement of recognition which acknowledges First Peoples' right to self-determination, the disproportionate impact of the criminal justice system on First Peoples in a way which has contributed to criminalisation, disconnection, intergenerational trauma and social disadvantage, as well as the survival and success of First Peoples in the face of the impacts of colonisation and dispossession and the ongoing structural and systemic inequality and racism in the criminal justice system.⁸ They further recommend that courts take into account the unique systemic and background factors affecting First Peoples and require the use of Gladue-style reports.⁹ We consider that urgent reforms recommended to the sentencing of First Nations people would have the benefit of embedding cultural understanding into the system and a more trauma-informed approach to sentencing for First Nations people.

There are complex and interrelated challenges women experience in the criminal justice system, including: parenting and family responsibilities, homelessness and housing instability, substance use, trauma and victimisation, mental health concerns, and economic disadvantage. For First Nations women, these challenges are compounded by histories of colonisation, intergenerational trauma, loss of culture and land and ongoing experiences of racism and social dislocation.¹⁰ These unique needs require tailored and gender-responsive justice responses and support services, which are informed by the experiences of First Nations victim survivors. This includes an acknowledgment that experiencing sexual violence and other forms of trauma is often a factor that leads to First Nations women having contact with the criminal justice system as offenders. Responses to First Nations women who have been convicted of crimes or who are or have been imprisoned must have regard to the likelihood that they are also victim survivors.

Ensuring the availability of culturally safe services and justice system responses

Despite First Nations women being more likely to have experienced sexual violence than other women, they are significantly under-represented in the take up of victims' services in Victoria. Data from the VLS shows that Aboriginal and/or Torres Strait Islander victim survivors are more likely to access the support service provided by an ACCO than by a non-First Nations specific service provider. Any provider of services to First Nations people must ensure their service is culturally safe and appropriate to meet the needs of First Nations communities. We support the transfer of resources and powers to First Nations communities and ACCOs and recommend that all other

⁷ Statistics from Corrections Victoria state that 90% of First Nations women in custody have experienced sexual or family violence. The barriers to reporting highlighted above have a significant impact on reporting numbers and therefore this statistic is likely to be much higher. See research conducted by the Australian Institute of Criminology that found that up to 90% of violence against Aboriginal and Torres Strait Islander women goes unreported. Willis, M. (January 2011), 'Non-Disclosure of Violence in Australian Indigenous Communities', pp 4–10.

⁸ Yoorrook Justice Commission, Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems (2023), recommendation 37a.

⁹ Yoorrook Justice Commission, Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems (2023), recommendation 37c.

¹⁰ Yoorrook Justice Commission, Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems (2023), p 365.

services that provide services to First Nations people undertake cultural safety training and build a workforce which is culturally competent and responsive.

As well as embedding safe practices into victim survivors services, we see the need for culturally safe court processes for both users and victims of sexual violence. In Victoria, the specialist Koori Court provides a culturally safe court option, however access is limited by the requirement for the accused to plead guilty and the availability of a Koori Court in your geographical location, as well as the exclusion of certain offences, such as sexual offences. We encourage consultation with ACCOs and First Nations communities and defer to their expertise for recommendations about the Koori Court, including any recommendations for the expansion of its jurisdiction.

Recommendations

1. Promote and strengthen the right to self-determination in response to sexual violence and in the criminal justice system including by:
 - Recognising the importance and value of self-determined and community led responses across all areas of the justice system
 - Transferring resources and power to First Nations communities and Aboriginal Community Controlled Organisations working with victim survivors
 - Establishing a First Nations sexual assault service, which is needed to provide a culturally safe and appropriate service for First Nations people who have experienced sexual violence
2. Strengthen the accountability and transparency in the justice system, to enable First Nations victim survivors to report experiences of sexual violence. This includes by:
 - Establishing an independent police oversight authority as proposed by the Yoorrook Justice Commission¹¹
 - Strengthening First Nations led oversight and accountability across the justice system, including in custodial services, the courts, prosecution agencies, legal aid and the legal profession
3. Amend sentencing laws to enable the consideration of cultural context for First Nations people. We recommend amending sentencing laws in line with recommendation 37 of the Yoorrook Justice Commission
4. Ensure the cultural competence of all people working in victims' support services and in custodial settings
5. Ensure access to culturally safe court processes

¹¹ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (2023), recommendation 27.

