

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

*A joint submission from partners in Victoria's Victims Legal Service to the 2024 ALRC inquiry into justice responses to sexual violence*



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## Introduction: Victoria's specialist legal service for victim-survivors

Victims of crime have unique, diverse and complex legal needs, and have often experienced (re)traumatisation through their engagement in the justice system. In particular, people who have experienced sexual violence often report not getting what they need or want from the justice system. Research and lived experience advocates have highlighted the current systemic gaps in meeting the need for victim-survivors to be supported and heard, to have a voice, and to feel there has been a just outcome.<sup>1 2</sup>

Trauma-informed, accessible, inclusive and culturally safe and appropriate legal advice and assistance is critical for victim-survivor participation in the justice system and recovery from sexual offences. This includes access to independent, comprehensive legal advice to understand their legal rights and options, as well as legal representation to assist in exercising those rights.<sup>3</sup> The establishment of a specialist and comprehensive victims legal service that focuses on the substantive legal entitlements of victim-survivors, to address this unmet legal need of victim-survivors, has been a key recommendation of multiple inquiries and research focused on the experiences of the justice system by victim-survivors.<sup>4</sup>

The Victims Legal Service (**VLS**) commenced in March 2023 and is Victoria's first dedicated, statewide, specialist legal service for victims of crime.<sup>5</sup> Service partners include Victoria Legal Aid (**VLA**), Victorian Aboriginal Legal Service (**VALS**), Djirra, Women's Legal Service Victoria (**WLSV**) and seven local community legal centres (**CLCs**) across the state: Eastern CLC, Northern CLC, Inner Melbourne Community Legal, South-East Monash Legal Service, Ballarat & Grampians CLS, Mallee Family Care CLC and Gippsland CLS.

This submission draws together the experience of these service partners and sets out the VLS service model and design process, and the outcomes and impact of the VLS to date. Collectively we seek to inform future provision of specialist legal assistance, recognising the crucial role in promoting just outcomes and improving the experiences of the justice system for people who have experienced sexual violence.<sup>6</sup>

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<sup>1</sup> *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs*, Centre for Innovative Justice, Report to the Office of Public Prosecutions Victoria, April 2019.

<sup>2</sup> Victorian Law Reform Commission, *Improving the Justice System Responses*, September 2021.

<sup>3</sup> Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020), 149; Victorian Law Reform Commission, *Improving the Justice System Responses to Sexual Offences*, (Report No. 42) September 2021, recommendation 46; Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victims participation in the justice system*, November 2023, recommendation 21.

<sup>4</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No.34), August 2016, recommendation 34. Sentencing Advisory Council, *Restitution and Compensation Orders: Report* (October 2018) 99, recommendation 8; Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020), 149; Victorian Law Reform Commission, *Improving the Justice System Responses to Sexual Offences*, (Report No. 42) September 2021, recommendation 46; Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victims participation in the justice system*, November 2023, recommendation 21.

<sup>5</sup> \$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.

<sup>6</sup> This submission focuses on the role for specialist legal services for victim survivors of sexual assault, and the insights we have gained as service delivery partners of the Victims Legal Service. It is endorsed by Eastern

## Current scope of the Victims Legal Service

The scope of the current VLS is to provide free legal advice and support to people who have suffered injury or loss because of a violent crime, including sexual offences, and who need help to obtain:

- Financial assistance through the Victims of Crime Assistance Tribunal (**VOCAT**) (noting this will be provided through the Financial Assistance Scheme (**FAS**) when this comes into operation), and/or
- Compensation from the person who committed the crime through a Restitution and Compensation Order under the *Sentencing Act 1991* (Vic).

