

NEW SOUTH  
WALES

VICTORIA

# Cross-border **justice**

Exploring ways to improve access to legal assistance along the NSW/Victorian border

October 2018

Victoria Legal Aid (VLA) is an independent statutory authority set up to provide legal aid in the most effective, economic and efficient manner.

VLA is the biggest legal service in Victoria, providing legal information, education and advice for all Victorians.

We fund legal representation for people who meet eligibility criteria based on their financial situation, the nature and seriousness of their problem and their individual circumstances. We provide lawyers on duty in most courts and tribunals in Victoria.

Our clients are often people who are socially and economically isolated from society; people with a disability or mental illness, children, the elderly, people from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander peoples, and those who live in remote areas. VLA can help people with legal problems about criminal matters, family separation, child protection and family violence, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

We provide:

- free legal information through our website, our Legal Help line, community legal education, publications and other resources
- legal advice through our Legal Help telephone line and free clinics on specific legal issues
- minor assistance to help clients negotiate, write letters, draft documents or prepare to represent themselves in court
- advocacy to people diagnosed with mental health issues, including cognitive neurological, intellectual and psychosocial disabilities, through our Independent Mental Health Advocacy service
- grants of legal aid to pay for legal representation by a lawyer in private practice, a community legal centre or a VLA staff lawyer
- a family mediation service for disadvantaged separated families
- funding to 40 community legal centres and support for the operation of the community legal sector.

VLA has 15 offices in metropolitan and regional Victoria. People living in regional and remote communities can feel isolated and find it difficult to access legal assistance. Our regional offices play a vital role in servicing the community, providing professional and timely advice to those living in rural and remote parts of Victoria.

#### Who we are

We are the largest legal aid agency in Australia. Our role is to deliver and coordinate legal aid services. A Board of 10 members determines our policies and priorities. Board members are appointed by the New South Wales Attorney General for a period of up to three years.

#### What we do

We provide legal services across New South Wales, through a state-wide network of 26 offices and 235 regular outreach locations, with a particular focus on assisting socially and economically disadvantaged people.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law.

Our services range from high volume legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice.

More intensive assistance, such as casework and legal representation, is means tested and sometimes merit tested.

We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, Community Legal Centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include the Cooperative Legal Service Delivery Program and the Women's Domestic Violence Court Advocacy Services, whose funding we administer.

We work closely with other agencies providing social and support services to disadvantaged and marginalised people, helping us achieve more integrated services that address clients' legal and non-legal needs.

Last year, we created our five-year plan, which is a roadmap to ensure we deliver the best services for our clients. Our goals are contained under five headings: high quality and targeted services; partnerships that deliver the best outcomes; work to improve the legal system; a capable workforce; and responsive business processes.

#### Our purpose and values

We are committed to helping people to understand and protect their legal rights. We do this through advice, advocacy, representation and education, focusing on disadvantaged people and communities.

We are committed to providing an expert service; being inclusive and respectful and making a difference—in line with the New South Wales public service values of integrity, trust, service and accountability. These values are reflected in our Code of Conduct and govern the way we do our business.

#### Our objectives

Our main objective is to improve access to justice for the most disadvantaged people in our society, responding to their legal and non-legal needs. We aim to provide legal assistance that can help people break the cycle of disadvantage. To do this, we draw on the skills and dedication of our highly experienced employees and work alongside a growing network of stakeholder partners to deliver joint services.

# CONTENTS

<b>Executive summary</b>	<b>1</b>
<b>Recommendations</b>	<b>2</b>
<b>Methodology</b>	<b>4</b>
Scope	4
Consultations	4
<b>Introduction</b>	<b>5</b>
About cross-border communities	5
Legal need along the NSW/Victorian border	5
<i>Legal services along the border</i>	9
<b>Report findings</b>	<b>10</b>
Service experience of border communities	10
<i>The intersection of two legal frameworks</i>	10
<i>Gaps in legal services</i>	10
<i>Implications of non-legal service provider arrangements on legal matters</i>	12
<i>Unfair legal outcomes arising from proximity to the border</i>	14
Key actions and recommendations – service experience of border communities	16
Coordination and collaboration between service providers	16
<i>Sector or collaborative service planning</i>	16
Key actions and recommendations – coordination and collaboration between service providers	17
Intake, assessment and referral	17
Key actions and recommendations – intake, assessment and referral	18
Eligibility in Commonwealth matters (applying the forum test)	19
Key actions and recommendations – eligibility in Commonwealth matters (applying the forum test)	21
Court events	21
Key actions and recommendations – court events	22
<b>Conclusion</b>	<b>22</b>
<b>Appendix 1 – consultations</b>	<b>23</b>

# EXECUTIVE SUMMARY

The barriers that rural and regional communities have in accessing legal assistance are broadly understood—geographic isolation, limited public transport, poor telecommunications and gaps in legal providers are common problems.

In addition to these challenges, people living along the NSW and Victorian border experience additional barriers to timely legal assistance. These communities routinely travel across the border as part of their everyday activities, but in doing so, become subject to two distinct legal systems. This can increase the likelihood of legal problems arising and make it harder to resolve them.

In 2017, Legal Aid NSW and Victoria Legal Aid (VLA) established a joint project to investigate the unique challenges that arise for border communities needing legal help. The focus of this review was to examine how both legal aid commissions could work together more effectively to avoid confusion or duplication and make the experience of accessing legal aid more seamless and efficient for clients and legal practitioners alike.

The review involved widespread consultation with legal aid staff, private practitioners, Aboriginal community legal services, community legal centres and other social and justice staff along the border. It revealed opportunities for both legal aid commissions to improve practices and work together more deliberately to produce better outcomes for these communities. It also identified some key issues affecting border residents that will require further advocacy and engagement with other justice agencies.

The review found that client services in cross-border regions could be significantly improved if there was a more collaborative approach to service design and delivery between legal aid commissions. This should recognise the unique context in which these communities operate; the practical challenges associated with accessing legal and support services and some of the key legal problems that arise—increased coordination in the delivery of child protection/care and protection matters was identified as a priority. Both legal aid commissions have a role to play in supporting community legal centres in their work and in encouraging private practitioner participation in the legal aid scheme.

Border communities can be subject to poor intake, triage and referrals when seeking legal help due to confusion about eligibility or a lack of knowledge about interstate services. The review revealed the need for Legal Aid NSW and VLA to improve intake and assessment of matters from border residents—through better communication and coordination—to create a more seamless experience for applicants and avoid people wrongly missing out on receiving the help they need. This includes trialling a more flexible approach to determining eligibility for Commonwealth family law matters, to allow border residents greater choice in legal practitioners.

Finally, the review identified how some laws and practices that work effectively elsewhere produce unintended consequences in border communities. Strict enforcement of common conditions in community-based orders that prohibit people from interstate travel are often arbitrary for those living along the border. Court listing practices in family law matters mean border residents often must go through additional steps and delays to have their matter transferred to a location that is geographically close to them. Both legal aid commissions are committed to raising these problems with relevant agencies to address these unfair and anomalous outcomes for cross-border residents.