The role of specialist, coordinated legal assistance in promoting just outcomes and improving the experiences of the justice system for people who have experienced sexual violence

The VLS commenced in March 2023 and is Victoria's first specialist legal service for victims of crime.¹² The VLS provides an example of coordinated, collaborative service delivery for victim survivors. It provides legal advice and assistance in financial assistance and compensation, and restitution and compensation order matters to victims of crime, and is delivered statewide in partnership between VLA, VALS, Djirra, Women's Legal Service Victoria (**WLSV**) and seven Community Legal Centres across Victoria. The service provides a dedicated state-wide helpline delivered by VLA as the primary entry point (although there is a no wrong door approach to service provision across the partners) and legal advice and file-work provided by all service partners.

The importance of trauma-informed service design and delivery

The VLS recognises unique experiences of victimisation and intersecting barriers to accessing justice, and intentionally seeks to address these challenges through the service design and delivery. This has included designing the VLS in partnership with service delivery partners, the Victorian government and lived experience experts (victim survivors). Through this process, the aims of the VLS were identified to be:

- Providing victims of crime with trauma-informed, specialised legal advice and assistance related to financial assistance and compensation matters
- Ensuring victims of crime understand their rights, entitlements and available supports regarding state funded financial assistance and restitution and compensation from the offender
- Supporting victims of crime to feel validated, heard and have their experience recognised, and
- Enabling victims' immediate legal needs to be identified and responded to in a timely manner before they escalate, noting this response may be via referral to another agency for assistance.

Recognising the strengths in this collaborative and coordinated approach, the service continues to be coordinated through a working group of service providers providing strategic oversight, a project coordinator employed at VLA and a community of practice of VLS partners.

Since March 2024, a limited expansion of the VLS, under a Commonwealth funded Pilot scheme (**Commonwealth pilot**), has enabled the VLS to also provide legal assistance to sexual violence victim survivors seeking to prevent their confidential communications and health information, such as medical or counselling records, being disclosed during court proceedings.¹³ These services are provided by VLA, WLSV and Djirra and include:

¹² \$7.3 million was announced in the 2021/22 Victorian budget to establish a new, dedicated Victims Legal Service. This funding currently ends in June 2025.

¹³ In the October 2022-23 Budget, the Australian Government announced \$8.4 million in funding over three years to pilot specialised and trauma-informed legal services for victims of sexual offences in three locations across Australia. Victoria, through DJCS, submitted a proposal for this funding and was selected as one of three successful jurisdictions, alongside Western Australia and the Australian Capital Territory. The pilot projects in the respective jurisdictions are being led by the Women's Legal Service in WA and ACT together with other partners; in Victoria the pilot project is being led by WLSV, VLA and Djirra. See [Supporting victims and survivors of sexual violence - piloting new legal services models | Our ministers – Attorney-General's portfolio \(aq.gov.au\)](#).

- Legal information, procedural advice, and referrals for victim survivors of sexual assault through the existing VLS Helpline
- Targeted advice, casework and representation for victim survivors seeking to protect confidential communications made to health and counselling professionals under the *Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 32CE*, and
- Tailored support for First Nations victim survivors through funding to Djirra, to provide direct support to First Nations women seeking to report sexual assaults to police and secondary consultations to other VLS providers in confidential communications applications made in relation to First Nations women.

Outcomes and impact

Since commencement in March 2023, we have seen a high level of demand for the VLS. Between March 2023 to 30 April 2024, the VLS Helpline provided information and legal advice in response to 2,912 enquiries and successfully referred 381 victims to VLS partners for more intensive legal assistance.

Through this work, we have seen how specialist, trauma-informed, collaborative services can help improve the experience for victim survivors, as well as the role for financial compensation as part of the healing process. Through the new Commonwealth pilot, we are also starting to see how dedicated legal assistance can assist victim survivors to understand their rights and options, make informed decisions and minimise the trauma of the justice process.

The following client story illustrates the difference that access to the VLS can make for a victim survivor of gendered violence.