Since March 2024 a limited expansion of the VLS, under a Commonwealth funded pilot scheme (**Commonwealth pilot**), has also enabled the VLS to provide legal advice to sexual violence victim-survivors seeking to protect their confidential communications and health information, such as medical or counselling records, during court proceedings.<sup>7</sup> These services are provided by three VLS partners, VLA, WLSV and Djirra, and include:

- Legal information, procedural advice, and referrals for victim-survivors of sexual violence 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 violence to police and secondary consultations to other VLS providers in confidential communications applications made in relation to First Nations women.

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Community Legal Centre, Inner Melbourne Community Legal, South-East Monash Legal Service, Victoria Legal Aid, Women's Legal Service Victoria, Northern Community Legal Centre, Federation of Community Legal Centres, Djirra, Victorian Aboriginal Legal Service, Ballarat and Grampians Community Legal Service, Mallee Family Care and Gippsland Community Legal Service. We note that several organisations have also made individual submissions.

<sup>7</sup> In Victoria, the protections for victim-survivors in relation to confidential communications made to health and counselling professionals were strengthened in response to the VLRC Sexual Offences Report. These stronger protections commenced in July 2023, and include an expanded definition of confidential communications to include health information, a positive obligation on the prosecuting party to provide notice of an application to a victim-survivor and a right for victim-survivors to appear and make submissions. However, until the funding for the Commonwealth pilot, there was no access to legal assistance to support victim-survivors to understand or exercise their rights under these strengthened provisions. 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 \(ag.gov.au\)](#).

## Service design and model

### Service aims and model – designed with victim-survivors

The VLS recognises unique experiences of victimisation and intersecting barriers to accessing justice, and intentionally sought to address these challenges through the service design and delivery. 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 higher rates of victimisation and discrimination. As such, the VLS prioritises working with women experiencing gender-based violence, 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, LGBTQIA+ clients, people with a disability, including mental health issues, people experiencing family violence, and victims of sexual assault and historical child abuse. For the Commonwealth pilot, women in prison have also been identified as a priority group. We note that it is uniquely difficult for First Nations women to report sexual assaults and access just outcomes, due to the historic and systemic failures to believe Aboriginal women, and justice responses that have often criminalised them. For example, First Nations victims of sexual assault have talked to us about the challenges of reporting to police, including that they are fearful of not being believed and that they fear the police in general, that reporting to the police can be retraumatising and that police have not taken their report seriously.

The design of the VLS service model was informed by the perspectives, experiences and expertise of victim-survivors, alongside organisations who work with and support victims of crime. This informed the aims of the VLS, which are to:

- Provide victims of crime with trauma-informed, specialised legal advice and assistance related to VOCAT/FAS and RACO matters
- Ensure victims of crime understand their rights, entitlements and available supports regarding state funded financial assistance and restitution and compensation from the person who committed the crime
- Support victims of crime to feel validated, heard and have their experience recognised, and
- Enable victims' immediate legal needs to be identified and responded to in a timely manner before they escalate.

The aims of the VLS informed the service model, including how victim-survivors access the service. The VLS consists of a **state-wide specialist advice line** (both phone and webchat) delivered by VLA, which is the primary entry point for the VLS and provides legal information, legal advice and referrals. The VLS Helpline is staffed by a specialist team of lawyers who provide triage, information, advice and referrals, both legal and non-legal. All VLS Helpline staff have received specific training in trauma-informed practice to support warm referrals to VLS partners, minimising the need for a victim-survivor to repeat their story. VLS Helpline staff are also trained to identify when a victim-survivor may benefit from an appropriate non-legal referral.

As [REDACTED] story demonstrates, the model also includes a '**no wrong door**' approach so that victims of crime can also enter the service via different entry points, including through place-based services, strong relationships and health justice partnerships VLS service partners



have; including, for example, with victim support services, family violence or sexual assault service providers, Aboriginal Community Controlled Organisations, and community organisations.

### **██████████ The importance of a place-based, trauma-informed service**

██████████ had been in an abusive relationship with ██████████ for over six months before he sexually assaulted her. Despite reporting it to the Police, charges were never laid against ██████████.

