

Review of VLA's Remand Services

Report to Victoria Legal Aid

October 2023



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Acknowledgement

Aboriginal and Torres Strait Islander readers are advised this report contains the names of people who have passed.

The Centre for Innovative Justice (CIJ) at RMIT University acknowledges the people of the Woiwurrung and Boonwurrung language groups of the Eastern Kulin Nation on whose unceded lands we conduct the business of the University. We acknowledge their Elders past and present, as well as the ongoing strength of the world's oldest continuing and living culture. Always was, always will be.

The CIJ acknowledges the ongoing impacts of colonisation, impacts which contribute to significantly higher rates of incarceration of Aboriginal community members. We recognise the structural discrimination and systemic racism which sees Aboriginal people arrested and held on remand at disproportionate rates. We acknowledge that experiences of criminalisation and incarceration are often devastating.

We acknowledge the devastating passing of a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri, Yorta Yorta woman Veronica Nelson while on remand in Victoria.

We thank people with lived experience of the criminal justice system for sharing their stories with us, and generously offering their unique insights, ideas and solutions. The CIJ acknowledges that people with lived experience of systemic oppression and disadvantage play a crucial role in telling us what the problems are, and how they can be remedied.

We thank all the people who contributed to this review by giving their time and sharing their experiences.

Staff from across Victoria Legal Aid provided essential information and insights of great assistance to us in the course of undertaking this review, including the Criminal Law team, Aboriginal Services and Outcomes and Evidence team. In particular, we thank Kate Bundrock, Director Summary Crime and Therapeutic Justice, and her team including Cavell Warren, Carrie O'Shea, Madeline Ryan and Jessica McDonald.

The CIJ project team comprised Stan Winford, Dorothy Armstrong, Prue Elletson, Megan Hughes, Nareeda Lewers, Emily Piggott and James Davis.

Cover artwork

Melissa Bell, Gunditjmara/Yorta Yorta

Rain Coming Down #8, 2023.

This painting represents my land, the connections to my people, the rain coming down. The dots represent all the different tribes all over Australia.

Suggested citation: Winford, S., Armstrong, D., Elletson, P., Hughes, M., Lewers, N., Piggott, E. (2023) *Review of Victoria Legal Aid's Remand Services*, Centre for Innovative Justice, RMIT University, Melbourne.

Executive Summary

" ... in that moment, you probably wouldn't even be in a state anymore where you could accept a hug from someone that you cared about. That's how far gone your ability to connect to anything is

Lived experience participant

" You're dealing with extremely vulnerable people who are oftentimes very unwell. And you're dealing with their liberty and whether they're going to get appropriate treatment or sent off to prison. And for obvious reasons, that's extremely stressful

VLA Lawyer

The Centre for Innovative Justice interviewed several people who had first-hand experience of being remanded in custody while undertaking this Review of VLA's remand services. We heard strikingly similar accounts from each of them. When describing the experience of being remanded in custody, they often used words like 'terrifying', 'traumatic' and 'dehumanising'. Being remanded was 'like a living death' for people suddenly 'extracted' from the community and unable to contact their families. They had very little understanding of the confusing legal processes taking place around them, leaving them with a profound sense of powerlessness.

This Review was informed by data about the remand service, a review of the literature, and consultation with professional stakeholders in the justice system. However, it was the first-hand accounts of traumatic and distressing experiences from people with lived experience that were particularly compelling. These accounts make it clear that the bail and remand process – in which VLA plays an important role – must better respond to the needs of people who have been remanded in custody.

All of those we interviewed highlighted the importance of addressing pressing needs when people are first remanded – whether these needs are legal or not. People who had been on remand described the devastating impacts on themselves and others when these needs were not met. The importance of providing remand services was also deeply felt by all lawyers interviewed. They demonstrated both a strong sense of responsibility and commitment to the work they perform as well as an acute sense of systemic challenges that impact their work, and their clients.

It is critical that the unique perspectives of those with experience of the remand service are brought to the fore when VLA seeks to understand how it might better meet the needs of its clients. In our view, the importance of listening to and learning from the experience of VLA's clients and those with lived experience of the remand system cannot be understated; it is through this lens that this Review's findings and recommendations should be viewed. Our recommendations also seek to better support lawyers providing critical remand services, acknowledging the tremendous responsibility, skill and commitment required, the risk of 'burn out' and vicarious trauma experienced by remand lawyers and the importance of providing the conditions for them to do their best work.

Introduction

Across Victoria, VLA facilitates legal assistance to every person brought before court after being arrested and taken into custody. Duty lawyers provide advice and representation to the person remanded, or connect them with a lawyer to represent them. VLA's 'remand service' refers to legal and other services provided through VLA's duty service and through VLA funded bail applications under VLA's duty lawyer and funding guidelines respectively.

The remand service is a significant proportion of VLA's summary crime program, with arrest and remand being a critical 'entry point' into VLA's assistance services.

VLA supports over 13,000 clients facing remand each year. This represents approximately 15% of the 80,000 individual clients VLA assists annually. More than 10,000 'duty' lawyer services are provided to people facing remand, and a further 8,000 grants of assistance are provided to private practitioners to make an application for bail. Almost a third of VLA's workforce participates in the remand service – being rostered to duty services, providing ongoing legal assistance, or providing administrative or program support to this service.

The remand landscape has undergone a significant change in recent years. Legislative reforms have led to an increase in the proportion of unsentenced people in prison, and have had a disproportionate impact on Aboriginal people, particularly Aboriginal women. These changes have been accompanied by major operational changes including the establishment of a Bail and Remand Court, operating seven days a week with hearings from 10 am to 9 pm. VLA has responded to these changes, including by changing its funding guidelines and expanding its services, but its model for the provision of remand services has generally remained static.

Receiving legal assistance when facing remand is of fundamental importance. Imprisonment is the most serious form of punishment for people convicted and sentenced for criminal offending, yet 'being on remand' sees a person deprived of their liberty before a charge is found proven. This time spent in custody can have significant and traumatic consequences for the person on remand, as well as their children and families. Even short periods in custody are destabilising and disruptive and can affect access to housing, employment, family arrangements and medical care and other treatments and support. Additionally, access to support and rehabilitation services for people on remand is limited.

Bail legislation is complex and can be difficult to navigate without legal assistance. The experience in Victoria, and reflected in the wider literature, shows that the provision of legal assistance to people on remand, particularly at first remand, can be critical to shaping a person's trajectory away from the justice system and back to the community.

In recent years, deaths in custody of people on remand, including the passing of Veronica Nelson, a strong Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, have underscored the importance of legal assistance and support in the remand system.

About the Review

In late 2022, VLA engaged the Centre for Innovative Justice to review its remand service. The scope of the Review was to understand:

- the most effective or important activities of the remand service
- to what extent the remand service meets the needs of clients
- to what extent the remand service achieves VLA's intended outcomes
- the system impact of VLA's remand services.

Section 1 of this report provides background on the conduct of the Review.

The CIJ gathered extensive material about VLA's programs, practices and services. We conducted a literature review about the characteristics of providing legal services to people on remand. We sought practice information and service data from VLA, and conducted consultations with justice sector stakeholders including courts and Victoria Police.

We received ethics approval for our research methodology in March and April 2023 and conducted research with three key groups: people who had been on remand, people who deliver the remand services, including lawyers (VLA lawyers and private lawyers) and administrative staff, and other professionals that support people on remand, including social workers. We held focus groups and interviews about their experiences of the remand service. In these in-depth discussions, we spoke to 24 people, including six people with lived experience of remand.

Our findings and our recommendations are informed by the experiences – both positive and negative – of those who spoke with us. This was not a representative sample of VLA's client base or its workforce. Rather, the people consulted in this project allowed us to consider deeply the experiences of people close to the issues. We considered this in the context of all the material about the remand service we gathered.

Section 2 of this report explains the context for the delivery of VLA's remand service. Section 3 of this report details what we heard about the remand service from the perspective of our research participants. Section 4 explores what we found, stepping through key themes that shape the delivery of the remand service. We have also assessed VLA's service against the themes of its own Outcomes Framework at Section 5.

Our recommendations, at Section 6 of this report, are directed at critical improvements to make the remand service more client-focused and cohesive. The suggestions for change seek to address opportunities for VLA to better align its remand service model to VLA's broader organisational outcomes and goals, respond to the experiences of clients and lawyers delivering VLA's remand services and to identify opportunities to achieve change.

There are systemic challenges that affect VLA's capacity to address all of the issues raised in this Review, and collaboration with sector partners will be critical. There is a need for long-term, collaborative and systemic work, alongside immediate actions that VLA can take to address its engagement with its clients and its workplace settings for its staff. VLA articulating its vision for the remand service is a powerful and essential step. Bail law reforms, intended to take effect in 2024, also provide a strong impetus for change and an improved remand service.

How VLA delivers the remand service

VLA's remand service is widely recognised as providing a critical service to clients and the broader court system. Effective interactions between lawyers and their remanded clients are vital to the safety, wellbeing and legal outcomes of people who have been remanded in custody. In an under-resourced system, these interactions have implications far beyond the courtroom or prison, and can change the long-term trajectory of people's lives.

The remand service – those services that relate to an individual making an application for bail – can be provided when a person is first brought into custody after being charged, or after being remanded, when a later application for bail is made. This means that services are provided at court through court-based duty services (coordinated and primarily staffed by VLA lawyers), or

by lawyers who are funded to provide ongoing assistance to a client. This might be a VLA lawyer, or a private practitioner, consistent with VLA's mixed service model.

The Review received data from VLA about the nature of its services. The Review report presents this data, where possible, over the last decade and since changes to bail laws in 2018. Key statistics include:

- In 2022, 18,860 services were provided across Victoria to people facing remand, through duty lawyer in-custody services and grants of aid for bail applications; 58% of these are duty lawyer services.
- Of VLA's in-custody duty lawyer services, 90% of these services result in one of four key activities: a bail application being made (24%), provision of information or advice (which might include referral to a private practitioner) (26%), an adjournment (26%) or a plea (6%).
- Where VLA records its duty service activity as a 'bail application', more than a third result in bail being granted but almost two thirds result in an adjournment or bail refusal. Over the last four years, the proportion of these services that have resulted in bail being granted has increased; in 2022, 2,872 direct bail applications were made by VLA's in-house duty service.

These statistics describe, in part, the high volume of work performed by the remand service. However, there are limitations to this data, including changes in data collection methods over time and inconsistent data collection practices which mean that it is challenging to draw conclusions on key aspects of the service, including service outcomes.

Overwhelmingly, we heard that the remand service is not just a legal service. Instead, it involves legal assistance and non-legal work and assistance, as well as coordination or triage services for the court generally.

Key functions of the remand service (including duty services)	Activities
Lawyers assist clients with their legal needs	<p>Lawyers represent individual clients through the provision of several distinct activities including:</p> <ul style="list-style-type: none"> • conferences with clients, • negotiations with prosecution, • appearances in court, and • case and client administration. <p>A feature of bail work is obtaining information about available support services in order to meet the 'unacceptable risk' and 'exceptional circumstances' tests under the <i>Bail Act 1977</i>.</p> <p>Assisting with legal needs can include post-release support, connecting clients to support services and follow up about further court reviews and appointments.</p>

<p>Lawyers assist clients with their non-legal needs</p>	<p>Lawyers facilitate responses to urgent needs such as medical care and treatment, care for children and if they are employed, work arrangements.</p> <p>Being able to address these needs assists the interaction between lawyer and client – particularly the ability to understand and process legal information and provide instructions.</p>
<p>Lawyers assist to triage and coordinate matters for the court</p>	<p>This work includes initial intake of all people held in custody and being brought to court to ascertain if the person has a lawyer or will need legal representation that day.</p> <p>Lawyers contact a client’s lawyer to advise them their client is in custody and to find out if they can appear for their client that day. This may involve repeated contact or negotiation to discuss the nature of the matter, the availability of online links to holding cells, court, and support services. Lawyers are also required to provide updates when requested to the sitting magistrate and court staff about the allocation of lawyers to people in court, and the readiness of matters to proceed.</p>

Understanding the role and functions of the remand service is critical to VLA delivering a service that: supports the administration of justice; is responsive to the operations of courts and prosecution; works to meet individual client’s needs; and allows lawyers and other staff to contribute effectively and sustainably. Defining this service and its scope will also help VLA to deliver on its Outcomes Framework, including by providing clients with increased access to justice and delivering an effective and sustainable VLA.

Experiences of the remand service

This Review has been informed by the unique perspective of people who have received legal services on remand. Consistent with VLA’s Strategy 26 and Outcomes Framework, VLA seeks to increase access to justice for its clients, and to ensure that clients have a strong voice in services and systems affecting them.

VLA’s services are generally delivered to a profile of people who are male (84%), are generally aged between 30-39 years (34%), are born in Australia (80%), and are not employed (82%). In addition, over one quarter of VLA’s clients report having a disability and one-fifth are at risk of homelessness. Approximately 10% of remand service clients identify as Aboriginal or Torres Strait Islander.

We interviewed six people who had first-hand experience of being remanded in custody. They described their experience of being remanded as 'terrifying', 'traumatic' and 'dehumanising', and found the legal processes they were subjected to both bewildering and disempowering.

" but if you're already in this really severely traumatising situation, unknown to you, withdrawing from drugs, separated from your child, have no contact with the outside world, it's literally like, it's like a living death.

In this context, the role of a lawyer to not only represent the client, but listen and connect with them, takes on enormous significance. Participants reported that contact with a lawyer, provided a key point of connection 'to the outside world'. Their interactions with a lawyer could be empowering or alienating depending on the approach of the lawyer and the conditions in which these interactions occurred. Participants variously described both positive and negative interactions with lawyers in this context.

More directly, people with lived experience of remand spoke of the importance of communication, connection and being heard by lawyers. Participants spoke consistently about the lack of time lawyers are able to spend with clients on remand and how most interactions feel rushed and inadequate. All participants noted the impact of rushed interactions, sometimes in contrast to better engagements with lawyers at other times. Being able to clearly and empathetically communicate with people who are experiencing distress is also key – we heard about the importance of lawyers explaining what was happening, explaining justice processes, legal concepts and strategies to their clients. More broadly, participants spoke of the importance of lawyers acknowledging them and their circumstances – of being heard.

" it was more about listening, supporting and being there.

A strong theme that emerged was that people on remand feel that lawyers who know them are better advocates, and provide a better service to them. Continuity of knowledge and relationships between clients and lawyers was felt to be critical.

All of those we interviewed spoke about the range of non-legal needs they had when remanded. A key concern was accessing medical and health services and medication – particularly for people who are substance-affected when remanded, or experiencing mental ill-health. People also described practical support needs such as arranging for care of children or family members, or to advise their employer, or secure their homes and belongings. We heard that lawyers become the focal point for addressing these needs, and that a failure to address these needs often resulted in more distress for people on remand. Lawyers also described how addressing the non-legal needs of their clients was a humane thing to do, and also enabled them to provide legal assistance more effectively.

Overall, lawyers were viewed as providing a vitally important service to remanded people. That role was recognised as having an enormous responsibility to provide a multi-faceted, strong and visible advocacy role, to communicate effectively with distressed and disoriented people, to hold an in-depth knowledge of criminal law processes and procedures and to clearly and carefully explain legal processes, and to demonstrate care, compassion and empathy to people on remand.

Providing remand services

Through the course of the Review we heard from lawyers, private practitioners, and administrative and program staff about the delivery of services to people on remand. We also spoke to people who support clients facing remand to gain their perspective of the service, and to wider justice stakeholders.

The importance of the remand service was noted by all of these participants, particularly lawyers who expressed a deep sense of responsibility for the work they perform.

" I see it as the most important work I do at VLA. That's because the client is truly at their most vulnerable when they're first remanded...they're in acute crisis.

An overarching concern raised by all participants was that lawyers seek to provide assistance within a system that is 'broken'. People noted the sheer increase in numbers of people who are on remand, and its subsequent impact on courts, support services, police and infrastructure, as well as VLA itself. In the context of a stressed and strained system, lawyers seek to protect their clients' interests – and fill gaps in services that are not of their making.

Private practitioners, VLA lawyers and support organisations alike reported on the importance of access to clients. Having face-to-face contact with clients was recognised as the optimal way to engage with clients and provide legal assistance, despite acceptance that remote hearings and lawyers communicating remotely with clients would continue to be a feature of the work. For lawyers, the pressure of providing services in a time-critical environment is immense. Just as people who have experience of remand called for more time with their lawyers, so too lawyers called for more time with their clients.

Both lawyers and support services we spoke to identified two aspects to the role that lawyers perform: the legal aspect of the role, which requires the application of legal analysis, forensic judgment, and advocacy skills; and a second aspect of the role, which requires engaging with clients' social support needs and making arrangements for these to be addressed. The two aspects of the role are intertwined: addressing clients' social support needs is crucial to the prospects of obtaining bail, with the extent to which social supports can be put in place affecting a court's consideration of risk. In regional areas, where coordinated or court-facilitated support services are not available, the time devoted to this function for lawyers increases. This aspect of the service is critical to achieving outcomes for clients.

" all of that work that we are doing out here to mitigate the risk posed by our clients is myself and my colleagues really doing social work. We're calling the Aboriginal co-ops, seeing what programs they offer, seeing if they can get down to court that day. We're obviously calling the family, seeing the families are happy to have them live there, making the referrals to the individual support services.

With this context in mind, all participants in the Review noted the variety of skills that lawyers need to deliver effective and high quality remand services. A common trait identified was maturity and capacity to make forensic decisions about how to proceed with a matter, and to have the capacity for robustness, where necessary, when engaging with the police, the court

and clients. In addition, cultural awareness, communication and trauma-informed practice were considered important skills and attributes for lawyers delivering remand services.

Lawyers described the responsibility, and at times, stress of providing services. Some of this related to volume – but we also heard that it is partly the *nature* of the work and its gravity that affects staff.

" You're constantly fighting all these different people ... being attacked from all these different angles, so by the time you get on to your bail application, you're just like 'please, just give them bail. I'm trying really hard here.' That pressure coming from all the different angles can be absolutely exhausting, in my experience.

Discussions about the nature of VLA's service prompted many ideas for improvement. Key amongst these were the need for more time with clients, the capacity to respond to non-legal needs, and supporting lawyers who deliver the service. These suggestions for change are addressed in the Review's findings and recommendations.

Key findings of the Review

The reflections reported in this Review provide a rich understanding of VLA's remand service. It is important to recognise that the sample size of participants and stakeholders consulted for the Review was relatively small, and the research does not purport to, and cannot, provide a definitive picture of the views of all VLA staff, clients and stakeholders. Nonetheless, bringing together these perspectives, along with program information and data from VLA, against a background of the academic literature, has allowed us to form conclusions about the inputs and activities of the remand service, the extent to which it meets the needs of VLA's clients and achieves VLA's intended outcomes. It is on this basis that the Review makes findings and recommendations for changes and improvements.

Importance of the remand service

The provision of legal services to people on remand is critically important. It is essential that the people who use the remand service are at the centre of its design.

The remand environment is extremely challenging for both remanded people and lawyers, but the interactions between lawyers and their remanded clients are critical to the safety, wellbeing and legal outcomes of people who have been remanded in custody.

The lawyers who deliver the duty lawyer service are acutely aware of the traumatic impact of being remanded, what an ordeal it can be for people, and how being remanded can disrupt someone's entire life. We heard from lawyers that the responsibility of advocating for a client's liberty comes with an enormous sense of obligation, as well as stress and pressure. Other stakeholders recognised the work of the remand service as a critical safeguard of people's rights and welfare. People with lived experience we spoke with also emphasised how harmful and disruptive being remanded was for them, and hoped that their experience could contribute to better experiences and outcomes for people in their position.

More than a legal service

VLA's remand service is more than a legal service. In addition to providing advice and representation to people remanded in custody, it also provides non-legal services and triage and coordination services for the benefit of the court and the justice system as a whole. The scope of VLA's service is not well-understood, and recognising the multiple services provided by VLA, and resourcing them, will lead to better outcomes.

People remanded in custody – and especially when they are first remanded – have a range of pressing legal and non-legal needs. When a person's only contact point outside of custody is their lawyer, the lawyer becomes the focal point for providing not only a legal outcome, but practical support and assistance such as advocating for a client's access to medical treatment or medication, contacting family and friends or employers; arranging for children to be collected from school, arranging referrals to services. These tasks and functions, which participants described as essential to their wellbeing, are not currently the sole or clear responsibility of any practitioner or group of practitioners in the remand process.

Lawyers do their best to provide a good service to people in custody, but their primary focus is on achieving the best possible legal outcome for the person. A successful bail application requires satisfying the presiding magistrate that risk has been adequately addressed and the required bail threshold has been met. A common way to address some risks is to demonstrate that appropriate social supports are in place. Lawyers regularly do the work of addressing people's non-legal needs, in the service of achieving a good legal outcome: the two 'categories' of need are interrelated.

Currently, the duty lawyer service can address people's legal needs, and people's non-legal needs to the extent that preparing a viable bail application requires this. However, there are a range of non-legal needs that fall outside of this category, that are critically important from the perspective of newly remanded people (including assisting the communication and understanding of legal concepts) which go unaddressed. At the time of release from custody, there is generally a gap in the support that can be provided and that which is requested or needed by the client. Despite this, lawyers often take on this work.

VLA's duty lawyers also carry out a range of duties which assist the court and the justice system more generally, to administer the remand service. These tasks are largely triage and coordination services such as assisting the court to manage the list of cases to be brought before the court and ensuring magistrates have an understanding of who is in custody, even if those people are not VLA clients. In some circumstances, duty lawyers also provide a safety-net to people in custody, ensuring magistrates have knowledge of the people in custody who may not be engaging with lawyers or support services.

Recognising and resourcing the multiple services provided by VLA will lead to better outcomes for all involved in the remand system, including most importantly, the people in custody.

Urgent need for lawyers to have more time with their clients

Time pressures permeate all aspects of the remand service, to the detriment of the people remanded in custody. There is an urgent need for newly remanded clients to have more time with lawyers. To fully address this issue, practice and service changes from VLA and a range of justice stakeholders are necessary.

A lack of time and the associated consequences of this was a prevailing theme raised by every person we engaged with in the Review. People with lived experience were conscious that duty

lawyers have multiple demands on their time and simply did not have the ability to get to know them well or gain a deep understanding of their circumstances. For lawyers, the lack of time they had to spend with clients severely impeded their ability to build trust and rapport, which lawyers identified as being critical in being able to fulfil their role.

