



Access to Legal Aid



VICTORIA

Victorian
Auditor-General

Access to Legal Aid

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The Hon. Bruce Atkinson MLC
President
Legislative Council
Parliament House
Melbourne

The Hon. Christine Fyffe MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my report on the audit *Access to Legal Aid*.

The audit assessed whether Victoria Legal Aid (VLA) is performing its functions and duties effectively and efficiently, and achieving its statutory objectives. This includes its arrangements around the supply and delivery of legal aid services, and its performance in delivering those services.

I found that VLA is prioritising the most vulnerable people when delivering its services. VLA is operating in a challenging environment, and its service provision is based on a sound understanding of demand drivers and funding risks.

VLA has made changes to eligibility criteria for intensive services in an effort to remain financially sustainable. While this action is consistent with its legal obligations, it has implications for access to justice.

However, VLA's performance monitoring framework does not clearly inform its board or the public about how effectively, efficiently and economically it is achieving its statutory objectives.

Yours faithfully



John Doyle
Auditor-General

20 August 2014

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Auditor-General's comments



John Doyle
Auditor-General

Legal aid is a cornerstone of Victoria's justice system. It provides the basis for a fairer and more equitable legal system by giving some of the most vulnerable people access to affordable legal assistance. However, publicly funded services like legal aid cannot assist everyone in need.

Victoria Legal Aid (VLA) is the responsible body which provides both legal aid directly and funds private practice and Community Legal Centres to provide assistance to eligible recipients. To remain financially sustainable and consistent with its governing legislation, it must prioritise who can access its services, and decide who among all those in need is eligible to receive legal services.

Currently, more people are coming before the justice system, and in turn more people are seeking state-funded legal services. In this environment, VLA has to make difficult decisions about who it can assist. Consequently, some people will not get the type of legal assistance they need.

In this audit I assessed VLA's planning for the supply of legal aid, and its delivery of legal aid services. I also assessed its performance frameworks—a key part of its accountability in the use of increasingly scarce public resources.

My audit found that VLA is performing its role in delivering legal services, and has a sound understanding of the service demands it faces and the challenges it faces around policy settings and funding constraints.

However, limitations with VLA's performance framework mean that it is not possible to determine how effectively, efficiently and economically it is providing these services, but it is pleasing that VLA has committed to improve its performance framework to provide greater assurance.

As a public body with shortcomings in the way it reports on its performance and use of public funds, VLA is not alone. This is an area of ongoing audit interest for me, and I have recently commenced an audit of public sector performance measurement and reporting to get a broader perspective around this activity.

I note in this audit that VLA's funding is based largely on demand levels from 2008. Much has changed in the past six years, with tension between demand and increasingly scarce resources. VLA faces a challenge in remaining financially sustainable and meeting demand to minimise the further erosion of access to justice for Victoria's most vulnerable citizens.

A handwritten signature in black ink, appearing to read 'John Doyle'. The signature is fluid and cursive, written over a light-colored background.

John Doyle
Auditor-General
August 2014

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Audit summary

Legal aid involves providing publicly funded legal services to people who are otherwise unable to afford it. People in need of legal aid typically represent the more vulnerable in society and their complex needs are often the product of entrenched systemic disadvantage.

Legal aid is an important feature of a democratic society, intended to enable fair and equitable access to justice and to the legal system. It can also assist the justice system to function more effectively and efficiently.

Legal aid involves more than just providing legal assistance to someone appearing before the courts. It encompasses a broad range of legal services that include civil, criminal and family, youth and children's law matters.

Many legal aid services are accessible to everyone, such as legal information on Victoria Legal Aid's (VLA) website. Other more intensive legal services have eligibility guidelines, as required under the *Legal Aid Act 1978* (the Act). Limited eligibility guidelines apply to services such as duty lawyers at court, while more extensive eligibility guidelines apply to the most intensive service—grants of legal assistance provided either in house, through private practitioners or through Community Legal Centres.

The audit's objective was to assess whether VLA is performing its functions and duties, and achieving its objectives under the Act. To address this objective, the audit assessed the arrangements in place to:

- effectively and efficiently plan the supply of legal aid services
- effectively, efficiently and economically deliver legal aid services
- effectively monitor performance in the provision of legal aid.

Conclusions

VLA is performing its role delivering legal aid services across Victoria, and prioritising the most vulnerable people based on a sound understanding of demand drivers and funding risks. It is providing its services in a challenging environment of increased demand—influenced by policy decisions beyond its control—and with fixed funding. VLA's current funding is largely based on demand levels from 2008.

The extent to which VLA is providing services effectively, efficiently and economically is constrained, however, by its performance monitoring framework, which does not clearly inform VLA's board or the public about how well it is achieving its statutory objectives.

Increased demand has resulted in VLA tightening eligibility for its more intensive and costly legal services in order to remain financially sustainable. This has had the effect of reducing the number of people who are eligible for legal representation—its most intensive service—while moving more people to less intensive services. While these actions are consistent with VLA's legal obligations to determine eligibility for services, to prioritise those who can receive legal aid services, and to manage the Legal Aid Fund, they have implications for access to justice.

There are gaps in some areas of its service delivery, and VLA is actively addressing these to improve services. Many of VLA's initiatives are new, or being phased in. Their impacts on VLA's efficiency and cost effectiveness will take time to assess.

Findings

Strategic and operational planning

Sound planning is a key part of effective governance and management. VLA has a structured planning framework to guide the development of strategic and operational plans. The framework and plans are informed by a sound understanding of service demand and gaps, organisational risks and financial sustainability.

Financial sustainability

One of the major risks that VLA's board and senior management actively manages is the ability of VLA to secure adequate levels of funding to meet demand for its legal services. Financial sustainability is a key part of VLA's organisational planning, reflected in its strategic and business plans as a priority.

Financial risks for VLA were realised in 2012–13 when it reported a deficit of \$9.3 million, and in 2011–12 when it reported a \$3 million deficit. VLA has acted to mitigate its financial risks by introducing changes to its eligibility guidelines during 2012–13 to reduce expenditure, and by changing the way it delivers services. It has also received \$13.7 million in additional funding over four years to help address its financial position.

Service demand

VLA has demonstrated a thorough understanding of the drivers that influence the supply and demand for its services. It undertakes regular environmental scanning, which focuses on the impact that drivers may have across VLA and on specific program areas. In addition, VLA monitors the monthly impact of its internal policy changes that influence the amount of legal services that it is able to supply.

While it keeps abreast of changes to demand and supply factors, VLA also engages external expertise to undertake demand modelling as an input into its planning for future service demand. The types of demand and supply drivers that VLA has identified include:

- recruitment of additional police officers and protective services officers
- sentencing policy
- family violence
- child protection
- prisoner numbers
- economic conditions.

Gaps in service provision

VLA understands the types of people who are most likely to require its legal services and to what degree people from these groups access its services. VLA reviews its programs and policies to determine whether there are any gaps in its service provision and undertakes initiatives to adjust those services accordingly.

VLA has committed to review the service delivery model in South East and North East Melbourne—identified areas of significant disadvantage and growing interface regions—and to consider increasing outreach services delivered in Community Legal Centres, health settings and other community agencies. VLA is also considering innovative ways to increase its service coverage and address service gaps.

Performance monitoring and reporting

Monitoring and reporting performance is a key element of effective governance and public sector accountability. Public sector entities have a responsibility to monitor and report on whether they use public funds efficiently and economically to achieve intended outcomes and objectives. Effective performance monitoring and reporting, evaluations, and continuous improvement practices should also enable an agency's management to track performance and act to address underperformance.

VLA has a performance monitoring and reporting framework, with the board receiving management reports on VLA's performance. This includes periodic performance reviews of its strategic and business plans, and routine reports on VLA's financial sustainability. However, there are weaknesses with this framework, particularly around its own performance measures and whether they provide VLA's board and senior management with adequate information about whether it is achieving its objectives.

VLA reports on its performance externally, and, as with its internal reporting, there are weaknesses with the performance measures used for its external reporting.

Accessible and equitable legal aid services

VLA provides a range of legal aid services in civil, criminal and family, youth and children's law matters. While many legal aid services are accessible to everyone, such as legal information on VLA's website, other more intensive legal services have eligibility guidelines—required under the Act—to limit access. Limited eligibility guidelines apply to services such as duty lawyers at court, while more extensive eligibility guidelines apply to the most intensive service—legal assistance provided either in-house or through private practitioners.

Eligibility criteria and guidelines

Grants of legal assistance are the most intensive and expensive service that VLA provides. In 2012–13 the Victorian Government decided to incorporate the temporary funding increase for 2010–11 and 2011–12 into VLA's base funding, rather than increase funding. Following this decision, VLA's board determined that it could no longer meet future legal services demand with existing policy settings without changes to its service mix.

To ensure financial sustainability, and consistent with its obligations under the Act, VLA sought to reduce expenditure by introducing changes to its eligibility guidelines during 2012–13. This resulted in fewer people accessing legal representation—VLA's most intensive service. These changes have been made with consideration and understanding of VLA's service mix, the capability and capacity of its workforce, and the funding required to meet forecast demand.

They were also made with the intention of reducing the number of people who were eligible to receive the highest level of legal representation—grants of legal assistance—and shifting more people to lower cost services such as duty lawyer services. The changes to eligibility guidelines were designed to affect new cases only, so the previous eligibility guidelines apply to existing matters.

A file review conducted for this audit identified that the criteria and guidelines were being applied as intended by private practitioners and VLA staff.

Priority clients

Consistent with its obligations under the Act, VLA prioritises those who are eligible to receive its most intensive and expensive services. VLA is in the process of a statewide implementation of the Priority Client Framework, which imposes priority client restrictions and a requirement for an income test to access VLA's services. The more intensive the service, the more criteria clients need to satisfy to access it. Priority clients include those people living on a low income, people in custody or detention, children, and those experiencing or at risk of experiencing family violence.