Sama's story

Sama (not her real name) was born in the Middle East and moved to Victoria with her husband and his family several years ago. She experienced domestic violence, and returned to her home country after this marriage ended, before eventually returning to Australia. On return to Australia, she was linked in with support services that assisted her in making a report to police about the acts of violence she had experienced while living in Victoria. Sama was referred to VLA for legal assistance.

Sama's first language is Arabic. She speaks limited English and experiences a language barrier in Australia. She requires an Arabic interpreter to engage with police, lawyers and in legal processes. Prior to receiving assistance, Sama said she did not have confidence to go to the police or to make a victims' compensation application herself.

VLA assisted Sama in making an application to VOCAT, including submissions about her circumstances and obtaining an extension of time to lodge the application. VLA communicated with Sama through an Arabic interpreter, and assisted in linking her up with housing, counselling, and other support services. While in Australia, Sama also started learning circus arts. Sama's application for victims' compensation was accepted by VOCAT, and she received financial assistance (including a lump sum payment of \$10,000 which was higher as a result of the lawyer's advocacy), including funding for future counselling sessions, security-related expenses, and funding for an ongoing membership at her circus program provider.

Sama says, "I really appreciated the assistance, it's made a big difference for me. I was particularly happy with the funding for the circus program because that has helped build my strength and skills, which is helping me to mentally recover from what happened to me."

Ensuring the service is accessible to victims with differing needs and experiences

The principles and model of the VLS recognise that there are key groups who often have specific needs and/or experience structural barriers to accessing the justice system, including First Nations people, people experiencing language or cultural barriers, children and young people, older people, people experiencing homelessness, people living in regional/rural/remote locations, people who identify as LGBTQIA+, people with a disability including mental health issues, people experiencing family violence, victims of sexual assault and historical child abuse. Data for the period 1 July – 31 December 2023 shows that clients with a disability, clients experiencing mental health issues and clients experiencing family violence were the top three priority client groups accessing the VLS:

- Almost one half of VLS service users identified as having a disability
- 36.5% of VLS service users were experiencing a mental health issue at the time they sought assistance, and
- 30.4% of service users recorded family violence indicators, with all but one VLS service provider indicating this priority group accounted for at least 25% of all assistance provided.

Data for this period also shows that 8.7% of service users identify as Aboriginal or Torres Strait Islander, as well as 5.9% of the help seekers who accessed the VLS Helpline. Across the VLS, ACCOs provided the most services to Aboriginal or Torres Strait Islander clients.

The future of specialist legal services for victim survivors

A number of reports and reviews have recommended comprehensive legal services for victims of crime in Victoria.¹⁴ In particular, the VLRC report recommended the establishment of a comprehensive legal advice and representation services to make sure victim survivors can exercise their rights in relation to confidential communications,¹⁵ access to intermediaries, right to privacy, options for compensation and restorative justice.¹⁶

Through over 12-months of service provision, we have observed:

- **High demand for services and the need for nation-wide services:** Resourcing for the VLS is limited, with a number of VLS service partners only funded for a part-time lawyer dedicated to this work. Demand for VLS services has been high and a number of service partners were at capacity within three months of commencement, meaning some victim survivors were only able to receive information and advice, rather than more intensive legal assistance. In addition to continuing the funding for the VLS in Victoria (currently due to end in June 2025), the high demand for current services should be considered in informing decisions about adequately meeting the legal needs of victim survivors nation-wide.
- **The need for expanded specialist, holistic legal and non-legal advocacy services for victim survivors:** The VLS is a collaborative, whole of legal sector service model, the design of which was informed by victim survivors. However, the scope of the funded services remains narrow and we reiterate the need to invest in more comprehensive legal services for victim survivors. Consistently with the VLRC Report, this should include legal advice and representation to make sure victim survivors can exercise their rights in relation to confidential communications,¹⁷ access to intermediaries, right to privacy, options for compensation and restorative justice.¹⁸ We also see the need for non-legal advocates or allied professionals, as recommended by the VLRC, to provide support for victim survivors across services and legal systems, including to provide information about justice options, help victim survivors understand and exercise their rights (including under the *Victims' Charter Act 2006 (Vic)*), facilitate referrals and advocate for victim survivors in services and across legal systems.¹⁹

¹⁴ E.g. Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (2016); Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 2006* (2018); Victorian Law Reform Commission inquiry and report into justice system responses to sexual violence (2021); and the Victims of Crime Commission, *Silenced and sidelined: Systemic inquiry into victim participation in the justice system* (2023).