Many of the tasks a lawyer must carry out, such as seeking access to their client, or arranging an interpreter or a medical assessment for their client, are not within the control of the lawyer. In addition, lawyers do not control service timeframes such as the cut-off times for accepting new remand matters at court. All of these issues limit the time available between clients and lawyers, falling short of what is required for an optimal remand service. To provide for meaningful change and to increase the time available to lawyers to provide advice and support to clients who are remanded in custody, practice and service changes are needed from a range of justice stakeholders. To help VLA in advocating for such changes, a useful starting point is for it to define the vision and scope of its service and communicate this to stakeholders and people remanded in custody.

Tensions between the objectives of the remand service, the court and clients

A number of tensions exist in delivering the remand service. Improved communication and understanding of roles amongst all stakeholders could help to respond to and alleviate these tensions.

A significant tension for lawyers is between representing their clients and responding to the court. Within the duty service, this is an ever-present issue, with frequent requests from the court reported to disrupt and limit lawyers' time with clients. Acknowledging the legitimate need to bring an accused before the court as quickly as possible, a perceived focus on efficiency can be at odds with a client-focused approach.

People with lived experience had a clear understanding that duty lawyers play a role in assisting the court, in addition to providing advocacy in individual matters. For some, this meant that the duty lawyers were perceived to be part of the court apparatus, and therefore less like a trusted advocate.

The Review also heard of tension within relationships between VLA lawyers and staff, and private practitioners, largely concerned with the capacity and scope of assistance each could provide, alongside a desire to work collegially.

These tensions could be in part addressed by determining and communicating the scope and limits of VLA's remand service. The Review recommendations directed to journey mapping and service design also seek to address these issues.

Variation in practices across the state

The delivery of the remand service is dependent on the court location, including local practices at court, VLA staffing composition and VLA resources across its offices.

A critical issue identified in the Review was the impact on the work of the remand service of variations in the availability of support services across Victoria, particularly in regional areas. Where support services such as the Court Integrated Services Program (CISP) or Forensicare are not available, lawyers spend more time seeking to arrange services to support their client's bail application. Where services are not available, a client may be denied bail.

Practice variability across court locations changes the nature of the work that lawyers perform in the remand service, with lawyers in regional areas responding to mixed court lists, compared to remand applications almost exclusively at the Bail and Remand Court at Melbourne Magistrates' Court. Understanding and designing for these differences is critical to resourcing an efficient and effective remand service model.

Need for greater clarity about funding guidelines for bail applications

Lawyers support the recent changes to VLA's funding guidelines to encourage more bail applications for Aboriginal and Torres Strait Islander clients and children. There is a need for greater clarity about the application of funding guidelines for bail applications for priority clients including those with serious mental health diagnoses or cognitive disability.

The Review considered the impact of recent changes to duty lawyer guidelines and funding guidelines on the remand service and its clients. VLA provided the Review with data that suggests that following changes aimed at encouraging the making of represented bail applications for First Nations clients, more First Nations clients had a bail application made and there was an increase in the proportion of bail applications funded that were made for First Nations clients. This indicates that funding guidelines are a tool that VLA can use to direct priorities for the delivery of its services.

Lawyers also expressed support for prioritising bail applications for people with serious mental health diagnoses or cognitive disability and suggested further changes to the funding guidelines ought to be considered by VLA. In response, we heard from VLA that bail applications will always be supported for priority clients and are provided for under current guidelines. This suggests there is an opportunity for VLA to provide greater clarity to lawyers about the application of the funding guidelines to priority groups.

Value of lawyer continuity

Private practitioners are critical to the delivery of remand services. The experience of people in custody improves significantly if they can see a lawyer they know.

Private practitioners are a key part of the mixed service model of legal aid in Victoria. In this Review, the role private practitioners play in representing newly remanded clients was highlighted, with people with lived experience describing positive experiences with private practitioners.

A remanded person's experience and their outcomes were greatly improved by having an existing relationship with a single lawyer, whether it be a private practitioner or a VLA lawyer with a grant of aid. Prioritising ways to support lawyer continuity can provide benefits to all parties.

It was not within the scope of this Review to determine appropriate funding models for the remand service, however, the provision of legal assistance at the point of first remand (including legal assistance that may not, after assessment, result in a bail application being made) should be prioritised, and the preferences of clients for lawyer continuity supported where it is feasible to do so.

Impact of remand duty work on lawyers

Working as a lawyer providing remand services, particularly as a duty lawyer, is highly stressful. It is essential that supervision and support are prioritised by VLA, tailored to those performing this work and made mandatory.

The Review heard from lawyers that delivering remand services involves working with people who may have histories of trauma, have cognitive impairments or be experiencing episodes of mental illness. Lawyers also experienced this work as challenging and exhausting, with the potential for vicarious trauma and 'burn out'. VLA recognises these risks to staff, and has policies in place to address them, but they do not adequately address the impact of remand duty lawyer work on those who deliver the services. In particular, without a mandatory program of supervision or support, or some other way of ensuring participation, staff will attend to client work before their own needs.

There are also a range of practical steps that VLA can take to ease administrative and operational burdens on staff.

Improving system responses through advocacy

VLA is an important public body, with a powerful role to play in advocating for people remanded in custody and the remand service, at a systemic level.

A common theme that arose from Review participants and stakeholders was the sentiment that VLA as an organisation could and should do more 'systemic advocacy.' This sentiment recognised VLA's key role as a provider of services, and the knowledge and perceived influence it could have in the broader justice system. However, what 'systemic advocacy' looked like varied considerably and included advocacy aimed at addressing both operational and practice issues within the remand system. The Review was also informed of the various ways that VLA does engage in advocacy to improve the remand service, the experiences of its clients and the broader justice system.

We make recommendations for VLA to consider how it performs its advocacy role, and how it communicates these activities across the sector. There are opportunities to improve system collaboration and coordination with stakeholders, and for VLA to contribute to better alignment of purposes and priorities amongst stakeholders involved in the remand system. The Review has also identified that VLA has a unique opportunity to work with people with lived experience of system challenges to develop solutions.

Recommendations

In this Review we have sought to identify where recommendations should be prioritised for implementation in the short term, and where it might be more effective to undertake further work as part of the implementation process. This further work might include collaboration with people with lived experience as part of journey mapping and design processes to ensure these important perspectives inform implementation. Where appropriate, we have added implementation considerations, and our assessment of whether additional funding would be required to implement recommendations. Details of these considerations are set out in detail in Section 6.

1 Articulating the vision for the remand service

It is recommended that VLA:

- 1.1 Define the purpose and scope of the remand service.
- 1.2 Promote awareness of VLA's remand service amongst people remanded in custody and stakeholders.

2 Designing a client-focused remand service

It is recommended that VLA:

- 2.1 Undertake a journey mapping process to better understand the needs of VLA's clients before, during, and after they come into contact with the remand system and VLA's remand service.
- 2.2 Undertake a co-design process to continue to improve the remand service, incorporating insights from client journeys through the remand system and drawing on the findings and recommendations of this Review.

3 Improving the remand service to meet the needs of people remanded in custody

It is recommended that VLA:

- 3.1 Establish an integrated service model that responds to the legal and non-legal needs of people remanded in custody.
- 3.2 Ensure clients have adequate time with lawyers so that lawyers can properly advise, support and communicate with them.
- 3.3 Improve access to information about the remand service, bail and associated court processes for people remanded in custody.

4 Prioritising the needs of people remanded in custody at first remand

It is recommended that VLA:

- 4.1 Prioritise support for people remanded in custody at the point of first remand by:
 - a. promoting their preference to be assisted by their existing lawyer; and
 - b. exploring whether VLA can fund the provision of legal assistance for straight remands.
- 4.2 Clarify and communicate to practitioners the application of funding guidelines to priority groups, including people with cognitive disability or serious mental health diagnoses, to encourage lawyers to make bail applications at the first opportunity.

5 Supporting the remand service workforce

It is recommended that VLA:

- 5.1 Ensure that lawyers and staff receive tailored and practical training on how to support clients on remand including the effects of trauma and how it can impact on people's

presentation; communicating with people with cognitive disability; and recognising signs of mental health conditions.

- 5.2 Continue to focus on creating a safe working environment that supports the health and wellbeing of staff delivering remand services by:
 - a. adding to the suite of current supervisory and wellbeing options, supports or services which are tailored to address the particular impact of remand service work; and
 - b. making participation in the tailored supports or services mandatory for all staff delivering remand services.
- 5.3 Review and determine the mix and proportion of managing, senior and junior lawyers in its remand service that is sufficient to provide adequate support and mentoring for staff delivering the service.
- 5.4 Explore opportunities to recognise the importance of the work of the remand service including by acknowledging the skills and special expertise of lawyers delivering remand services and fostering a culture of recognition and respect for the work of the remand service, particularly duty lawyers, across the courts and other justice stakeholders.
- 5.5 Provide access to technology and equipment to enable VLA lawyers to perform their roles effectively, and work with stakeholders in areas where this requires cooperation.

6 Targeting systemic and practice advocacy

It is recommended that VLA:

- 6.1 Advocate for collaborative system-wide stewardship and leadership that promotes better alignment of purposes and prioritises a focus on people remanded in custody.
- 6.2 Strengthen its advocacy, drawing on the lived experience of people who have been remanded in custody by:
 - a. including and amplifying their voices in its systemic advocacy
 - b. supporting the capability development of people with lived experience as self-advocates
 - c. supporting the inclusion of people with lived experience in working groups and other stakeholder forums.
- 6.3 Work with stakeholders for system-wide legislative reform and operational practices that support the needs of people remanded in custody and more client-focused service delivery including:
 - a. adequate time for people remanded in custody to receive legal advice and support
 - b. timely and better quality access to people remanded in custody
 - c. access to support services for people remanded in custody including court-based services such as the Court Integrated Services Program, Forensicare and Youth Justice
 - d. timely access to prosecution case materials and prosecuting officers.

7 Improving data and understanding

It is recommended that VLA:

- 7.1 Measure the activities and impact of the remand service, including by:
 - a. collecting data on all activities undertaken as part of the remand service (such as those performed for remanded clients and those supporting the operation of the remand system as a whole); and
 - b. collecting data on clients' experience of the remand service, including the extent to which the service addressed their legal and/or non-legal needs.

7.2 Monitor and evaluate the remand service.

8 Funding and resourcing the remand service

It is recommended that VLA:

- 8.1 Seek funding to implement the recommendations of this Review.

1 Introduction

1.1 Background

In December 2022, Victoria Legal Aid (VLA) engaged the Centre for Innovative Justice (CIJ) to undertake an external review of its remand services (the Review). VLA commissioned the Review to better understand how its remand services are operating and to draw on any findings and recommendations to make any necessary improvements to its services. VLA highlighted that the Review must consider the experience of its clients and those with lived experience of the remand system, as well as engagement with stakeholders in the criminal justice system.

1.1.1 Starting from the perspective of those with lived experience of remand

During the course of this Review, we interviewed several people who had first-hand experience of being remanded in custody. We heard strikingly similar accounts from each of them. When describing the experience of being remanded in custody, they often used adjectives like ‘terrifying’, ‘traumatic’ and ‘dehumanising’. Being remanded was ‘like a living death’ for people suddenly ‘extracted’ from the community and unable to contact their families. They had very little understanding of the confusing legal processes taking place around them, leaving them with a profound sense of powerlessness.

While the Review has been informed by data, a review of the literature, and consultation with professional stakeholders, these first-hand accounts of traumatic and distressing experiences from people with lived experience were particularly compelling. They make it clear that the bail and remand process – in which VLA plays an important role – must better respond to the needs of people who have been remanded in custody.

The focus in commissioning this Review has been on improving access to legal services, however people we spoke to made it clear that their needs were not limited to legal advice and representation. All of those we interviewed highlighted the importance of addressing pressing non-legal needs when they were remanded. They described the devastating impacts on themselves and others when these needs were not met. They spoke about being unable to engage effectively with their lawyers, and missing out on access to psychological support and medical and other critical forms of assistance. As well as compounding the harmful experience of remand, insufficient access to legal and non-legal assistance limited their prospects of being released from custody.

As the people we interviewed told us, it is critical that their unique perspective is brought to the fore when VLA seeks to understand how it might better meet the needs of its clients. We have included their stories throughout this report to illustrate these perspectives. In our view, the importance of listening to and learning from the experience of VLA’s clients and those with lived experience of the remand system cannot be understated; it is through this lens that the rest of this Review report should be viewed.

1.2 About the Review

1.2.1 Review aims and objectives

The Review aims to better understand the experiences of clients who have engaged with VLA's remand services. This will inform an assessment of whether VLA's services model aligns with, and contributes to, broader organisational outcomes and goals, and whether any necessary improvements are required.

VLA's objectives in commissioning the Review are to understand:

- (a) What are the most effective or important inputs and activities of our remand service to achieving our intended outcomes?
- (b) To what extent does the remand service meet the needs of our clients?
- (c) To what extent does the remand service achieve our relevant intended outcomes set out in the Summary Crime Program Logic?
- (d) What is the system impact of our remand services?

1.2.2 Key inputs

The key inputs for the Review are:

- a literature review of research (including peer-reviewed and 'grey' literature) about the provision of legal services in remand settings
- engagement with lawyers providing remand services (VLA lawyers and panel practitioners) to understand their functions (legal and non-legal) and their experience of providing remand services, including duty services
- engagement with key stakeholders in the criminal justice system to understand their experiences and views of VLA's remand services
- engagement with people with lived experience of VLA's remand services.

In order to answer the key research questions posed by VLA, we requested from VLA data relating to:

- the number of clients assisted by the remand service (including whether that was by a duty lawyer or a funded bail application appearance by a lawyer)
- the number of services provided to people on remand (by VLA in house lawyers, panel practitioner and barristers)
- demographics of clients accessing the service
- the nature of the services
 - whether an application for bail was made
 - whether referrals made and to whom
 - outcome of the service (eg person remanded/bail/charges discharged etc)
- personnel numbers, allocation of duty lawyers across the state

- funding of the remand service.

We requested this data for the previous 10 years so as to consider the impact of legislative and other practice changes. VLA provided raw data in response to the above request, as well as existing data that VLA has prepared about its remand service.

1.2.3 Deliverables

VLA has requested a written report which sets out:

- findings and recommendations for necessary changes and improvements
- the voices and experiences of people with lived experience of VLA's remand service
- recommendations to VLA regarding further engagement with people with lived experience of remand.

We have also prepared a response to the key evaluation questions posed by VLA. This is provided at Appendix 7.6

1.2.4 A note on terminology

In this report, VLA's *remand services* mean the legal services provided to people who are refused bail by police or are presented directly to the court for a determination on bail (first remand) and, after the first remand hearing, to people in custody who seek to make a bail application.

At the first remand stage, legal services are generally provided by *duty lawyers*. The duty lawyer will also find out if the person has an existing legal representative and seek to have that person assist the accused. Duty lawyer services are provided by *VLA's in-house legal practice*, by *panel practitioners* providing duty lawyer services and by *barristers* briefed to provide duty lawyer services or appearances.

After the first remand, a person in custody will be assisted by an allocated lawyer (who may or may not be the lawyer who assisted at first remand). Both in-house (VLA) lawyers or private lawyers provide legal services to people in custody subsequent to the first remand. This work is usually subject to grants of legal aid for each matter.

The focus of this Review is on the ways in which services are delivered to people on remand primarily focusing on adults and matters dealt with in the Magistrates' Court. The focus on adults Magistrates' Court matters is because:

- this represents the vast majority of VLA's remand service (noting that all indictable stream remand matters commence in the Magistrates' Court)
- services to children on remand can differ substantially to services to adults, and given the specialist approaches (including VLA's specialist practice) for children, the timing, ethics approvals and scope of this project did not provide for direct engagement with young people.

1.3 Methodology for this Review

This Review was designed and undertaken using four separate approaches to data collection and analysis: research; consultation; observation; and document analysis. These methods were selected to ensure rigour; wide consultation; both in-depth and broad data analysis and completion of the Review within the available timeframes.

First, a piece of ethics-approved research was undertaken to ensure that this Review can provide much needed evidence to VLA and to the wider criminal justice sector on the urgency of legal reform and redesign of services to adequately meet the needs of people with lived experience of the criminal justice system.

Second, broad consultation was conducted alongside the research to ensure that the scope of the project was defined not just by the research team, but by VLA and their stakeholders in the criminal justice system. While the research component was designed to provide in-depth information, stakeholder consultations provided a breadth of information that could not be gained via other methods.

Third, data and document analysis were conducted to ensure the research team could situate the research findings and consultation data within the context of VLA's policies and practices. This form of analysis does not provide an evidence base as it was not undertaken using a defined research methodology. Rather, it was conducted to ensure that the research component of the Review could be appropriately situated within the context of VLA's current policies.

Finally, court observations were conducted by the research team for the purposes of contextualising the research, consultation and document analysis within the 'live' context of the operations of the courts. Again, observations of court were not conducted using defined research methods so do not form part of the evidence base. Instead, observations were conducted so the research team could observe the phenomena described by the research participants and understand the consistencies and inconsistencies between what research participants described and what the research team observed.

1.3.1 Research

As the literature review demonstrates, little is known internationally about the provision of legal services for people on remand, and the gaps in knowledge indicate that more research into the needs (both legal and non-legal) of remanded people is essential. Similarly, little evidence exists that describes the ways in which remand services function, or what the range of tasks and issues are that affect service provision.

Exploratory social research methodology is often employed to explore social phenomena where little is known, and where other types of research (such as a Randomised Controlled Trial for example) cannot be undertaken. The aim of an exploratory study is to *explore* phenomena rather than *explain* phenomena, and as such, exploratory research does not have implications for correlation or causation. As a small exploratory study, the results of this research are not necessarily generalisable and do not have any statistical significance. The sample sizes for each participant group were small (for example, the sample of people with lived experience of remand is n=6), and therefore the themes developed across these groups are not necessarily representative of the broader views of lawyers, administrative staff, people with lived experience of remand or people who work in support organisations.

Ethics approval for the research component of this Review was granted by RMIT's Human Research Ethics Committee on 28 March 2023 and 12 April 2023. For the purposes of rigour and expediency, a simple research design was adopted to conduct an exploratory qualitative study with five different participant groups that were considered to hold diverse and important perspectives on VLA's remand services. Recruitment of the five participant groups occurred via agencies that either employ relevant staff (such as VLA, Flat Out, Vacro and Law and Advocacy Centre for Women) or provide services to people who experience remand.

Interview and focus group questions were developed based on the findings of the literature review and the questions posed by VLA in its engagement request. A copy of the question guides for this research are at Appendix 7.3. Between April and June 2023, the researchers conducted semi-structured interviews and focus groups with five participant groups. The participant groups were:

- people with lived experience of remand in Victoria
- lawyers performing duty lawyer services employed by VLA
- lawyers and barristers providing remand services funded by VLA (panel practitioners)
- legal assistants and VLA administrative staff
- professional staff from organisations who work with remanded people (called 'support organisations throughout this report).

Inclusion criteria for lawyers and barristers were that they were employed by VLA or were private practitioners, and that they performed duty lawyer services for VLA. Inclusion criteria for legal assistants and administrative staff were that they were employed by VLA, and the inclusion criteria for other professional staff from support organisations were that they provided services to people on remand, and that they were an independent organisation (not funded by VLA, and not a court-funded service). The independent support organisations were selected as information sources as the research team decided that it was important to hear the perspectives of professionals who are not part of the 'machinery' of the court system.

The inclusion criteria for people with lived experience was that they had experienced a period of remand in Victoria since 2018. This date was selected to ensure the people with lived experience had experienced remand following the 2018 changes to the *Bail Act 1977* (Vic). Due to the tight timeline of the research, people subject to any current criminal legal order were excluded from the research, as the inclusion of people on current orders would have required applications for ethical approval from several additional agencies.

The exclusion criteria and the recruitment method for the people with lived experience may have influenced the sample, as the researchers were only able to interview people who were not currently subject to any legal orders, and who had maintained contact with a support organisation (such as Flat Our, Vacro and LACW). The research team moved to a second recruitment method, which was to recruit via VLA itself, however this method did not yield any additional participants. The sample consisted of four women and two men, which is not representative of the Victorian prison population, or of VLA's remand service clients.

Focus group and interview data was coded using a simplified thematic analysis.¹ The data was not coded to the point of thematic saturation as time did not permit this level of analysis. This

¹ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3(2) *Qualitative Research in Psychology*.

means that the transcripts were coded only for explicit (or obvious) themes, and not to the point where no new information can be generated.²

People with lived experience of social phenomena (such as being remanded) are a vital source of information to ensure that the phenomena under investigation can be understood from the perspective of those who are directly and closely involved. But similarly important is the inclusion of the lived experience perspective in research to ensure that the analysis of researchers without lived experience is accurate and sensitive to the experiences of research participants.³

An additional layer of analysis was undertaken on the transcripts for the participants with lived experience of remand. One of the ways in which lived experience expertise can be utilised in research design is through the integration of lived experience perspectives in data analysis.⁴ This method can strengthen more 'traditional' approaches to research, where lived experience experts can identify gaps in data, interpret data using a lived experience lens, and comment on the relevance and future direction of the research. Integrating lived experience into data analysis can result in research that has greater practical applicability and more relevance to the researched population.

The transcripts were coded by a member of the research team and then provided to the CIJ's Lived Experience Advisor Dorothy Armstrong (who is also a member of the research team). After familiarising herself with each transcript Dorothy Armstrong was asked to comment on the consistency of the themes identified by the researcher; articulate her observations related to the experiences the participants described in the transcripts and identify any additional themes in the transcripts. Dorothy's analysis of the transcripts is provided in section 3.1.6.

1.3.2 Consultation

The CIJ research team conducted a series of consultations between January 2023 and July 2023. A range of relevant stakeholders participated in consultations including Victoria Police members (in particular, members involved in prosecutions and custody management) staff and judicial officers at the Magistrates' Court of Victoria, community legal centre staff and advocacy organisations. The research team also consulted various teams across VLA to obtain information and insight about the remand service and relevant VLA programs.

1.3.3 Observation

The research team observed remand processes both in person and online during business hours on weekdays and online after hours and on weekends at the Bail and Remand Court (BaRC). While notes were taken during periods of observations, research methods were not used, and so formal analysis of notes did not occur. Rather, the notes were used to guide the researchers' shaping of interview questions for research participants, and the questions asked of VLA stakeholders throughout the consultations.