Triage and intake

Standard practices in the triage and referral processes are important so that clients are assessed and referred in a consistent and equitable manner. VLA has only recently started, and is still in the process of, driving consistent assessment, triage and intake of clients for its services.

This primarily involves implementation of the Assessment Intake and Referral (AIR) policy as part of the Improved Client Access and Triage project. Prior to the implementation of the AIR policy, there was no single organisation-wide policy or procedure for client triage, intake and referral—only local work instructions or procedures at individual offices.

The AIR policy was finalised in December 2012 and first implemented in the Legal Help telephone service and Adult Summary Crime Duty Lawyer service. VLA is in the process of a statewide rollout of the AIR policy, with expected completion in 2014. It is too early to determine the adequacy of training and compliance with the policy. However, VLA has systems in place to collect relevant data to make that assessment.

Access barriers

Besides service eligibility and triage, there are barriers that can restrict people's access to VLA's services. These can include people being unaware of having a legal problem, their legal rights or VLA's services, cultural or language barriers, and difficulty in contacting VLA and delays in obtaining assistance.

While VLA is acting to remove these barriers, it has been less successful in improving access to and the timeliness of its Legal Help telephone service.

VLA has experienced longstanding challenges in relation to service users making contact. The issues included multiple pathways to contact VLA and unclear referral pathways, leading to clients being referred between areas in VLA without receiving appropriate help.

VLA is aware of accessibility issues with its Legal Help service and attributed this to being unable to resource growing demand. To address this, VLA appointed three additional Legal Help staff members in October 2013. The additional staff assisted in increasing the accessibility of Legal Help, but only temporarily, as their appointment coincided with a period of low demand. In June 2014, the VLA board approved a further four staff for Legal Help to meet demand growth and improve accessibility.

Recommendations

Number	Recommendation	Page
1.	That Victoria Legal Aid reviews its performance monitoring framework, with a view to: <ul style="list-style-type: none"> • developing specific performance measures relating to its statutory objectives and strategic plan objectives • clearly linking business plan performance measures to its objectives and key directions • developing targets to report against, and including that data in its annual report. 	20
2.	That Victoria Legal Aid: <ul style="list-style-type: none"> • assesses the awareness of its services among its priority clients group to ensure it is appropriately targeting and responding to this group • reviews and improves the accessibility and timeliness of the Legal Help service. 	32

Submissions and comments received

In addition to progressive engagement during the course of the audit, in accordance with section 16(3) of the *Audit Act 1994* a copy of this report, or part of this report, was provided to Victoria Legal Aid with a request for submissions or comments.

Agency views have been considered in reaching our audit conclusions and are represented to the extent relevant and warranted in preparing this report. Victoria Legal Aid's full section 16(3) submission and comments are included in Appendix A.

1 Background

1.1 Legal aid

Legal aid involves providing publicly funded legal services to people who are otherwise unable to afford it. People in need of legal aid typically represent the more vulnerable in society and their complex needs are often the product of entrenched systemic disadvantage.

Legal aid is an important feature of a democratic society, aimed at enabling fair and equitable access to justice and to the legal system. It can also assist the justice system to function more effectively and efficiently. This can happen by balancing legal representation between parties and, where possible, resolving matters before they get to court. Without legal aid, people who cannot afford the services of a private lawyer are likely to be less informed and less aware of their legal rights. This can increase the burdens on courts and tribunals, and increase the risk of people's legal rights being compromised.

1.1.1 Victoria Legal Aid

Victoria Legal Aid (VLA) is an independent statutory authority, established under the *Legal Aid Act 1978* (the Act), with responsibility for providing legal aid. The Act sets out VLA's objectives to guide its operations to:

- provide legal aid in the most effective, economic and efficient manner
- manage its resources to make legal aid available at a reasonable cost to the community, and on an equitable basis
- provide improved access to justice and legal remedies to the community
- pursue innovative means of providing legal aid directed at minimising the need for individual legal services in the community.

The Act also imposes a range of duties and functions on VLA. Among these is the requirement for VLA to determine, or vary priorities around, who can access legal aid and the legal matters involved. This happens in the context of it performing its statutory objectives, as well as the requirement for VLA to control and administer the Legal Aid Fund—a fixed fund established for VLA's administrative and operating expenses, including grants of legal assistance.

VLA is also required to perform its duties considering any agreements between the Victorian and Australian governments—currently the National Partnership Agreement on Legal Assistance Services (NPA).

National Partnership Agreement on Legal Assistance Services

The NPA is an agreement between the states and the Australian Government that is intended to create a national system of legal assistance. It is focused on providing services for disadvantaged Australians, and is based around access to justice principles, such as accessibility, appropriateness, equity, efficiency and effectiveness.

In meeting its objectives and performing its duties, VLA must focus on targeting legal assistance to people who are at risk of social exclusion, and early resolution of legal matters for those experiencing disadvantage. In this respect, the NPA influences the types of legal aid services VLA provides and how it provides them.

1.1.2 Legal aid services

Legal aid is more than the legal assistance provided to someone appearing before the courts. It encompasses a broad range of legal services that involve civil, criminal and family, youth and children’s law matters. Legal aid services typically include:

- general legal information through VLA’s website, printed publications and its Legal Help telephone service
- targeted community legal education
- free telephone legal advice—through the Legal Help telephone service—which is not of a substantive or continuing nature
- alternative dispute resolution
- appointments with in-house lawyers for legal advice and, where appropriate, minor assistance
- duty lawyer services—lawyers at court who provide legal information, advice and/or representation to people attending court without a lawyer
- grants of legal assistance for a lawyer, either in-house, a private practitioner or from a community legal centre, to manage parts or all of a case.

The distribution of VLA’s services varies across its three core law programs. As Figure 1A shows, the majority of VLA’s more intensive services—grants of legal assistance for ongoing casework and duty lawyer services—are provided by the criminal law program.

Figure 1A
Allocation of services, 2012–13

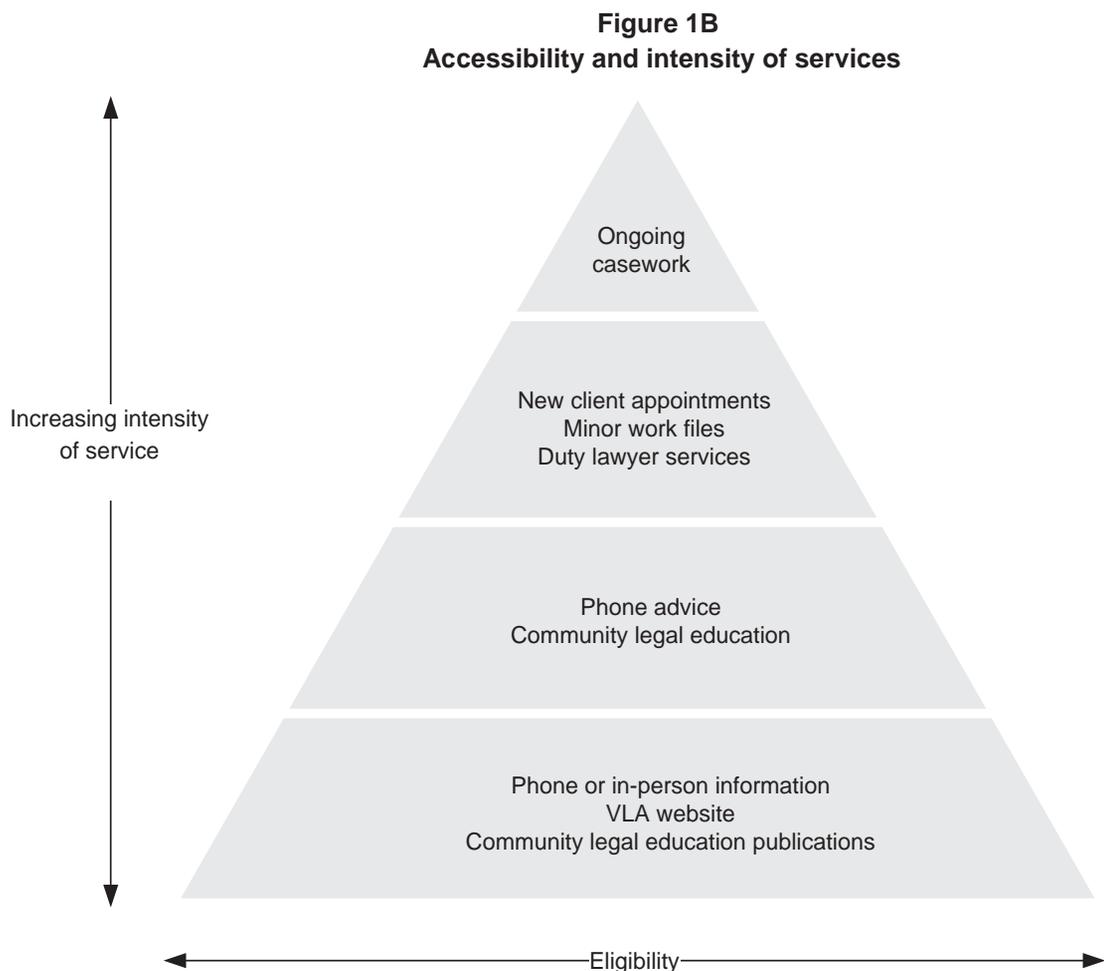
Type of service	Civil Law Program (% of total service)	Criminal Law Program (% of total service)	Family, Youth and Children’s Law Program (% of total service)	Total number of services
Phone services—law matters	44	20	36	89 463
Free legal advice, minor assistance and advocacy	32	40	28	51 598
Duty lawyer services	6	70	24	65 303
Grants of legal assistance	3	61	36	39 782

Source: Victorian Auditor-General’s Office based on information provided by Victoria Legal Aid.

1.1.3 Accessing legal aid

Many legal aid services are accessible to everyone, such as legal information on VLA's website. Other more intensive legal services have eligibility guidelines, as required under the Act. Eligibility guidelines apply to services such as duty lawyers at court, and to the most intensive service—grants of legal assistance provided either in-house or through private practitioners.