¹⁵ Victim survivors have rights as participants in a criminal trial to object to the production of certain confidential communications, which are communications made in confidence by a victim survivor to a medical practitioner or counsellor, either before or after the alleged sexual offending occurred.

¹⁶ E.g. Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (2021) recommendations 28, 29, 31, 46(a), 83 and 87(a) and Chapter 21.

¹⁷ Victim survivors have rights as participants in a criminal trial to object to the production of certain confidential communications, which are communications made in confidence by a victim survivor to a medical practitioner or counsellor, either before or after the alleged sexual offending occurred.

¹⁸ E.g. Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (2021) recommendations 28, 29, 31, 46(a), 83 and 87(a) and Chapter 21.

¹⁹ *Ibid*, recommendation 45. See also Sexual Assault Services Victoria, *SAS Vic's call to end sexual violence in Victoria* ([here](#)).

- **The benefits of collaborative and coordinated services:** Through the VLS, we have seen the strengths of a coordinated service model, including warm referral pathways which reduce trauma for victims by minimising the need to re-tell their stories; continuous improvement in service provision through communication and a community of practice; identification of systemic issues and building an evidence-base for reform; and supporting legal practitioners to provide high-quality, trauma informed services to victim survivors through training and support. This service model has a role to play in informing and embedding cultural change across legal services and the justice system. In contemplating future funding and service models for victim survivors of sexual offences across Australia, governments should consider and invest in service coordination to deliver the benefits observed through Victoria's VLS.

Recommendations

6. Ongoing funding for the Victims Legal Service and implementation of nation-wide specialist legal assistance services for victim survivors of sexual violence. This should include consideration of and investment in service coordination to deliver the benefits observed through Victoria's VLS
7. Supporting expansion of the VLS to a more comprehensive, holistic service for victim survivors, including legal advice and representation to make sure victim survivors can understand and exercise their rights in relation to confidential communications, access to intermediaries, right to privacy, options for compensation and restorative justice

Restorative Justice

We support the use of restorative justice in a broad range of contexts, including in response to sexual violence. We recognise that the criminal justice system does not meet all justice needs for victim survivors and that restorative justice should be an option open to victim survivors when they seek a justice response to sexual violence. Restorative justice is not currently an established component of the criminal justice system's response to sexual violence in Australian jurisdictions (with the exception of the ACT) and neither is it a visible, accessible option for victim survivors who choose not to engage with the criminal justice system.

Restorative justice should be available as a response to sexual violence

Restorative justice should be available in connection with sexual offence prosecutions. Our practice experience indicates that, while not every case will be suitable for restorative justice, there are many cases where it may be appropriate. We regularly assist people charged with, and people convicted of sexual offences, who express that they would like to offer an apology or take responsibility in a way that may be experienced as meaningful by the victim survivor.

Our experience indicates that many of our clients would agree to participate in restorative justice, should this be an avenue a victim survivor wishes to pursue, and subject to these clients meeting relevant screening and assessment requirements. We can see the benefit for restorative justice to be routinely available given the benefits demonstrated for all who take part in restorative justice responses.

Evidence supporting broader access to restorative justice in response to sexual violence includes:

- Restorative justice has been used successfully in response to sexual violence in other countries such as Canada²⁰ and New Zealand²¹ for decades. The ACT's restorative scheme was expanded to include family violence and sexual violence cases in 2018, and its work in those areas was positively evaluated in 2023.²²
- Research with victims of different types of crime, and specifically with victim survivors of sexual violence, has established that victims and victim survivors have a range of justice needs, not all of which can be met via the criminal justice system alone.²³ In recognition that victim survivors have diverse justice needs, experts have called for a suite of different justice options to be made available to victim survivors when they seek a justice response to sexual violence, including restorative justice.²⁴

²⁰ *Community Justice Initiatives* (Website) [Homepage | Community Justice Initiatives \(cjiwr.com\)](https://www.cjiwr.com)

²¹ *Project Restore* (Website) [Project Restore - Restorative Justice following sexual violence](https://www.projectrestore.org.au)