# RECOMMENDATIONS

Service experience of border communities	
Recommendation	Responsibility
1. Legal Aid NSW to investigate options to fund or deliver care and protection services in the Wentworth / Dareton / Balranald area within the next 12 months.	Legal Aid NSW Director, Family Law
2. VLA to investigate the legal implications of the way mental health services are provided along the NSW/Victorian border, along with exploring options to improve representation at the Wangaratta Mental Health Tribunal.	VLA Executive Director, Civil Justice, Access & Equity / Shepparton office
3. VLA and Legal Aid NSW to advocate for changes to how bail, parole and other community-based orders are applied and enforced in border communities that recognise the need for interstate travel and avoid unfair and unintended outcomes.	VLA Executive Director, Criminal Law Services Legal Aid NSW Director, Criminal Law

Collaboration and coordination of service delivery	
Recommendation	Responsibility
4. Legal Aid NSW to extend the Albury CLSD model to incorporate Wodonga and surrounds.	Legal Aid NSW Director of Policy, Planning & Programs
5. VLA and Legal Aid NSW enable members of the Albury/Wodonga CLSD model to trial the use of the online referral tool.	VLA Executive Director, Services & Innovation, and VLA Associate Director, Access & Equity
6. VLA to implement co-ordinated sector planning in the Mallee region in the next 18 months.	VLA Executive Director, Services & Innovation
7. CLE Program Managers at each LAC to meet at least biannually to explore options to deliver legal education to highlight cross-border issues.	VLA Program Manager, CLE Legal Aid NSW, Solicitor in Charge, CLE
8. VLA to actively engage with the Victorian Cross-Border Commissioner to encourage joint discussions between VLA, Legal Aid NSW and the cross-border commissioners in each state to continue to put access to justice issues on their agenda.	VLA Executive Director, Services & Innovation Legal Aid NSW Director, Policy, Planning & Programs
9. VLA and Legal Aid NSW to develop a plan on how to best support private practitioners to deliver high-quality services across both jurisdictions.	VLA Executive Director, Legal Practice Legal Aid NSW, Deputy CEO

<b>Intake assessment and referral</b>	
<b>Recommendation</b>	<b>Responsibility</b>
10. Legal Aid NSW to investigate the possibility of using VLA's online referral tool or a similar tool to make efficient and effective referrals to clients.	Legal Aid NSW Director, Client Service VLA Associate Director, Access & Equity
11. VLA and Legal Aid NSW to develop a protocol for the referral of legal aid applicants between respective grants areas, with particular consideration of the needs of cross-border clients.	Legal Aid NSW Director, Grants VLA Executive Director, Legal Practice

<b>Eligibility in Commonwealth matters (applying the forum test)</b>	
<b>Recommendation</b>	<b>Responsibility</b>
12. VLA and Legal Aid NSW to work together to clarify the application of the forum test and make it more accessible by: <ul style="list-style-type: none"> <li>a. making the descriptions of the forum test consistent across both jurisdictions</li> <li>b. trialling a more flexible approach to applying the forum test for border communities.</li> </ul>	Legal Aid NSW, Director Grants VLA Executive Director, Legal Practice
13. VLA and Legal Aid NSW to advocate to National Legal Aid that a national review of the forum test be conducted to ensure it is clear, fit-for-purpose and mindful of the unique circumstances of those living along state borders.	

<b>Court events</b>	
<b>Recommendation</b>	<b>Responsibility</b>
14. VLA and Legal Aid NSW to highlight the challenges border communities can face to have matters listed in the venue closest to their home, when participating in consultation processes flowing from the restructure of the Family Courts or other relevant reforms.	VLA Executive Director, Family, Youth and Children's Law Legal Aid NSW, Director, Family Law



# METHODOLOGY

## Scope

The project was tasked with:

- examining the way legal aid services are delivered along the NSW/Victorian border;
- identifying what was working well;
- outlining the unique challenges that make it harder for border clients to get the help they need; and
- exploring opportunities to improve the legal aid service system for border communities.

Given the project was limited to six months in duration, the scope was confined to matters within each legal aid commission's (LAC's) control or immediate sphere of influence. Accordingly, not all the issues relating to access to justice in these communities is canvassed in this report. Instead, the priority has been for both LACs to understand whether their respective policies, processes and services impede timely access to appropriate legal assistance.

An insights report provided to the Managing Director of VLA and the CEO of Legal Aid NSW at the project mid-point, enabled an informed reflection on the various issues revealed and articulated preliminary recommendations for improvement that were subsequently refined for this report.

## Consultations

The primary basis for the findings in this report have emerged from comprehensive consultations with a range of legal service providers and justice system stakeholders. The direction and priorities for the project were informed by the issues that were presenting on the ground.

The groups consulted were as follows:

- in-house staff at Legal Aid NSW in Albury, Broken Hill and Sydney;
- in-house staff at VLA in Mildura, Bendigo, Shepparton and Melbourne;
- community legal centre staff;
- Aboriginal legal services staff;
- private lawyers on VLA and Legal Aid NSW panels;
- court staff; and
- people who interact with the legal aid service system from a variety of different perspectives.

Legal Aid NSW and VLA are grateful to the many internal and external stakeholders (see **Appendix 1**) who took the time to share their experiences and ideas throughout the project.

# INTRODUCTION

In August 2017, Legal Aid NSW and Victoria Legal Aid (VLA) met in the border town of Mildura, Victoria, to discuss ways to improve access to justice for vulnerable clients living in communities along the Victorian/NSW border.

Border communities have complex and unique challenges that can compound the impacts of legal problems and impede their resolution. Both legal aid commissions (LACs) agreed to jointly fund a six-month collaborative project to investigate access to legal aid services along the border, reflecting a shared commitment to understanding and addressing any unique barriers clients experience to gaining access to timely and effective legally aided services.

## About cross-border communities

Along the length of the Victorian/NSW border there are towns that are close in distance but physically separated by the Murray River. These include Albury-Wodonga, Mildura-Wentworth-Dareton, Echuca-Moama and Yarrowonga-Mulwala. Some locations such as Albury-Wodonga are commonly referred to by their hyphenated name or as ‘twin towns’, with many residents essentially seeing themselves as members of a single community.

People living along the border routinely travel between states to work and study or to access everyday services and amenities. For example, data collected by the Hume Riverina Community Legal Service in a 2015 survey showed that 47 per cent of people living in Albury-Wodonga cross the border (a less than 10-minute drive) more than seven times per week and over 14 per cent do so more than 16 times a week.<sup>1</sup>

The proximity and interconnectedness of these border communities is often not recognised in the way laws are developed and administered. It also often isn’t reflected in the way services are provided—requiring people to navigate two different, and sometimes conflicting systems, just to undertake everyday activities. This can create confusion and arbitrary outcomes for people living in these communities.

Recognising this, the NSW Government established the role of the NSW Cross Border Commissioner in 2012. In September 2018, the Victorian Government announced the appointment of the first Victorian Cross Border Commissioner, Luke Wilson. This presents a unique opportunity to raise cross-border justice issues with both commissioners, to ensure justice-related issues are on their collective agenda.

While there is a lot to consider in the cross-border space, there are few things more important than access to justice.

**James McTavish,**  
**New South Wales**  
**Cross Border Commissioner**

## Legal need along the NSW/ Victorian border

The Law and Justice Foundation of New South Wales has developed Need for Legal Assistance (NLAS) indicators, which uses census data to assess potential demand for legal services by geographic location. These indicators are useful when determining and comparing potential legal need across various locations.