² Virginia Braun and Victoria Clarke, 'To Saturate or Not to Saturate? Questioning Data Saturation as a Useful Concept for Thematic Analysis and Sample-Size Rationales' (2019) 13(2) *Qualitative Research in Sport, Exercise and Health*.

³ Laura Hemming, Daniel Pratt, Peter Bhatti, Jennifer Shaw and Gillian Haddock, 'Involving and Individual with Lived Experience in a Co-Analysis of Qualitative Data' (2021) 24 *Health Expectations*.

⁴ Joanne R Beames et al 'A New Normal: Integrating Lived Experience Into Scientific Data Syntheses' *Front Psychiatry* (October 2021).

1.3.4 Document analysis

The research team undertook analysis of VLA's policy, practice and procedure documents, including both publicly available material and documents provided to the research team by VLA. Additionally, the research team used publicly available data from a range of government agencies and bodies to analyse VLA's remand service within the greater context of courts and the criminal justice system more broadly.

Scoping discussions were held with key VLA staff at the commencement of the Review, and materials and additional information was provided to the research team throughout the duration of the data collection phase of the Review. The research team met with key VLA staff throughout the data collection phase to further refine the scope of the document analysis, and to seek missing data.

An overview of the organisations and people the research team engaged with during the Review is provided at Appendix 7.2.

1.3.5 Limitations of the research

One of the primary limitations of this Review is the relatively short time within which the research was conducted. A longer period of time would have allowed for greater data collection, further and fuller analysis, more extensive consultation and most importantly greater engagement with people with lived experience.

The lived experience literature⁵ makes clear that engaging people with lived experience of social and structural disadvantage requires a range of conditions be met for engagement to be successful and safe. It is well known that engagement of people with lived experience is time and resource intensive and requires a period of relationship building to gain trust before work can commence. Within the timeframes of this Review, it was not possible to engage more than six people with lived experience of remand. All of the participants interviewed had some prior experience using their lived experience for research, in projects or in identified lived experience roles. As such, the sample was biased towards people with the confidence to speak about their experiences and make criticisms of systems and agencies.

For future research with people with lived experience it will be important for VLA to ensure appropriate timelines can be afforded to ensure that people with lived experience can be engaged in a safe and ethical manner. Similarly, timelines should be sufficient to ensure that people with lived experience can be engaged as co-researchers or designers rather than just interviewees. In other words, for meaningful engagement of people with lived experience to occur, the research should be done *with* rather than about them.

Not all requested data and documents could be provided to the researchers, in part due to the timeline of this Review.

⁵ For examples of the current lived experience literature see: Rachel Marie Tindall, Melissa Ferris, Meredith Townsend, Gayle Boschert and Steven Moylan, A first-hand experience of co-design in mental health service design: Opportunities, challenges, and lessons, *International Journal of Mental Health Nursing* (2021) 30, 1693–1702, Jakob Trischler, Timo Dietrich and Sharyn Rundle-Thiele, Co-design: from expert- to user-driven ideas in public service design, *Public Management Review*, (2019) 21:11, 1595-1619

1.3.6 Literature review

The research team conducted a literature review of academic and grey literature available on the question of 'what are the characteristics of the provision of legal services to people on remand?'

In summary, key characteristics of legal services identified in that literature review were:

- the legislative context, and in particular a trend of legal tests that focus on assessment of risk of re-offending increases the interaction of legal assistance and support services
- the social and operational context of remand settings affects the nature of legal services provided
- people on remand have acute needs and complex needs, that are not only legal needs
- remand legal assistance changes legal outcomes, with adequate legal representation influencing rates of remand and other (subsequent) legal outcomes
- the nature of legal assistance provided on remand is limited by access to clients and access to information
- the delivery of legal assistance to people remand is characterised by speed, volume and the need for support services and referrals to discharge legal tests relating to risk.

The Literature Review is provided at Appendix 7.1 and its key learnings are noted throughout this report.

1.4 About bail and remand in Victoria

The first contact that VLA's remand service has with a person in custody usually occurs after the person has been charged and is lodged in custody. As the stories of people with lived experience of remand in this Review illustrate, the period *prior* to first contact with a duty lawyer can have a significant impact for a person facing remand. We explore some of these experiences in section 3.1.

In the section below, we describe the legal process, from a person's point of arrest, to being placed on remand, waiting to see a lawyer, followed by a brief explanation of remand, bail and the legislation which governs bail in Victoria. We then look at changes to the *Bail Act 1977* which were introduced in 2013, and 2017-18. This information is important, as it provides the context for this Review including the impact of the changes to the bail laws on the delivery of VLA's remand services.

The process for accused people leading to remand⁶

At first contact with police, the person will be arrested and given their caution and rights. If they resist arrest, reasonable force may be used to restrain them. This may involve them being pushed to the ground and handcuffed. The person will be placed in a police vehicle to be transported to the police station. At the station they will be photographed and their details entered into the attendance register. They should be given the opportunity to make two phone calls. The person will be placed in an interview room where the record of interview will take place. The interview will not proceed until police have gathered relevant evidence (for example statements or CCTV footage). After the interview the accused person will wait in the cell or interview room while police complete the remand paperwork. The person will then be transported to the police cells or custody centre.

Once lodged in custody, the person will be strip searched, their possessions will be placed in a clear plastic bag and removed from them. They will be placed in a cell, possibly with other remandees and will wait to see a duty lawyer (or be connected with their lawyer) and to appear before the court.

What is remand?

Remand describes the situation where a person has been arrested and is held in custody waiting for their charges to be heard. This is distinct from a sentenced prisoner. A person will be on remand either because they have not applied for bail, they have been refused bail or because they have not been able to comply with a condition of bail – like the payment of a surety.

For the purposes of this Review, a *remand service* refers to services provided by VLA to assist people who are in custody on remand, and include the duty lawyer service and the framework for funded bail applications made for people in custody.

What is bail?

Bail is a written promise (known as a bail undertaking) that a person will come to court at a particular time and date. If somebody is in custody and is granted bail it means they will be released into the community. To get bail, the person may have to agree to conditions such as:

⁶ Information provided by VLA.

reporting to the police station; living at a certain place; having someone act as a surety for the person on bail.⁷

Bail Act 1977

Bail in Victoria is governed by the *Bail Act 1977 (Vic)* (the Bail Act). Since 2013, Victoria's bail laws have been amended to increasingly limit the circumstances when a person may be released on bail, and to change the consequences for breaches of bail conditions.⁸ The stated intent of successive governments in proposing the changes was to make access to bail more difficult for violent offenders, to manage risk, improve community safety and restore public confidence.⁹

In 2013, the Bail Act was amended to make it an offence to contravene certain bail conditions or to commit an indictable offence whilst on bail,¹⁰ then in 2017 and 2018, it was further amended following the Bourke Street tragedy¹¹ and recommendations made by former Director of Public Prosecutions and Supreme Court Justice, Mr Paul Coghlan QC.¹² The critical change to the bail laws introduced following the review by Mr Coghlan (the Coghlan Review) was the expansion of the 'reverse-onus test'. This change meant that even people with low level offending (such as failing to attend Court on a date their bail required) would find themselves having to show either 'exceptional circumstances' or 'compelling reasons' for bail to be granted. The person accused of the offence bears the burden of proof as to the existence of exceptional circumstances or compelling reasons. If the applicant can persuade the bail decision maker that they have met this test, the bail decision maker must then consider the 'unacceptable risk' test. The prosecutor bears the burden of proof as to the existence of an unacceptable risk.

While the reverse onus test existed prior to the 2017-18 reforms, it only applied to a limited number of offences. The presumption against bail now applies to over 100 offences in Victoria, more than in any other Australian jurisdiction.¹³ In addition, 'double uplift' provisions mean that often people are required to demonstrate exceptional circumstances to obtain bail, even where the offences charged are minor. This can occur as a result of repeated low level offending. Other notable changes introduced following the Coghlan Review include:

- the establishment of BaRC, which commenced operation on 1 July 2018, from two courtrooms at Melbourne Magistrates' Court. Its operating hours are 10am – 9pm, seven days and nights per week, including public holidays
- the insertion of a purpose provision in the Bail Act and a list of guiding principles to aid the application and interpretation of the Act. These insertions were to "reflect that decisions on whether or not to grant bail are made in the context of broader policy

⁷ Victoria Legal Aid, 'Being released from police custody', (11 April 2022) <<https://www.legalaid.vic.gov.au/being-released-police-custody>>

⁸ For instance, in 2013, the *Bail Amendment Act 2013 (Vic)* introduced the offences of contravening a conduct condition of bail and committing an indictable offence on bail.

⁹ Amendments to the Bail Act 1977 (Vic) made by the Bail Amendment Act 2013, Bail Amendment (Stage One) Act 2017 and Bail Amendment (Stage Two) Act 2018: see Parliament of Victoria, Attorney-General Robert Clark Bail Amendment Act 2013, Second reading, 17 April 2013, 1268, see also Parliament of Victoria, Attorney-General Martin Pakula, Bail Amendment (Stage One) Bill 2017, Second reading, 25 May 2017, 1492; see also Parliament of Victoria, Attorney-General Martin Pakula, Bail Amendment (Stage Two) Bill 2017, Second reading, 13 December 2017, 4366.

¹⁰ Bail Amendment Act 2013 (Vic) s 8.

¹¹ On 20 January 2017 James Gargasoulas drove a motor vehicle through Bourke Street, Melbourne, killing six people and injuring 30 others. It was later revealed that Mr Gargasoulas was released on bail 6 days prior to committing these acts. The Victorian Government immediately announced a review of Victoria's bail laws.

¹² The Hon. Paul Coghlan QC, Bail Review: First advice to the Victorian Government (3 April 2017), The Hon. Paul Coghlan QC, Bail Review: Second advice to the Victorian Government (1 May 2017).

¹³ Dr Marilyn McMahon, 'No Bail, more jail?: Breaking the nexus between community protection and escalating pre-trial detention', (Research Paper No. 3, Parliamentary Library & Information Service, Parliament of Victoria, August 2019), 12.

considerations, particularly the balance between community safety and the presumption of innocence”.¹⁴

1.4.1 Impact of 2018 Bail Act changes

Changes to the legal test for the circumstances when a person can obtain bail has resulted in a significant increase in the numbers of people remanded in custody.

In 2016, there were 6522 Victorian prisoners, 28.8% of whom were unsentenced. By 2019, this number increased to 8101 prisoners, with 36.75% of prisoners unsentenced. While the overall numbers of prisoners reduced to 6569 in 2022,¹⁵ 42.1% of prisoners of those are unsentenced.¹⁶

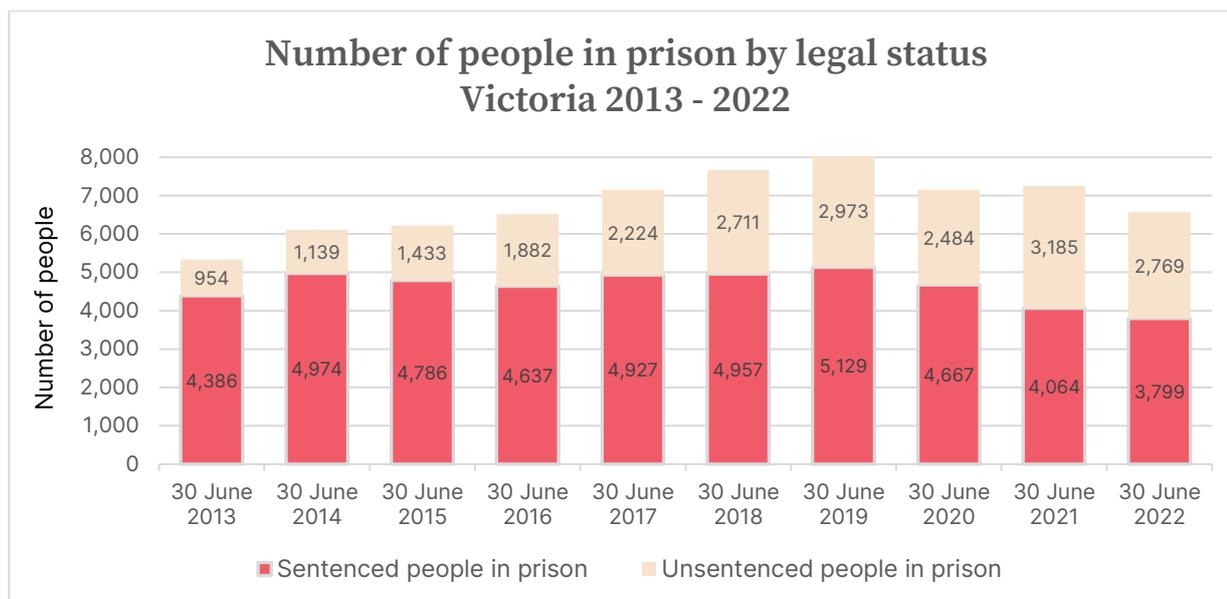


Figure 1: Number of people in Victorian prisons by legal status. Source: Corrections Victoria, Annual Prisons Statistical Profile, 30 June 2022, Table 1.8.

¹⁴ Coghlan, First advice to the Victorian Government, n 12, 26, Recommendation 1.

¹⁵ Reductions in movement during the COVID-19 pandemic saw reduced rates of *certain* offending, reduced court activity in Victoria from 2020, and lower prisoner numbers: see for example Crime Statistics Victoria, 'Police-recorded crime trends in Victoria during the COVID-19 pandemic: update to end of December 2020', (Number 12, March 2021); see also Magistrates Court of Victoria, (2022) *Annual Report 2021-22*; Corrections Victoria, (2022) *Annual Prisons Statistical Profile* (30 June 2022).

¹⁶ Australian Bureau of Statistics, (2022) *Prisoners in Australia*, ABS Website, <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release>, Prisoner characteristics, States and Territories, Table 15.

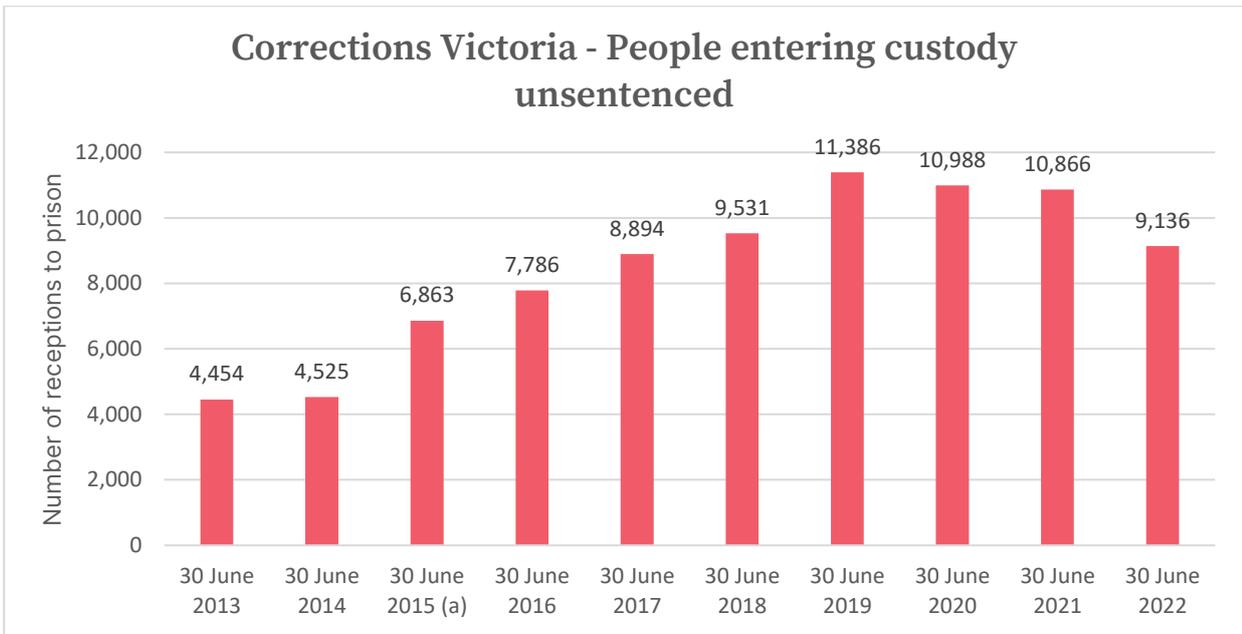


Figure 2: People entering custody unsentenced. Source: Corrections Victoria, Annual Prisons Statistical Profile, 30 June 2022, Table 2.2.

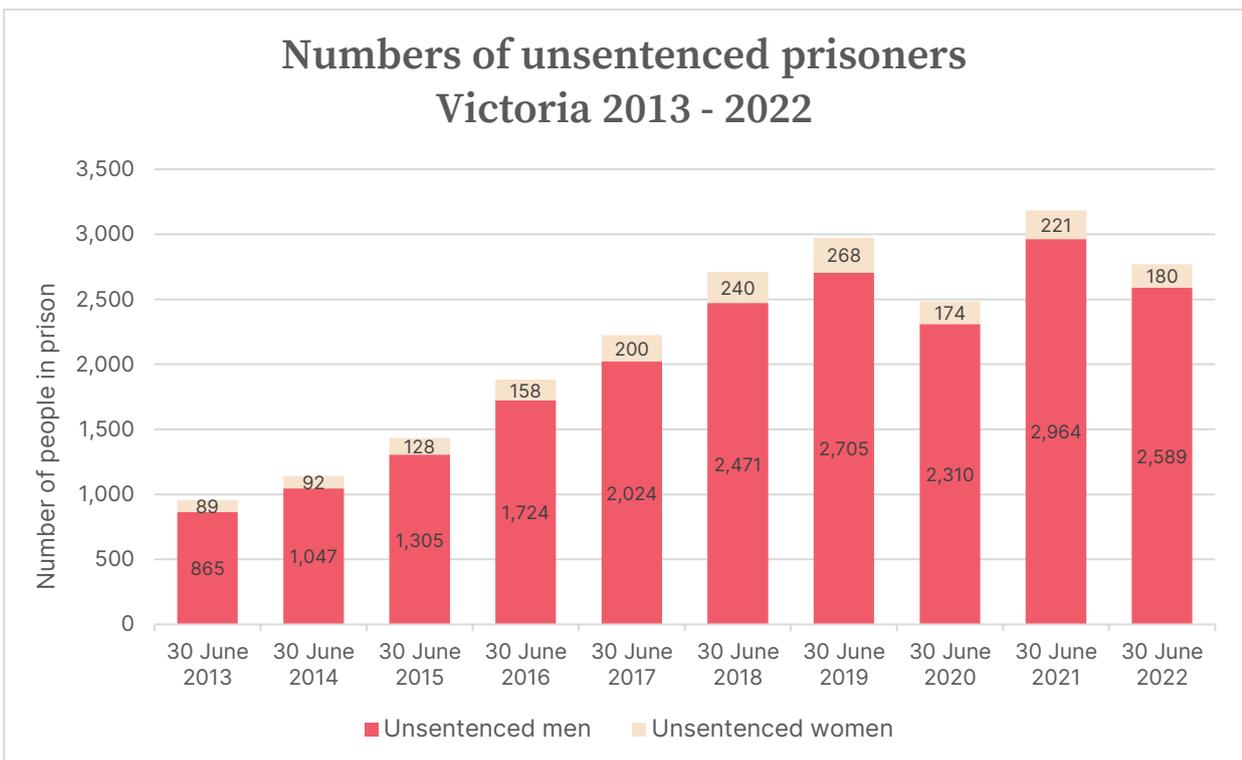


Figure 3 Numbers of unsentenced prisoners. Source: Corrections Victoria, Annual Prisons Statistical Profile, 30 June 2022, Table 1.8.

While the bail reforms were intended to make it “harder than ever before for a person in Victoria to get bail if they are accused of committing a serious violent crime”¹⁷ and to ensure that “community safety is given a much higher priority when considering bail applications,”¹⁸ the evidence heard by the Victorian Legislative Council’s Legal and Social Issues Committee (the Committee) in its Inquiry into Victoria’s Criminal Justice System in March 2022, is that the reforms have had other, unintended consequences:

The Committee is concerned that the current operation of Victoria’s bail system has led to an increasing remand and prison population, with serious negative impacts for those individuals awaiting their charges being heard in court. Importantly, the Committee has not received evidence to demonstrate that the changes to the bail system implemented through recent reform of the Bail Act have led to greater community safety. Further, evidence suggests that individuals remanded in custody are more likely to be later sentenced to a term of imprisonment, often as ‘time served’, than they would have if they had been granted bail.¹⁹

Of particular concern, has been the disproportionate effects of the bail reforms on women, Aboriginal Victorians, children and young people and people living with a disability.²⁰ On this topic, the Committee’s Report cited VLA’s submission:

Our practice experience is that the reforms have had a disproportionate impact on more disadvantaged groups and people charged with lower-level offending for which they are unlikely to receive a sentence of imprisonment ... The starkest impact can be seen in the number of Aboriginal women on remand, which has increased five-fold over the past 10 years.²¹

In particular, the effect of having reverse onus for obtaining bail, and the requirement to show exceptional circumstances for minor offending (the category previously reserved for the most serious offences) saw an increasing number of people remanded for low level or minor offending (for which the remand period may exceed any potential or actual sentence for the offence).

In March 2023, the Victorian Government announced its intentions to wind back the 2018 bail changes. The proposed reforms have been reported to include “refining the unacceptable-risk test and limiting the reverse-onus bail test to those charged with serious offences and those who pose a terrorism risk”.²² At the time of writing, amending bail legislation is before the Victorian Parliament.²³

¹⁷ Premier of Victoria, ‘Community Safety The Priority In Bail System Overhaul’ (Media release, 8 May 2017), <<https://www.premier.vic.gov.au/community-safety-priority-bail-system-overhaul>>.

¹⁸ Ibid.

¹⁹ Legislative and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria’s Criminal Justice System* (Final Report, March 2022) <<https://www.parliament.vic.gov.au/lsc-lc/inquiry/1003>> (‘Criminal Justice Inquiry’). See also *Finding into death with inquest of Veronica Nelson* (COR 2020 0021) [2023] VicCorC 28312 (30 January 2023) (‘Veronica Nelson Inquest Findings’).

²⁰ Criminal Justice Inquiry, above n 19, Summary booklet, xxiv.

²¹ Criminal Justice Inquiry, above n 19, 456.