²² Siobhan Lawler, Hayley Boxall & Christopher Dowling, *Restorative justice conferencing for domestic and family violence and sexual violence: Evaluation of Phase Three of the ACT Restorative Justice Scheme* (2023)

²³ Jane Bolitho, 'Putting justice needs first: a case study of best practice in restorative justice' (2015) 3(2) *Restorative Justice* 256; Kathleen Daly, 'Reconceptualising Sexual Victimization and Justice' in Inge Vanfraechem, Antony Pemberton & Felix Ndahinda (eds.) *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Taylor & Francis, 2014) 378.

²⁴ Centre for Innovative Justice, *Innovative Responses to Sexual Offending* (2014).

- There is an established evidence base showing that: victims (including but not limited to victim survivors of sexual violence) who take part in restorative justice report high levels of satisfaction with these processes;²⁵ that participation in restorative justice can reduce post-traumatic stress;²⁶ and that restorative justice can prevent further offending.²⁷
- In Victoria in recent years, there have been numerous inquiries that have recommended restorative justice as a response to sexual violence, including the 2021 VLRC report.²⁸

Addressing risk through evidence-based program design

We acknowledge that there are concerns regarding the use of restorative justice in response to sexual violence, given the unequal power dynamics and other complexities inherent to this type of harm. These concerns can be addressed by ensuring that restorative justice programs that respond to sexual violence are consistent with lived experience expert and evidence-based best practice. Recognising the need to ensure restorative justice practice meets victim survivors' needs and has safeguards to prevent traumatisation should not operate as a barrier to making restorative justice widely available as an option for victim survivors of sexual violence.

We support victim survivor-focused models of restorative justice in which participation is voluntary, and that are complementary to the criminal justice system – that is, a victim survivor can choose to engage in restorative justice in place of or in addition to a criminal prosecution. There is evidence that restorative justice programs that respond to sexual violence are effective when they incorporate the following features:

- a specialist response, which includes facilitator skill, knowledge and experience
- vigilant screening (relating to suitability, not just eligibility)
- the use of experts (in sexual offending and the dynamics of violence) throughout the process
- flexibility and responsiveness to participant needs
- timing of the meeting appropriate to victim survivor readiness, and
- for people who have used sexual violence, parallel participation in a targeted sexual violence treatment program.²⁹

The VLRC recommended a model that is broadly consistent with the above. We support this approach.

²⁵ Heather Strang, *Repair or revenge: Victims and restorative justice* (Oxford University Press, 2002); Jane Bolitho and Karen Freeman, *The use and effectiveness of restorative justice in criminal justice systems following child sexual abuse or comparable harms* (2016).

²⁶ Caroline Angel, Lawrence Sherman, Heather Strang, Barak Ariel, Sarah Bennett, Nova Inkpen, Anne Keane and Therese Richmond, 'Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: A randomised controlled trial' (2014) 10 *Journal of Experiential Criminology* 291.

²⁷ Joudo Larson, *Restorative Justice in the Australian Criminal Justice System* (2014).

²⁸ Law Reform Committee, Parliament of Victoria, *Inquiry into Alternative Dispute Resolution and Restorative Justice* (2009); Victoria, Royal Commission into Family Violence, *Final Report* (2016); Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process: Final report* (Victorian Law Reform Commission, report 34, 2016), Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Victorian Law Reform Commission, 2021).

²⁹ Jane Bolitho & Karen Freeman, *The use and effectiveness of restorative justice in criminal justice systems following child sexual abuse or comparable harms* (2016).

Restorative justice should be an option available to all victim survivors

As recommended by the VLRC, victim survivors should have the option of engaging in restorative justice in the following circumstances: when no report to police has been made, when a report has been made but a prosecution has not commenced, when a prosecution decision to discontinue a prosecution has been made, after a conviction and before sentencing, and following sentencing.³⁰

We support the availability of restorative justice in all of the above circumstances. However, despite the availability of two restorative justice programs that respond to sexual violence in Victoria - Department of Justice and Community Safety's restorative justice service and Open Circle, attached to the Centre for Innovative Justice - restorative justice is not currently an established component of the Victorian criminal justice system's response to sexual violence.