<sup>1</sup> Hume Riverina Community Legal Service, Submission to the Victorian Government Access to Justice Review, March 2016, accessible via <<http://www.hrcls.org.au/wp-content/uploads/2017/06/Access-to-Justice-Review-Hume-Riverina-CLS-submission-20160301.pdf>>





Number of people likely to need legal assistance if a problem arises<sup>2</sup>

Number of people who are ATSI and likely to need legal assistance if a problem arises<sup>3</sup>

Number of people who are CALD and likely to need legal assistance if a problem arises<sup>4</sup>

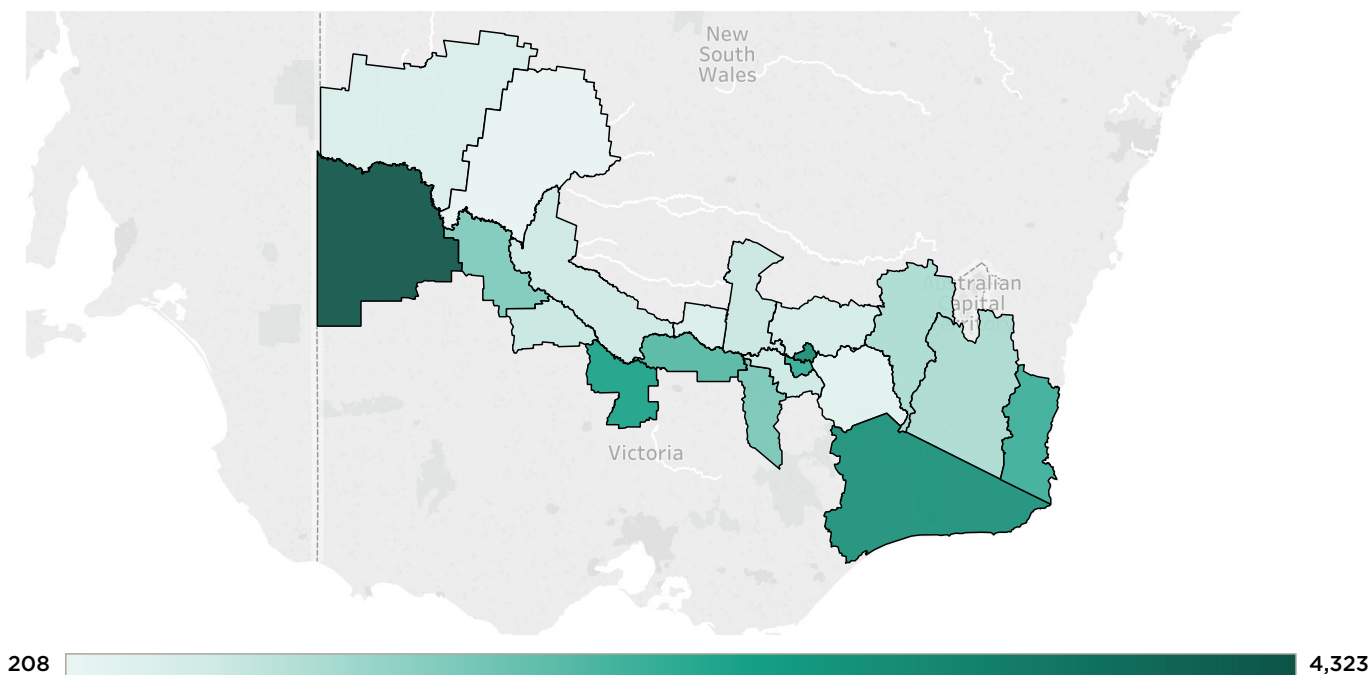
Postcode	Population	Number of people likely to need legal assistance if a problem arises <sup>2</sup>		Number of people who are ATSI and likely to need legal assistance if a problem arises <sup>3</sup>		Number of people who are CALD and likely to need legal assistance if a problem arises <sup>4</sup>	
		Number	Percent	Number	Percent	Number	Percent
3500 (Mildura)	32,738	2,720	8.3	489	1.5	1,841	5.6
2739 (Buronga)	1,397	100	7.2	46	3.3	35	2.5
2717 (Dareton)	1,333	133	10.0	140	10.5	10	0.8
2648 (Wentworth and region)	2,375	188	7.9	66	2.8	11	0.5
3585 (Swan Hill and region)	11,705	711	6.1	113	1.0	425	3.6
3564 (Echuca)	15,944	968	6.1	166	1.0	130	0.8
2731 (Moama)	6,407	287	4.5	81	1.3	39	0.6
2640 (Albury; also, Wymah, Ournie)	36,343	1,778	4.9	265	0.7	735	2.0
2641 (Lavington, Hamilton Valley)	15,073	1,235	8.2	182	1.2	562	3.7
3690 (Wodonga)	33,522	2,044	6.1	280	0.8	820	2.4

<sup>2</sup> NLAS capability: aged 15-64, low income, low educational attainment

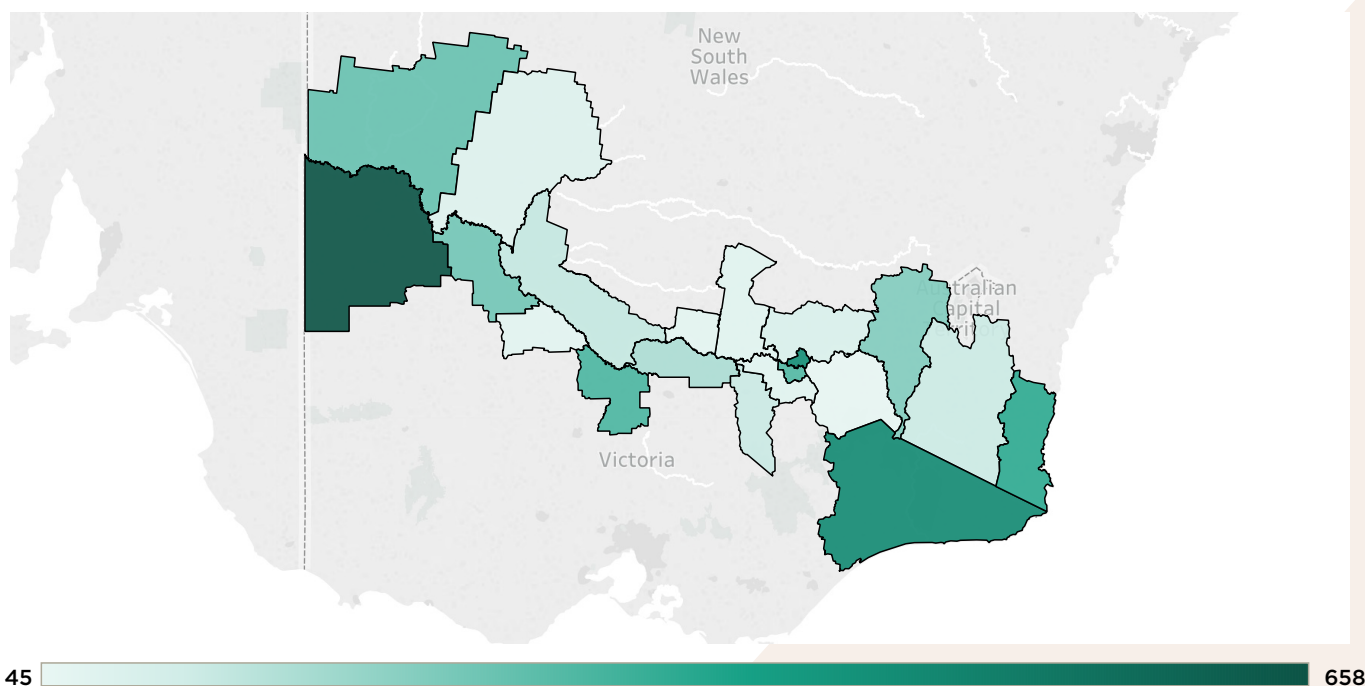
<sup>3</sup> NLAS ATSI: aged over 15, low income

<sup>4</sup> NLAS CALD: aged over 15, low income

The NLAS (capability) population is a count of people aged between 15 and 64 who are likely to need legal assistance, should they experience a problem, due to their low level of personal income and education.



**Figure 1**—NLAS population indicator for Victoria/NSW



**Figure 2**—NLAS (ATSI) population indicator for Victoria/NSW

## Legal services along the border

The following legal services are available along the border:

### Permanent legal aid offices

In 2016, Legal Aid NSW established a small office in Albury that delivers criminal law, care and protection, general civil and family law services. It operates as a satellite of Legal Aid NSW's Wagga Wagga office. A Legal Aid NSW family lawyer is based in a community service in Broken Hill and provides some services between Broken Hill and the Victorian/New South Wales state border, however the capacity of this service is quite limited.

In 2017, VLA established a small presence in Mildura. It is known as Mallee Legal Impact and is a health justice partnership with Sunraysia Community Health Services. The focus of this service is to provide early intervention advice and strategic assistance in child protection and general civil law matters.