As Figure 1B shows, the majority of legal aid services are widely available and of low intensity. Broadly, the services identified at the bottom of Figure 1B have the broadest eligibility and represent the bulk of legal aid provided, while the services at the top are less accessible, more intensive, more costly, and represent the smallest part of legal aid services provided.



Source: Victorian Auditor-General's Office based on information provided by Victoria Legal Aid.

Intensive legal aid services

VLA has a two-tiered grants assessment process to approve applications for grants of legal assistance for intensive legal aid services.

The simplified grants process applies to approximately 80 per cent of grant applications. This process is designed to allow VLA's in-house lawyers and approved lawyers on its specialist private practitioner panel to recommend funding for a grant of legal assistance based on their self-assessment that the client meets the merit test and eligibility guidelines outlined in the *VLA Handbook for lawyers*.

Under the simplified grants process, a client will visit a lawyer, complete an application form and provide proof of means, and documentation substantiating the matter. The lawyer submits the application electronically to VLA recommending funding. The system conducts a number of tests, including whether the applicant meets the means test, to determine if the application can be automatically approved or requires a manual assessment by VLA's assignments team.

If VLA refuses to grant legal assistance, the client or lawyer may seek to have it reconsidered and if unsuccessful, to have it reviewed by an independent reviewer.

The full assessment grants process applies to the remaining 20 per cent of grants submitted by law firms and private practitioners on a general practitioner panel. A client will visit a lawyer, complete an application form and provide proof of means and substantiating documentation. The lawyer submits the application—including all relevant documents—to VLA's assignments team for assessment. VLA's assignment officers assess if a grant of assistance can be made by determining whether the client meets the means test, merits test and grant eligibility guidelines as outlined in the *VLA Handbook for lawyers*.

1.1.4 Providing legal aid

Victoria operates under a mixed model of legal aid provision. In addition to providing services directly through its 14 offices located across Victoria—including 90 per cent of duty lawyer services in court—VLA also allocates legal aid work to private law practices and funds 40 Community Legal Centres (CLC).

Private practitioners are private practice barristers and solicitors who provide predominantly legal assistance to clients that VLA funds. Legal assistance typically encompasses legal advice or appearing in court on behalf of clients. Private practitioners provide around 73 per cent of all legal assistance for legal aid clients, funded through grants of legal assistance.

CLCs are independent community organisations that provide free legal advice, casework and legal education. Generalist CLCs provide general legal services to their local community, while specialist CLCs focus on particular groups of people or areas of law, such as women, tenancy and immigration.

1.1.5 Legal aid funding

VLA receives its funding primarily through:

- Victorian Government appropriation
- an annual grant from the Public Purpose Fund (PPF)—a trust fund established to meet the costs of regulating the legal profession and other public purposes, such as legal education and legal aid
- the Australian Government under the NPA.

Figure 1C shows funding and expenditure from transactions over the past six financial years. Of the \$156 million VLA received in 2012–13, around \$100 million (65 per cent) was from the Victorian Government through grants and the PPF, while around \$47 million (30 per cent) was from the Australian Government. VLA's main expenses include case expenditure of around \$77 million (48 per cent of total expenses) and employee benefits, such as salaries and on-costs, of around \$54 million (33 per cent).

Figure 1C
Victoria Legal Aid income and expenditure, \$'000s

Source	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13	2013–14 (forecast)
Commonwealth grants	35 183	37 571	43 643	47 228	46 345	46 875	53 557
State grants	42 897	55 970	64 054	69 096	72 864	75 304	81 848
Public Purpose Fund	31 860	28 000	23 500	25 769	25 663	25 663	25 663
Client contributions	4 173	2 692	3 763	4 042	5 913	5 157	4 500
Other income	5 429	3 170	2 495	3 069	3 046	2 991	1 320
Total income	119 542	127 403	137 455	149 204	153 831	155 990	166 888
Total expenditure	137 987	128 924	131 678	140 748	159 991	162 473	164 398
Net result (transactions)	-18 445	-1 521	5 777	8 456	-6 160	-6 483	-
Net result	-20 305	-2 537	6 150	2 124	-3 095	-9 332	2 490

Note: The 'Net result' reflects changes in the value of assets or liabilities unrelated to any transactions.

Source: Victorian Auditor-General's Office based on information provided by Victoria Legal Aid.

Figure 1D shows the proportion of expenditure by funding source for VLA's three law program areas for 2012–13. A majority of state funding goes towards VLA's criminal law program, while most of the Commonwealth funding is allocated to the family, youth and children's law program—reflecting that family law is mostly covered under Commonwealth laws.

Figure 1D
Proportion of total state/Commonwealth expenditure by Victoria Legal Aid program area, 2012–13

Funding source	Criminal Law Program	Civil Law Program	Family, Youth and Children's Law Program
State	66.2%	6%	16.4%
Commonwealth	7.8%	7.1%	70.9%

Source: Victorian Auditor-General's Office based on information provided by Victoria Legal Aid.

1.2 Audit objective and scope

The audit's objective was to assess whether VLA is performing its functions and duties, and achieving its objectives under the *Legal Aid Act 1978*.

To address this objective, the audit assessed the arrangements in place to:

- effectively and efficiently plan the supply of legal aid services
- effectively, efficiently and economically deliver legal aid services
- effectively monitor performance in the provision of legal aid.

The audit examined services that VLA provides and how it ensures that private providers and CLCs are delivering the services that they have been engaged to undertake. The audit did not review the specific performance of individual private practitioners or CLCs.

The audit also examined the full range of legal aid services across the three areas of law—criminal, family and civil. The audit did not differentiate between services that are funded by the Victorian Government and services that the Australian Government funds via the NPA.

1.3 Audit method and cost

The audit was conducted in accordance with section 15 of the *Audit Act 1994* and Australian Auditing and Assurance Standards. Pursuant to section 20(3) of the *Audit Act 1994*, unless otherwise indicated, any persons named in this report are not the subject of adverse comment or opinion. Audit evidence was gathered through document and file review and interviews with VLA staff.

The total cost of the audit was \$320 000.

1.4 Structure of the report

The report is structured as follows:

- Part 2 discusses whether VLA is effectively planning for the delivery of legal aid, and whether it monitors its performance.
 - Part 3 discusses whether VLA is providing legal aid services effectively, efficiently and economically.
-

2 Planning for legal aid

At a glance

Background

Victoria Legal Aid (VLA) requires effective and efficient planning processes to ensure that its decisions around providing legal aid are evidence-based and consistent with its statutory obligations. This is particularly so given increasing demand for its services and finite financial resources to meet that demand.

Conclusion

VLA is planning for the delivery of legal aid services, informed by a sound understanding of the key drivers of demand and the funding risks to which it is exposed. However, VLA's ability to understand whether it is meeting its objectives and the extent to which it is providing services effectively, efficiently and economically is constrained by its performance monitoring framework.

Findings

- Financial sustainability is a key risk for VLA. Along with recent operating deficits, its efforts to obtain further funding to meet demand have been only partially successful.
- VLA has acted to mitigate its financial risks by introducing changes to its eligibility guidelines during 2012–13 to reduce expenditure, and changing the way it delivers its services.
- VLA understands the drivers influencing the supply and demand for its services and the categories of people who are most likely to require its legal services.
- VLA has a performance monitoring framework that provides the board and the public with information about its performance. However, weaknesses with its performance measures limit the effectiveness of this framework and reduce its ability to plan effectively.

Recommendation

That VLA reviews its performance monitoring framework, with a view to developing and improving its performance measures, including the development of performance targets for its annual report.

2.1 Introduction

Victoria Legal Aid (VLA) is governed by a board, which is responsible for managing VLA and ensuring that it meets its objectives. Key aspects of the board's role are to determine VLA's policies, priorities, and strategies, as well as ensuring that VLA is effective, efficient and economical.

To perform these roles, VLA requires effective and efficient planning processes to ensure that its decisions around providing legal aid are evidence-based and consistent with its statutory obligations. This is particularly so given increasing demand for its services and finite financial resources to meet that demand. VLA also requires effective oversight and performance frameworks that enable it to assess the extent to which it is meeting its objectives and meeting the needs of service users.

This Part of the report examines VLA's understanding of its financial sustainability, service demand, gaps in service provision and the extent to which its strategic and operational plans reflect these. It also examines VLA's approach to assessing its performance and continuous improvement.

2.2 Conclusion

VLA is planning for the delivery of legal aid services informed by a sound understanding of the key drivers of demand and the funding risks it is exposed to. With funding constraints and growing demand, VLA is also acting to reduce costs so that it is financially sustainable.

However, VLA's ability to understand whether it is meeting its objectives and providing services effectively, efficiently and economically is constrained by its performance monitoring framework. Without comprehensive performance information its ability to plan effectively is reduced. There are opportunities for VLA to improve its performance indicators to provide the board and the public with performance information that can more readily be understood.

2.3 Strategic and operational planning

Sound planning is a key part of effective governance and management. Typically, planning involves routine environmental scanning of the operating environment to understand risks and opportunities, to identify strategic issues and gaps, and to identify service demands. Sound planning also involves identifying the tools, actions and resources needed to achieve the stated objectives, maximise opportunities, address issues and gaps, manage demand and mitigate risks.

VLA has a structured planning framework to guide the development of strategic and operational plans. The framework and plans are informed by a sound understanding of service demand and gaps, organisational risks and financial sustainability.

2.3.1 Financial sustainability

One of the major risks that VLA's board and senior management actively manage is VLA's ability to secure adequate levels of funding to meet demand for its legal services. Financial sustainability is a key part of VLA's organisational planning, and is reflected in its strategic and business plans as a priority.

VLA's financial risks have been evident for a number of years, with VLA reporting a \$20 million deficit in 2007–08. A commissioned Funding and Functions Review was undertaken in 2008, resulting in additional temporary funding of \$25 million for ongoing casework and duty lawyer services for the years 2010–11 and 2011–12.