██████████ also lived locally, meaning that ██████████ was scared to leave the house. ██████████ become more and more afraid, and was struggling to live her life.

Trying to find help, ██████████ found the number for the Victims Legal Service online after googling questions about help for victims of sexual assault. She gave the phone number a call. The VLS helpline referred ██████████ to her local VLS service partner.

When ██████████ first engaged with the legal service, she said she felt like she would never get any justice. Further, due to the trauma ██████████ had suffered as a result of what happened to her, she found gathering and providing documents very difficult.

After several months of information gathering, the VLS service partner lodged an application on behalf of ██████████ including a Statement of Claim seeking significant security expenses and relocation expenses.

Shortly thereafter ██████████ application was granted in full giving her access to \$4,000 security expenses she needs to feel safe and \$12,000 in rent and moving expenses allowing her to move away from ██████████. ██████████ was also granted the maximum special financial assistance \$10,000.

██████████ hope is her experience, and her story, can hopefully help others to not go through the same thing she did.

## **Collaborative, cross-sector and trauma-informed**

Victim-survivors who participated in the service design process informed the development of ten principles that underpin VLS service delivery (see below box). We see various benefits in these principles and the ways the service delivery partners are required to meet them. For example, the collaborative nature of the VLS model<sup>8</sup> supports a co-ordinated service that responds to victims' legal needs, including through structured opportunities to identify emerging issues for victim-survivors and their experience of the justice system, to share and embed best practice and to regularly escalate any concerns or issues.

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<sup>8</sup> This is supported by a Working Group convened by the Department of Justice and Community Safety with VLS partners to oversee the implementation of the service, and a Community of Practice that meets regularly (monthly or bi-monthly) to bring together all VLS partner organisations. The Community of Practice aims to ensure consistency of practice and client experience across the VLS, identify emerging issues and trends, share and develop best practice, facilitate opportunities for further learning through shared training and maintain, and to build relationships between VLS partners.

**The 10 principles of the VLS:**

1. Trauma-informed
2. Victim-led
3. Equitable
4. Culturally Safe
5. Self-Determination
6. Accessible
7. Specialised
8. Co-Ordinated
9. Timely
10. Accountable

Clients have also indicated they feel more valued and empowered within the justice system because of the dedicated service and approach.

In preparation for the Commonwealth pilot, the VLS partners responsible for delivering this service partnered with Sexual Assault Services Victoria to undertake a comprehensive training package to upskill lawyers in responding to disclosures of sexual violence, understanding the experiences of the subpoena process for victim-survivors of sexual violence, and the effects of trauma. VLS partners also work to intentionally provide wrap around support, including for ancillary legal issues and access to non-legal support including social work.

## Outcomes and impact

Through the past year of service delivery, we have seen:

- How accessing **specialist, trauma-informed, collaborative and 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 importance of **warm referral pathways** in reducing trauma for victims by minimising the need to re-tell their stories
- **Continuous improvement in service provision** through strong collaboration, communication and the community of practice
- **Identification of systemic issues** and building an evidence-base for reform
- The benefits of supporting legal practitioners to provide high-quality, trauma informed services to victim-survivors through **training and support**, and
- The role for **financial compensation** as part of the healing process, including the positive impact the VLS and VOCAT scheme can have, particularly for victim survivors whose matters do not proceed to a criminal prosecution. Victim-survivors who make successful applications to VOCAT can experience this process as deeply validating. This opportunity is extremely valuable, particularly in light of the low conviction rate for sexual offences.

Abby's story demonstrates the positive impact that a civil justice response can have for victim survivors of sexual violence, especially in relation to the holistic assistance that victim-survivors need, while also addressing any other related legal issues. It also demonstrates the importance of victims having access to independent legal advice and support during

criminal investigations and proceedings, to alleviate the stress of having to communicate directly with police about the matter.