### Outreach and fly-in services

VLA has specialist family and civil law staff that periodically fly into Mildura to provide advice and assistance. In addition, VLA's Bendigo and Shepparton offices provide outreach and duty lawyer services in some locations along the border, including Swan Hill, Kerang, Echuca and, to a lesser extent, Wodonga.

Legal Aid NSW provides fly-in civil law outreach services from Sydney to Wentworth and Dareton every six weeks. The service targets Aboriginal clients but also assists non-Aboriginal clients. Legal Aid NSW works closely with and relies on Coomealla Health Aboriginal Corporation (CHAC) and Mallee Family Care to support the work it does in Dareton and Wentworth.

## Telephone help and advice

Legal information and advice is provided over the telephone by Law Access NSW and by Legal Help in Victoria. These services are available in multiple languages.

### Private practitioners, community legal centres and Aboriginal legal services

Residents in these areas also receive legal help and support from the following providers:

- Private practitioners who conduct case work and duty lawyer services in a range of locations along the border.
- Djirra, an Aboriginal legal service formerly known the Family Violence Prevention and Legal Service, based in Mildura but providing some outreach to nearby locations.
- Victorian Aboriginal Legal Service, based in Melbourne, Mildura, Swan Hill and Shepparton but providing outreach along the border to Echuca, Kerang and Wodonga.
- Aboriginal Legal Service NSW/ACT, based in Broken Hill but providing outreach to Wentworth.
- Murray Mallee Community Legal Centre, based in Mildura, but providing some outreach.
- Hume Riverina Community Legal Service, based in Wodonga, but also providing services in Albury and the broader region.
- Loddon Campaspe Community Legal Centre, based in Bendigo.
- Goulburn Valley Community Legal Centre, based in Shepparton.

Murray Mallee Community Legal Centre, and Hume Riverina Community Legal Service are some of the few services in the region where residents can get advice on both Victorian and NSW legal issues.



# REPORT FINDINGS

## Service experience of border communities

A key finding of the report is that clients living in cross-border communities experience complex and unique challenges, in addition to those experienced by regional and remote communities.

### The intersection of two legal frameworks

People living in border communities experience many of the same problems of regional and remote communities. They often live a long distance from essential services and have inadequate public transport, poor phone service, limited access to interpreters and inconsistent internet access. However, these common barriers are exacerbated for border communities, who live at the intersection of two distinct sets of rules and systems.

In addition, these communities:

- Are expected to be familiar, and comply with, two legal frameworks depending on their precise location (for example, different driving road rules).
- Can be ineligible for services that are physically closer to them because of jurisdictional boundaries (for example, access to some health services).
- Can be subject to the enforcement of arbitrary rules or orders that can result in unfair outcomes that would not occur elsewhere (for example, breaches of community-based orders requiring a person to remain within a particular state, which is impractical for people living very close to the border).

Whilst some of these issues are beyond the remit of legal aid commissions, the unique circumstances of border communities need to be taken into consideration in service design and when managing the expectations of legal aid staff about the ability of clients to physically attend services or to self-help. Legal aid commissions are also uniquely placed to raise concerns with government agencies on issues that lead to inequitable or unfair outcomes within the justice system.

## Gaps in legal services

There are gaps in the availability of legal assistance along the Victoria/NSW border. Some cross-border communities have a very small number of private practitioners doing legal aid work, making it difficult for clients to get assistance. Conflicts of interest, which prevent a lawyer from assisting a person if they have previously assisted another party to the matter, can further limit the number of lawyers available to assist.



It is tough to get lawyers for Mum, Dad and the kids. There are lots of conflicts and there just aren't enough lawyers to go around.

### A non-legal support worker

While the limited access to legal assistance is a problem, the absence of legal assistance in care and protection (child protection) matters is especially concerning—particularly given the overrepresentation of Aboriginal children in the child protection system and the high proportion of Aboriginal families living along the border.

Practitioners consulted as part of this review suggested that many parents in these areas are arriving at care agreements with child protection workers without receiving independent legal advice. This means they can be signing documents that affect their legal rights and obligations without understanding the long-term impact of their consent. In some areas (for example Swan Hill and Echuca), there is a 'fly-in fly-out' visiting service from Bendigo; however, in other areas (for example Wentworth and Dareton) there is currently no legal assistance at all, other than telephone advice.

## ILLUSTRATIVE CASE STUDY FREIJA\*

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Freija\* is 18 years old and pregnant with her first child. The father is her boyfriend Tom. They sometimes stay with Freija's parents in Albury or with Tom's parents in Wodonga.

There had been a few times throughout the pregnancy when Freija and Tom had been fighting and the police had been called. Police had notified child protection in Victoria (the Department of Health and Human Services) and care and protection in NSW (Family and Community Services) of their concerns for the unborn child as some of the incidents were in Victoria and some were in NSW.

When the baby was born, there were concerns about which child protection agency should be involved with the family as there was a desire to intervene before the baby left the hospital.

Sitting in the hospital with a crying newborn, Freija didn't know where to get advice. She contacted the local legal aid office in Albury. The receptionist was very nice but told her that they could only help her if she had a court date in Albury. If it was a Victorian matter she would need to contact a lawyer in Wodonga. Tom had been in a bit of trouble in the past and when she called around the private lawyers she was told they had a 'conflict of interest', although she didn't really know what that meant.

In the end, the child protection case worker asked Freija to sign some documents that would allow them to be involved with the family on a voluntary basis. Freija was very emotional and didn't want to be uncooperative and so she signed the forms without having had any legal advice.

\*This case example is an illustrative example of situations described in consultations but is not based on any one legal matter.

### Implications of non-legal service provider arrangements on legal matters

Non-legal support services are crucial to the effective delivery of legal services. Many of these support services rely on state-based funding. Consultations revealed examples of support workers driving clients but not being able to cross the border to deliver their client to Court or to an appointment because their funding agreement does not allow services to be delivered in the other state.

Albury Wodonga Health was established in 2009 and was the first cross-border public health service to exist in Australia.<sup>5</sup> This health service has taken a creative approach to service delivery whilst working around its own cross-border issues. To avoid unnecessary duplication, this service centralises all the health services of a particular type in one location. For example, maternity services in the region are delivered out of Wodonga and all involuntary mental health services are delivered out of Albury. This has implications for legal aid clients with child protection/care and protection matters and mental health treatment proceedings. Clients may access a service in the neighbouring state without understanding that the location of the service could change their legal rights or options.

Clients tend to accept the practical approach taken by health or other services, but without having lawyers involved in the design or implementation of these solutions the concern is that the legal implications around such efforts to improve practicality may be overlooked.

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<sup>5</sup> Albury Wodonga Health website, via <https://www.awh.org.au/about-us/about-awh/> (accessed on 28 June 2018).

## ILLUSTRATIVE CASE STUDY **PETER\***

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Peter\* grew up in Melbourne. He moved to Wodonga last year. He has had long-term issues with bipolar disorder. He has taken medication on a voluntary basis for the past seven years. Every few years his medication stops working and he becomes unwell, which happened last week. Peter's behaviour became very erratic and he was quite manic. His new partner hadn't seen him in this state before and she called the Wodonga police because she was concerned for his wellbeing.

A warrant was issued under the Victorian Mental Health Act because it was believed that he was a risk to himself or others and he was arrested and taken to the Wodonga hospital. As Albury Wodonga Health only deliver mental health services out of Albury, Peter was given some options. He was given the option to be sent in an ambulance to Wangaratta (50 minutes away) or to Albury (five minutes away). He doesn't want to be in an ambulance at all and so understandably chooses the shortest trip to Albury. He doesn't fully understand that moving to Albury subjects him to a different mental health regime to the one he has always known.

\*This case example is an illustrative example of situations described in consultations but is not based on any one legal matter.