Barriers to the expansion of restorative justice should be addressed

One of the reasons that restorative justice responses are not available is that there are some enduring structural barriers to the expansion of restorative justice in Victoria. Action is required to address the following barriers to restorative justice:

Legislation

VLA supports the introduction of legislation that would have the effect of:

1. clarifying that restorative justice can be used to respond to sexual violence, including in connection with sexual offence prosecutions
2. protecting what is said and done within a restorative justice context from becoming evidence in current or subsequent legal proceedings.

Legislation providing for the use of restorative justice in the context of sexual offence prosecutions should clarify how these processes can safely operate in connection with criminal prosecutions. This will assist to build confidence in restorative processes and enable these processes to be used more routinely in the context of sexual offence prosecutions.

Legislation must also address the issue of confidentiality or admissibility of restorative justice processes. At present there are barriers to people accused of sexual violence participating openly and fully in restorative processes, because of risk that what is said and done during a restorative justice process might become evidence able to be used in legal proceedings. This may mean that people accused of sexual violence are advised against participating in restorative justice due to risks to their procedural rights. The effect of this is that the option of restorative justice for victim survivors who want to take part in restorative justice processes in response to an experience of sexual violence is no longer available. This is a poor outcome for victim survivors, in light of the established benefits for victim survivors in having the choice to participate in restorative justice. The option of restorative justice could be preserved for victim survivors if legislation ensured that the risks to the rights of an accused person were protected and lawyers were able to advise clients to participate in restorative justice with the confidence that their clients' rights will be protected. A provision with a similar effect applies to the Youth Justice Group Conferencing restorative justice program in Victoria.³¹

³⁰ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Victorian Law Reform Commission, 2021) recommendations 9.141 – 142.

³¹ *Children, Youth and Families Act 2005* (Vic) s 415.

Therefore, as a minimum, legislation should provide procedural guidance for the operation of restorative justice in the context of criminal prosecutions, and prevent the use of evidence of what occurs during restorative justice processes. Legislation should enable flexible delivery of restorative justice programs that can be tailored to the particular needs of the communities they serve.

Community-based treatment programs

We support the model for restorative justice programs that require each participant to access individual support while they are engaged in the restorative process. Access to specialised treatment programs for people who have used sexual violence is a determinant of whether specialist sexual violence restorative justice programs are successful.³² In Victoria, while there are sex offender programs that operate in custodial settings, we are not aware of any community-based specialist services that people who have used sexual violence can access on a voluntary basis. Some of VLA's clients who have sought therapeutic treatment for sexual violence have accessed private psychologists via Medicare-funded mental health care plans. However, there is generally a gap between the cost of the service and the funding, which puts this form of treatment out of reach for many VLA clients. A significant number of VLA clients who have been prosecuted for sexual offences have cognitive disabilities, and require therapeutic services tailored to their needs. We are not aware of any community-based services of this nature in Victoria.

These significant gaps in the service system must be addressed if restorative justice in the context of sexual violence is to become widespread. In addition to supporting the use of restorative justice, these gaps should be addressed to promote behaviour change in people who have used sexual violence. Preventing future harm is a justice need for victim survivors, who want the person responsible for sexual violence to engage in treatment that will make it less likely that they will harm someone else in the future.³³ It is therefore crucial for the consideration of the therapeutic treatment options for people who have used sexual violence to be a component of victim survivor-centred system reform.

³² Jane Bolitho & Karen Freeman, *The use and effectiveness of restorative justice in criminal justice systems following child sexual abuse or comparable harms* (2016).

³³ Jane Bolitho, 'Putting justice needs first: a case study of best practice in restorative justice' (2015) 3(2) *Restorative Justice* 256.

Recommendations

8. The Commonwealth Attorney-General should lead work to establish national guidelines and standards for victim survivor focused restorative justice programs that respond to sexual violence. An evidence-based practice model with the following features should be promoted:
 - a specialist response, which includes facilitator skill, knowledge and experience
 - vigilant use of screening (relating to suitability, not just eligibility)
 - the use of experts (in sexual violence and the dynamics of violence) throughout the process
 - flexibility and responsiveness to participant needs
 - timing of the meeting appropriate to victim survivor readiness
 - parallel participation in a targeted sexual violence treatment program for people who have used sexual violence.
9. Enact legislation enabling the use of restorative justice to respond to sexual violence, including in connection with criminal prosecutions, in all jurisdictions. At a minimum, legislation must include provisions that create a strict privilege applying to restorative justice processes
10. In each jurisdiction, establish and fund community-based therapeutic programs for people who have used sexual violence. Programs must be culturally safe, available in a range of community languages and appropriate for people with different access needs, including people with cognitive disabilities.