### Abby's story

Abby<sup>9</sup> contacted the VLS because she had experienced physical assault and sexual violence. Notably, the person responsible for the violence had been charged for the assault, but the investigation regarding the sexual violence was ongoing when Abby was referred for legal assistance through the VLS Helpline.

The police investigation regarding the sexual violence was lengthy, and often with delays between updates provided to Abby about the progress. The VLS service provider was able to take some of that burden off Abby's shoulders, with Abby's lawyer seeking updates and relaying those to Abby, including to confirm the investigation was still ongoing.

The person responsible for the violence had also applied for a Family Violence Intervention Order (**FVIO**) against Abby, and an interim order had been granted. With the lawyer's assistance, this application was struck out, which was of huge importance to Abby as she felt a deep sense of injustice by the fact an interim order had been granted. It was incredibly validating for Abby to have the Magistrate acknowledge she was the true victim in the circumstances, and that the application for FVIVO was an abuse of process.

Unfortunately, the police investigation regarding the sexual violence did not proceed to charges and Abby was incredibly disheartened by this. She expressed a significant sense of disenfranchisement from the criminal justice system as a result.

The VLS lawyer was able to re-channel Abby's energy into a VOCAT application. Abby's claims referenced the re-traumatisation she had experienced as a result of the frivolous FVIO proceedings against her, as well as the decision by police not to pursue criminal charges against the person responsible for the violence.

Ultimately the Tribunal awarded Abby Special Financial Assistance, future counselling, security measures and various supports to complete an educational course, which Abby had previously started but had not been able to finish due to the psychological impacts of being a victim of crime.

These awards, and particularly those related to Abby's further education, helped set Abby up to take the next steps in her journey, to return to the career she is seeking to build and restore confidence in herself that was deeply affected by the bodily violation she experienced.

Abby also expressed that her experience of the VOCAT process was the most 'just' out of all her interactions with the justice system. She felt it provided recognition and a flexible mechanism for putting her story forward, and that her story was heard and not questioned nor disbelieved (as this is what she unfortunately took from the unsuccessful police outcome).

Abby provided some very positive feedback about the part the VLS lawyer played in her journey and supporting victim survivors of family and sexual violence in what she perceives to otherwise be a broken system.

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<sup>9</sup> Not her real name.



## High demand for VLS services

Since its commencement in March 2023 there has been strong demand for the VLS. During this time, and up to 30 April 2024, **the VLS Helpline has provided information and legal advice in response to 2,912 enquiries and successfully referred 381 victims to VLS partners for more intensive legal assistance.**<sup>10</sup> In the second reporting period alone (1 July-31 December 2023) the VLS provided a total of 1,568 services. Of these, 1,168 (75%) were provided by the VLS Helpline and 400 were more intensive legal services by the VLS service partners.

## Ensuring the service meets the needs of people who are disproportionately affected by sexual violence

VLS providers report data every six months on the legal assistance that has been provided to these priority client groups.<sup>11</sup> The data measures the extent to which the VLS is engaging with these priority groups and how the service is achieving higher-quality service delivery outcomes for these groups. Consolidated data for the second reporting period shows that:

- Almost half of VLS service users live with a disability
- 36.5% of service users were experiencing a mental health issue at the time they sought assistance
- 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, and
- 8.7% of service users identify as Aboriginal and Torres Strait Islander, as well as 5.9% of the help seekers who accessed the VLS helpline.<sup>12</sup>

## The future of specialist legal assistance for victim-survivors in Australia

A number of reports and reviews have recommended a more comprehensive legal service for victims of crime in Victoria.<sup>13</sup> As the VLS service delivery partners, we have been pleased to see the early demonstrated impact and outcomes through the VLS, supported by the foundations of the collaborative service model. Informed by over 12-months of service provision, we reiterate:

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<sup>10</sup> Note these figures do not include information, advice and referrals that came directly to the VLS service providers rather than through the VLS Helpline. The consolidated DJCS data shows that 400 victim-survivors sought assistance from VLS service providers.