### Unfair legal outcomes arising from proximity to the border

Bail, parole and community corrections orders are imposed with an assumption that clients will live and remain in one state and will travel interstate only in exceptional circumstances. Remaining in the resident state is usually a core condition. There is no flexibility for people who routinely cross the border for work, to access support services or to visit family.

If a person cannot demonstrate the ability to comply with the core conditions of a community-based order, they may instead be sentenced to a term of imprisonment. Some people have had to quit their job or stop participating in supportive interventions across the border to enable them to comply with their order—a counterproductive outcome unique to these communities.

Other clients can be charged with breaching their orders for not complying with the strict requirement not to leave the state—which is impractical in many cross-border areas. This has significant negative impacts for clients who could spend unnecessary time in jail, for each LAC in funding breach or bail proceedings, but also a cost for the community in keeping clients in custody simply because the system is not flexible enough to fairly administer justice in a cross-border context.



Our clients are limited when they are charged in New South Wales but reside in Victoria. They are prevented from receiving community service orders and that limits the Court's sentencing options. It also prevents eligibility for Intensive Correction Orders. The impact of that is that some clients are exposed to a greater risk of gaol if they reside in Victoria.

I have personally had a number of clients sentenced to gaol who were ineligible for an Intensive Correctional Order simply based on the fact they reside in Victoria. This has even been the case when I have disadvantaged clients who are only able to get department of housing placements in Victoria and simply cannot afford private rental in New South Wales.

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**A Legal Aid NSW lawyer**

## ILLUSTRATIVE CASE STUDY TERRY\*

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Terry\* is a 19-year-old Aboriginal man. He had used cannabis since he was 13 years of age but started using ice two years ago. As his habit increased, he stole things and sold them to pay for drugs.

He was placed on a community corrections order (CCO) by the local Magistrate with conditions that focus on drug and alcohol rehabilitation. He was also subject to the core conditions of a CCO, which include a condition that he not leave the state of Victoria without permission from Corrections.

He had been working with John, a support worker at Mallee District Aboriginal Service (MDAS). John secured him a place at Warrakoo, which is a three-month residential rehabilitation program about an hour and a half away from Mildura. Warrakoo is jointly funded by Victoria and NSW and aims to have 50% Victorian residents attend. This program is very well-regarded, but hard to get into.

John and Terry spoke to Terry's case manager at Corrections Victoria and told them about the placement. Terry was required to formally ask permission to leave the state of Victoria. The turnaround time for determining these requests is approximately 14 days. By that time, Terry's spot at Warrakoo had been given to someone else.

He was frustrated, but still working with John and his local drug and alcohol counsellor to reduce his drug use. One day in Mildura, Terry was talking to some mates down near the river. It was 43 degrees that day and Terry decided to go for a swim to cool off. His Corrections Officer was walking her dog along the river and Terry called out and said hello. Unfortunately, swimming in the river (or in fact going below the high-water mark) involves leaving the state of Victoria without permission and resulted in Terry breaching a core condition of his CCO. The penalty for breaching a CCO is often three months' jail.

\*This case example is an illustrative example of situations described in consultations but is not based on any one legal matter.

## Key actions and recommendations—service experience of border communities

### Actions already undertaken:

- Informal approaches to justice agencies in both Victoria and NSW on bail and enforcement issues disproportionately affecting our clients.

### Further action required

- Continued liaison with justice agencies to advocate for greater flexibility for those on bail, parole or other community-based orders to avoid unfair or unreasonable consequences because of where they live.

## Coordination and collaboration between service providers

The way that clients experience legal aid services in cross-border regions could be significantly improved if there was a more collaborative approach to service design and planning.

### Sector or collaborative service planning

Sector or collaborative service planning involves identifying the legal need that exists in an area and working together with local service providers to determine how to best address that need.

Developing a model for collaborative place-based planning is an identified priority in Victoria, where this work is currently in the early, pilot stage.

Legal Aid NSW has a more advanced Cooperative Legal Service Delivery (CLSD) model that, in the border context, only operates in the Albury region. This means that legal service planning in other areas (including Mildura) is done in relative isolation. This has the potential to lead to the duplication of services in some areas and a failure to identify service gaps in others.

### Cooperative Legal Service Delivery model—Albury

The Cooperative Legal Service Delivery model in the Albury region has very active participation by the CLSD program at Legal Aid NSW, the Albury legal aid office, the Hume Riverina Community Legal Service, private lawyers and related non-legal services in the area. The Hume Riverina Community Legal Service hosts the CLSD regional coordinator for the Albury CLSD Program partnership. The Regional Coordinator distributes information to local stakeholders, arranges events and convenes regular meetings of the members to share information about legal need, what services are being delivered, service gaps and other topics of interest or concern. It is a good way to share information and gather intelligence from a range of sources to enable effective and collaborative service planning. The Albury CLSD Program partnership engages in regular collaborative planning using a broad range of evidence, including the Need for Legal Assistance indicators, to identify unmet and emerging legal needs and ways of working together to meet those needs.

### Emerging legal issues

Legal Aid NSW civil lawyers have identified some emerging civil law issues in the region that include:

- Complexity around the jurisdiction of the NSW Civil and Administrative Tribunal and Victorian Civil and Administrative Tribunal to hear matters between residents of different states, for example in housing matters or consumer contracts.
- Access to National Disability Insurance Scheme (NDIS) services: NSW clients have experienced some difficulties accessing appropriate services. This may emerge as an issue for clients in cross-border regions as the NDIS is further rolled out. There may also be issues with enforcing rights under service agreements considering the NCAT and VCAT jurisdictional issues raised above.

There may be opportunities for Legal Aid NSW and VLA to collaborate on approaches to addressing these emerging issues.

### ***Example of collaborative practice—Work and Development Orders along the border***

High levels of fines debt are a significant problem for communities along the NSW / Victorian border. The Work and Development Order (WDO) Scheme provides a way to help disadvantaged people who can't pay their fines. People who are eligible for a WDO can clear their fines with approved activities (such as unpaid work, counselling, courses and treatment programs) instead of paying the fine.

The WDO Service (Southern NSW & Far West) based at Legal Aid NSW Wollongong helps individuals and organisations in the border regions.

The primary aim of the service is to increase access to the Work and Development Order (WDO) program for vulnerable people in these regions. The service recruits and supports WDO sponsors and provides legal assistance and WDO placements to clients with fines debt.

Legal Aid NSW and VLA have held Combined Sponsor forums to provide advice and resources to sponsor organisations under the NSW WDO Scheme and Victorian Work Development Permit Scheme. The first of these forums was jointly delivered by Legal Aid NSW and VLA at Sunraysia Community Health Centre on 3 November 2017. A second forum is planned for December 2018.

### **Aboriginal Engagement Officers**

There may be opportunities for VLA and Legal Aid NSW to collaborate with Aboriginal Community Engagement Officers. Legal Aid NSW civil lawyers have met with the Mildura based ACEO and discussed opportunities for joint outreach. The Mildura based ACEO is currently in the process of establishing a regular interagency meeting between legal services supporting Aboriginal clients in the area.

### **Community legal education**

Community legal education is an important tool used by legal aid commissions to support communities to understand their legal rights and obligations. Effective community legal education can help avoid legal problems arising, support early resolution and support people to know where to go for help.

Because border communities sit at the juncture of two distinct legal systems, they are required to abide by two different legal regimes. Sometimes, these differences are relatively modest (for example, road rules). In other situations, there can be significantly different consequences for certain behaviours depending on which side of the border you are on. It is important that border communities understand these differences.

### **Training resources for private practitioners**

Similar issues arise for private practitioners, who may be required to give legal advice and assistance to people on two distinct legal regimes where they are on legal aid panels for both Victoria and NSW. It is important that lawyers are supported to understand distinctions in the law in their practice areas and that they are up-to-date with changes to the law across jurisdictions.

Both legal aid commissions deliver email updates to private practitioners to keep them updated on practice issues.