VLA has taken action to address its financial risks by seeking additional funding. Before the temporary funding ended, VLA and the Department of Justice commissioned a review to underpin a business case for further funding. The review determined that VLA would require \$31.4 million funding from 2012–13, and up to \$39.3 million by 2015–16 to meet forecast demand. The lapsing funding of \$25 million per annum was incorporated into base funding from 2012–13. This was estimated to be between \$5.8 million to \$13.7 million less than what was required to meet forecast demand at the time of review.

Incorporating the temporary funding into VLA's recurrent funding had the effect of maintaining funding based on demand levels from 2008. In its 2013–14 Budget, the Victorian Government provided VLA with additional funding of around \$3.4 million each year to help address VLA's financial position.

A further funding risk for VLA is that funds from the Public Purpose Fund (PPF) can fluctuate, as they are susceptible to economic conditions through a reliance on interest and investment income. VLA can receive up to 35 per cent of the amount held in the fund—at the discretion of the Attorney-General—although this is subject to the performance of the fund. In 2007–08, 25 per cent of VLA's revenue was received from the PPF—an amount of \$31.9 million. But for each of the past three years, VLA has received \$25.7 million, or 15 per cent of total revenue.

Reducing costs

Financial risks for VLA were realised in 2012–13 when it reported a deficit of \$9.3 million, and in 2011–12 when it reported a \$3 million deficit. An external review that VLA commissioned in 2012 to support its funding business case to government, as part of the 2013–14 State Budget, identified that VLA was an efficient organisation. It found that VLA's casework services—the most expensive services—were close to optimised and that further significant savings were unlikely to be realised. It also found that VLA was efficient relative to other Australian legal aid offices.

VLA has acted to mitigate its financial risks by introducing changes to its eligibility guidelines during 2012–13 to reduce expenditure, and to prioritise access to its services. While this has resulted in fewer people receiving grants of assistance for legal representation in court and legal advice, these actions are consistent with VLA's obligations under the *Legal Aid Act 1978* (the Act) to manage the Legal Aid Fund and to provide legal aid economically.

In part to contain costs, VLA has taken steps to bring legal services in-house, specifically increasing its in-house advocacy capacity. In July 2012, VLA established its VLA Chambers, which is a specialist group of in-house advocates that can provide advice and representation to clients who have been given in-house or external grants of legal assistance across all three law program areas. The purpose of establishing the Chambers is to manage a greater range of high-cost legal work through its fixed-cost staff practice, instead of purchasing advocacy services from private barristers on a daily rate.

While VLA believes that bringing legal services in-house is likely to reduce costs, it does not yet have sufficient evidence to demonstrate this. VLA commissioned a review in 2011 of staff practice costs, which identified that VLA was more cost effective in seven of the 13 program areas.

While it understands the overall costs of its staff practice and the number of services provided, unlike private practitioners VLA cannot break down the cost of its staff practice at a service level—for example, the cost to manage a minor work file. It is therefore not yet in a position to determine whether its staff practice is as cost effective as private practice.

VLA is aware of this gap and is undertaking the Measurement Project to address this. The objectives of the Measurement Project are to:

- implement a financial performance model for measuring the cost recovery rate of the staff legal practice
- develop a framework for allocating costs to units of work, sub-programs and programs to assist in measuring the relative costs of delivering types of legal aid services through different modes of service delivery.

VLA has also undertaken steps to increase in-house lawyers advocating for their own cases, rather than private barristers being engaged. In April 2013, VLA implemented a coordinated briefing policy that requires each sub-program to have its own briefing policy based on a set of principles and minimum standards. This includes a process to prioritise staff lawyers advocating on their own cases, and an approval process for briefing a private barrister.

Data from VLA indicates that these initiatives have been effective in driving in-house briefing practices and reducing costs. There is an increasing trend of in-house briefings, either by VLA Chambers or its sub-program lawyers—from 24 per cent in the first quarter of 2011–12 to 71.5 per cent in the third quarter of 2013–14. Briefings to private barristers reduced significantly from 76 per cent to 28.5 per cent. From a cost perspective, there was a 22 per cent (\$1.3 million) reduction in external briefing fees when compared to 2011–12 and 2012–13.

Demand for grants of legal assistance has direct cost implications for VLA. Therefore, there is an incentive for VLA to undertake strategic litigation cases and participate in broader law reforms that addresses systemic issues and their causes, thereby reducing demand for VLA's services.

VLA achieves this through its Strategic Advocacy Framework, which was endorsed by the board in November 2011. Strategic advocacy includes undertaking focused casework or strategic litigation cases, undertaking law policy reform, and increased stakeholder engagement to improve laws, policies and practices.

VLA has also commenced work to improve its service funding structure to drive quality and maintain a cost-effective and sustainable service. Specifically, VLA commenced the High Quality Criminal Trials Project, which seeks to improve efficiency in funding of criminal trials by introducing greater accountability and compliance around quality trial preparation and trial advocacy.

2.3.2 Service demand

VLA has demonstrated a thorough understanding of the drivers that influence the supply and demand for its services. It undertakes regular environmental scanning, which is provided to the board to help inform its strategic planning. This analysis focuses on the impact these drivers may have across VLA and on specific program areas. In addition, VLA monitors the monthly impact of the internal policy changes that influence the amount of legal services it is able to supply.

While it keeps abreast of changes to demand and supply factors, VLA also engages external expertise to undertake demand modelling as an input into its planning for future service demand. VLA has undertaken demand modelling on three occasions—2008, 2012 and 2013.

VLA has used this modelling in its strategic planning to determine its level of service provision, and the financial and funding implications of continued demand for its legal services. VLA is currently developing its own demand modelling capabilities but this is focused on more specific drivers—for example, forecasting the amount of indictable crime resulting from police arrests. This is intended to complement, rather than replace, its more systematic forecasting.

VLA's monitoring and modelling of demand and supply drivers incorporates the types of factors that research demonstrates drive demand in justice systems and legal services. The types of demand and supply drivers that VLA has identified include:

- **Recruitment of additional police officers and protective services officers (PSO)**—the recruitment of 1 700 additional police officers and 940 PSOs is likely to result in the detection and reporting of more crime, resulting in more cases before the courts and a likely increase in demand for VLA's criminal law services, particularly in the summary crime sub-program.
- **Sentencing policy**—changes to sentencing law in Victoria—including abolishing suspended sentences, introducing mandatory minimum terms of imprisonment for 'gross violence' offences and changes to bail and parole law—may increase demand for criminal law services as defendants face more severe sentences and are likely to lead to an increase in prisoner numbers.
- **Family violence**—continued police and policy focus on family violence is likely to result in continued demand for services in the family law and criminal law programs. More specifically, the current sentencing trend towards imprisonment is likely to increase demand on the legal aid fund, as raw numbers of contravention offences have increased overall and the consequences of breaches have become more serious.
- **Child protection**—an increase in Victoria in child protection notifications and child protection grants of assistance, growing public awareness of and increased government policy focus on addressing child abuse, and changes in child protection practices are likely to lead to increased demand for family law services.
- **Prisoner numbers**—continued prison capacity pressures may lead to more human rights related complaints from prisoners, particularly prisoners with special needs, such as a mental illness or a drug addiction.
- **Economic conditions**—a deteriorating economic environment is likely to adversely impact the disadvantaged, contributing to a continued demand for VLA's services.

VLA's forecasts show that without changes to its eligibility criteria there would be increased demand for its services. Figure 2A shows the forecast demand for grants of assistance funded by the state government, with and without the eligibility criteria changes made in 2012–13.

Figure 2A
Increase/decrease in average forecast demand for state-related grants of assistance with and without eligibility changes, 2012–13 to 2016–17

Program and sub-program	Eligibility change (per cent)	No eligibility change (per cent)
Civil law	1	4
Criminal law	2	3
Summary crime	-3	1
Indictable crime	2	6
Youth crime	-4	9
Appellate crime	2	1
Family law	4	3
Child protection	4	2
Family violence	1	4

Source: Victorian Auditor-General's Office based on Victoria Legal Aid data.

Figure 2B shows the impact that VLA anticipates the changes to its eligibility guidelines will have on its expenditure and grants of assistance and duty lawyer services (DLS) volumes in 2013–14.

Figure 2B
Impact of eligibility guideline changes for grants of legal assistance and duty lawyer services on expenditure and volumes

Program/sub-program	2013–14 Impact (\$ million)	2013–14 Impact (volume)
Civil law		
Social inclusion	↓ 0.30	↓ 300 grants
Criminal Law		
Summary crime	↓ 4.40	↓ 5 290 grants ↑ 10 580 DLS
Youth crime	↓ 0.90	↓ 980 grants ↑ 1 960 DLS
Family law		
Child protection	↓ 1.81	↓ 1 000 grants
Total impact	↓ 7.41	↓ 7 570 grants ↑ 12 540 DLS

Source: Victorian Auditor-General's Office based on Victoria Legal Aid data.

While VLA has identified demand drivers, it has also identified levels of unmet demand based on the funding it receives. In 2012, VLA estimated that the levels of unmet demand for its services at current funding levels would be about 5.7 per cent in 2012–13, increasing to 12.1 per cent in 2015–16.

2.3.3 Gaps in service provision

VLA understands the types of people who are most likely to require its legal services and to what degree people from these groups access its services. VLA reviews its programs and policies to determine whether there are any gaps in its service provision and undertakes initiatives to adjust its services accordingly.

In April 2013 the board reviewed whether there were any gaps in its service delivery by reviewing the service mix, the locations of service delivery, and whether services were reaching the right people. The 2013 review considered the relationship between location and high legal need and whether there were any locations of high unmet need that VLA was not servicing adequately. It also assessed the current initiatives being undertaken by VLA to align its services with place-based legal need.