<sup>11</sup> Clients experiencing language or cultural barriers, children and young people, older people, clients experiencing homelessness, clients living in regional/rural/remote locations, LGBTQIA+ clients, clients with a disability, clients experiencing mental health issues, clients experiencing family violence, victims of sexual assault and historical child abuse and Aboriginal and Torres Strait Islander clients.

<sup>12</sup> Across the VLS, Aboriginal Community Controlled Organisations and specialist services accounted for the majority of service delivery to Aboriginal and Torres Strait Islander clients.

<sup>13</sup> See, eg, 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).

- **High demand for services and the need for nationwide 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 and no confirmation of funding beyond the initial three-year funding period (currently due to conclude in 2025/2026). 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. This has also been affected by the amount of time taken for compensation cases to be finalised through VOCAT, with VLS partner capacity to take on new referrals limited by existing files remaining open for long periods of time. In addition to continuing the funding for the VLS in Victoria, 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 services for victim-survivors:** The VLS is a collaborative, whole of legal sector service model, the design of which was informed by victim-survivors, including the key groups who have specific needs and/or experience structural barriers to accessing the justice system. 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 Victorian Law Reform Commission's inquiry and 2021 report, *Improving the Justice System Response to Sexual Offences (VLRC Sexual Offences Report)*, this should include legal advice and representation to make sure victim-survivors can exercise their rights in relation to confidential communications,<sup>14</sup> access to intermediaries, right to privacy, options for compensation and restorative justice.<sup>15</sup> 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, facilitate referrals and advocate for victim survivors in services and across legal systems.<sup>16</sup> Additional funding for frontline staff and enhanced co-ordination are vital to equip the VLS to meet the existing and future legal need of victim-survivors.
- **The benefits of collaborative and coordinated services:** Through the VLS, we have seen the strengths of a coordinated service model as outlined in this submission. 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.

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<sup>14</sup> 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.

<sup>15</sup> See, for example, recommendations 28, 29, 31, 46(a), 83 and 87(a) and Chapter 21 of *Improving the Justice System Response to Sexual Offences*. Available online at: [VLRC Improving Justice System Response to Sex Offences Report web.pdf \(lawreform.vic.gov.au\)](https://www.lawreform.vic.gov.au/VLRC-Improving-Justice-System-Response-to-Sex-Offences-Report-web.pdf).

<sup>16</sup> Ibid, recommendation 45. See also Sexual Assault Services Victoria, SAS Vic's call to end sexual violence in Victoria (here).

## Recommendations

1. **Implementation of nation-wide specialist legal services for victim-survivors, including ongoing funding for the Victims Legal Service.** This should include additional funding for frontline staff and consideration of and investment in service coordination to deliver the benefits observed through Victoria's VLS.
2. **Supporting expansion of the Victims Legal Service to a more comprehensive, holistic service for victim survivors,** including legal advice and representation to make sure victim-survivors can exercise their rights in relation to confidential communications, access to intermediaries, right to privacy, options for compensation and restorative justice, as well as non-legal advocates or allied professionals to provide support for victim-survivors across services and legal systems.
3. Work with Aboriginal Community Controlled Organisations (**ACCOs**) and First Nations communities, including victim-survivors, to deliver **self-determined and culturally safe approaches** to justice responses to sexual violence. This should include **sustainable funding models for ACCOs** who support victim-survivors, **strengthening cultural capability**, for example through compulsory anti-racism and cultural safety training for justice agencies, and **strengthening the accountability and transparency in the justice system**, to enable First Nations victim-survivors to report experiences of sexual violence, by establishing an independent police oversight authority and 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.
4. Recognise the role for **financial compensation** as part of the healing process for victim-survivors, and adequately resource these schemes (such as VOCAT in Victoria and equivalent tribunals in other jurisdictions) to provide timely, trauma informed outcomes (including reduced backlogs and wait times).