²² Annika Smethurst, ‘Bail law reforms unveiled as attorney-general concedes state ‘cast the net too wide’, *The Age* (online, 5 March 2023) <https://www.theage.com.au/politics/victoria/bail-law-reforms-unveiled-as-attorney-general-concedes-state-cast-the-net-too-wide-20230304-p5cpd8.html>

²³ Bail Amendment Bill 2023.

1.4.2 Impact of 2018 Bail Act changes on VLA

The changes to the Bail Act have had a significant impact on VLA's remand service. The reasons include the increase in the number of people being remanded and the establishment of BaRC which operates 7 days a week, from 10am until 9pm. In addition, the bail reforms have had an impact on other participants in the criminal justice system, such as Victoria Police, who it has been suggested have been operating until recently, under an 'informal policy' which encourages members to oppose all bail applications involving the exceptional circumstances test.²⁴ Although data limitations mean it is difficult to demonstrate the precise increase in VLA's services that have resulted from these legislative changes, VLA reports an increase in the clients assisted through its services, which is supported by Magistrates' Court data on the number of bail applications before the Court over time to 2020.²⁵ Increase in VLA's services includes those clients assisted by the duty service at the point of first remand, and those assisted by private practitioners or VLA lawyers after being remanded. Those impacts are further described in section 2.4 (with VLA's remand service data) and in section 3 (experiences of the remand service).

VLA also recognises that its model for providing remand services has largely remained static in recent years despite significant changes to the internal environment within VLA, including within the Summary Crime Program. These changes include:

- the introduction of VLA's Outcomes framework 2022–30.²⁶ This framework was introduced in 2022 to guide VLA's services, programs, and strategies over the next eight years. It was designed to help VLA link what its clients need, what VLA does (services and programs), and what VLA wants to achieve²⁷
- the development of VLA's Summary Crime Program Logic²⁸
- adjustments in approach by VLA to service design and evaluation with a focus on human centred-design principles, greater recognition of the role and value of non-legal services and increasing emphasis on ensuring VLA's practices are culturally safe.

Another important factor guiding VLA's decision to undertake the Review are the recent deaths in custody of people who have interacted with VLA's remand services. The death of proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, Veronica Nelson, who passed away in custody on 2 January 2020, after being refused bail for relatively minor, non-violent offences, has impacted on many participants in the criminal justice sector and resulted in reviews of organisational practices. The Coroner's findings and 39 recommendations delivered on 30 January 2023 has also necessitated system wide reflections and responses.²⁹

²⁴ For more information about this policy, refer to the 'Veronica Nelson Inquest Findings, including Recommendation 10. See also the report that Chief Commissioner of Victoria Police emailed senior police in March 2023 "to correct any misunderstanding there is an informal policy encouraging members to oppose all bail applications or discouraging them from using their discretion under the law": Joseph Dunstan, 'Victorian police chief issues bail direction in wake of Veronica Nelson inquest findings', *ABC News Online*, 15 April 2023).

²⁵ See Magistrates' Court of Victoria (2023) *Annual Report 2021-2022* at 40, and Magistrates' Court of Victoria (2019) *Annual Report 2018-2019*.

²⁶ Refer to section 2.1.3 for more information about VLA's Outcomes Framework.

²⁷ See Victoria Legal Aid, *Outcomes Framework 2022-30*, (2022) available at <https://www.legalaid.vic.gov.au/outcomes-framework>

²⁸ Refer to sections 2.1.5 and 5.1 for more information about VLA's Summary Crime Program.

²⁹ Veronica Nelson Inquest Findings, above n 24.

VLA explained to the Review that recent deaths in custody “have reinforced the importance of legal assistance and support in the remand system and provide an important imperative for ensuring our remand services are operating effectively and meeting the needs of clients.”³⁰

³⁰ Victoria Legal Aid Request for Quote for the provision of external review of remand services, 4.

2 VLA's remand service

2.1 Framework for delivery of VLA's remand services

The Review has highlighted that VLA does not have an articulated model for the provision of remand services, nor is there a defined role description for a lawyer providing remand services. This is in part, because VLA does not employ people to *only* provide remand services, rather it is one aspect of a lawyer's role delivering criminal law services within relevant VLA programs. It is also in recognition of the immense pressures associated with providing legal services to people on remand, and because the custody status of clients is not static but can move between remand and non-custody. A consistent message from the lawyers we spoke to during our focus groups was about the pressures associated with this work. It is also noted that in regional areas, demand and resourcing issues may result in only one duty lawyer being rostered at court, so providing remand services will be just one aspect of their duties when on duty.

To understand the context within which VLA's remand services are delivered, this section provides an overview of the framework that guides the delivery of VLA's services.

2.1.1 Legal Aid Act 1978

VLA is an independent statutory body established by the *Legal Aid Act 1978 (Vic)*. The objectives, functions, powers and duties of VLA are set out in the Act.³¹ VLA's objectives are to:

- provide legal aid in the most effective, economic and efficient manner
- manage resources to make legal aid available at a reasonable cost to the community and on an equitable basis throughout the state
- provide to the community improved access to justice and legal remedies
- pursue innovative means of providing legal aid directed at minimising the need for individual legal services in the community
- ensure the coordination of the provision of legal aid so that it responds to the legal and related needs of the community
- ensure the coordination of the provision of legal assistance information so that information responds to the legal and related needs of the community, including by being, accessible, current, high-quality and of sufficient breadth.³²

This Review relates to a number of VLA's statutory objectives, including seeking to improve access to justice, to provide legal aid in the most effective, economic and efficient manner and ensuring the provision of legal aid responds to the legal and related needs of the community.

The Act also governs how legal aid may provide legal assistance, including by VLA and community legal services and private practitioners. It sets out rules for providing legal

³¹ *Legal Aid Act 1978 (Vic)* ss 4, 6, and 7.

³² *Legal Aid Act 1978 (Vic)* s 4.

assistance, including that duty lawyer services are provided without charge, but for substantial or continuing legal advice, a person may be required to apply for legal assistance.

In order to meet its objectives, VLA operates pursuant to a range of related strategies and policies. Strategies that are relevant to VLA's delivery of remand services, as outlined to us by VLA, are set out below.

2.1.2 Vision, Purpose and Values

VLA has developed a vision, purpose and set of values to guide all of its work. The values were updated in 2022 to add 'inclusion'.

Our vision
Our Vision is for a fair, just and inclusive society where people can get help with their legal problems and have a stronger voice in how laws and legal processes affect them.

Our purpose
To make a difference for clients and the community by helping to effectively address legal problems, supporting the coordination of a strong and dynamic legal assistance sector and working with partners to create fairer laws and systems.

Our values

- Fairness**
We are committed to fairness in society and to facilitating fair and equitable access to legal support.
- Care**
We care about our clients and the community and we approach our work with an awareness of the effects that trauma and discrimination can have. We treat each other with kindness and respect.
- Courage**
We approach our work with strength and confidence. We are guided by our values and what matters most to our clients and society.
- Inclusion**
We provide an inclusive environment for clients, staff, and referral partners.

Figure 4: VLA vision, purpose and values. Source: VLA Annual Report 2021-22, 1.

2.1.3 Outcomes Framework

In 2022, VLA introduced an Outcomes Framework, which aligns with its vision and purpose.³³ The Outcomes Framework articulates VLA's aims and sets out five outcomes which VLA will focus on over the next eight years. These are:

- Clients: clients have increased access to justice
- Community: improved legal understanding in the community
- Legal Assistance Sector: collaborative legal assistance sector
- Laws and systems: fairer laws and systems
- Victoria Legal Aid: effective and sustainable Victoria Legal Aid.

³³ See Appendix 7.5.

The Outcomes Framework has been developed to accord with standards and frameworks used in the legal assistance sector and is consistent with the Victorian Government’s commitment to outcomes reporting for public sector entities.

2.1.4 Strategy 26

Strategy 26³⁴ is VLA’s four-year strategic plan, linked to the five outcomes from the Outcomes Framework. It articulates the 15 priority actions VLA will focus on to guide its service design and planning over the next four years. The strategy also sets out how success is to be measured.

2.1.5 Summary Crime Program Logic and Better Justice Everyday Project

In 2019, VLA introduced a Summary Crime Program Logic. This arose from the recommendations of an independent evaluation of the Summary Crime Program carried out by the Law and Justice Foundation of New South Wales.³⁵ Development of the Program Logic is part of VLA’s ‘Better Justice, Everyday Project’.³⁶

VLA’s Summary Crime Program Logic was updated in June 2023. The purpose of the Summary Crime Program is “to make the biggest difference we can for our clients and the community by creating a fairer summary crime system every day”.

The updated Summary Crime Program Logic is more clearly aligned to the Outcomes Framework. Further discussion about the Summary Crime Program Logic is provided at section 5.1.1.

2.1.6 Aboriginal Services Strategy 2020-25

VLA’s Aboriginal Services Strategy 2020–25 outlines its commitment to becoming a client-centred organisation for Aboriginal and Torres Strait Islander peoples. The strategy intersects with the organisation’s Reconciliation Action Plan 2019-2021. There are three focus areas in the strategy:

1. Actively engage with Aboriginal and Torres Strait Islander peoples to increase access to services.
2. Be client-focused and make informed decisions, based on evidence, to improve the quality of and access to services for Aboriginal and Torres Strait Islander peoples.
3. Support our practice partners to improve the services delivered to Aboriginal and Torres Strait Islander peoples.

³⁴ Victoria Legal Aid, *Strategy 26* (2022) <<https://www.legalaid.vic.gov.au/strategy-26>>.

³⁵ Hugh McDonald, Amanda Wilson, Zhigang Wei, Sarah Randell and Suzie Forell *Evaluation of the appropriateness and sustainability of Victoria Legal Aid’s Summary Crime Program*, (2017) Law and Justice Foundation of New South Wales <<https://www.legalaid.vic.gov.au/node/9817>>

³⁶ Victoria Legal Aid, ‘Better justice, everyday project’, (2023) <<https://www.legalaid.vic.gov.au/better-justice-every-day>>.

2.1.7 Client-first strategy

In 2020, VLA released its Client-first strategy,³⁷ which recognises the need to put people with legal needs at the centre of all of VLA's work and thinking. The strategy commits VLA to becoming more 'client-first' in all of its activities and articulates four objectives. These are:

1. Create and nurture a client-first culture.
2. Enable clients to participate in decisions that affect them.
3. Strengthen and better connect entry points to improve navigation and access.
4. Reimagine service models, including more holistic approaches and stronger partnerships.

The critical importance of hearing from people with lived experience of VLA's remand service as part of this Review is consistent with its Client-first strategy.

2.1.8 Client Priority and Capability Policy

The Client Priority and Capability Policy³⁸ introduced by VLA in 2019 guides VLA in the allocation of its limited resources to ensure the people most in need, receive the services they require. This is in keeping with VLA's statutory obligations and its commitment to improving access to legal assistance services to people facing disadvantage. The policy also seeks to improve the way VLA designs and delivers its services.

Children, Aboriginal and Torres Strait Islander peoples and people living with a cognitive impairment are among the groups of people who VLA has identified as the strongest priority for legal assistance and people in custody are a high priority.

2.2 'Mixed service' model

VLA delivers legal services through a mixed model of service delivery.

The mixed model comprises:

- lawyers (either sole practitioners or in law firms) generally referred to as 'private practitioners'
- barristers
- Victoria Legal Aid's in-house legal practice
- community legal centres.³⁹

Under this model, clients who receive legal aid funding can choose their lawyer, or will be referred to a lawyer by VLA and or its duty service. Once a lawyer is allocated to a client, the lawyer is responsible for running the legal matter, including making decisions about whether to brief a barrister and which barrister to brief.

³⁷ Victoria Legal Aid, *Client-first strategy (2020-2023)* <<https://www.legalaid.vic.gov.au/client-first-strategy>>

³⁸ Victoria Legal Aid, *Client Priority and Capability Policy (1 March 2019)* <<https://www.legalaid.vic.gov.au/client-priority-and-capability-policy>>

³⁹ Aboriginal legal services, including the Victorian Aboriginal Legal Service and Djirra, are not part of the mixed model as expressed in the *Legal Aid Act 1978*.

The mixed model is also used to provide duty lawyer services, with VLA employed lawyers, private practitioners and barristers providing duty services, either on an ongoing or interim basis.

2.2.1 VLA's duty lawyer and funding guidelines

VLA facilitates duty lawyer services at courts across Victoria. Duty lawyer services are often provided by VLA lawyers, but they can also be provided by private practitioners or barristers who are funded by VLA to provide duty lawyer services for the day. Duty lawyer services are provided in accordance with VLA's duty lawyer guidelines.⁴⁰ Under the guidelines, duty lawyer assistance to people in custody is a priority for all duty lawyers delivering criminal law services.⁴¹

In September 2021, the duty lawyer guidelines applicable to accused people in custody were amended to encourage more bail applications to be made for Aboriginal and Torres Strait Islander peoples. The 2018 Bail Act changes had a disproportionate effect on Aboriginal and Torres Strait Islander clients, especially women, who were being remanded for minor offending. The 2021 guideline amendment was designed to ensure that Aboriginal and Torres Strait Islander clients facing their first remand hearing are represented in bail applications if that is what they instruct. The statement "wherever possible unrepresented bail applications should be avoided" was added.⁴²

VLA Duty Lawyer Guidelines – criminal law Magistrates' Court criminal law cases

6. Accused people in custody

- 6.1. An accused person who is in custody and has been brought to court for the first time in relation to a matter is a priority. The Duty Lawyer Service must prioritise seeing all accused people in this category. No income test is to be administered. The Duty Lawyer will give advice and representation on the day or help the person to get legal representation either through an application for legal aid or by a referral to a private practitioner. **Wherever possible unrepresented bail applications should be avoided.**
- 6.2 Where the accused has not requested the assistance of a private lawyer and the Duty Lawyer believes that it is appropriate that a bail application should be made on the day then the Duty Lawyer Service must prioritise that application. A Duty Lawyer will ordinarily appear to make the bail application.
- 6.3. **Where the accused identifies as Aboriginal or Torres Strait Islander and instructs the duty lawyer to make an application for bail, the duty lawyer should prioritise the making of this application even if the prospects of success are remote. The duty lawyer should ensure that the accused fully understands the implications of making a represented bail application before doing so.**

⁴⁰ Guidelines for different types of legal matters are provided at <https://www.legalaid.vic.gov.au/duty-lawyer-services>, as well as rules for accreditation as a duty lawyer and duty lawyer's responsibilities.

⁴¹ Victoria Legal Aid, *Duty lawyer guidelines – criminal law*, (August 2021) <<https://www.legalaid.vic.gov.au/duty-lawyers-court-criminal-charges>>

⁴² Victoria Legal Aid, 'Prioritising representation for first remand Aboriginal and Torres Strait Islander clients', (27 September 2021) <<https://www.legalaid.vic.gov.au/prioritising-representation-first-remand-aboriginal-and-torres-strait-islander-clients>>

VLA also provides and funds assistance in criminal law matters, pursuant to grants of legal aid. VLA's Handbook, part 3, Criminal law guidelines, outlines the types of matters where VLA can grant assistance, the criteria for eligibility for grants of legal aid, and how to apply for a grant. The Criminal Law Guideline 6 deals with bail applications.⁴³

In July 2022, VLA amended its Criminal Law Guidelines – for grants of aid funding – to encourage more bail applications to be made especially where the applicant is a child or an Aboriginal or Torres Strait Islander person.

This change to guideline 6 of the Criminal Law Guidelines amended the test for funding from a focus on the likely *outcome* of the application – that there be a 'realistic prospect of bail being granted' – to a focus on the *basis* for the application.

VLA Criminal Law Guideline 6 – Grants of aid: bail applications in the Children's, Magistrates', County and Supreme Courts

Victoria Legal Aid (VLA) will generally make a grant of legal assistance to a person who wants to apply to the Children's Court, Magistrates' Court, County Court or Supreme Court for bail if there is a reasonable basis for the bail application.

'Reasonable basis' means that a bail application should be made, taking into account the charges, the personal circumstances of the applicant, and relevant bail law. Section 3A AAA and 3AAA are relevant to the assessment of reasonable basis, as is the question of whether a person is likely to spend longer on remand than they would receive as a sentence of imprisonment for the underlying offending.

VLA considers there is always a reasonable basis to make a bail application where the applicant is a child and/or an Aboriginal and/or Torres Strait Islander person. Practitioners must consider the applicability of s3A Bail Act when representing Aboriginal people in applications for bail, and s3B Bail Act when representing children, in addition to all other relevant factors.

VLA's means test still applies (to adults). However, proof of eligibility under the means test is not required where assistance is sought under the bail guideline. A person's partner is also not required to provide proof of means where the bail application will be heard within seven days of the person being taken into custody or if the partner meets one of the other exemptions set out in the Handbook for Lawyers.

When announcing this change, VLA emphasised the 'starkly disproportionate impact' the 2018 Bail Act reforms have had on Aboriginal and Torres Strait Islander people, noting that "in June 2021, 51 per cent of Aboriginal people in Victorian prisons were on remand, compared to 32 per cent in June 2017."⁴⁴ Feedback on the funding guideline from lawyers providing remand services changes is set out in sections 3.2.6 and 3.4.8.

⁴³ Victoria Legal Aid, *Guideline 6 – bail applications in the Children's, Magistrates', County and Supreme courts*, (19 April 2023) <<https://www.handbook.vla.vic.gov.au/node/5706>>

⁴⁴ Victoria Legal Aid, 'Prioritising bail applications for Aboriginal and Torres Strait Islander clients', (22 July 2022) <<https://www.legalaid.vic.gov.au/prioritising-bail-applications-aboriginal-and-torres-strait-islander-clients>>

2.3 Activities of the remand service

To inform the Review, and to provide context to our consultations with lawyers, people with lived experience and other stakeholders who interact with VLA's remand services, it was important to understand the activities undertaken by the remand service, and in particular, its duty lawyer service.

A list of these activities of duty lawyer remand services was provided by VLA to CIJ, as set out in the columns below. The list is not exhaustive, nor are the activities sequential.

An important feature of the duty lawyer service is that by its nature, staff on duty do not know ahead of time, the number of people who will present on a given day, nor whether they will accept legal assistance, be VLA clients or clients of private practitioners.

Intake & triage	Allocation	Information gathering
<ul style="list-style-type: none"> ✓ Duty lawyer service receives information about new remands – from the court or VicPol or both ✓ Duty lawyer or legal assistant checks VLA systems to determine if client is existing or has a Private Lawyer ✓ Duty lawyer or legal assistant checks if client is Aboriginal or Torres Strait Islander ✓ Duty lawyer or legal assistant checks if grant of aid exists for each client ✓ If Private Lawyer involved, Duty lawyer or legal assistant will make contact ✓ Can Private Lawyer attend? If no, Duty Lawyer determines level of service to be provided by Duty Lawyer on the day, in collaboration with Private Lawyer and on client's instructions 	<ul style="list-style-type: none"> ✓ Once client's status is determined the client is allocated to a duty lawyer or private lawyer 	<ul style="list-style-type: none"> ✓ Duty lawyer or legal assistant will seek police brief and other useful information eg: client's location ✓ The information will be sought from various sources, including Court staff, Prosecution, VicPol members, custody staff, client's previous lawyer, CISP, Corrections staff, as well as doctors, social workers and family members.

Legal conference	Negotiation	Referral and support
<ul style="list-style-type: none"> ✓ Duty lawyer meets with client to obtain instructions. ✓ The meeting may be in person or remote either by telephone or audio-visual link ✓ The type of technology depends on the location of the client (different courts have different systems) ✓ There are frequently problems with the technology and difficulties with speaking to the client to get instructions 	<ul style="list-style-type: none"> ✓ Duty lawyer negotiates with police prosecutions, occasionally with the informant (ongoing) 	<ul style="list-style-type: none"> ✓ DL will speak to potential support and referral services to prepare application for bail ✓ Support services include: CISP, Navigation and Triage, Forensicare, as well as family, employers, community contacts, housing services, client's existing health and medical practitioners such as psychologists. ✓ Support services available depend on location of court

Court communication	Appearance	Client conference	Post appearance service decision
<ul style="list-style-type: none"> ✓ Duty Lawyer will be constantly communicating with the Court. ✓ This includes informing Court staff where matter is up to and discussing listing (including what application will be made, whether online or in person, timing of listing). ✓ Sometimes this takes the form of a call-over in front of a Magistrate. 	<ul style="list-style-type: none"> ✓ Duty Lawyer will appear before the Magistrate ✓ The appearance may be for a bail application, a plea of guilty or something else. 	<ul style="list-style-type: none"> ✓ Duty Lawyer will meet with client to discuss Magistrate's decision ✓ This is not always possible if, for example, the Duty Lawyer is appearing in another matter. 	<ul style="list-style-type: none"> ✓ Documents to be completed ✓ If the matter is to be appealed – prepare advice/ lodge appeal documents ✓ Duty Lawyer notes ongoing lawyer on file. If an in-house VLA lawyer can't continue, the client is centrally allocated for ongoing assistance. If client has a Private Lawyer, Duty Lawyer reports outcome of matter and sends documents to Private Lawyer.

Other factors to note in considering the activities of the duty lawyer remand service:

- VLA rosters lawyers (who may be VLA lawyers, private practitioners or barristers) to provide duty services at each Magistrates' Court in Victoria. Each office has a designated remand email inbox which receives matters 24/7
- Throughout a rostered duty service, there is ongoing communication between the duty lawyer service and court staff

- duty lawyers appear as a ‘friend of the court’ in matters where a person does not wish to be represented or where a person is unable to express their wishes
- engaging support services involves referrals being made and assessments being undertaken. This normally involves the lawyer forwarding the support services the brief and completing and emailing a referral pro forma document. The lawyer then needs to wait for the assessment to be completed before they can move on to the next steps, which can impact the timing of when a bail application can proceed
- BaRC hears all matters in Melbourne from 10am-9pm, 7 days per week, as well as out of hours matters from other metropolitan courts after 3pm
- matters received/listed at BaRC from approximately 8pm are rolled over to the following day, to be heard at their proper venue. On nights where there is a very high volume of cases, the cut off time may be earlier
- at BaRC, a senior VLA lawyer performs a co-ordinator role which includes intake and triage, and negotiations with court staff throughout the day and night. In suburban and regional locations this role can be undertaken by a senior lawyer or Deputy Managing Lawyer, or may be undertaken by a single lawyer who also provides the legal service.
- we also heard that VLA engages Legal Assistants to support duty lawyers delivering remand services at some locations, including the day operations at BaRC. A pilot program commenced in March 2023 at VLA’s Dandenong office with Legal Assistants rostered to assist with intake and coordination tasks.