The review identified that there were areas throughout Victoria—typically at the interface between metropolitan and regional areas—with unmet need due to changes in socio-economic conditions, population growth and a lack of legal infrastructure.

Several recommendations were made for action over the rest of 2013 and 2014 to better align VLA's services with place-based legal need, including greater use of outreach services.

Under its 2013–14 business plan, VLA has committed to review the service delivery model in South East and North East Melbourne—identified areas of significant disadvantage and growing interface regions—and to consider increasing outreach services delivered in Community Legal Centres, health settings and other community agencies. VLA is also considering innovative ways to increase its service coverage and address service gaps. Specifically, this includes introducing a more flexible service delivery arrangement—for example, mobile lawyering and a 'hub and spoke' model of service delivery—to address issues such as inadequate infrastructure for priority clients and security risks at some of VLA's offices. VLA has been unsuccessful in obtaining funding for these initiatives.

VLA also undertakes regular research to understand the types of people most likely to require legal aid. A major component of VLA's research base has come from the Legal Australia-Wide Survey (LAW Survey). From 2008 to 2011, VLA, along with all other Australian legal aid commissions, engaged the Law and Justice Foundation of New South Wales to conduct the survey.

The LAW Survey found that almost half the Australian population had experienced at least one legal event in the previous 12 months, with legal problems not spread evenly throughout the community. Certain demographic groups were more vulnerable to specific legal problems:

- People with a disability, single parents, people who have been unemployed and people who live in disadvantaged housing have a high prevalence of legal problems overall—including multiple and substantial legal issues.
- People with low education levels and people whose main language is not English are less likely to report legal events.
- Some types of legal problems are more likely to result in adverse consequences, with family problems reported to have the most adverse consequences.

From the LAW Survey and other similar research, VLA determined that legal services need to be tailored to meet the needs of the most disadvantaged and vulnerable groups, including groups that tend to experience multiple or substantial legal events. VLA continues to use the findings of this survey to understand its likely cohort of clients and has developed policies to prioritise them.

2.3.4 Strategic and business plans

The VLA board sets the high-level policies, priorities and strategies, consistent with its obligations under the Act. The aim of VLA's planning framework is to set and monitor the organisation's overall directions, operations and services delivery.

This structure clearly identifies the roles and responsibilities of the board and VLA's senior executive team. VLA's planning framework, referred to as the 'board planner', clearly states the four core functions that are required for the board to fulfil its obligations, and the types of actions that comprise each function:

- **strategy**—setting the strategic direction and objectives
- **governance**—ensuring those objectives are met
- **risk**—ensuring effective management of major risks to achieving objectives
- **compliance**—ensuring compliance with VLA's obligations.

Unifying principles

In December 2012, VLA's board endorsed its unifying principles document, which is intended to be a 'foundation' document for the board.

The unifying principles are designed to guide decision-making about service mix, design and eligibility in a consistent and principled manner within the constraints of finite funding. The unifying principles, shown in Figure 2C, appropriately link back to VLA's business plan and are a good example of the board actively prioritising its resources to those most in need.

Figure 2C
Victoria Legal Aid's unifying principles

Principles
All services will have an element of targeting and triaging built in
Targeting and triaging will be directed towards assessing both access (initial eligibility) and intensity (extent) of service
Means or income tests are important, but are not necessarily the starting point for effective triage or targeting
We will only deliver services that have an impact or are effective in delivering benefits to an individual client or the community
Service choices and service design will be primarily focused on priority client needs, not just traditional legal problem categories
Commitment to the mixed model of service delivery in Victoria, but with flexibility to respond to changing circumstances by adjusting the weighting of staff practice, private practitioners, and community legal centres
There should be physical access points to legal aid services across the entire state, but the physical footprint must be appropriately targeted and efficient
Maintain a material footprint through a dynamic staff practice
Constantly seek out more efficient or lower unit cost service delivery approaches for legal problems or needs, and preference those approaches
Proposals, rules or guidelines for services in practice areas will be able to be administered in a way that minimises up-front red tape and administrative costs, while ensuring compliance through more efficient risk-based targeted and random compliance activities
Preference more straightforward rules over rules that require application of selective judgment
The way that a service is designed and delivered will be amenable to evaluation, scrutiny and with built-in accountability measures in terms of both performance and community expectations

Source: Victorian Auditor-General's Office based on Victoria Legal Aid information.

Operational plans

VLA's planning process produces a number of key outputs. In addition to the board and senior executive team planners, VLA's three-year strategic plan outlines its priorities, strategic directions, themes and strategic goals, objectives, actions, and commitments. It also appropriately reflects VLA's obligations under the National Partnership Agreement on Legal Assistance Services.

To implement the strategic plan, each year VLA develops the following complementary documents:

- **Business plan**—details VLA's key organisational directions, priorities and initiatives for the financial year and sets out how VLA will measure its performance for these priorities and initiatives. Business plans appropriately reflect key issues affecting VLA and its clients, with strategic initiatives linking back to organisational directions.
- **Program plans**—detail the contribution each program is to make in the financial year towards VLA's key priorities and initiatives as stated in the business plan. Initiatives have clear links back to strategic priorities.
- **Sub-program plans**—detail the major initiatives of each sub-program that contributes to the relevant organisational priorities
- **Regional office plans**—detail what is required for each regional office to implement VLA's business plan and each office's priorities and local initiatives.

2.4 Performance monitoring and reporting

Monitoring and reporting performance is a key element of effective governance and public sector accountability. Public sector entities have a responsibility to monitor and report on whether they use public funds efficiently and economically to achieve intended outcomes and objectives. Effective performance monitoring and reporting should also enable an agency's management to track performance and act to address underperformance when detected, including through evaluations and continuous improvement practices.

VLA has a performance monitoring and reporting framework, with the board receiving management reports on VLA's performance. This includes periodic performance reviews of its strategic and business plans, and routine reports on VLA's financial sustainability. However, there are weaknesses with this framework. These are particularly around its own performance measures and whether they provide VLA's board and senior management with assurance about the extent to which VLA is achieving its objectives.

VLA also reports on its performance externally, and as with its internal reporting, there are weaknesses with the performance measures used for its external reporting.

2.4.1 Internal performance monitoring and reporting

VLA has an internal performance monitoring and reporting process that provides the board—responsible for VLA achieving its objectives—with information about its performance. However, there are weaknesses that limit the effectiveness of VLA's performance monitoring, including whether it can demonstrate the achievement of its objectives.

Statutory objectives

VLA has four key objectives that guide its operations. These are included in the Act, and are to:

- provide legal aid in the most effective, economic and efficient manner
- manage its resources to make legal aid available at a reasonable cost to the community and on an equitable basis throughout the state
- provide improved access to justice and legal remedies to the community
- pursue innovative means of providing legal aid directed at minimising the need for individual legal services in the community

There are no performance measures that directly link to these objectives. VLA should have measures that inform the board whether it is effective, economic and efficient, and whether it is achieving the elements of the other objectives, including whether:

- legal aid is available at reasonable cost and is provided on an equitable basis
- access to justice and legal remedies has been improved
- innovative means of providing legal aid have been developed, and whether they have minimised the need for individual legal services.

Strategic and business plan reviews

On a six-monthly basis, the board receives reports on how VLA is performing against commitments in its strategic plan and against performance measures in its business plan. Providing the board with this type of management information is a positive initiative—however, there are weaknesses in the reporting that limit the benefits.

While the strategic plan has objectives, it does not include specific performance measures that would enable the board to know whether VLA is meeting these objectives. Rather, the half-yearly performance report assesses performance against nine commitments. Many of the commitments contain terms like 'more' and 'increased' but do not include targets or baseline information. Without this information it is not possible to know whether the commitments have been achieved, or the extent to which they have been achieved.

VLA uses assessments such as 'favourable' or 'on track', but it is unclear what these are based on or what it is tracking performance against.

The mid-year business plan and its review report include data against a suite of performance measures. However, VLA's performance measures do not clearly link to its objectives, nor do they clearly link to the business plan's key directions—high quality services, holistic lawyering, targeting services to priority clients, and a sustainable future. The key priorities—which come out of the key directions—are essentially 'tagged' against each of the four key directions. Some priorities have links to multiple 'directions', which results in a lack of clarity about which performance measures relate to that specific priority, and ultimately about the performance of each priority.

Financial sustainability reporting

Each month the board receives a financial performance and sustainability report. This is a detailed report that enables the board to actively monitor VLA's finances in relation to the key legal services it delivers. The report includes timely information about VLA's revenue, expenditure and trends in service delivery against its budget.

2.4.2 External performance monitoring and reporting

External performance monitoring and reporting is a core part of accountability for the use of public resources. VLA monitors and reports its performance primarily through its annual report and the State Budget Papers.

Budget Papers

The Victorian Government's annual Budget Papers provide information to Parliament and the public about how it intends to collect and spend public money over a four-year period. *Budget Paper No. 3: Service Delivery* provides information on the government's service priorities, and on expected and actual performance in delivering these priorities. It includes key performance indicators and is a key part of accountability for the use of public funds.

VLA's accountability in Budget Paper No. 3 is diluted by its inclusion in the output group 'Supporting legal process and law reform'. This is because it shares this output group with five other public sector entities, and this creates challenges in apportioning accountability for the achievement of the Department of Justice's objective of 'Supporting the rule of law'.

VLA is accountable for the achievement of four output indicators and one timeliness indicator—including the number of grants of legal assistance provided, and the number of services provided for legal advice or minor assistance. It is not accountable for any quality indicators about the effectiveness of its services. Consequently, the indicators and reported performance in Budget Paper No. 3 do not provide adequate information for Parliament or the public about the overall performance of VLA.

Annual report

VLA's annual report is a further part of accountability for the use of public funds, providing it with an opportunity to report meaningfully on its performance to the public and Parliament.

VLA's annual report contains detailed information on its operational and financial performance. This includes information on trends in its performance in relation to key areas of service delivery, as well as its key program areas.