### **Key actions and recommendations—coordination and collaboration between service providers**

#### **Actions already agreed or undertaken:**

- The Cooperative Legal Service Delivery (CLSD) model that currently exists in the Albury region will be extended by Legal Aid NSW to encompass Wodonga and other smaller towns along the border adjacent to the current CLSD region.
- The Albury/Wodonga CLSD will trial the use of the VLA online referral tool for lawyers and other service providers to make referrals to services that are based in both Victoria and New South Wales.
- Mallee Legal Impact is less than one year old and is still in the process of establishing some stakeholder networks. The Aboriginal Community Engagement Officer based at Mallee Legal Impact recently contacted similar role holders at the Victorian Aboriginal Service (Mildura based), Djirra, formerly the Family Violence Prevention & Legal Service (Mildura based), Aboriginal Legal Service NSW-ACT (Broken Hill based) and the Civil Law Service for Aboriginal Communities (Sydney based). They are arranging a regular meeting when the visiting services are in the Mallee to discuss how their services operate, learn how to make better referrals and discuss how they can assist mutual clients more effectively.
- Discussions have taken place between the CLE program managers in each LAC about how these programs can complement each other, avoid duplication and highlight areas where the law is different between Victoria and New South Wales, examples including sexting, driving and fines. Each LAC have agreed to work together and continue to turn their mind to cross-border issues when planning services going forward.
- Agreement-in-principle between commissions to explore ways to better support private practitioners along border communities. This may include targeted training, increased sharing of precedents or webinar technology to improve accessibility of professional legal education.



### Further action required

- Agreement on an approach to place-based planning in the Mallee region. The expanded place-based planning activities foreshadowed for Albury-Wodonga and the Mallee region will both be reviewed and the learnings from these models could be used when doing sector planning in other cross-border regions of Victoria and New South Wales.

### Intake, assessment and referral

Clients seeking legal assistance in cross-border regions are often subject to poor intake and referral processes between services.

Ensuring people requiring legal aid find the help they need as soon as possible is a key goal for both LACs. A failure to do so can allow vulnerable people to miss out on the help they need and risks compounding their legal problem. Because border communities sit at the periphery of two service providers, there is a greater risk that they will be wrongly referred or slip through the cracks.

Ensuring referrals are appropriate is complicated by the fact that both LACs have some differences in financial and other eligibility. Therefore, a person eligible for legal aid in one state, may not be eligible for assistance from the neighbouring legal aid commission.

#### Intake and assessment

There is generally limited understanding of the scope of services or eligibility criteria of a service provided by a bordering LAC, creating the risk of poor referrals or incorrect information being provided to applicants.

It would really help if we knew where the outreach services were and who to contact. Now we give clients general numbers and hope they call and get through to someone.

**An Aboriginal support worker**

### Referrals

There are inconsistent approaches to client referrals (both between and beyond legal aid commissions). This is borne out in the absence of a clearly agreed referral protocol, leading to a reliance on individual approaches based on personal knowledge and relationships. There is the potential for this knowledge to become outdated or lost if staff turnover.

### Key actions and recommendations— intake, assessment and referral

#### Actions already agreed or undertaken

- VLA is deploying an online referral tool which is designed to provide quicker and more accurate referrals and bookings that are suited to a person's specific circumstances. As noted earlier, the use of this tool will be trialled in Albury/Wodonga.
- Preliminary workshop between grants areas of both legal aid commissions to scope more effective intake and referral processes for those living along the NSW/Victorian border.
- Agreement between Law Access NSW and Legal Help telephone information services to track referrals between agencies on an ongoing basis with a view to continuously improving intake, triage and information provided to border residents.

#### Further action required

- Development of a memorandum of understanding between grants areas, which outlines an agreed approach to applicant referrals between Legal Aid NSW and VLA, that prioritises warm referrals and effective information sharing (with consent).

It's hard when clients have already been on the referral roundabout and I have to put them straight back on it. Sometimes they get so dizzy they fall off.


**A Victoria Legal Aid panel lawyer**

## Eligibility in Commonwealth matters (applying the forum test)

### The forum test

The forum test was established in 1991 by National Legal Aid, with the purpose of clarifying which legal aid commission is responsible to provide a grant of legal assistance to clients with matters that may straddle more than one jurisdiction. It is applied most commonly in Commonwealth family law parenting disputes, where parties may live in different states and territories.

Whilst it is intended that the legal aid forum test would be applied consistently across all legal aid commissions, the way the forum test is worded in guidelines in Victoria and New South Wales (and other states) differs and gives the impression that the test is not uniform. This is particularly confusing for practitioners working in both Victoria and NSW.



We see lots of clients each year who fall foul of the forum test. There has never been a clear and consistent approach from either legal aid body. The rules are not clear or known and they seem to change at whim. We have parties, courts and children in both states, and then those can all change to the other State.

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**A Legal Aid NSW panel lawyer**

### Interpretation of the forum test

Many in-house and private practitioners lack a clear understanding of the proper interpretation of the forum test as it applies in their primary jurisdiction. This can result in the forum test being applied incorrectly. Inconsistent application of the forum test may result in some clients getting assistance which is funded by the incorrect legal aid commission, but of more concern—some clients' legal aid applications being refused based on the forum test without further guidance or assistance about where they can get help. This is particularly problematic for clients submitting direct applications for legal assistance who sometimes struggle to identify the service from which they should ideally be seeking assistance.

### Referral processes for applicants refused legal aid based on the forum test

There is no consistent referral process between the legal aid commissions for border residents. How matters are referred by one legal aid commission to the other after a refusal based on the forum test is dependent on the approach of the individual grants/assignments officer. While there are examples of good practice (coordinated, warm referrals) there are also examples where applicants refused in one jurisdiction aren't appropriately supported to obtain aid from the other jurisdiction, despite potential eligibility.

# ILLUSTRATIVE CASE STUDY JENNY\*

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Jenny has two children in her care and has been the victim of long-term family violence. She separated from Paul, the children's father, 10 weeks ago. The family had previously lived in Mildura. Jenny and the children now live in Wentworth (20kms away from Mildura) with her parents.

Jenny went to see a family lawyer in Mildura, where she does her shopping. This family lawyer was on VLA's family law panel and gave her some general advice but couldn't represent her because he wasn't on the Legal Aid NSW panel.

Jenny contacted Law Access New South Wales and eventually got a lawyer to help her and issued proceedings in the Broken Hill registry of the Federal Circuit Court; which was easiest for her lawyer.

She would have liked to be able to start proceedings in the Mildura Magistrates' Court which was only 15 minutes away from where she lived for convenience, but also because her application could be listed in a few weeks. The next family law circuit in Broken Hill didn't start for four months and she urgently needed to get arrangements in place for the children.

When the application was filed with the Federal Circuit Court, the Court identified that the parties lived in Wentworth and Mildura, and that Broken Hill may not have been the proper venue for the proceedings. The matter was transferred to Adelaide for an interim hearing. Jenny's lawyer briefed a barrister to appear and sought an order for a change of venue. Jenny couldn't afford to travel to Adelaide to attend this hearing but was grateful that the Court allowed her to appear by telephone.

The proceedings were transferred to Mildura, but Jenny continued to be assisted by the lawyer based in Broken Hill, three hours away. Jenny's lawyer continued to brief a barrister to represent her in the Circuit, but that was difficult because the fee structure for counsel paid by Legal Aid NSW is not consistent with the fees paid by Victoria Legal Aid and this caused confusion.

Eventually, Jenny secured orders enabling the children to see their father in a safe way, but the whole process was very frustrating for her. She wishes that she could have seen a lawyer that was close to where she lived, that she could see face-to-face and that she didn't have to argue to have her case determined at a location that was convenient.

\*This case example is an illustrative example of situations described in consultations but is not based on any one legal matter.