It became clear from briefings with VLA personnel, supported by feedback from the focus groups held with lawyers, that court practices and police practices with respect to remand differ across the state. These include:

- listing of remand matters. For example, at BaRC, a matter will not be accepted unless the duty lawyer has been provided with the police brief and associated documents; in other courts a matter will be accepted without the duty lawyer having access to the documents
- cut off times to hear a new remand matter on the day of lodgement varies depending on the court; some Magistrates may expect a matter that has been accepted at 3pm, to be ready by 3:30pm as court will rise at 4pm; others will accept that the matter being referred to BaRC for evening court hearing (if the client is at a metropolitan court)
- differing interpretations of Practice Directions by courts (despite the fact Practice Directions are designed to provide uniformity across courts)
- Magistrates’ preferences about whether it is permissible to appear in person or remotely differ
- availability of support services varies greatly across the state, with less services available in regional areas
- access to interpreters varies greatly
- access to clients varies significantly depending on where they are being held, and whether the lawyer is present
- the use and quality of technology varies; for example, access to Wi-Fi in police cells and at court is variable, which can have a significant impact on lawyers as it can impede their access to files, their ability to arrange referrals and their contact with clients.

We heard from lawyers that the variation in practices means that ‘postcode justice’ is very real – where a person is remanded can affect the likelihood of a person being bailed.

VLA's remand duty lawyer services are generally focused on the first remand hearing, with the expectation that where bail is refused or not sought at first remand, a later bail application may be funded under VLA's funding guideline. However, in some cases the duty lawyer service will continue to provide assistance to people in custody following first remand – this is most likely in the case of people who decline or are unable to engage with a lawyer, often because of mental health, cognitive or drug withdrawal issues.

VLA outlined that lawyers perform the following activities, following first remand.

Activities of a lawyer – assistance after first remand	
Preparation	Appearance
<ul style="list-style-type: none"> ✓ Lawyer is allocated the client or has retained the client following first remand date ✓ Lawyer makes an assessment of prospect of bail application - usually this is in conjunction with assessment about likely course of the matter i.e. guilty/not guilty plea/negotiation needed/reports needed/services needed ✓ Lawyer assesses whether funding is available for a bail application in accordance with VLA guidelines ✓ Legal conference - lawyer provides advice and takes instructions ✓ If client instructs bail application, lawyer makes an application for funding ✓ Lawyer/legal assistant contacts Court to ascertain available date taking into account time estimate, files bail application paperwork and serves on prosecution and informant. Court confirms date and time for application 	<ul style="list-style-type: none"> ✓ Lawyer contacts client to notify them of the date, obtain any further instructions and liaises with support services, family etc to obtain materials or witnesses to support the bail application ✓ Sometimes, lawyer briefs counsel to appear on bail application ✓ Bail application heard at Court and decision made by Magistrate i.e. bail granted/bail refused ✓ Client conference post Court appearance

2.4 VLA's remand service delivery data

We requested a range of data sets from VLA, with a view to obtaining a picture of the scale of the remand service it provides across Victoria and in particular, in seeking to understand who receives its assistance. We requested this data for the previous 10 years to consider the impact of legislative and other practice changes.

We set out the data and our analysis below:

- number of people in custody receiving a remand service
- demographics of users of the remand service
- number of legal assistance services to people on remand
- duty lawyer services and outcomes
- grants of aid to make a bail application
- where services are provided.

2.4.1 Number of people in custody receiving a remand service

The number of people who received services from VLA in custody has proportionally increased in recent years. From financial years 2018-2019 to 2019-2020, the number of clients of the remand service grew from 14,599 to 16,706 unique clients.⁴⁵ This count includes clients that are identified by their lawyer as 'in custody' at the time of assistance, and includes VLA in-house duty lawyer services as well as grants of aid that include a bail application. Private practitioner duty lawyer services are not included in this count.

The number of unique clients of the remand service decreased during the 2020-2021 and 2021-2022 financial years, when COVID-19 pandemic restrictions saw a reduction in people presented for remand. For the first six-months of the 2022-23 financial year, 7,822 unique clients had received legal assistance from the remand service – a figure closer to pre-pandemic levels.

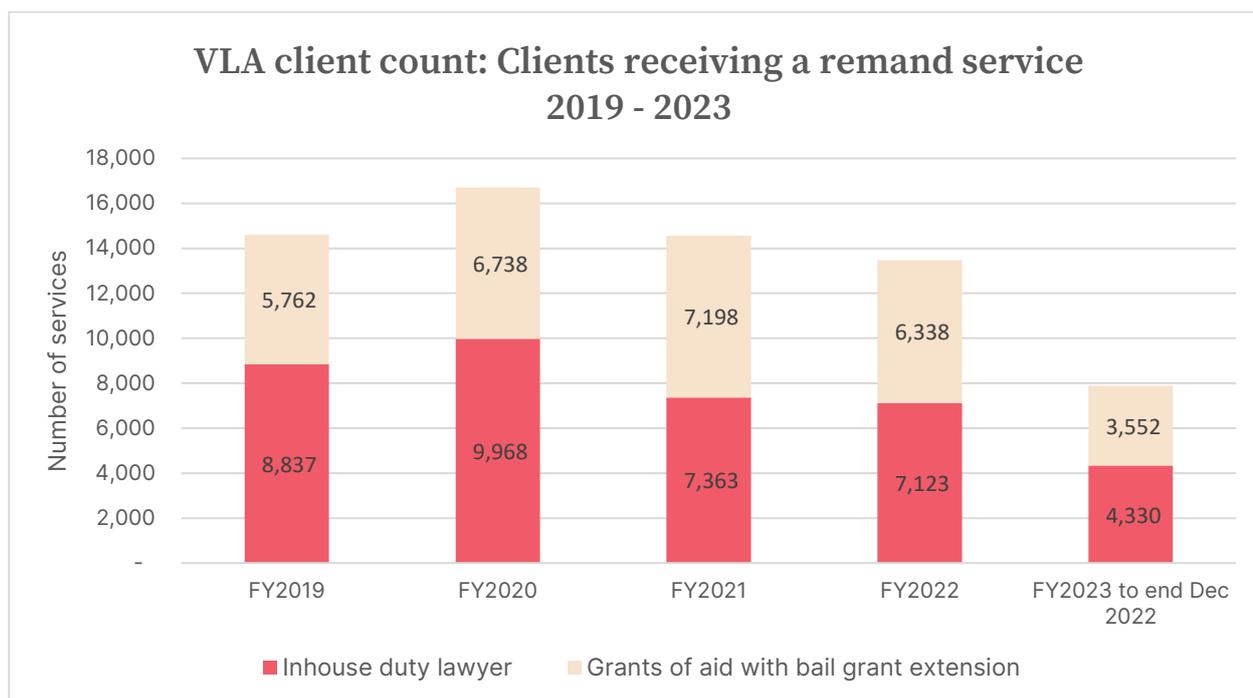


Figure 5: VLA client count of clients receiving a remand service 2019-2023. Source: VLA

2.4.2 Demographics of users of the remand service

VLA provides assistance to a diverse range of clients. Many clients 'experience cultural barriers, discrimination, disability, mental health issues, or social and geographic isolation. These issues or experiences are often intersectional'.⁴⁶

VLA provided data of certain demographic characteristics of recipients of the remand service, including age, gender, Indigenous status, disability, risk of homelessness, employment and country of birth. This data was provided for clients who received duty services in custody, and

⁴⁵ This time period has been chosen because from October 2018, VLA introduced an 'in custody' marker for its recording of services delivered. Prior to this marker being used, it is not possible to account for the number of remand service delivered. This time period also includes significant changes to the *Bail Act 1977*.

⁴⁶ Victoria Legal Aid, *Annual Report 2021-22* (2022), 5.

those who received a grant of aid with a bail grant attached. A client might receive both types of services.

Overall, key characteristics to note from this data was that most clients of the remand service were:

- male (84%)
- aged 30-39 years (34%)
- not employed (82%)
- were born in Australia (80%).

In addition, over one quarter of clients report having a disability, approximately 10% identify as Aboriginal or Torres Strait Islander, and 20% are at risk of homelessness.

The demographic profile is mostly similar between duty lawyer services and grants of aid services. Differences of note are that:

- 13% of recipients of grants of aid (with bail application) identify as Aboriginal or Torres Strait Islander, compared to 9% of duty lawyer service clients
- 93% of clients receiving a grant of aid are unemployed, 82% of duty lawyer service clients are.

These differences may be attributable to limited information being available or provided at the time of a duty service. VLA advised that these differences may be attributable to:

- more Aboriginal clients being assisted by the Victorian Aboriginal Legal Service at first remand, and
- some clients who are employed might be less likely to subsequently receive a grant of aid, or they may have lost their job as a result of being remanded and therefore be unemployed at the time of making a funding application.

A summary of this data is provided at Appendix 7.4.

2.4.3 Number of legal assistance services to people on remand

In recent years, VLA's data shows that VLA and private practitioners have provided an annual average of over 20,000 legal assistance services to people in custody.⁴⁷

Over the last five years, this has followed a similar trend to the number of clients who were assisted, with an increase in the number of services provided to 30 June 2020, a decline in 2021 and 2022 financial years, and a trend increase in financial year 2022-23 data towards 2019 levels.

In this period, the proportion of duty lawyer services relative to grants of aid for bail application has decreased.

⁴⁷ For this assessment, VLA provided the number of in house duty lawyer services in criminal law where the client was in custody, and/or a bail application was shown as the worktype, and/or the court type was listed as BaRC, night court or weekend court. VLA commenced recording 'in custody' status in October 2018. The number of duty lawyer remand services provided by private practitioners was not available.

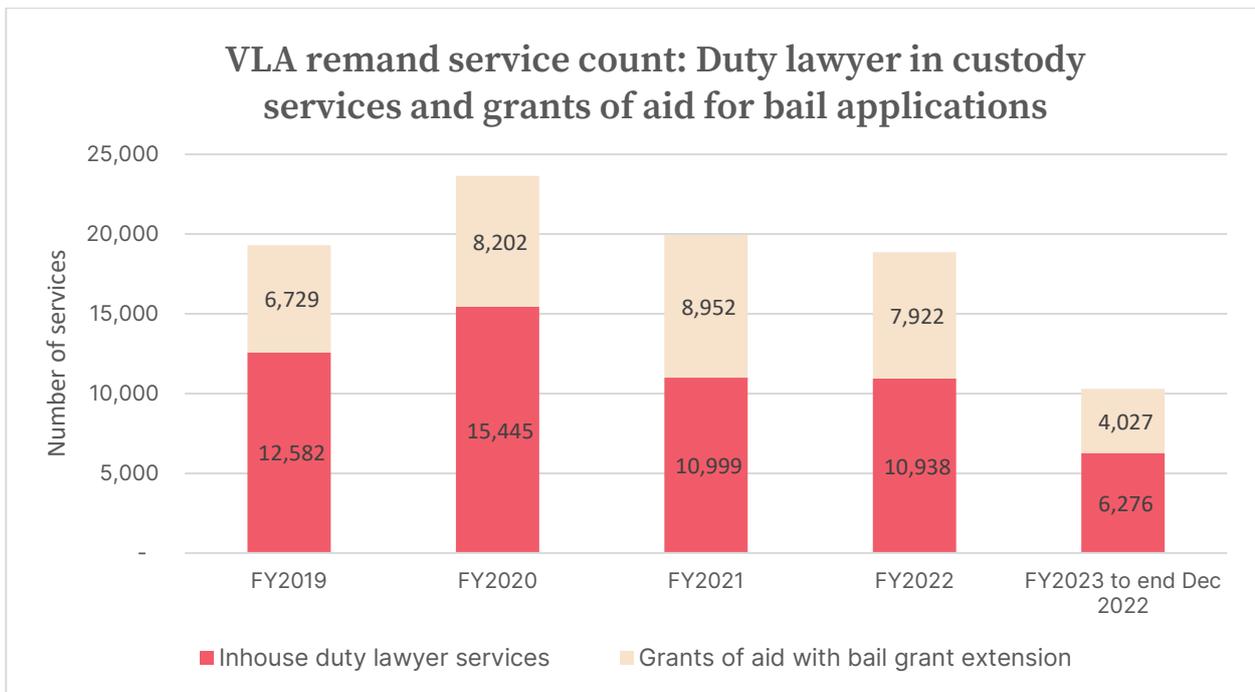


Figure 6: VLA Remand service - count of service 2019-2022. Source: VLA ⁴⁸

VLA advised that one of the factors contributing to the split of duty work and grants of aid may be greater availability of audio-visual links in court may mean that private practitioners have greater capacity to attend remotely, instead of a duty lawyer appearing at first remand hearing. A private practitioner will provide this assistance with a grant of aid.

2.4.4 Inhouse duty service – bail applications and other outcomes

VLA provided data on the number of services it has provided where a lawyer records the duty lawyer service activity as worktype ‘bail application’ or a ‘bail variation’.⁴⁹

⁴⁸ This data does not include private practitioner duty lawyer services in the remand service. While VLA records the number of private practitioner duty lawyer services provided in the criminal law service generally, this data does not identify whether the service was provided to a person in custody.

⁴⁹ Data is a count of VLA worktypes ‘bail applications’, ‘bail application’ and ‘bail variation’ and excludes VLA worktypes filing hearing, hearing, information only, legal advice, mediation, mention, no hearing, null, plea, plea otherwise aidable, plea guilty, procedural advice only, sentence, sentence indication hearing, special mention. In each of these worktypes, outcomes recorded include bail granted, bail refused or bail varied. However, these outcomes are not always the result of lawyer assistance, and outcomes recorded may not correctly record assistance provided by duty lawyers.

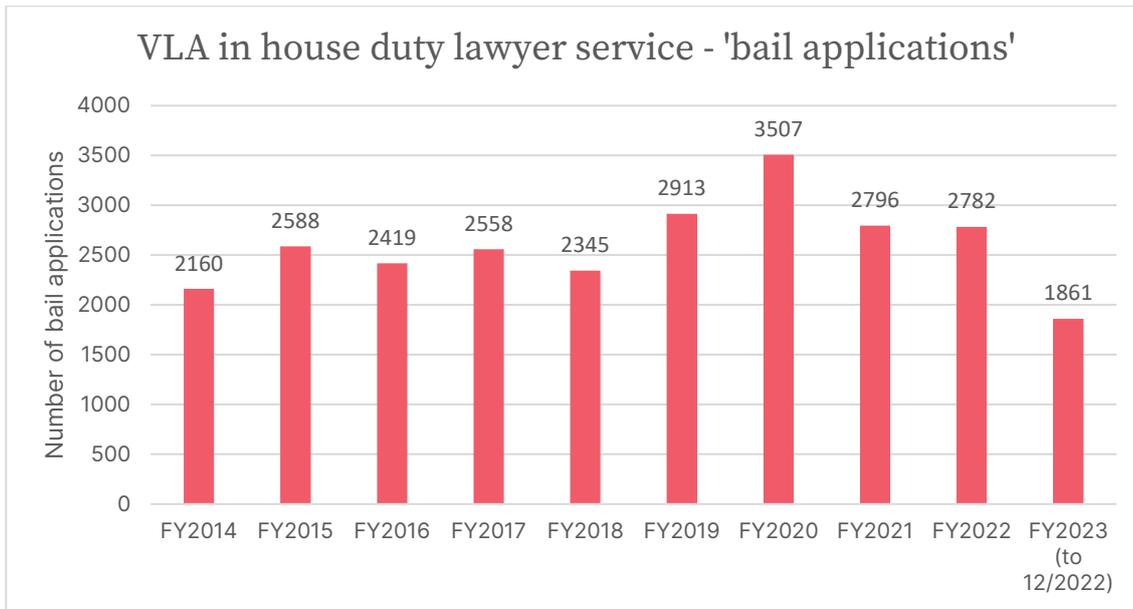


Figure 7: Bail applications (work type) made by in house duty lawyers. Source: VLA.

This shows a peak in the number of bail applications made by the duty lawyer service in the 2019-2020 financial year, with 3507 bail applications made by the duty lawyer service. The number of services provided to date for the 2023 financial year (figures are to December 2022) suggest an increased number of bail applications, approaching 2020 levels.

VLA also provided data on the recorded outcomes of these worktypes. These outcomes show that most commonly, when a lawyer selects their duty lawyer activity as 'bail application', a matter is either adjourned, bail is granted, or bail is refused.

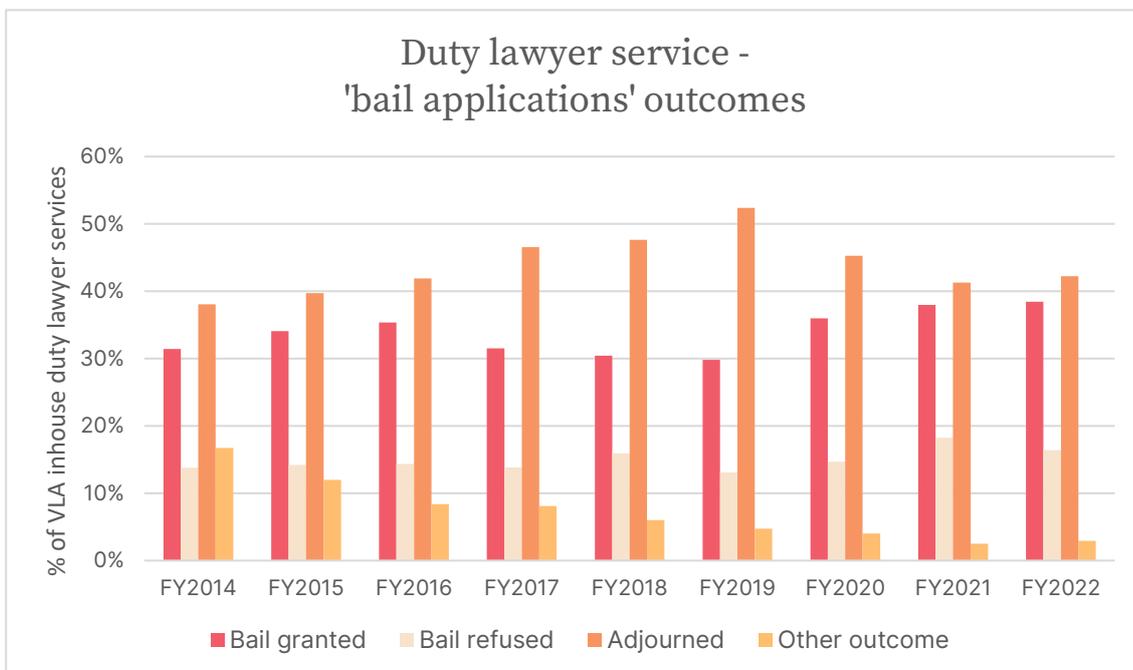


Figure 8 Outcomes of duty lawyer service bail applications. Source: VLA ¹

VLA's inhouse duty service performs more services than the making of bail applications. As is outlined at section 2.3, lawyers might make a bail application for a client, but they also provide advice and information, have matters adjourned or resolved by way of a plea of guilty, and connect people with their existing lawyers (private practitioners). VLA's service data shows that over 90% of services to clients in custody result in these four activities (see Figure 9).

From 2018-2019, to 2021-2022, on average:

- 24% of all duty lawyer services to people in custody result in a bail application being made by a duty lawyer
- 25.5% of all duty lawyer services to people in custody result in information or advice only (which may include referral to a private practitioner)
- 25.5% of all duty lawyer services to people in custody result in adjournment without a bail application being made.

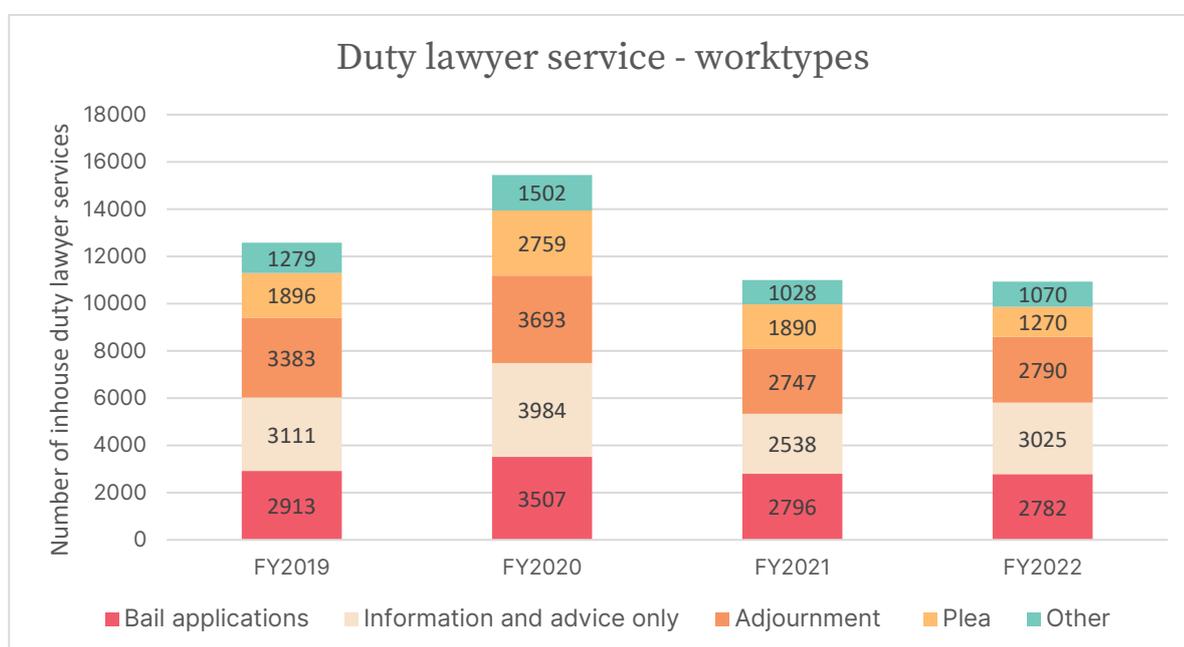


Figure 9: Number and type of duty lawyer service activities for in custody services. Source: VLA ⁵⁰

2.4.5 Grants of aid to make a bail application

The number of services provided pursuant to a grant of aid to make a bail application has increased over the last decade.⁵¹

⁵⁰ This data shows the four key service types provided by the duty lawyer service to people in custody: bail applications, providing information and advice, where an adjournment occurs (which may include a 'straight remand' where no bail application is made), and plea hearings.