Accountability and transparency would be enhanced, however, if VLA reported its performance against targets. While detailed information is presented and accompanied by explanations, the lack of any targets or baseline information means that the relative performance cannot be properly assessed, and the significance of any decreases or increases in outputs is unknown.

Client satisfaction surveys

Since 2011, VLA has also undertaken client satisfaction surveys to inform it about how it is performing from a client's perspective, and to inform decisions about how it provides services. VLA has sought feedback from clients accessing its criminal, civil and family law services in 2011, criminal law clients in 2012 and Legal Help clients in 2012–13. The results of these surveys are accessible on VLA's website.

2.4.3 Evaluation and benchmarking

Understanding how well specific programs and activities are performing is a key part of an effective performance framework. Evaluation and continuous improvement can go beyond the metrics that indicators provide to give a more qualitative perspective on performance.

VLA has a sound approach to evaluation, with an organisation-wide evaluation framework—endorsed in August 2013—to guide evaluations of programs, projects and initiatives. VLA has undertaken a range of evaluations of initiatives and service reviews of program areas as an input into continually improving its services.

VLA also undertakes performance benchmarking with other Australian legal aid offices. The benchmarking activity compares performance across six measures relating to grants management. This includes two measures relating to timeliness around processing and deciding on applications, two measures relating to the review of legal aid refusals, one on the payment of accounts and one relating to the ratio of administrative costs and purchasing of legal aid costs.

Benchmarking can be a useful exercise, and VLA's benchmarking provides an indication of relative performance. However, it is limited by different jurisdictions using different targets for the same measure, which reduces the usefulness of comparing performance.

Recommendation

1. That Victoria Legal Aid reviews its performance monitoring framework, with a view to:
 - developing specific performance measures relating to its statutory objectives and strategic plan objectives
 - clearly linking business plan performance measures to its objectives and key directions
 - developing targets to report against, and including that data in its annual report.
-

3 Providing legal aid

At a glance

Background

Victoria Legal Aid (VLA) is required to provide its services in the most effective, economical and efficient manner. In doing so, it must also make legal aid available to the community on an equitable basis, and provide the community with improved access to justice.

Conclusion

VLA is providing legal services, albeit with funding constraints and increasing demand. While VLA is prioritising its services for the most vulnerable people—consistent with its legislative obligations—this has meant an increasing number of people are missing out on VLA's most intensive services. However, VLA has increased access in other areas.

Findings

- VLA provides a range of legal aid services in civil, criminal and family, youth and children's law matters.
- Consistent with its obligations under the *Legal Aid Act 1978*, VLA has sought to reduce expenditure by changing its eligibility guidelines, resulting in fewer people accessing legal representation—its most intensive service.
- VLA prioritises those who are eligible to receive its most intensive and expensive services, although it has not assessed awareness of legal aid among this group.
- VLA has only recently started—and is still in the process of—driving consistent assessment, triage and intake of clients for its services.
- VLA has experienced longstanding challenges with service users making contact, and data on VLA's Legal Help service indicate ongoing difficulty.

Recommendation

That Victoria Legal Aid:

- assesses the awareness of its services among its priority clients group to ensure it is appropriately targeting and responding to this group
- reviews and improves the accessibility and timeliness of the Legal Help service.

3.1 Introduction

Victoria Legal Aid (VLA) is required to provide its services in the most effective, economical and efficient manner. In doing so, it must also make legal aid available to the community at a reasonable cost and on an equitable basis, provide the community with improved access to justice, and pursue innovative means of providing legal aid directed at minimising the need for individual legal services.

This Part of the report describes key access data and examines the extent to which legal aid services are accessible and equitable. This includes examining eligibility criteria and guidelines, prioritising clients, triage and intake, and access barriers.

3.2 Conclusion

VLA is providing legal services as required, albeit with finite financial resources and increasing demand for services. These pressures have meant that many people who cannot afford private legal representation or advice can no longer access VLA's more intensive services, with the most vulnerable people prioritised to receive them. This approach is consistent with its statutory obligations to determine eligibility and to prioritise access.

However, VLA has increased access in other areas—mostly notably information on its website that is widely accessible—and is taking increased numbers of calls to its Legal Help service. It is also implementing other initiatives to enhance access, including triage and intake processes, and reviewing where and how it delivers services outside of the metropolitan area. While this is positive, it is too soon to assess the effectiveness of these initiatives.

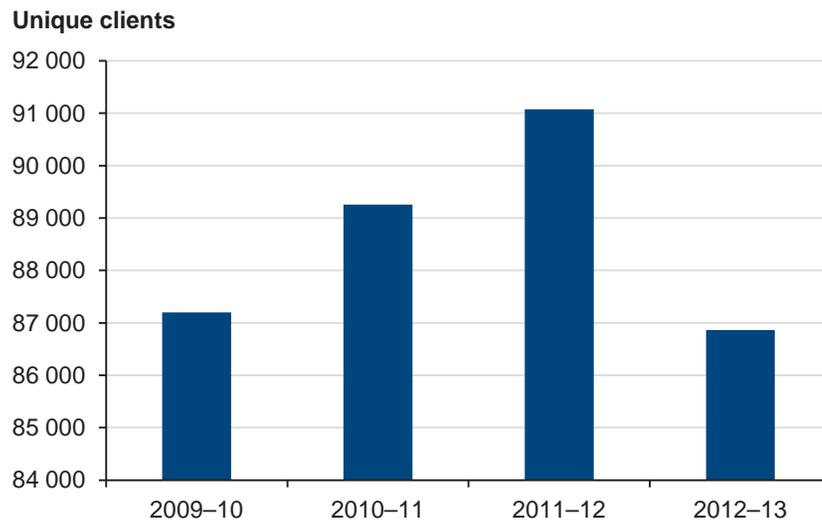
3.3 Accessible and equitable legal aid services

Accessible legal aid is important as a means of providing justice for people who are otherwise unable to afford legal assistance. Those who are without access to legal aid and are unable to afford private representation have an increased risk of their legal rights being compromised.

VLA provides a range of legal aid services in civil, criminal and family, youth and children's law matters. While many legal aid services are accessible to everyone, such as legal information on VLA's website, other more intensive legal services have eligibility guidelines—required under the Act—to limit access.

As the following Figures demonstrate, many people have accessed legal aid services over the past four years. Figure 3A shows that VLA has seen around 86 000 'unique' clients—those clients that have accessed VLA's more intensive services, including advice, minor assistance, duty lawyers or a grant of legal assistance. While the number has declined over the last year, this primarily reflects a tightening of eligibility requirements rather than a decline in demand for intensive services.

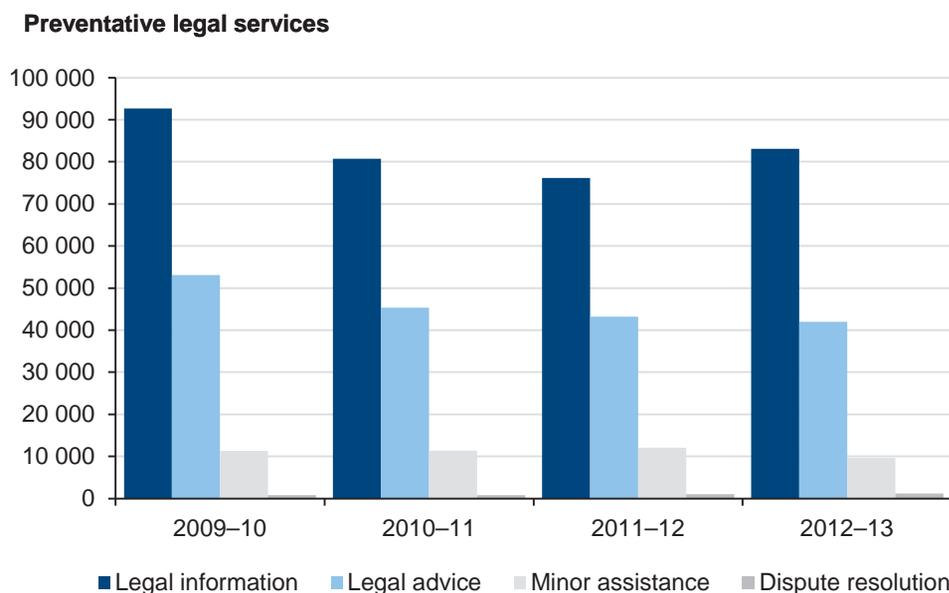
Figure 3A
Unique clients



Source: Victorian Auditor-General's Office from Victoria Legal Aid data.

Figure 3B shows trends in the preventative services—services that are aimed at avoiding litigation in court—that have been accessed over the past four years. While the decreases in more intensive preventative services are evident, there has also been a decrease in the number of people accessing legal information through VLA's Legal Help telephone service over the four years.

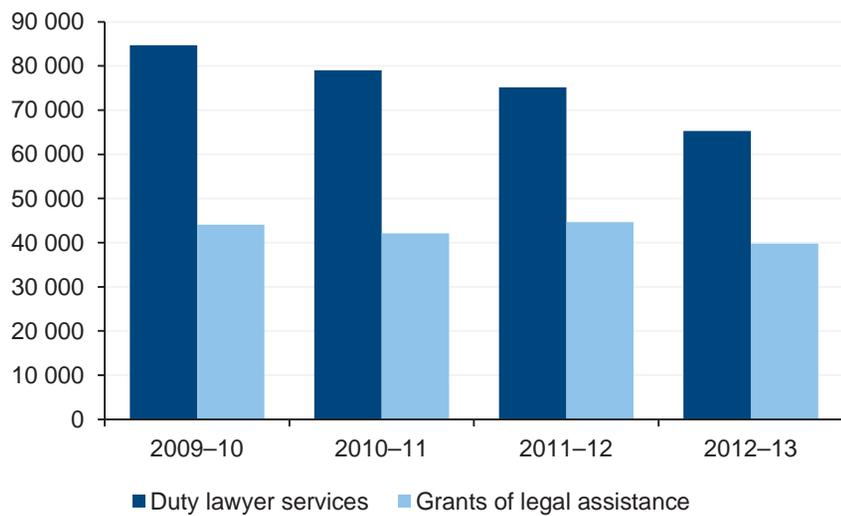
Figure 3B
Preventative and early intervention legal services



Source: Victorian Auditor-General's Office from Victoria Legal Aid data.