About Victoria legal Aid

Who are we?

Victoria Legal Aid (VLA) is a statutory authority established under the *Legal Aid Act 1978 (Vic)*. We are responsible for providing information, advice, and assistance in response to a broad range of legal problems. We provide statewide assistance to people every day and night in courts and tribunals in Victoria across both federal and state jurisdictions. VLA is funded by both state and federal governments. As a statutory agency, we are part of government.

What do we do?

We assist people with legal problems in a range of areas including criminal law, family breakdown, child protection, family violence, mental health, discrimination, disability, tenancy, fines, social security, immigration, guardianship and administration, debt, and assistance for victims of crime. We do this through our specialist legal teams and allied professionals, working with our legal assistance sector partners in the private profession, community legal centres, and Aboriginal community-controlled organisations.

In 2022-23, VLA assisted 86,321 unique clients, provided 78,751 in-house duty lawyer services, and responded to 138,969 requests for assistance through Legal Help.

Why do we do it?

In line with our values – fairness, care, courage and inclusion – VLA provides services and coordinates the provision of legal information to improve access to justice, support people to develop stronger legal capability and have a voice in the legal problems they face. We also pursue systemic change to address injustices by advocating to reform laws and systems to improve equality for clients and the community. The *Legal Aid Act* requires us to pursue innovative means of providing legal aid to reduce the need for individual legal services.

How do we do it?

We provide information and advice, prevention, early intervention, dispute resolution, and ongoing assistance and representation. The range of services we offer include:

- Legal Help phone and webchat service for information and advice
- Community legal education and information
- Family dispute resolution mediation service
- Help before court for criminal charges
- Early resolution service for family violence matters
- Help at courts and tribunals through duty lawyer services and grants of legal assistance
- Family advocacy and support services
- Independent mental health advocacy and family advocacy support services
- Legal representation in a range of civil, family and criminal law matters.

We also use our practice and evidence base to address systemic injustices and inequality for clients and communities through strategic litigation and advocacy as well as policy and law reform. We aim to promote the voices of clients and address the impacts of discrimination by advocating for fairer laws and systems.

Our clients

Service snapshot

Our clients **86,321** unique clients **▲7%**

70%

Metropolitan
Melbourne

30%

Regional
Victoria

Assistance with a case **41,320¹** grants of legal assistance **▲1%**

15%

In-house

83%

Private
practitioners

2%

Community
legal
centres

Duty lawyer services **111,236²** duty lawyer services **▲54%**

71%

In-house

12%

Private
practitioners

17%

Community
legal
centres

1 This total figure includes grants for community legal centres (which aren't included in our Budget Paper 3 reporting) and family violence services.

2 Adjusted by +7,438 duty lawyer services. The total figure includes services provided by community legal centres (which aren't included in our Budget Paper 3 reporting) and family violence services.

Early intervention and early engagement and resolution

Legal Help

138,969 requests for help responded to **▲16%**, **73%** of total incoming requests