⁵¹ It is possible to provide this data over a 10 year time frame (compared to other analyses that detail changes since 2018) because it is not subject to the requirement to flag if a client is 'in custody', which VLA introduced for duty lawyer services in 2018.

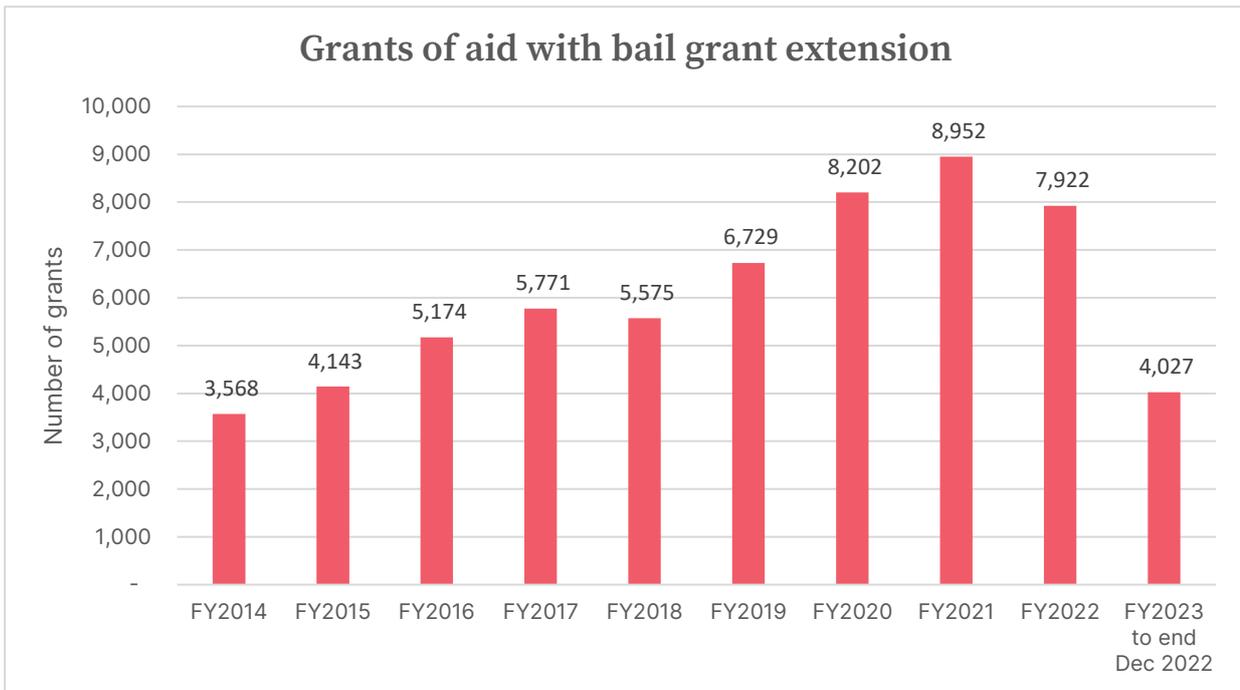


Figure 10: Number of grants of aids with a bail grant extension. Source: VLA

Where a grant of aid is provided to assist a person in custody to make a bail application,⁵² this service is more commonly provided by private practitioners. As shown in Figure 11, the number of recorded grants of this nature to private practitioners rose from 5,399 grants in 2019 to a peak of 7,943 grants in 2021, and then 7,226 in grants in 2022. This increase occurred during the COVID-19 pandemic, when client numbers were lower. The number of grants of aid for VLA in-house lawyers to make a bail application for a person in custody has declined over the last five years.

VLA advised that in-house lawyers may be less likely to apply for a grant of aid when making a bail application for a client, that is, the bail application is made as a duty lawyer service rather than a funded service. We discuss the impact of changed funding guidelines on these trends below at section 0.

⁵² VLA identifies this activity by grant files by initial approval data that have had a bail grant extension.

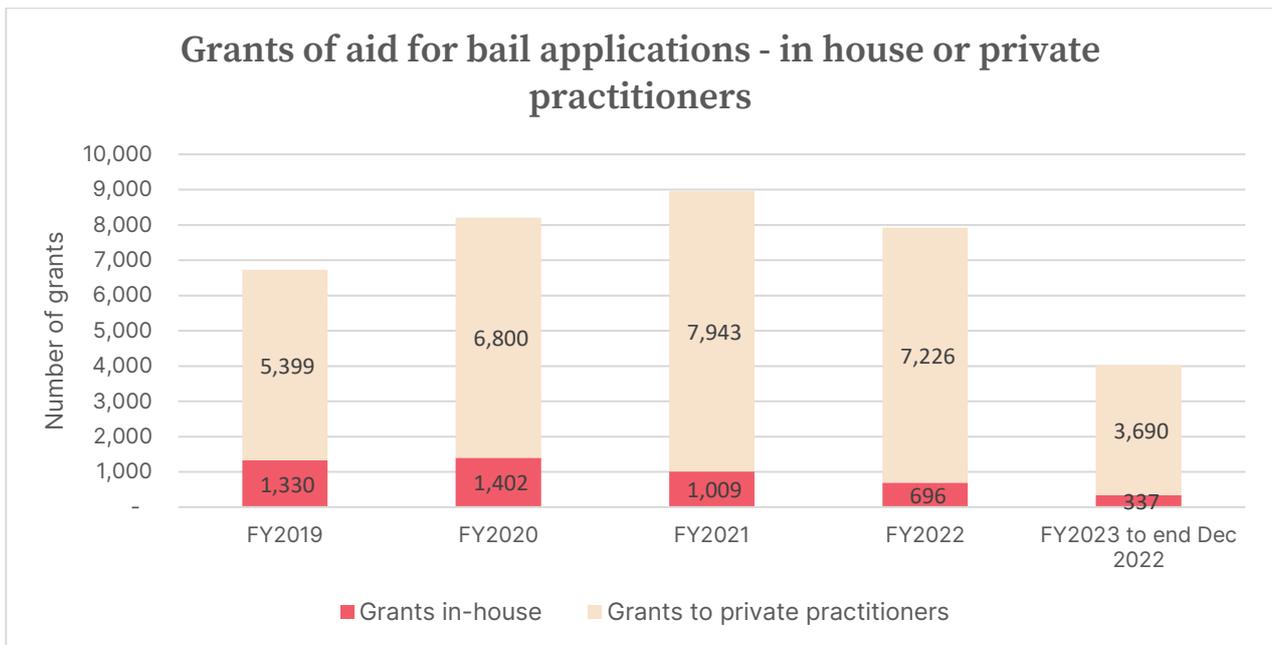


Figure 11 Grants of aid for bail applications - 2019-2023. Source: VLA

2.4.6 Delivery of services across Victoria

VLA provides remand services across Victoria, at all Magistrates’ Courts (and Children’s Courts), including satellite or circuit locations.

The most remand services were delivered at the court locations outlined in Table 1.

Since the creation of BaRC in April 2018, the number of remand services provided at Melbourne Magistrates’ Court has increased (BaRC is captured in VLA’s Melbourne location data).

For instance, the number of grants of aid with a bail application at Melbourne Magistrates’ Court increased from 1,862 in 2018 to 2,528 in 2022. Duty lawyer services have also increased, from 7,969 in 2019, to 8,284 in 2022. As a proportion of the remand services at all courts, in 2022, Melbourne was the location of 76% of all VLA in house duty services to people in custody.

Table 1: VLA remand service: Top 10 highest service counts by court location – 1 July 2021 – 30 June 2022

	Duty lawyer services		Grants of aid with bail application		Private practitioner duty lawyer service ⁵³	
	Court location	Services	Court location	Services	Court location	Services
1.	Melbourne	8284	Melbourne	2528	Bendigo	728
2.	Dandenong	361	Sunshine	645	Mildura	676
3.	Heidelberg	274	Heidelberg	537	Wodonga	468
4.	Sunshine	260	Geelong	453	Melbourne	398
5.	Frankston	246	Dandenong	452	Wangaratta	309
6.	Warrnambool	221	Broadmeadows	430	Werribee	279
7.	Ringwood	206	Ringwood	370	Sunshine	267
8.	Ballarat	197	Frankston	366	Shepparton	199
9.	Latrobe Valley (Morwell)	174	Ballarat	258	Moorabbin	151
10.	Bendigo	135	Latrobe Valley (Morwell)	254	Sale	117

2.5 Feedback from clients of the remand service

VLA provided to the Review information about internal reviews of client experience through its annual client satisfaction surveys and complaints data.

This information is provided as further context to what we heard from people with lived experience of VLA's remand services, discussed at section 3.1.

⁵³ Includes all criminal duty lawyer services, not only duty lawyer *remand* services.

2.5.1 Client satisfaction surveys

VLA conducts an annual client satisfaction survey, which is one way that it obtains feedback from clients. VLA uses the survey to inform its understanding of VLA's achievements against its Outcomes Framework.

The most recent client satisfaction survey, conducted in 2022,⁵⁴ sought feedback from clients who had received VLA's services from 1 July – 31 December 2021. VLA received 752 client responses to its online survey (from a pool of 10,113 clients invited).

The 2022 Client Experience Survey Summary Report includes feedback about legal advice, case work and duty lawyer services, across family law, civil law and criminal services. Clients who were currently receiving a service from VLA were excluded from the survey sample, including those in custody at the time of the survey. It is not possible to identify from the Survey Summary Report if the feedback relates to VLA's remand services as it does not identify whether clients were in custody or not at the time of receiving the service.

More generally, key results in 2022 were:

- Overall, 67.4% of clients were satisfied and very satisfied with the help received from VLA. In criminal law services, 75% of respondents (n=228) were satisfied with the service they received.
- Clients receiving casework services indicated higher levels of satisfaction (72%) when compared with duty lawyer support (69%) and legal advice (64%).
- Eighty-seven percent (87%) of the criminal law clients who reported that after help from VLA their legal problems were resolved or ended, were satisfied with their service compared to 75% of those criminal law clients who reported their legal problems had not been resolved or ended. This was a higher rate of satisfaction than with VLA services generally.
- Seventy-four percent (74%) of those clients whose legal problems were resolved or ended indicated the help they got improved their overall wellbeing.

VLA notes that given the continuing impacts of the COVID-19 pandemic on the way legal services were accessed or delivered, some caution should be used in assessing satisfaction levels from the survey.

The 2022 Summary Report identifies four key lessons and recommendations, largely targeted at internal actions to improve VLA's evaluation approaches and strengthening the use of client feedback. One lesson, however, was to 'improve communication, expectation management, and understanding of clients' needs and circumstances'. This theme reiterated previous feedback received by VLA about the importance of keeping clients better informed, improving how VLA listens to and communicates with clients, explaining eligibility criteria and better understanding of clients' needs.⁵⁵

We discuss this theme in the experiences of people with lived experience of remand at section 3.1.

⁵⁴ Victoria Legal Aid, *Client Experience Survey Summary Report 2022*, (2023) available at <<https://www.legalaid.vic.gov.au/client-experience-surveys>>.

⁵⁵ Ibid.

2.5.2 Complaints

As part of the Review, we considered what, if any, complaints VLA received about the services provided to people on remand.

VLA has a Complaints Policy that applies to all VLA staff who provide services to the community, as well as private practitioners and community legal centres that sit on VLA's panels. Any person can make a complaint about the service they receive by online form, phone, email or post. Complaints may be resolved directly and quickly where possible, or escalated for formal investigation by VLA, or another regulator. Complaint data is collected, analysed and disclosed for reporting, quality improvement and identification of systemic issues or trends. VLA's internal complaints procedure encourages reporting back to the complainant on the progress and outcome of a complaint.

Information about how to complain is available on VLA's website. People in custody, or recently released from custody may find it difficult to make complaints due to limits to access to technology, communication issues, or the priority of other issues they are facing.

VLA advised it does receive complaints from people in custody, which may relate to duty lawyer services or funded services. A typical complaint from a person in custody would relate to a concern that a lawyer had not put their instructions to court appropriately or had not provided them with effective advice.⁵⁶

2.6 VLA's remand service workforce

One of the questions VLA wanted answered through this Review was to understand the experience of its staff. The experiences of staff who participated in the review are detailed at sections 3.2 and 3.3.

Context about the number of VLA staff providing remand services, and information provided by VLA about training to deliver the remand service and supervise its staff is provided in the sections below.

2.6.1 VLA remand service – VLA staffing profile

VLA reports that all criminal law legal staff generally conduct a mix of file and duty service work (excluding staff working in VLA Chambers). In terms of duty services at court, this generally involves non custody matters (mentions) as well as assistance to people facing remand. In addition, criminal lawyers often provide family violence intervention order related services. BaRC is staffed by VLA staff from the indictable crime, summary crime and therapeutic courts teams. In light of this staffing mix, we did not receive data outlining the proportion of time that lawyers spend on remand matters or duty service shifts.

VLA advised that as of June 2023, there were 348 VLA staff from across the organisation that are involved in remand service provision, that is, they have an interaction with clients while on remand. This includes roles such as lawyers and deputy managing lawyers, as well as non-practising roles such as legal assistants and administrative services managers, as well as staff

⁵⁶ Requests from people in custody to speak to their lawyer, or to find out what is happening in their case, are classified as enquiries, not complaints.

such as Aboriginal Community Engagement Officers who may assist with remand services. No staff work exclusively on remand work, and particularly in rural locations, rostered tasks such as duty services will include remand work, as well as other assistance in crime and other areas. For these reasons, it was not possible to identify the number of VLA staff working to the remand service at a particular point in time. It is worth noting that across its entire operations, at 30 June 2022, VLA reported a total of 994 employees. Despite the difference in timeframe for this figure compared to the number of VLA staff who are 'involved in the remand service', approximately 30% of VLA employees have a role in direct service provision to remand clients. This figure does not include staff involved in administering funding for bail matters.

Aboriginal Community Engagement Officer Program

The remand service is also supported by other VLA staff and program areas that seek to support VLA's engagement with various client groups. One such program of improving legal service delivery to a particular client group is the Aboriginal Community Engagement Officer Program (ACEO Program).

The ACEO Program was established in 2015 as part of VLA's first Reconciliation Action Plan and links to the Aboriginal Services Strategy. The program employs non-legal staff, located in regional areas, whose role is to provide a connection between First Nations communities and VLA services. As at May 2023, there were ACE officers located in six regional areas: Shepparton, Morwell (Bairnsdale), Mildura, Ballarat, Geelong, Bendigo, with planning underway for ACE officers to be located at BaRC. The extent to which ACE officers are able to provide support for remand services varies across locations.

The main activities carried out by ACE officers are:

- client access and support, including community engagement, targeted outreach, community legal education, intake and referral pathways, and proactive follow-up with clients
- quality service provision, including peer support, formal and informal education for lawyers, promoting cultural awareness within VLA, and ACEO Program Guidelines
- internal advice and consultation, including in the development, design, and implementation of VLA policies, projects and initiatives, and participation in internal staff training and on interview panels
- priority stakeholder relationships, including stakeholder engagement and relationship building, attending, and organising community events
- data, including data collection and reporting, monitoring, and evaluation.⁵⁷

VLA commissioned an evaluation of the ACEO Program in 2022. The evaluation concluded that the ACEO Program has been a notable success for VLA and made a range of recommendations to grow and improve it over the next four years.⁵⁸

⁵⁷ Victoria Legal Aid, *Evaluation of ACEO Program*, Report prepared by Karen Milward Consulting Services (1 June 2022), 11.

⁵⁸ *Ibid*, 8.

ACE officers' assistance to the remand service

An ACE officer may assist lawyers in the remand service when an Aboriginal client is in custody. ACE officers support lawyers to engage meaningfully with people on remand, to address any cultural barriers that may be in place and to help to foster a good relationship. It is acknowledged that a lawyer's time seeing someone in custody is brief and the opportunity for meaningful interaction is limited. An ACE officer can make an impact on this relationship and interaction by assisting with connections to support services.

Using local relationships and knowledge established through the community engagement aspects of the role, an ACE officer can piece together a bail plan quickly, making connections with local support services and establishing referrals. This might include establishing a bail address or identifying appropriate drug and alcohol services. In some cases, those services will attend court to speak about the services to be provided. These actions take the 'doorknocking' and coordination tasks away from a lawyer, so they can focus on liaising with prosecutions and the court.

Beyond the assistance provided to individual clients, ACE officers aim to improve VLA's engagement with Aboriginal communities, and also provide a culturally safe space within VLA so lawyers can learn. This work contributes to VLA's goal of ensuring First Nations clients experience culturally safe legal services and increased access to justice.

2.6.2 Training and capability of VLA remand service staff

We asked participants in our research what are the desirable attributes or capabilities of people working in the remand service, and what helps them to do their job well. Unsurprisingly, the responses we received varied according to who was being asked, with different emphasis being placed on communicative and technical skills. These reflections are discussed further at section 3.4.7 and 3.6.7.

VLA provided a range of material about the ways in which it ensures that legal services provided to people on remand are appropriate. All position descriptions for roles as criminal lawyers require technical skills as well as high levels of interpersonal skills, and demonstrated understanding of the issues affecting Aboriginal and Torres Strait Islander peoples and the ability to effectively communicate with Aboriginal and Torres Strait Islander peoples. For lawyers that provide services as members of the VLA's panels, members must meet the terms and conditions for members and practice standards. There are specific practice standards for criminal law, and working with specific client characteristics (including in custody clients). VLA conducts compliance and quality monitoring of panel practitioners' services.

VLA employs the 70:20:10 framework for internal learning and development. This model states that high performing staff members learn from 70% on the job learning, 20% exposure through coaching and access to mentors, managers and peers and 10% through formal learning programs. As part of this approach all staff are allocated a mentor and have regular structured supervision with their manager. On commencement at VLA, lawyers are given the opportunity to shadow experienced lawyers performing court duties. An experienced lawyer observes them on duty and provides feedback.

VLA staff can access training in the form of e-learns, guides and written materials. New or junior lawyers undertaking work in the Magistrates' Court can complete structured learning modules that provide learning tasks and resources to meet outcomes related to appearing at court, including the conduct of bail applications, appearances in person and online, and to providing services that are culturally sensitive and appropriate to client needs and capabilities. Training in safe client interactions is mandatory.

There are a range of training options to support staff cultural awareness (including mandatory modules). VLA is currently working with the Law Institute of Victoria to develop a new First Nations cultural capability framework for the legal profession. This work, which acquits a recommendation made by Coroner McGregor in the inquest into the passing of Veronica Nelson, envisages 'development of a cultural capability framework, underpinned by training products tailored to the needs of specific cohorts of lawyers, including fundamental baseline education applicable to all Victorian lawyers on the impact of the colonial justice system on First Nations people, from colonisation through to the present day'.⁵⁹

VLA's intranet is accessible to VLA lawyers and hosts bail resources, including legislative guides, flowcharts, submissions and precedents and case law resources.

2.6.3 VLA staff wellbeing

VLA identifies staff welfare as a key element for delivering on its vision and purpose. Strategy 26 commits VLA to 'invest in our people and work in a safe, inclusive, equitable way that involves people with lived experience'⁶⁰ while VLA's outcomes framework states 'an effective and sustainable VLA' is one of its five key outcomes⁶¹ and identifies delivery of 'a safe, inclusive, and equitable organisation, with diverse and skilled staff'.

The Summary Crime Program Logic details the specific outcomes it seeks to make its workforce effective and sustainable. There are two aspects to this outcome: 'a skilled SCP workforce that delivers and supports high quality services', and providing 'a supportive environment to the SCP workforce'.

To support staff wellbeing and safety, VLA has developed a guidance note on 'Employee Supervision' that sets out supervision as a responsibility of VLA managers. It provides a model supervision process that focuses on four main areas, including employee wellbeing and workload support, practice and task development and support, professional and career development, and team and organisational context and opportunities. The guidance note recognises that 'from a health and wellbeing perspective, an embedded system of supervisory practice that proactively identifies and discusses work demands that may contribute to stress, enables early intervention and problem-solving approaches to help prevent and minimise any ongoing effects of stress'. VLA advises that the tools in the Guidance Note, such as using the traffic lights approach to gauge staff wellbeing, are widely used.

VLA provides an employee assistance program to all staff. This service provides support services including face to face counselling with a psychologist, on the spot advice, and an online

⁵⁹ Legal Services Board and Commissioner, Response to the Recommendation 17 in the Investigation into the passing of Veronica Nelson (28 April 2023), <<https://www.coronerscourt.vic.gov.au/inquests-findings>>.

⁶⁰ Victoria Legal Aid, *Victoria Legal Aid's Strategic Plan 2022-26*, 'Strategy 26', available at <<https://www.legalaid.vic.gov.au/strategy-26>>

⁶¹ Victoria Legal Aid, (2022) Outcomes Framework, available at <<https://www.legalaid.vic.gov.au/outcomes-framework>>

resources portal. Up to four counselling sessions are available to staff per year. At a collective level, VLA advises that it uses team-based informal debriefing to support staff providing legal assistance to people on remand, and to troubleshoot practice issues that arise. Bespoke group supervision sessions have recently been introduced for VLA staff working at BaRC.

In this Review we did not seek OH&S data on concerns raised by staff that may relate to the remand service. We recommend that VLA review this data to identify issues and trends connected to staff experiences of providing legal assistance to people on remand.

2.7 VLA's advocacy about bail and remand

One of VLA's functions as a statutory authority is to deliver services efficiently and innovatively and to reduce the need for individual legal services in the community.⁶² VLA may also make recommendations to or through the Attorney-General with respect to law reform.⁶³

2.7.1 Systemic advocacy

VLA's strategic advocacy priorities are outlined in its annual Corporate Plan. These advocacy priorities are based on the outcomes sought by VLA and set out in its Outcomes Framework.

In 2022–23, VLA's strategic advocacy priorities included the following, many of which are relevant to its remand services:⁶⁴

- Work with Aboriginal Community Controlled Organisations to promote reforms that address the over-criminalisation of First Nations peoples and their disproportionate representation in the youth justice and child protection systems.
- Work with culturally and linguistically diverse organisations and communities to promote reforms that address the experiences of over-criminalisation and disproportionate involvement in the youth justice and child protection systems of these communities
- Advocate for reforms that will reduce entry into the criminal justice system and address the harms of criminal justice system involvement, including deaths in custody. This work will focus on improved police practices and accountability, raising the minimum age of criminal responsibility, reducing social disadvantage, and bail, summary offences and sentencing reform.
- Promote rights, accountability and consumer leadership for people experiencing mental health issues and people with disability.
- Advocate for safe, accessible, and inclusive family law, family violence and child protection systems.
- Advocate for gender equality and improve responses for victim-survivors of gendered violence (inclusive of LGBTIQ and gender diverse communities). This advocacy will focus on preventing and responding to sexual harassment, sexual offending, family violence, and improving victim-survivor participation in the criminal justice system.