## Key actions and recommendations—eligibility in Commonwealth matters (applying the forum test)

### Actions already agreed or undertaken

- Preliminary workshop between grants areas, which discussed the challenges arising from the forum test for cross-border applicants.

### Further action required

- Trialling a more flexible approach to applying the legal aid forum test for those living within a certain distance to the border, to enable them to choose the practitioner that is most convenient to them (whether they fall under Legal Aid NSW or VLA). This is intended to increase the pool of lawyers available to an applicant and avoid enforcing a provider on a person that may not be proximate or suitable for them. The financial and other implications of this trial will be evaluated before being adopted permanently.

This is a really great, practical step forward for border families who must navigate this tricky area, often while simultaneously trying to navigate a family breakdown. It will make a big difference.

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**A Victoria Legal Aid family lawyer**

### Court events

Court listing practices that are logical and effective in most areas, do not always operate to the convenience of border communities. Clients attending Court in cross-border regions are often subject to an additional burden to have their matter heard at an appropriate time and location.

### Family law circuits

Family law disputes in cross-border regions are difficult to manage. They are heard by circuits in central locations, including Broken Hill, Albury, Bendigo, Shepparton and Mildura. A visiting Judge and court staff travel to the location approximately four times each year for one month and hear as many cases as possible. This means people often wait months to have their matter heard.

The application of the legal aid forum test, as it currently stands, means that proceedings are commenced in the jurisdiction funding the matter. This is not always the Court closest to the parents. Parents sometimes make an application to change the venue of the hearing to enable them to practically travel to attend Court. This process involves making an application for change of venue, which is heard in Melbourne or Adelaide at the Judge's convenience. An extension of legal aid funding is required, and a barrister is briefed to appear. The parent is often unable to attend the hearing in person, due to distance and cost involved.

The forum test also influences whether lawyers commence family law proceedings in the Magistrates' Court/Local Court or the Federal Circuit Court. Because of delays between circuits, many clients would prefer to initiate proceedings locally to start progressing the matter, but the forum test may not allow that to happen. This is more of an issue for cross-border clients than for clients in general, because the Magistrates' Court/Local Court and the Federal Circuit Court are often on different sides of the border.

Families need to be able to access justice. Family law says this should occur in a court closest to the children. If it's urgent, that might be a local State court that can hear your matter more quickly. But if you are reliant on legal aid funding, eligibility criteria might not allow either of those processes to happen.

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**A Victoria Legal Aid family lawyer**





## CONCLUSION

### Interim hearings

Family law circuits are managed by the Court registry where the Judge presiding over the circuit is based. If family law proceedings are issued in Broken Hill (the closest Court in New South Wales for clients living in Wentworth or Dareton), the case is often managed in Adelaide where the visiting Judge is based. Likewise, if proceedings commence in Albury, the case is managed out of Melbourne. Any urgent matters that arise between circuits are heard where the Judge is based – requiring additional effort from the lawyer and the parties and expense to the LAC.



Interim matters are called on in Melbourne where the Judge sits. I have to brief a barrister to appear, but most barristers don't want to do work for New South Wales rates, so we don't have much choice. I am not there. The client is on the phone because she can't afford to get to Melbourne. It is not a great experience of the family law system for her.

**A Legal Aid NSW panel lawyer**

Through this unique project partnership, Legal Aid NSW and VLA now have a much stronger understanding of the complex and unique challenges experienced by border communities. We have seen that these challenges compound the impacts of legal problems and impede their resolution. We are committed to working together to continue to address these issues and to think creatively about how we can make it easier for clients in these communities to gain access to justice.

A useful reminder came out of the joint meeting between the CEO of Legal Aid NSW and the Managing Director of Victoria Legal Aid: “our starting point should be to give people a service, not deny it.”

We recognise the vital importance of the relationships that have been established during this project, which facilitate improved cooperation and collaboration between our respective organisations. We believe that these strengthened connections will ultimately benefit clients in cross-border communities. We continue to learn from each other and will continuously improve the way legal aid services are delivered in each LAC and to clients who cross between them.

We also recognise and value the discussions that we have had with many external stakeholders over the course of this project. It is our sincere intention that by engaging broadly and highlighting the unique and persisting needs of cross-border communities, our future service offering and practices will improve. It is also our sincere hope that law-makers will have a similar appreciation of these unique and persisting needs and consider the unintended impacts that existing practices and systems, or any proposed reforms, have on our border communities.

### Key actions and recommendations –court events

#### Actions already agreed or undertaken

- National Legal Aid and Victoria Legal Aid made submissions to the Australian Law Reform Commission review of the family law system, which referenced issues relating to circuits and access to services by clients who live in rural, regional and remote areas.

#### Further action required

- Noting that significant reforms to the family court system have been announced, it is proposed that cross-border issues be considered by senior leadership in family law teams across both Legal Aid NSW and VLA to inform strategic discussions with the family law courts.

# APPENDIX 1—CONSULTATIONS

The project team would like to thank the following people who have all given generously of their time to contribute to this project. Whether you sent an email, took a phone call or made time to meet face to face – your contribution has been valuable and is very much appreciated.

## Legal Aid NSW staff:

- **Brendan Thomas** – CEO
- **Jane Cipants** – Director, Client Service
- **Gaby Carney** – Director of Policy, Planning & Programs
- **Kylie Beckhouse** – Director, Family Law
- **Jocelyn Flanagan** – Director, Grants
- **Leanne Robinson** – Acting Director, Grants
- **Shanna Satya** – Manager, Legal Service Development
- **Judith Levitan** – Acting Manager, Legal Service Development, Client Service Unit
- **Lara Sabbadin** – Manager, CLC Program
- **Chelly Milliken** – Manager, Planning & Review
- **Dana Beiglari** – Senior Lawyer, Combined Civil Law Specialist Team
- **Meredith Osborne** – Acting Director of Civil Law
- **Rebekah Doran** – Senior Lawyer, Combined Civil Law Specialist Team
- **Nicole Dwyer** – Solicitor in Charge, Riverina Murray Offices
- **Dione Garwell** – Senior Solicitor, Riverina Murray Offices
- **Shaun Mortimer** – Criminal Practice Manager, Riverina Murray Offices
- **Camille McKay** – Criminal Solicitor, Riverina Murray Offices
- **Hannah Reid** – Civil Law Solicitor, Riverina Murray Offices
- **Mark Rosalky** – Solicitor, Driver Reform Implementation Team
- **Isabelle Jones-Rabbitt** – Duty solicitor scheme co-ordinator
- **Dora Dimos** – Manager, Professional Practices
- **Francis Decena** – Senior Panels Officer
- **Scott Kirkwood** – Acting Operations Manager, Grants Division
- **Lauren Finestone** – Solicitor in Charge, Community Legal Education
- **Natalie Neumann** – Solicitor, Community Legal Education
- **Miranda Jakich** – Senior Communications Coordinator
- **Lisa Garnham** – Publications Officer
- **Jenny Lovric** – Program Manager, CLSD & ROCP, Collaborative Legal Service Delivery Unit
- **Kate Halliday** – Solicitor, Collaborative Legal Service Delivery Unit
- **Michelle Jones** – Manager, Women’s Domestic Violence Court Advocacy Program (WDVACP)
- **Alexandra Colquhoun** – Solicitor in Charge, Family law litigation
- **Nicola Callander** – Solicitor in Charge, Care and Protection
- **Ruth Pilkington** – Solicitor in Charge, Early Intervention Unit
- **Deirdre Scott** – ICT Business Partner
- **Michael Snape** – Senior Civil Lawyer, Grants Division
- **Bridget Akers** – Combined Civil Law Specialist Team
- **Brigid O’Connor** – Acting Executive Officer
- **Justine Conaty** – Solicitor, Civil Law Service for Aboriginal Communities
- **Louise Pounder** – Manager, Strategic Law Reform Unit