Average wait time of **8:54 minutes** (phone line and webchat) **▼22%**

112,198¹ information sessions **▲17%**

14,280² advice sessions **▲9%**

Help Before Court

9,545 services **▼8%**

Early Resolution Service

11,758 services **▲31%**

Family Dispute Resolution Service

839 conferences **▼24%**

80% settlement rate **▼2%**

Independent Family Advocacy Service

2,011 information and referral sessions **▲10%**

2,327 advocacy and self-advocacy sessions **▼1%**

Independent Mental Health Advocacy

25,658 information and referral sessions **▲2%**

18,280 advocacy and self-advocacy sessions **▲38%**

Community legal education and information

213 education sessions **▲84%**

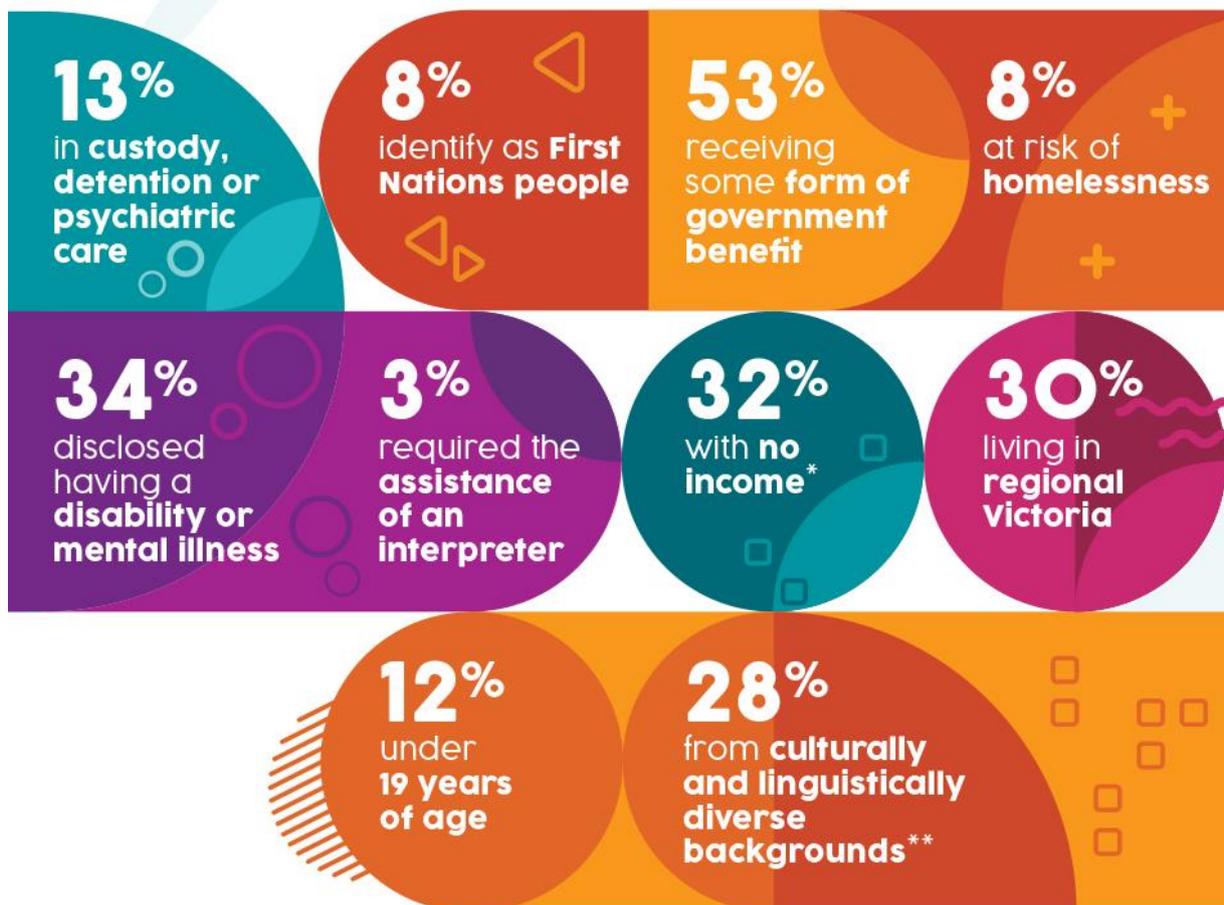
162,038 publications distributed **▲107%**

Due to identified underreporting in our data, some figures have been adjusted to better reflect the number of services delivered. Percentage increases and decreases are in comparison to 2021-22 data.

1 Adjusted by +4,033 information sessions.

2 Adjusted by +741 advice sessions.

Who our clients are



These figures do not include clients seen by a private practitioner or who accessed information services.

* Examples include children and young people, people experiencing homelessness, people in custody and immigration detention, and psychiatric patients.

** Based on the Australian Bureau of Statistics definition of people from culturally and linguistically diverse backgrounds. Includes people who speak a language other than English at home and people who were born in a non-English speaking country.