⁶² *Legal Aid Act 1978* (Vic) section 4(d).

⁶³ *Legal Aid Act 1978* (Vic) section 6(2)(c).

⁶⁴ Victoria Legal Aid, (2022) *Corporate Plan 2022-2023*, available at <<https://www.legalaid.vic.gov.au/corporate-plan>>

Specific to the issue of bail law reform, VLA has contributed to public inquiries about the impact of the law. It has recently made submissions to the Parliamentary Inquiry into the Criminal Justice System, the Yoorrook Justice Commission, the Youth Justice Statutory Review and Sentencing Advisory Council's adjourned undertakings review.

VLA participates in working groups and other forums with the Department of Justice and Community Safety and stakeholders, regarding criminal justice practices, service delivery and law reform. Consistently with VLA's role as a statutory authority, VLA also provides advice and information directly to government about the impact of laws and practices in the justice system. In relation to bail, it advises that this has included sharing practice experience, case studies and client examples illustrating the harmful impact of bail legislation, and the remand system, since before the 2018 legislative changes.

2.7.2 Practice advocacy

VLA advised it uses a range of mechanisms to identify, raise and address matters of concern for their lawyers and clients. This includes:

- Court users' group meetings: these meetings at regional and suburban courts are attended by Regional Coordinating Magistrates and senior registrars, VLA staff and stakeholders such as police prosecutions, private practitioners CISP, Forensicare and Corrections. These meetings are a forum to share information, raise and resolve problems, and develop better processes or resources.
- Informal local relationships: most VLA Regional Managers and Managing Lawyers have relationships with head registrars and/or Regional Coordinating Magistrates which allow them to directly raise issues on an ad hoc basis. Regional Managers and Managing Lawyers also have relationships with the heads of local prosecution units, local community legal centres, Corrections and other stakeholders.
- State-level coordination and action: VLA's Associate Director and Director of Summary Crime have monthly meetings with the Deputy Chief Magistrate in charge of state operations and the Coordinating Magistrate for Melbourne Magistrates' Court. Likewise, VLA senior managers meet regularly with Victoria Police legal services branch.
- Judicial Complaints: VLA may escalate complaints to the Judicial Commission of Victoria if a concern relates to judicial conduct.

3 What we heard about the remand service

3.1 Experiences of users of the remand service

In this section, we outline what we heard from people who had experienced remand and used VLA's remand service. We also include some of the stories told to us by the participants in our research.

3.1.1 About the people with lived experience

Six people with lived experience of remand were interviewed for this Review. Five were from metropolitan Melbourne and one was from regional Victoria. Four participants were women and two were men. Five of the six participants had been remanded either once or twice, and one participant described a lengthy history of involvement in the criminal justice system (over 30 years) and countless experiences of remand. Three of the four women interviewed had children and their remand had significantly disrupted their parenting and led to ongoing child custody issues. Five of the six participants described problematic substance use in their histories, with some suggesting that withdrawal from substances was a contributing factor to their difficult experiences whilst remanded. Three of the women described experiences of family violence, with two women recounting how experiences of family violence led to their remand. Three participants discussed their involvement with child protection either in their own childhoods or as adults with their children. Five of the six participants described a range of social and personal factors that had led to their involvement in the criminal justice system.

All participants described factors such as mental illness, trauma, extreme distress, cognitive disability and substance use as either present in their own lives, or present in the lives of those they were remanded or incarcerated alongside. While participants were not asked any questions about other incarcerated people, all participants described the distress, difficult lives and general disadvantage of the people they were incarcerated alongside.

The participants share some characteristics of people on remand identified in the literature (see Appendix 7.1) notably with respect to experiences of mental illness, disability, substance use and family violence. However, as a small exploratory study, the participant sample is not (and does not intend to be) representative of VLA's remand service clients. The experiences of these participants are not necessarily representative of the broader views of people with lived experience of remand. They nonetheless offer critical insight into experiences of remand and the remand service.

3.1.2 Fear, dehumanisation and loss of agency

A theme that emerged from the interviews is that people experience remand as a confusing, frightening process that serves to dehumanise them, disrupt their lives, and removes their sense

of agency. Participants used words such as 'dehumanising', 'traumatic' and 'terrifying' and described ways in which their access to information, support, communication with the outside world and even their clothes had been removed. The four women interviewed described their experiences as especially terrifying and dehumanising as they tended to focus on their first experience of remand, rather than subsequent experiences.

When I first got in, I was absolutely terrified. I remember being, I would say on the verge of hysteric[al]...it was very cold...I had no shoes...I had no idea what to expect...I had never once ever thought that I would end up in prison and I did not know of anyone that had gone to prison...so after...they take your clothes, they strip search you...make you squat and cough....

Two women described strip searching in detail and talked about the profound indignity and humiliation of the experience, with one woman recounting how not only were her clothes removed, but her hair was cut when she was remanded.

And during that period, I was standing there naked the whole time, because it was during strip search that they were removing everything...When I was stripped down and more clothing was put on me, because I had...umpteens amounts of little jewelly things...that I couldn't get out of my hair, they just cut it.

The women interviewed discussed the impacts on them of being 'criminalised' throughout their arrest and remand processes, and how they felt judged and labelled while not fully comprehending what was occurring, experiencing confusion about why they were being arrested, and not knowing when someone would 'help' them. While some of the participants had friends or other family members who had experienced the criminal justice system prior to them, two of the women interviewed discussed their acute confusion and inability to comprehend information they experienced when remanded, stating that they did not know anything about what would happen to them, and did not even understand words such as 'remand' and 'bail'.

...[a]nd even in that moment, you probably wouldn't even be in a state anymore where you could accept a hug from someone that you cared about. That's how far gone your ability to connect to anything is...[i]t doesn't sound like a lot, but if you're already in this really severely traumatising situation, unknown to you, withdrawing from drugs, separated from your child, have no contact with the outside world, it's literally like, it's like a living death. Because I've been extracted from my life and I'm not dead, but I'm still alive, but have no contact with my then living life.

Information and processes

The participants discussed the lack of clear information provided to them on remand, the inaccessible nature of the information provided, and the fact that information is not presented in a manner that allows retention. In discussing the emotional and psychological impacts of remand, several participants stated that the stress of remand significantly reduced their capacity to comprehend their situation or engage in conversation, meaning in some instances they were not able to even articulate their needs, or give their lawyer instructions. These experiences were significantly exacerbated for some participants by withdrawal from substances, cognitive disability and mental ill-health.

Lived experience stories: Mila*

Mila's involvement with the criminal justice system started when she was young, after many years of being involved with child protection.

I can tell you everything that's wrong with...[the system]...because I have lived it from every side now. I've been the parent, the child, the mother, the sister, the this, the that. I go, and every side of it I've seen the same thing and consistency is the one thing that works and also makes something fail... they're consistent at being inconsistent.

From her experience, Mila knew that duty lawyers wouldn't have the time to properly understand and represent her.

How can someone that literally gets to speak to you for not even two minutes in a courthouse, be able to represent you properly? Like, they can't. It's not humanly possible and it's not their fault either.

After she was charged, on the advice of a friend, she asked a private law firm to take on her legal matters, because she didn't want to have to use a duty lawyer again. She feels that this is what gave her a better outcome.

I was very blessed to sort of have my lawyer that I had for other matters and throughout my pregnancy ... he knew everything and knew what had gone on, knew the trauma, knew all the past history and stuff like that.

I was pretty well represented and came with a pretty good outcome at the end of the day.

Her lawyer understood where she had come from and the trauma she had experienced. He was able to be compassionate but professional.

It's like, other than obviously the truth and the facts ... it's like the lawyer is painting a picture for the judge and [the outcome] will be because of the picture that they've had painted for them somewhat. And it's like, if you've got five seconds to paint that picture, that's going to be a pretty ugly picture.

Mila knows that the person on remand doesn't have always have enough knowledge of the system to be able to give useful or adequate information about their needs and circumstance to the duty lawyer.

"I don't want to go to jail," that's what most people say...but you need to have the [lawyer] look into rehab [and support programs like that]. Like people need to look into it to see if it's available.

Mila found her lawyer was good at explaining things to her and knew how to give her information in a way she would understand.

Lived experience stories: Mila*

He was very clear on everything that was going to happen and how long I'd probably be looking at. Worst case scenario, best case scenario, maybe scenario. He pretty much put it all out there because he knew how my head thought about it anyway, so it was like he knew he had to put it out there in every single sort of form that he could.

Knowing her personal circumstances also helped the lawyer properly represent her.

I think it just helped him be able to represent me better as a client because he could see where it had all stemmed from.

Importantly, Mila felt her lawyer showed compassion and professionalism.

I guess the biggest thing was, when I spoke to him about anything, it was like he was speaking to me. At the end of the day, for him, it was business. There was no opinion, there was no judgement ... and that is how a lawyer should be... You need to know that someone is hearing you properly... So, I guess you've got to be a little bit detached, compassionate and detached at the same time. Which is a real contradiction, isn't it?

Mila found remand to be a demeaning experience. There is not proper support for people detoxing from drugs, and the mental health support is minimal.

Why not have the telehealth with the social worker, with the psychiatrist, [the] psychologists? Because at the end of the day they're the things that people are screaming out for and waiting for once a week for the person to come in.

From her experience, Mila recommends having a social worker available to people on remand, and better information about how family members can make contact.

The minute you walk in those prison doors, you have no f'ing clue of anything that's going on. You don't know what paperwork, you got about this much paperwork you got to fill out. And it's your visits forms, it's your phone numbers, it's your meal for the week.

She feels it's very important for services for people on remand to be informed by people with lived experience of remand.

Because people who haven't been there don't understand it. And they also will never be able to grasp the concept of the way of life and the way you have to change, mould and be as a person when you're not at home.

*Not participant's real name

Participants discussed the fear and distress caused by not being told what will happen to them next; not understanding when they will see a lawyer or go to court; not knowing how to contact family or supports in the community; and not having the different parts of the criminal justice system explained to them (such as the difference between Community Corrections and prison). One participant who had a significantly greater level of legal knowledge than other participants stated that despite increased knowledge, the information provided by lawyers was incomplete, at times inaccurate and difficult to understand. One participant discussed how having significant experience of the criminal justice system had meant that their understanding of legal processes had improved over time, but acknowledged that for people with little experience of the criminal justice system conversations with lawyers are bewildering.

3.1.3 Experiences with lawyers

In the context of people's reduced capacity to comprehend information and effectively articulate their needs, people with lived experience described their interactions with a range of lawyers when they were remanded. Participants stated that they were sometimes unaware of whether the lawyer they saw was a duty lawyer from VLA, or a private practitioner. What they were aware of was that lawyers they saw when they were first remanded were providing a short-term service. Lawyers who communicated well were described by some participants, but overwhelmingly the participants felt that lawyers performing duty services did not communicate well, and some treated them 'like a number'.

...we're just numbers to them...it's not going to have that kind of impact on them when it is just a job to them that they just got to get as many people through that day who don't have representation, right? And yeah, I just feel like that needs to change.

People with lived experience all had experience of a range of lawyers, both from VLA and other legal services. Most participants were able to describe the role of a duty lawyer but were not clear on the parameters of the role. Overall though, lawyers were viewed as providing a vitally important service to remanded people, with enormous responsibility. Participants expect duty lawyers to provide a strong and visible advocacy role; communicate effectively with distressed and disoriented people; clearly and carefully explain legal processes; hold an in-depth knowledge of criminal law processes and procedures; understand and explain criminal justice processes (such as when and why someone may be transferred to a different location), and demonstrate care, compassion and empathy to remanded people.

Communication

Participants described some duty lawyers as warm, empathetic, and able to communicate well, while other lawyers were described as poor communicators who were not able to effectively explain legal processes. Some lawyers were viewed as uncaring, cold, rude, abrupt, and overly concerned about 'getting through the list' rather than the circumstances of the client. Some participants felt that at times lawyers would not listen, because they had already made decisions about the person's prospect of bail, leading to frustration, fear, and a sense of not being heard.

Insufficient time

One of the strongest themes to emerge from the analysis is that many interactions with duty lawyers are characterised by insufficient time. Participants spoke consistently about the lack of

time lawyers spend with clients on remand and how most interactions feel rushed and inadequate, and do not allow clients to trust the lawyer or have confidence in them.

The strength of this theme was identified in the analysis by the fact that insufficient time was mentioned frequently throughout interviews by all participants, despite the interviewer not asking any questions specifically about time.

I had a really short meeting with her and that was restricted with glass...I hadn't eaten well, I hadn't slept well, I'd been traumatised, and I just want to get out of any interaction that I'm going to be faced with, including with her. I had no understanding of the significance of...[remand]...I'd never been in that situation before, so I didn't even understand what questions I could have asked.

Insufficient time was viewed by participants as an issue that leads to a range of adverse legal and non-legal outcomes that can have far-reaching impacts. Participants described how lack of time can lead to the remanded person being unable to comprehend legal advice and therefore unable to provide instructions, a person's circumstances and non-legal needs not being known or addressed, and in some instances feeling pressured to accept legal advice that did not seem accurate or well informed.

While participants identified that they were not provided with sufficient time with a duty lawyer, they also recognised that a range of system pressures drive lawyers' lack of time and appearance of being under pressure.

...[H]ow can someone that literally gets to speak to you for not even two minutes in a courthouse...represent you properly? Like, they can't. It's not humanly possible and it's not their fault either...[t]hey don't have the capacity to look after as many clients as they have for that day and there's not enough of them there.

Variable quality of legal assistance

Some participants viewed duty lawyers as less experienced and therefore less able to provide a good legal service. While all six participants stated that they believed that lawyers did not have enough time to adequately perform their role, they spoke of interactions with duty lawyers where the lawyer did not appear to hold enough information about legal processes; did not appear confident; did not appear to understand the person's circumstances and appeared flustered and stressed.

A consistent perception of people with lived experience was that duty lawyers are over-worked and unable interact with people on remand in the ways they need.

...you don't know whether that duty lawyer's going to be pissed off because they're busy, in a hurry, trying to get things done, rushing around like a blue arsed fly or whatever...[and]...the lawyer's frustrated and stressed out.

Lived experience stories: Dave*

Dave grew up in boys' homes and has been in jail before. When police came to his house with a warrant for his arrest, it was a confronting experience.

They smash through your door, don't care who's in there. They know I've had kids when I was with my ex-partner. The kids are freaking out, screaming. They don't know what's going on. You've got these men in, big brawly men smashing through my front door.

Dave's experience of having an acquired brain injury (ABI) has an effect on his treatment in custody and what he needs as support.

If you have got an ABI, you should have someone with you, before the interview can start.

As a young person, when Dave was arrested, he found the police very aggressive until his parents would arrive. He would sometimes call Victoria Legal Aid for advice after his arrest as well as seeing them when on remand. Each time he had contact with Victoria Legal Aid, it would be with a different person.

I feel that they should see you when you're at the police station...[but] if a duty lawyer comes out to the police station ... you see one person. Then, by the time you go into court, if you're out on bail, you go into Victoria Legal Aid, you'll see another person. Then, when you go back for next time, you'll see another one and they'll say, "I'm your lawyer".... So, you've explained it four different times, your case.

Having to explain his case multiple times was particularly distressing to Dave because of his ABI.

You're trying to explain things, and ... I got the ABI, I forget things, my anxiety goes through the roof, stress levels go through the roof and I don't know what I'm saying. Half the time I forget half the case.

When Dave got to court, his lawyer wasn't aware some of the charges had already been dealt with. In the end, it was easier for Dave to talk directly to the magistrate.

In the end, I started talking for myself. I said, "Your Honour, may I come to the bench?" They offered me to sit in the dock and I give my evidence from the dock.

I said, "No disrespect to him, Your Honour, but I've just met him today. He knows nothing about it and I just want to explain some of the things. If I explain it to you, you'll understand where I'm at." And we did and I got released from the court.

Dave pointed out that if a client had one lawyer, the magistrate wouldn't get frustrated at lack of communication from one lawyer to the next.

Lived experience stories: Dave*

You need a lawyer from start to go. Then, that way, the client will be happy, the lawyer will be happy, the courts will be happy. There's no frustrations. The judges aren't paying out on lawyers saying, "You should have had this done," or, "You should've had that done". It's all above board.

Dave finds the court experience particularly daunting for him as someone with an ABI. He found that participation in the Assessment and Referral Court (ARC) made a difference to how he experienced court.

The one thing that I needed all the time was to be reassured that the lawyers understood where I'm at.

But if you have [the magistrate] come down [and sit at the table] ... it's such a more easy going, relaxed environment to be in. It's only going to do good. It's not going to do any harm.

It would be helpful to have better communication.

That support could give you a printout of when you've got to come back to court, what dates, what charges. You wouldn't need to know what charges, just when you've got to come back to court, the Legal Aid office number and all that sort of stuff to get a lawyer.

*Not participant's real name.

Knowledge, relationships and continuity

A strong theme identified through the data analysis was that participants felt that the knowledge the lawyer develops of the remanded person, combined with the strength and continuity of the relationship, is important to attaining good legal and non-legal outcomes. Participants contrasted their experiences with duty lawyers, and lawyers who had had taken carriage of their matters after first remand, and reported that the service that duty lawyers provide is often inadequate because of these factors. Conversely, participants found that lawyers more fully understanding their circumstances, developing a relationship with them, and having knowledge of their matters over time, produced better outcomes.

One participant, who had an ongoing relationship with a lawyer, described the way her lawyer understood how she would comprehend and respond to information. This was a significant factor in achieving good legal and non-legal outcomes because she felt that her lawyer could manage her expectations, prepare her for court by providing relevant information, and effectively advocate using extensive knowledge of the participant's background.

Another participant described the significance of an ongoing relationship with a lawyer who had acted for them on several occasions. This participant felt that their lawyer genuinely cared about their wellbeing, and had played a significant role in supporting them address their legal and non-legal needs.

They were there during a time that was so horrific...going from the depths of despair of full brokenness...a walking shell ready to die. I didn't want to be on this earth but also so broken from life and society and the system...At first, I got frustrated because...[I was]...told that I wasn't able to get a bail app...[but]...he got to know me and helped me to get through the journey...And then I ran into him on the train...and I was able to talk to him about where I'm at and I was in a really good place...just knowing that that mattered to him because...it actually brings joy to people.

Lived experience stories: Tam*

Tam first became involved in the justice system when she was a child.

I ran from child protection, I ran from, you know, foster care places and I kept running from children's courts and stuff. And like, even the police were after me and I had warrants out for my arrest as a young person because I kept absconding, I was on the run.

She grew up very conscious of the power of the state and her lack of agency and choice.

As a young person, you're not heard because you're under eighteen, you're not an adult, you don't know anything, right? And like you're bound by the custody of the state ... you don't have any autonomy to your own self and your life as a young person.

Tam's experience in childhood took a toll on how she approaches life.

Even with the child protection system, you know, you're a number. Like in all these systems we're just numbers, we're not humans.

Tam found that she was constantly being handballed between different parts of the system, and no-one was prepared to offer her the support she needed. At one point, she was remanded because it was assumed she did not have stable accommodation, despite having an address at that point.

Tam's experience of prison was dehumanising.

I hated it. I really did. I hated all of it. I hated feeling like I was under control, and I couldn't escape. I feel like that I was, you know, lost everything and I felt I was already broken enough as it was and I was further broken by being in ... the power and control system. And I felt I was broken, and it just felt really dehumanising.

You've got people in powers of authority just retraumatising you and you know, with the strip searches and the fact that they think that that's an okay methodology and practice that they're running.

Tam found that because duty lawyers would represent her without properly knowing her background situation or previous experiences, that she felt she got poorer outcomes.

You want somebody to support you and hear you.... And then you're more likely facing the prospect of ending up incarcerated that day because of the fact that there is no background knowledge.

The way that lawyers communicate had a big impact.

You're standing there and they're talking gibberish or jargon and you have no idea what they're talking about. And they're talking about your life. And your life is in their hands. And they're throwing out times, custody, sentence, numbers, months, days. Like they're throwing out all this stuff, they're using language that

Lived experience stories: Tam*

nobody has an idea of what they're talking about. Like that is really harmful to a person who's standing there with our life in their hands.

I wouldn't have been so resentful at the process of a duty lawyer if I felt like that I had mattered in those process, you know?

Tam found her anxiety increased because in the lead up to her court date, she wasn't sure if she would have a lawyer to represent her. But when she did get a private lawyer, funded by Victoria Legal Aid, she found it beneficial because he stayed as her lawyer over a number of years.

He got to know me and helped me to get through the journey that I had to get through. He was listening to things; he was trying to help me. Initially there were things I didn't like that he was saying. Because obviously he was bound by certain legislations ... but I know that he was supportive. And that's what I think it was, it was more about listening, supporting and being there. But he also didn't just leave and say, 'Nope, he can't help me,' after that first matter, too.

The conditions of prison made it more difficult to maintain a relationship with her lawyer.

Like trying to get access to a lawyer or even talk to your own lawyer, is so hard while you're in custody, like when you're locked up as well like, you know? Especially in prison, like you can't make phone calls unless you got money on your account and you can't do this and you can't do that.

Tam feels that the way the court operates makes things more difficult for people who are charged. Delays and adjournments have devastating impacts, particularly after the bail reforms where people are more likely to be remanded than not.

Like you're constantly adjourned anyway because they need to have more evidence, or the prosecution needs to get more whatever. And like, you know, the constant waiting and waiting and waiting.

The constant delays mean that people are caught up in the system for a longer period of time, and their feelings of hopelessness and lack of agency become more prominent than if the matters were dealt with more promptly.

When I walked away after a few years of constantly battling the court system... being able to walk out and be like, technically I'm free. I don't have to report, I don't have to do bail stuff, I'm not facing potentially going back to jail like, you know what I mean? [Feeling] that kind of relief. Because when you're stuck in the system and your constantly having adjournments and adjournments and adjournments. Or you've got to meet this, or you've got to meet that.