- **Kelly Oxford** – Acting Family Lawyer, Broken Hill
- **Jayne Christian** – Family Law Solicitor, Broken Hill

## Victoria Legal Aid staff:

- **Bevan Warner** – Managing Director
- **Peter Noble** – Director of Services & Innovation
- **Katie Miller** – Executive Director, Legal Practice
- **Rowan McRae** – Executive Director, Civil Justice, Access & Equity
- **Elizabeth Jennings** – Chief Financial Officer
- **Nella Buccheri** – Associate Director, Assignments
- **Gayathri Paramasivan** – Associate Director, Family Law
- **Vincenzo Caltabiano** – Associate Director, Child Protection Transformation
- **Kate Bundrock** – Program Manager, Advocacy, Criminal Law
- **Tilda Hum** – Senior Policy & Project Manager
- **Abby Sullivan** – Strategy Project Co-ordinator
- **Gabrielle Kopke** – Stakeholder Engagement Manager, Strategic Communications
- **Bruce Clarke** – Risk Management Co-ordinator
- **Paula Wilson** – Project Management Co-ordinator
- **Bridget McAloon** – Senior Evaluation Advisor
- **Heidi Deason** – Managing Lawyer, Mallee Legal Impact, Mildura
- **Naomi Goldwater** – Senior Civil Lawyer, Mallee Legal Impact, Mildura
- **Joanne Brennan** – Child Protection Lawyer, Mallee Legal Impact, Mildura
- **Jessica Thomson** – Aboriginal Community Engagement Officer, Mallee Legal Impact, Mildura
- **Khoi CaoLam** – Manager, Client Access
- **Jess Bird** – Service Designer, Client Access
- **Sonia Law** – Program Manager, Mental Health & Disability
- **Hamish McLachlan** – Managing Lawyer, Mental Health & Disability
- **Erica Molyneaux** – Managing Lawyer, Shepparton Regional Office
- **Marcus Williams** – Managing Lawyer, Bendigo Regional Office
- **Majella Foster-Jones** – Deputy Managing Lawyer, Bendigo Regional Office
- **Rebecca Burgmann** – Managing Lawyer, Gippsland Regional Offices
- **Josh Cameron** – Lawyer, Gippsland Regional Office
- **Andrew Musgrave** – Manager, Assignments
- **Tina Nikoloski** – Assignments Co-ordinator
- **Daisy Smith** – Senior Communications Advisor, Strategic Communications
- **Sally Johnston** – Senior Communications Advisor, Strategic Communications
- **Kirsty Lauchland** – Graphic Designer, Strategic Communications



- **Brendan Moody** – Design & Publishing Manager, Strategic Communications
- **Andrew Morse** – Panel Practitioners Co-ordinator
- **Lauren Galvin** – Program Manager, Family Law Services
- **Amy Schwebel** – Manager, Strategy, Family Youth & Children’s Law
- **Gary Lung** – Family Lawyer, Parenting Disputes
- **Joel Townsend** – Program Manager, Economic & Social Rights
- **Kathleen Ng** – Program Manager, Child Support Legal Service
- **Anna Farrant** – Family Lawyer, Gippsland Regional Office
- **Lucia Danek** – Program Manager, Child Protection
- **Len Jaffit** – Senior Technical Specialist, Commonwealth Entitlements
- **Hormoz Kolah** – Complaints & Statutory Compliance
- **Danni Duviani** – Acting Managing Lawyer, Legal Help
- **Cleona Feuerring** – Managing Lawyer, Legal Help
- **Himmat Singh** – Program Manager, Legal Help
- **Rob Catania** – Operations Manager, Legal Help
- **Toby Verey** – Senior Policy & Project Officer, Client Access
- **Carman Parsons** – Senior Policy & Project Officer, Client Access
- **Michael Bevan** – Senior Lawyer, Mental Health & Disability, Dandenong
- **Kim Ison** – Managing Lawyer, Professional Support
- All Professional Support Lawyers
- **Lara Wentworth** – Legal Learning & Development Manager, Professional Legal Education
- All staff in Professional Legal Education
- All Regional Managing Lawyers
- **Aimee Cooper** – Program Manager, Equality Law
- **Hollie Kerwin** – Senior Policy & Projects Officer, Civil Law
- **Tim Meehan** – Professional Support Lawyer, Civil Law
- **Marie Baird** – Senior Policy & Project Officer, Economic and Social Rights
- **Sophie Meehan** – Acting Manager, Family Law Review
- **Samantha Watson** – Manager, Family Law Review
- **Wanda Bennetts** – Senior Consumer Consultant, IMHA

**Legal Aid panel lawyers:**

- **Chris Casey** – Principal, Medina Legal, Mildura
- **Hugh Middleton** – Director, Martin Irwin Richards Lawyers, Mildura
- **Rebecca Boreham** – Principal, Rebecca Boreham Legal, Mildura
- **Michele Kampen** – Principal, Robindale Legal, Wodonga
- **Emma Hill** – Principal, Tarella Law, Albury
- **Kate Freshwater** – Principal, Kate Freshwater Lawyer, Echuca
- **Sally Wilson** – Principal, Sally Wilson Legal, Wodonga
- **Justine Bowman** – Director, Jolimans Lawyers, Echuca, Cohuna, Swan Hill

**Community Legal Centre Staff:**

- **Steven Bliim** – Principal Lawyer, Murray Mallee Community Legal Service, Mildura
- **Elisa Whittaker** – Director, Legal & Policy, Women’s Legal Service Victoria
- **Sarah Rodgers** – Principal Lawyer, Hume Riverina Community Legal Service
- **Alison Maher** – Senior Family Lawyer, Hume Riverina Community Legal Service, Wodonga
- **Simon Crase** – CLE & CLSD Co-ordinator, Hume Riverina Community Legal Service, Wodonga
- **Karen Bowley** – Lawyer, Hume Riverina Community Legal Service, Wodonga
- **Sarah Caplice** – Family Lawyer, Hume Riverina Community Legal Service, Wodonga
- **Janet Osborne** – Lawyer, Hume Riverina Community Legal Service, Wodonga

**Aboriginal Support Services:**

- **Brendan Johnson** – Local justice officer, MDAS, Mildura
- **Nathan Kelly** – Men’s case management officer, MDAS, Mildura
- **Patsy Doolan** – Project Officer, Local Aboriginal Justice Advisory Committee, Department of Justice, Mildura
- **Andrew Arden** – Community Justice Programs Co-Coordinator, Victorian Aboriginal Legal Services, Mildura
- **Michael Harradine** – Field Officer, Victorian Aboriginal Legal Services, Mildura
- **Kym Avers** – Senior Lawyer, Djirra (formerly Aboriginal Family Violence Prevention & Legal Service), Mildura
- **Kenneth Dennis** – Acting Regional Community Engagement Manager, Western NSW, Aboriginal Legal Service (NSW / ACT)

**Other:**

- **James McTavish** – Cross-Border Commissioner, NSW
- **Caroline MacSmith** – Senior Project Officer, Office of the Cross-Border Commissioner, NSW
- **Rhonda Gallienne** – Manager, Mildura Justice Centre, Mildura
- **Simon Tutton** – Acting Policy Manager, Offender Strategy, Policy & Reform Branch, Department of Justice NSW
- **Sam Cook** – Youth Justice, Department of Justice & Regulation Vic, Bendigo
- **Carolyn McSporran** – Principal Registrar, VCAT
- **Peter Mithen** – Magistrate, Shepparton Region (visiting Wodonga)
- **Lisa Bannam** – Registrar in Charge, Swan Hill Law Courts
- **Janet Wagstaff** – Director, Law Access NSW
- **Nicholas D’Cruz** – Call Centre Manager, Law Access NSW
- **Dean Wickham** – Executive Officer of Sunraysia Mallee Ethnic Communities Council (SMECC), Mildura
- **Joylene Robins** – LiveBetter Community Transport, Wentworth