Duty lawyer services at court and legal assistance comprise a core part of the services that VLA provides. Figure 3C shows that the number of people receiving the most intensive service—grants of legal assistance—has reduced, by around 4 000 since 2009–10. This reduction is consistent with tightening the eligibility criteria. It also shows the number of people accessing duty lawyer services has decreased markedly, with around 19 000 fewer services delivered over the four years. VLA data for duty lawyer services for 2013–14 shows an increase of around 6 500 in the number of these services provided compared with 2012–13—reflecting the shift to less intensive services.

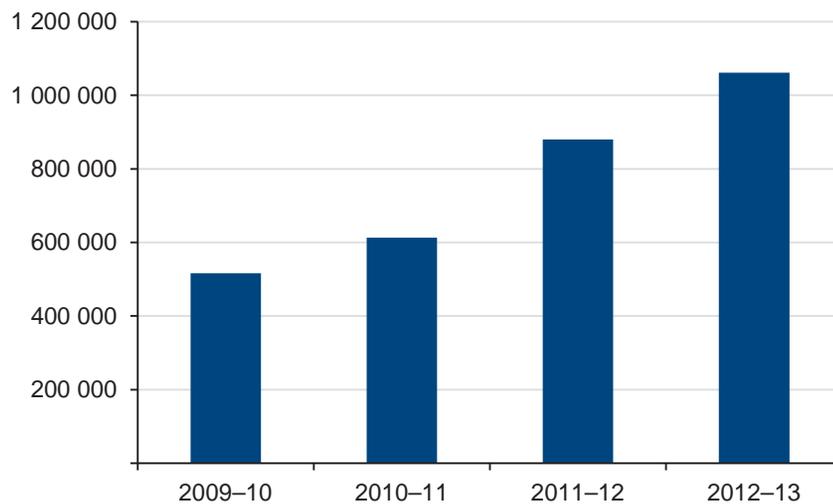
Figure 3C
Duty lawyer services and grants of assistance



Source: Victorian Auditor-General's Office from Victoria Legal Aid data.

While there have been decreases in the number of people able to access some VLA services, Figure 3D shows that there has been a consistent increase in the number of people accessing legal information from VLA's website. Around 58 per cent of website traffic is to the 'find legal answers' section, which provides self-help material and fact sheets on a range of legal matters. This represents an increase of 13 per cent since 2012–13.

Figure 3D
Website visits



Source: Auditor-General's Office from Victoria Legal Aid data.

3.3.1 Eligibility criteria and guidelines

While VLA's broad remit is to provide legal services to those who cannot afford it, it must also balance this with its legislative requirement to develop and apply eligibility criteria. Service eligibility policies and guidelines are an important part of providing equitable access to VLA's services. They establish service eligibility criteria to drive consistency in the types of clients accessing a particular service, and the intensity of the service provided.

Historically, not all of VLA's services have had guidelines to provide for equitable access. VLA has only recently established more service policies and guidelines to close this gap, and is still in the process of a statewide rollout.

Eligibility guidelines for grants of legal assistance have always been in place as this is a statutory requirement for VLA under the *Legal Aid Act 1978* (the Act). Guidelines on duty lawyer services have been in place as early as 1986, with more targeted guidelines recently introduced for law areas such as summary crime, family law, family violence and personal safety matters, and matters heard in the Victorian Civil and Administrative Tribunal. No guidelines were in place for its other services, such as client appointments or opening minor work files. VLA has only recently started a statewide rollout of guidelines for these services. Full implementation of these guidelines will help drive consistency in service accessibility for all of VLA's services.

Grants of legal assistance

Grants of legal assistance are the most intensive and expensive service that VLA provides. Following the decision by the Victorian Government in 2012-13 to not extend VLA's base funding beyond incorporating the lapsing funding, VLA's board determined that it could no longer meet future legal services demand at its existing policy settings without changes to its service mix.

To ensure financial sustainability, and consistent with its obligations under the Act, VLA sought to reduce expenditure by introducing changes to its eligibility guidelines during 2012–13. This resulted in fewer people accessing a grant of aid for legal representation—VLA's most intensive service. These changes have been made with consideration and understanding of VLA's service mix, the capability and capacity of its workforce, and the funding required to meet forecast demand.

The changes were also made with the intention of reducing the number of people who were eligible to receive the highest level of legal representation—grants of legal assistance—and shifting more people to lower cost services such as duty lawyer services. The changes to eligibility guidelines were designed to affect new cases only so do not affect pre-existing matters.

Examples of changes to the eligibility criteria include:

- Limiting grants of legal assistance for a traffic offence under the *Road Safety Act 1986* to only people with a psychiatric or intellectual disability or an acquired brain injury and to where the person's conviction would likely end in imprisonment or a suspended sentence.
- Increasing the threshold for a grant to assist people with unpaid infringements from \$1 000 to \$5 000.
- For less serious adult summary crimes, limiting eligibility for grants of legal assistance to people who are facing imprisonment.
- For parenting disputes, removing funding for legal representation at the final hearing unless the other party has legal representation. This guideline was amended in November 2013 and again in June 2014, whereby funding for legal representation at the final hearing will be granted where the matter is listed in the Magellan Program—a program for cases involving serious allegations of physical or sexual child abuse—or where the legally assisted person has an intellectual disability, an acquired brain injury or has a diagnosed mental illness, or where the other party has legal representation.
- Limiting funding for legal representation in the Children's Court of Victoria, Family Division, to people defined as parents and only funding extended family and other third parties where the matter is referred by the court or under exceptional circumstances.

VLA has appropriate processes to monitor the implementation of changes to its eligibility guidelines, which are referred to as Impact and Monitoring Statements. These statements include assessments of expected and actual impacts, risks and implementation issues.

To ensure that eligibility criteria changes do not result in its most vulnerable clients missing out on legal services, the changes to eligibility guidelines have been conducted with consideration of the VLA priority client groups.

3.3.2 Priority clients

VLA prioritises those who are eligible to receive its most intensive and expensive services. In June 2012, VLA finalised its formal definition for priority clients as people experiencing one or more of the following disadvantage indicators:

- people living on a low income
- people in custody, detention or involuntary psychiatric settings
- children
- children, young people and women experiencing, or at risk of, family violence
- Indigenous Australians
- people who experience language or cultural barriers
- people who are experiencing homelessness
- people with a disability—physical, intellectual or cognitive—or who experience mental illness.

VLA is in the process of a statewide implementation of the Priority Client Framework, which imposes priority client restrictions and a requirement for an income test to access VLA's services. The more intensive the service, the more criteria clients need to satisfy to access the service. This is outlined in VLA's Priority Client Framework, as shown in Figure 3E. While this is likely to result in more people who cannot afford private legal assistance and are not classified as a priority client missing out on legal assistance, VLA's actions are consistent with its statutory obligations, including management of the Legal Aid Fund.

Figure 3E
VLA's Priority Client Framework

Service intensity	Eligibility
Website and publications General information about the law External referral	General access.
Community legal education Phone advice—legal help or program-specific	Any single indicator of disadvantage. Not income tested.
Duty lawyer services—advice and/or representation	<p>Access is limited and prioritised to:</p> <ul style="list-style-type: none"> • people living on a low income • people in custody or detention • children • other specific exceptions—e.g. urgent family law matters. <p>People living on a low income are determined using an income test.</p> <p>An income test does not apply if the person is a child, is in custody or detention, or is subject to another specific exception.</p> <p>Other indicators of disadvantage and the nature of the proceeding can affect the intensity of service provided.</p>

Figure 3E
VLA's Priority Client Framework – *continued*

Service intensity	Eligibility
New client appointments and minor work files	<p>Access is limited and prioritised to:</p> <ul style="list-style-type: none"> • people living on a low income • people in custody or detention • children. <p>People living on a low income are determined using an income test.</p> <p>An income test does not apply if the person is a child or is in custody or detention.</p> <p>Other indicators of disadvantage and the nature of the issue can affect the intensity of service—e.g. length of appointment and amount of work done in a minor work file—and the way in which the service is delivered, such as urgency or priority given to a particular client.</p>
Ongoing casework through a grant of legal assistance	As per grant of legal assistance eligibility guidelines.

Source: Auditor-General's Office from Victoria Legal Aid information.

3.3.3 Triage and intake

Standard practices in the triage and referral processes are important so that clients are assessed and referred in a consistent and equitable manner. VLA has only recently commenced to drive consistent assessment, triage and intake of clients for its services.

This primarily involves implementation of the Assessment Intake and Referral (AIR) policy as part of the Improved Client Access and Triage (iCAT) project. Prior to the implementation of the AIR policy, there was no single organisation-wide policy or procedure for client triage, intake and referral—only local work instructions or procedures at individual offices.

In mid-2011, VLA started the iCAT project to develop and implement a suite of initiatives that aimed to improve client experiences in accessing VLA services. It also aimed to streamline VLA's assessment process. This project was developed in response to a 2005 internal review that identified inefficiencies in VLA's assessment and referral practices, and corresponding proposals to address the issues identified in 2008 and 2011. Some of iCAT's key initiatives include:

- development of an assessment, intake and referral policy
- consolidation, expansion and realignment of Legal Help to promote it as the main entry point for clients, and for Legal Help to undertake triage and provide legal advice
- development of service guidelines and upgrade of the service directory to assist in appropriate internal and external referrals
- introduction of an online booking tool.

The AIR policy was finalised in December 2012 and first implemented in Legal Help and Adult Summary Crime Duty Lawyer Services. VLA is in the process of a statewide rollout of the AIR policy, with an expected completion in 2014. It is too early to determine the adequacy of training and compliance with the policy. However, VLA has systems in place to collect relevant data and make that assessment.

3.3.4 Access barriers

Besides service eligibility and triage, there are barriers that can restrict people's access to VLA's services. These can include:

- people being unaware of having a legal problem, their legal rights or VLA's services
- cultural or language barriers
- difficulty in contacting VLA and delays in obtaining assistance.

While VLA is acting to address these barriers, it has not been successful in improving access to and timeliness of its Legal Help telephone service.

Awareness and cultural and language barriers

Awareness of VLA is the first step for people in accessing its services.

Victorian-specific results of the Legal Australia-Wide Survey indicate that there is high level of awareness across Victoria, with 86.6 per cent of those surveyed having heard of 'legal aid' and 43 per cent being able to name VLA specifically as a legal service that provides free advice and representation. VLA has not examined awareness of VLA's services among its priority clients groups.

There is evidence that VLA has taken steps to increase awareness of its services among priority client groups through proactive engagement, and to address cultural and language barriers. VLA also collaborates with other relevant government agencies and external organisations that have frequent interactions with its priority client group.

In its Civil Justice Program, VLA is looking to deliver a service model for clients with family reunion migration matters in collaboration with Community Legal Centres and agencies in the refugee sector. In its 2013–14 business plan, VLA has also committed to implementing new community legal education projects, including Learning the Law, Below the Belt and Sex, Young People and the Law, which are targeted at priority clients. Additionally, VLA developed and implemented a culturally and linguistically diverse communities (CALD) action plan 2011–12, with the aim to improve VLA's accessibility and responsiveness to CALD communities.

Contacting Victoria Legal Aid and timeliness

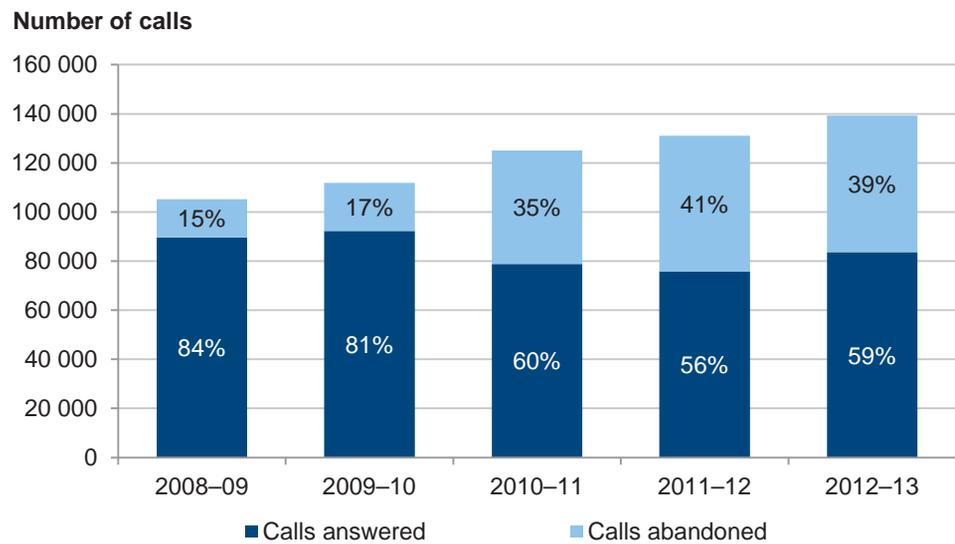
VLA has experienced longstanding challenges in relation to service users making contact. The issues include multiple pathways to contact VLA—over 50 contact numbers—and unclear referral pathways, leading to clients being referred between areas in VLA without receiving appropriate help.

VLA is addressing problems with making initial contact through implementation of the iCAT project. This includes introducing a consolidated 1300 number for Legal Help and consistently promoting it as the main entry point for people seeking assistance. Other relevant initiatives include enabling Legal Help to undertake triage and providing legal advice to identify and address legal issues, where appropriate and as early as possible.

Data on VLA's Legal Help service, however, indicate ongoing difficulty in contacting VLA. Figure 3F shows the annual demand for VLA's phone service and proportion of calls answered or abandoned between 2008–09 and 2012–13.

It shows around 59 per cent of calls were answered while around 39 per cent were abandoned in 2012–13. This represents a marginal improvement in performance when compared to 2011–12, with around 56 per cent of calls answered and 41 per cent abandoned, but a significant deterioration when compared to 2008–09 and 2009–10. The figure also shows that demand for the phone service has been increasing annually, with 2010–11 experiencing the largest increase of 14 per cent.

Figure 3F
Demand for VLA's phone service and proportion of calls answered and abandoned, 2008–09 to 2012–13



Note: Totals for each year do not add to 100 per cent. This is a result of VLA's Atlas phone system not recording internal transfers.

Source: Auditor-General's Office from Victoria Legal Aid data.

VLA has established a target of answering 80 per cent of calls for 2013–14. However, monthly Legal Help data for between July 2013 and June 2014 indicates that on average only 59 per cent of calls have been answered every month. This is the same performance as the previous year, although the last two months of the financial year saw 70 per cent and 68 per cent of calls answered. Additionally, since 2009–10 VLA has not met its target of three minutes waiting time before getting through to a lawyer for most months. Average waiting time for 2012–13 was four minutes and 12 seconds, increasing from three minutes and 13 seconds for 2010–11. VLA's data for 2013–14 shows an overall improvement, with average waiting time of three minutes and 28 seconds. This includes both May 2014 and June 2014 coming in under the target of three minutes.

Results from VLA's client satisfaction survey for 2013 also indicate that there are timeliness issues with accessing VLA's services. Two of the top three service improvements suggested by clients involved having more resources to reduce client waiting time and increase timeliness in returning calls or communicating with clients. The third service improvement related to being more caring and helpful.

VLA is aware of accessibility issues with its Legal Help service and attributed these to being unable to resource growing demand. In addition, the average call time has increased from just over six minutes in 2007–08, to just under eight minutes in 2013–14, which coincides with the introduction of advice and referral services to Legal Help, which has increased the intensity and therefore length of calls.

To address this, VLA appointed three additional Legal Help staff members in October 2013. The additional staff assisted in increasing the accessibility of Legal Help, but only temporarily as it coincided with a period of low demand—typically November and December. In June 2014, the VLA board approved a further four staff for Legal Help to meet demand growth and improve accessibility.

Data from VLA also indicates that improvement in performance was not sustained, with the proportion of abandoned calls increasing from 36 per cent in November 2013 to 45 per cent in March 2014.

VLA is looking to understand the recent sharp increase in demand and identify actions to address the inaccessibility of its service. Legal Help performance can be affected by implementation of initiatives arising from the iCAT project—such as staff undertaking additional duty lawyer assessments, collecting client information and undertaking post-call referrals and follow-ups.

Nonetheless, this should not be at the expense of Legal Help's accessibility. VLA needs to consider further actions to increase accessibility of Legal Help and to achieve accessibility targets set for the service.

Recommendation

2. That Victoria Legal Aid:
 - assesses the awareness of its services among its priority clients group to ensure it is appropriately targeting and responding to this group
 - reviews and improves the accessibility and timeliness of the Legal Help service.
-

Appendix A.

Audit Act 1994 section 16— submissions and comments

Introduction

In accordance with section 16(3) of the *Audit Act 1994*, a copy of this report, or part of this report, was provided to Victoria Legal Aid.

The submissions and comments provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

RESPONSE provided by the Chairman, Victoria Legal Aid



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8 August 2014

Mr John Doyle
Auditor-General
Level 24, 35 Collins Street
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Dear Mr Doyle

Performance audit

Thank you for the opportunity to comment on your proposed report on *Access to legal aid*.

The audit is timely and comes at an important time as Victoria Legal Aid (VLA) continues to implement a substantial reform and improvement agenda, while also preparing for our future strategic directions.

The audit acknowledges that VLA is operating in a complex environment and that our approach to managing finite resources and increasing demand for services is consistent with statutory obligations to determine eligibility and to prioritise access to our services. VLA has dedicated considerable effort to its planning to ensure decisions are informed by a sound understanding of key demand drivers and funding risks. VLA is acutely aware that it cannot help everyone with a legal problem and that gaps in service provision will continue to exist. To that end, the formulation of service and client priorities and unifying principles are important expressions of VLA's work that can serve to help stakeholders and the community understand the difficult choices about assistance that are being taken. It is VLA's desire to continue to improve our engagement on such matters into the future.

VLA agrees with the recommendation that improved performance reporting frameworks would be beneficial and considers this important. We are obliged to comply with intergovernmental agreements such as the National Partnership Agreement (NPA) and associated reporting frameworks. The next agreement is currently being re-negotiated and we anticipate that government sponsored reporting obligations will continue. While this presents challenges for a streamlined approach, it does not negate the requirement for VLA to make effective its reporting to the Parliament and the public the extent of achievement of its statutory objectives. VLA has already taken steps to report against targets in its 2013-14 annual report, and mindful of these recommendations, will review its performance monitoring framework, with a view to incorporating improvements in 2014-15.

The report also recommended that VLA should assess awareness of its services among priority client groups and improve the accessibility and timeliness of Legal Help. VLA agrees with both suggestions. Plans are already in place to improve call centre technology and to add resources to improve call responses to Legal Help, which functions as the main entry point to the legal assistance sector in Victoria. We will report on the outcomes in our 2014-15 annual report to Parliament.

Yours faithfully

A handwritten signature in black ink, appearing to read "Andrew Guy".

ANDREW GUY
Chairman

Auditor-General's reports

Reports tabled during 2014–15

Report title	Date tabled
Technical and Further Education Institutes: Results of the 2013 Audits (2013–14:1)	August 2014
Coordinating Public Transport (2013–14:2)	August 2014
Managing the Environmental Impacts of Transport (2013–14:3)	August 2014

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