*Not participant's real name

Non-legal needs

A consistent theme across interviews with people with lived experience was that people on remand experience a wide range of non-legal needs such as mental ill-health and withdrawal from substances that when unaddressed can contribute to or even determine legal outcomes. Participants not only described the significance of their own unmet non-legal needs on remand, but also what they had witnessed on remand where they believed others had not had their non-legal needs met.

I had both diagnosed, undiagnosed and underlying...mental health stuff that was never supported...[a]nd even if I was trying to receive supports, it was never consistent because of my instability in life.

During interview participants were asked only about their own experiences on remand, however that all six participants described witnessing the unmet needs of others on remand suggests that unmet non-legal needs is a significant issue of concern.

...you've got all this impending and impacting trauma and hurt and nothing to help support you.

Participants described a range of practical and support needs they had encountered whilst remanded. Two women described their first experiences of remand and how they were unable to let their children know where they were or make appropriate care arrangements due to lack of access to telephone calls. As they had not known who to call when remanded they had not called people who could assist them with childcare arrangements. Several participants described mental ill-health, withdrawal from substances and issues with family violence as factors that had contributed to being remanded, but also contributed to their ability to get bail.

Two participants described witnessing other people on remand try to comprehend legal information in written form, and how poor literacy had prevented them from doing so.

Consistently across the interviews with people with lived experience there was a theme that a lawyer's capacity to address non-legal needs for remanded people is crucial to the person's legal outcomes, and contributes to their success in the community when released either on bail or post-sentence. While participants acknowledged that it is not the role of the lawyer to address practical and support needs, all participants described how non-legal needs can play a very significant part in the legal process.

Participants consistently identified tasks and functions that are essential to their wellbeing in custody and throughout their legal processes that are not currently the responsibility of any practitioner or group of practitioners in the remand process. Tasks such as contacting friends and family to advise of the remanded person's location or ensuring a person's home is locked are not consistently performed, leading to increased stress for remanded people.

Participants stated that other needs such as the alleviation of distress through psychological support and essential medical assistance are routinely unaddressed for people on remand, which in some instances leads to catastrophic outcomes. While participants acknowledge that these needs cannot be addressed by lawyers, a theme emerged across the interviews that these needs must be addressed by someone, and as lawyers are the only advocate for the person on remand, they do need to play a role in ensuring support needs are met.

...and asthma, you know, if I stop breathing well then, I'm going to end up like...Veronica Nelson. Like it's, I mean that's also another testament to the very, like the lack of access to medical care...

An area of unmet need that some interview participants raised was their desire to have more information and support to understand basic processes within remand. While participants did not view this as a role for a lawyer, they did find that not understanding the basic processes of remand, such as where they will be taken, when they might get to have clean clothes, or when they will go to court contributed to feelings of distress and loss of agency. Participants found that these feelings of distress and loss of agency contributed to their inability to comprehend legal advice and give instructions.

Another significant area of unmet need for remanded people is appropriate support in the community. Participants all discussed the importance of a range of referrals occurring for resources such as accommodation and placement in detoxification and rehabilitation services. Participants themselves did not all require referral to services and supports in the community, but all described either their own needs for referrals or the needs of other people on remand who they had witnessed struggling with these issues.

Participants identified a range of tasks and functions that are required to adequately meet the needs of remanded people, ranging from the practical tasks that administrative staff and paralegals could perform, to the referrals and support social workers can provide to remanded people. A non-exhaustive list of the non-legal tasks identified by the participants to adequately meet their needs is provided below.

Table 2: Non-legal needs identified by people with lived experience of remand

Support and referral	Advocacy	Information
<ul style="list-style-type: none"> • Calling family and friends to notify them that the person has been remanded • Assisting with emergency childcare arrangements – for example, ensuring a child will be collected from school when the parent is remanded • Ensuring services and supports in community have information and can assist – for example, calling a case manager and requesting they visit a remanded person, or try to make contact by phone, ensuring they are included in meetings and decision making processes as they may be considered ‘trusted’ people. Facilitating phone calls and meetings with remanded person 	<ul style="list-style-type: none"> • Advocating for the remanded person to have access to phone calls while remanded • Advocating for access to medical items and aids such as asthma inhalers and glasses • Advocating for access to medical assessment and treatment in custody – especially where the person is experiencing withdrawal from substances, mental ill-health or extreme distress 	<ul style="list-style-type: none"> • Clearly explaining processes and supporting the remanded person to understand their situation – including where they are, where they will be taken next, what assistance is available, and when they will attend court • Explaining court processes to remanded people – for example, if the person has not been remanded before explaining to them where they will sit, who will be with them, who will speak, what they are expected to do and say, and what the court will look like

Support and referral	Advocacy	Information
<ul style="list-style-type: none"> • Appropriate, effective and timely referral to services in the community for needs such as: housing; AOD treatment; mental health treatment and support; material aid; transport; financial support • Notifying services and supports of remand (for example, calling a case manager to notify that person has been remanded) • Arranging access to appropriate clothing and footwear while remanded 		

Two participants raised the importance of peer support in custody, and the power of having a peer explain processes and provide support to manage distress. Peer support was described as a powerful form of support that could be made available to remanded people due to the ‘shorthand’ that peers have with each other, and the trust that can be easily built with each other.

Lived experience stories: Anna*

Anna was denied bail because she was already on an order when she was charged in connection to her drug use.

Her drug use was a self-medicating attempt to dull the trauma related to experiencing years of family violence. Over a six-year period, Anna had experienced extensive family violence and involvement with Child Protection services and the Family Court, eventually gaining sole parental responsibility for her child. This traumatic period led to her drug use, which is how she became known to police.

Although I wasn't mis-identified as the perpetrator, I was completely mis-identified as the unhinged woman and the narrative started being directed to my drug use, rather than to the violence that I was experiencing.

When Anna was brought in by police for questioning, she didn't understand she would not be going home. She used her only phone call to arrange a friend to pick up her child from school, rather than contact her mother or a lawyer.

The experience of remand was dehumanising – her clothes and jewellery were taken from her, and she was withdrawing from drugs. Even her hair was cut.

You're already in this really severely traumatising situation, unknown to you, withdrawing from drugs, separated from your child, have no contact with the outside world, it's literally like, it's like a living death. Because I've been extracted from my life and I'm not dead, but I'm still alive, but have no contact with my then living life.

When Anna saw a duty lawyer for a ten-minute meeting before her court appearance, she had barely slept or eaten.

It's just putrid. This is my first experience. I think there was a television in the corner with the cage over the top. Even the memories that I have are so vague because I was so out of it. Then, having been put in there with my hair cut and in someone else's clothing, being shipped a bit of food that is horrendously smelly, I was just like, and then, in the morning you get woken up first thing to go and attend court. I was like, man, seriously?

The duty lawyer informed her she would not be getting bail. She had no idea what questions to ask of the duty lawyer, or what to tell her about her circumstances. Nothing was explained to Anna about the court process, or what services and supports she needed.

I hadn't eaten well, I hadn't slept well, I'd been traumatised and I just wanted to get out of any interaction that I'm going to be faced with, including with her. I had no understanding of the significance or the important that, or even, I'd never been in that situation before, so I didn't even understand what questions I could have asked.

When she got to court, Anna spoke directly to the magistrate, and was sentenced to 14-days to 'dry out'.

Lived experience stories: Anna*

I remember I got up and I just pled my case to the judge. Because there was, I felt like there was no-one there saying anything. There was just very little interaction or care or advocacy or fight for me to say anything about me.

When she went to prison, she had no idea of what to expect or what was expected of her. She wanted the whole process over as quickly as possible.

Then, once I'd landed, a couple of days after, I was like, okay, cool. Now that I've slept, detoxed somewhat and I can feel like a little bit of a human being again where I can express my needs, it'd be great to get some Valium or a Panadol for my chronic headache. Okay, cool. There's a form that I need to fill out that takes two weeks to process. And I'm like, if someone had told me that that intake process was so important, I would have taken a little bit more time.

Anna feels that if the lawyer had taken more time to explain the process and what was going to happen, she would have been in a better position.

I do think that definitely, had the lawyer had have been more knowledgeable and more interested in my wellbeing and my case, I would have had a better outcome. Even if I wasn't able to communicate my concerns or my questions or the outcomes, if I had a support person there like my mum, she would've drilled them. She would've had all of the right questions.

Because Anna has now been incarcerated, this has had ongoing implications for her life. As she was told the purpose of her sentence was to 'detox', she wonders if a better-informed lawyer could have argued for her to do this without use of custody.

Anna felt that her lawyer just saw her as a criminal and a risk to community, not someone who had sole custody of a child, and whose offending was related to vulnerability, trauma and family violence.

Everything is always so heavily focused around risk and fear if we do this, then this could potentially maybe have a severe impact on us and then, me and my company.

Anna highly values the lived experience of others when she is seeking support.

When I go into AOD and there's someone there with lived experience, or when I go into homelessness and there's someone there with lived experience, you just automatically feel at home. They just, they just naturally get you and there's this unwritten, strange bond.

*Not participant's real name

Understanding circumstances

A theme emerged from the data about the need for all lawyers to develop good understanding of a person's circumstances. This includes understanding both the person's history, their current circumstances and their non-legal practical and support needs. Participants discussed the fear and frustration they experienced in interactions with lawyers where they felt that the lawyer did not appear to listen, understand their circumstances, nor think that their circumstances were relevant to their legal matters. These frustrations were reported to be felt primarily with duty lawyers, but were also felt with different lawyers throughout the participants' legal journeys.

I know that they're busy but it's really difficult...because really you want somebody to support you and hear you and stuff like that...but a lot of the time...they don't know your history well enough...[a]nd then you're more likely facing the prospect of ending up incarcerated that day because of the fact that there is no background knowledge.

Only one participant did not articulate this frustration, but instead stated that due to their extensive experience in the criminal justice system they had formed the view that duty lawyers do not have concern for their circumstances.

The participants' frustration that duty lawyers did not understand their circumstances at times led to them feeling that they were not being heard in court. Some participants made the decision to speak directly to magistrates on occasions where they felt they had not been heard by the duty lawyer and the duty lawyer was not able to adequately represent them.

Two participants discussed the difference between duty lawyers and lawyers who act for them throughout their matters. Both participants referred to the longer-term lawyers as 'private lawyers'. One participant stated that when their journey in the criminal justice system commenced, they realised that they needed to form an ongoing relationship with a 'private lawyer' to ensure that history, circumstances, and non-legal needs were always understood and raised in court. Several participants stated that having an ongoing relationship with one lawyer throughout their legal journey was beneficial.

Another participant explained that in one instance when circumstances and history were not understood, the duty lawyer had given poor advice about a breach of a family violence intervention order where the participant was the misidentified victim and charges were ultimately withdrawn. This participant identified that the duty lawyer who had provided poor advice was from a private legal firm and had lacked empathy in their communication with the participant. The participant had an ongoing relationship with a VLA lawyer who they wanted to contact, but the duty lawyer in that instance did not facilitate contact with the VLA lawyer leading to the participant feeling that the legal outcome was unjust. When this participant was able to make contact with the VLA lawyer, the charges that had been the basis for remand were eventually withdrawn.

3.1.4 Experiences of 'the system'

A consistent theme that emerged from the interviews was that the 'system' that governs the lives of remanded people is extremely harmful. Participants did not define the different components of 'the system' but articulated some components such as: police and policy custody; custodial locations such as prison and privately run custodial facilities; courts (including court staff); and Community Corrections and staff.

...you feel really stuck in these systems and even...when people are struggling with their mental health...people can't safely speak about certain things...because there's always punitive actions and consequences to talking about certain things.

For those participants whose earlier lives had been impacted by systems such as Child Protection and Youth Justice, experiences of remand stress were more acute.

...you're just stuck. Like you literally become part of the system and a number. You know, even with the child protection system...you're a number...in all these systems we're just numbers, we're not humans.

Courts, police stations, and custodial environments were viewed as part of an oppressive and terrifying machinery where remanded people experience trauma. For some participants lawyers also formed part of 'the system', whereas other participants viewed lawyers as their 'lifeline'.

I hated feeling like I was under control, and I couldn't escape. I feel like I was...lost...and I felt I was already broken enough as it was and I was further broken by being stuck in...the power and control system. And I felt I was broken, and it just felt really dehumanising.

Participants described the confusion and stress of navigating 'the system' without support or guidance, and how systemic pressures and service gaps lead to poor outcomes, both personal and legal.

I'm hoping they would know at some point how harmful it actually is...[a]nd how much systemic collusion, systemic abuse and systemic harm is formulated within the legislation...[that applies to]... courts.

Custody

The nexus of arrest, court and custody was described by participants as particularly frightening. While VLA cannot control the experience of custody for people on remand, it has a significant impact on how participants experience their engagement with lawyers. Participants described the fear and confusion they experienced during the arrest process, and how at the point of arrest little was explained to them about the reasons they were being remanded, why they were transported to different locations, when they may see a lawyer or when they would attend court. Often when they requested information it was denied.

And you're going through more experiences of grief and loss because you've literally just been taken away from everything that you know and everyone that you know. And then you're stuck in a system that just labels you, you know?

Court

Distinct from legal processes, people with lived experience described court-related procedures as extremely stressful. Participants described their lack of knowledge about how a courtroom functions and what is expected as confusing and frightening. As well as not understanding what being in a court might feel like, participants described other experiences that elevated distress such as: knowing a court appearance would occur but not knowing when; not knowing which lawyer would act; not knowing whether bail would be applied for; not understanding the language used in court; not understanding the outcome (and not having it adequately explained), and feeling judged, labelled and misunderstood. Despite one participant having a greater

knowledge of legal language, all participants described the difficulties of participating in their own court matters, and feeling like they did not fully participate and were not heard. Some participants did not feel that they received fair or just outcomes due to the factors surrounding both court and legal processes.

Many participants discussed how the fear of attending court is compounded by the pressure of the environment and the knowledge that the outcomes will have enormous impact on their lives. Most participants felt that magistrates and lawyers do not comprehend the stress remanded people are under and are not aware of how much power and control they have over people's lives and their wellbeing.

Some participants described additional difficulties in their navigation of 'the system' early on in their criminal justice journey. One participant described in detail the ways in which experience of the system leads to better decision making. This participant described learning over time which lawyers were more likely to gain better outcomes; how to interpret legal advice; how to give better instructions; how to impart relevant information to a duty lawyer and even how to self-represent. Conversely, the interviewees who had not had extensive experience of the criminal justice system described not knowing how to engage in processes and not comprehending information when it was provided.

3.1.5 Lived experience expertise

A strong theme that emerged across the interviews was that people with lived experience must be engaged for organisations to understand and solve problems. All participants felt that for organisations and services to meet the needs of the people who use them, people with lived experience of the system must be integral to the design of the service. Participants gave a range of reasons why lived experience perspectives are important, including that people with lived experience have unique perspectives that other professionals do not.

Because they're going to give perspective, that you would never think of.

Participants all stated that systems can only be improved when problems can be described by those who use the system – in other words, the people closest to the problem can best describe the problem and come up with the solution.

... having people with lived experience involved in designing anything...[is important]...how would you design something about a particular cohort, and you have nobody in that cohort to inform that design? How the hell can you predict what that cohort needs? It doesn't matter if it's for VLA. It doesn't matter what it's about. You cannot design something for a group of people if no one from that group is involved in designing it.

A range of ways in which lived experience expertise can be used by organisations was discussed by participants who suggested organisations such as VLA engage in: codesign work to redevelop services and systems; the development and delivery of staff training by people with lived experience and the employment of people with lived experience for peer support roles.

Well, you can't really kind of improve your system if you don't work with people that receive your services. It's like...if I was a business, I'm not going to ask my staff how good my food is, because they might not eat my food. Or they might say it's good because I pay them. So, you're going to go and ask the person that buys your food so that your business earns more money, you know?

Not only did participants feel that lived experience is an essential ingredient for good service design, but that people with lived experience have an important role to play in supporting professionals to develop greater understanding, and in some cases empathy about the circumstances of remanded people.

In describing how people with lived experience can support professional understanding of why people's difficult lives result in their arrest and remand, one participant stated:

I do understand that lawyers are very stretched, and they do a lot of work...with very little resourcing. But I think even just if there was a day...hearing the lived experienced...[and the]...circumstances that have led to prison....[and] getting a diverse range of people to talk to those lawyers so they can hear the stories...so that the next time...a case comes across the desk, they look at that and then they can think about, wow, you know, I remember that one girl or that man who...before all of this offending, there was all of this stuff. Like kept beating the crap out of me. And then it's like, well if you think the world is against you, why would you not fight back?

Lived experience stories: George*

The first time George was arrested and remanded at a police station he was not given any information about what was happening for two days.

It was incredibly—for lack of a better term— discombobulating, confusing, traumatic, stressful. As you would expect.

He only spoke to a duty lawyer five minutes before he went to court. The lawyer did no preparation for the hearing.

He just told me what was going to happen in court. He didn't provide me with the information that I would have liked. Like, you know, what legislation is in place, what are my rights under this legislation. Not in technical terms, but I'd have liked to know more about what I could do to help myself. Or what I could do for a lawyer to maximise the ability to provide me a solid defence.

The second time he was arrested, he contacted a private lawyer who was unavailable. As the duty solicitor was too busy to take on his matter, he had to represent himself. Even though he had some legal knowledge, he found court confusing and stressful.

Having person-centred, trauma-informed skills was identified by George as necessary for duty lawyers.

I think one type of skill encompasses it all and I think it's knowing how to have a person-centred approach. And that includes things like trauma-informed practice, which includes things like being empathetic.

George believes that duty lawyers are too overworked to adequately perform their role, and they can only provide surface level support.

I think when you're dealing with a large case load and you're not really able to provide sufficient and equitable representation, that's problematic...

I think to provide proper representation you have to understand the matter, you have to understand the circumstances...you have to understand the legislation in place. The summary jurisdiction deals with a variety of things from A to Z and you can't possibly be a specialist from A to Z.

A lawyers' technical skills are crucial.

She was sympathetic, she was empathetic and that's fantastic. But as much as I need empathy and sympathy at the time, I also need technical ... expertise, which wasn't provided to me.

George would like to see significantly more duty lawyers so they have the time to provide proper service. He also believes their training should be improved to ensure that any lack of experience does not poorly impact the people they are representing.

Lived experience stories: George*

I mean you're dealing with someone's freedom. I mean, isn't that pretty serious?

They are literally the only person on your side that you've spoken to in the last twenty-four to forty-eight hours, that's not the police. It will also improve outcomes by—I think—there won't be as many adjournments in court because you're dealing with it right then and there because the lawyer had time to look at your matter. So, it eases the back log and the pressures that are experienced by courts.

While support services weren't mentioned to George, because of his legal studies, he was aware that they could be provided to people facing remand.

Once they are aware that you know what you're talking about, then they'll provide it to you.

George highlighted the ways people's physical and mental health suffer while incarcerated, as services are not sufficient to meet people's needs.

I think everyone [lacks care] whether you're coming off substances or not. [You're] in a prison setting with the problematic, not well-resourced, not well-trained staff ... I think if you didn't come out of prison with...an unmet need...that would be pretty rare.

George identified the benefits of involving people with lived experience in a range of roles in and alongside the criminal justice system. However, George emphasised the importance of implementing the suggestions of people with lived experience, not just using their expertise in a tokenistic manner.

But this is on one condition, that you engage with people with lived experience, and that you implement what they say. You can engage someone and go, that's really great here's a report...that's made to look really good but we're not going to implement it.

And if you're not going to implement them, then we're not engaging. Because you're wasting people's time.

* Not participant's real name

3.1.6 Lived experience analysis

As stated in the Methodology section of this report, an additional layer of analysis was employed by the research team in this Review. The CIJ's Lived Experience Advisor, Dorothy Armstrong reviewed the transcripts from the six interviews with people with lived experience of remand and provided observations and comment on the consistency of the themes which had previously been coded by another member of the research team.

To gain an impartial analysis, the researcher who conducted the interviews did not provide her with any information on the interview participants. Dorothy was asked to read the transcripts and then participate in an informal interview with the researcher who had conducted the interviews. Dorothy was asked to analyse the transcripts using the lens of her own experiences of the criminal justice system.

After reading all six transcripts Dorothy commented that many of the participants appeared to have lacked access to basic human rights in custody, which was not viewed as especially important by anyone participants came into contact with while remanded. Consistent with what the participants stated, Dorothy confirmed that experiences of remand and incarceration are "horrific", and she interpreted the intensely difficult nature of the remand experience as the strongest theme within the transcripts.

Injustice

One of Dorothy's observations after reading the transcripts was that she gained a sense from the participants about the injustice they feel about their experiences of the criminal justice system. Consistent with her own experiences, Dorothy found consistency amongst participants in their experiences of fear, dehumanisation and trauma when remanded.

Dorothy commented on the tension that exists in the court process whereby lawyers aim to protect their clients' rights by speaking on their behalf which can result in remanded people feeling that their history and circumstances are not understood by lawyers nor the court. She commented that the feeling of being silenced, and the disempowerment that flows from this in legal processes is significant. She related this to her own experience and stated that the lawyer's understanding of the person's 'story' is crucial to the remanded person feeling a sense of fairness. She said that when police read out the remanded person's charges it can feel that they are in control of the narrative around the person's life, circumstances and offending. Consistent with what interview participants stated, Dorothy said that there is something vital about the remanded person feeling that they have a voice. Not having a voice and feeling no sense of control over the 'story' Dorothy described as leading to feelings of shame, hopelessness and of having been 'set up' and victimised by 'the system'. She described how these experiences can lead to people feeling a sense of inequality and injustice when appearing in court, and that court appearances then feel impersonal and utterly disempowering.

The Lawyer's Role

Another of Dorothy's observations was that there is a gap between what is expected of lawyers, and what they can provide to remanded people. Her interpretation of this was that because remanded people do not have access to anyone else who is 'on their side' when they are in custody, they rely heavily on lawyers to meet their needs. Dorothy commented that this places enormous responsibility on lawyers. This is consistent with her own experience of remand where she experienced extreme confusion, distress and trauma, and viewed lawyers as the only

'lifeline' in a hostile environment. Dorothy also commented that similar to what some participants said, she had almost no knowledge of the criminal justice system prior to entering it and did not understand the role of the duty lawyer.

Non-Legal Supports

In discussing how supports can be provided to remanded people to meet their non-legal needs Dorothy was very clear in stating the system that criminalises, remands and punishes people should not be the system that provides support. She stated that remanded people will not feel safe using support provided by court, police or custodial staff, and that support should be provided by services who are independent, 'on your side' and advocate for the rights of people on remand. Dorothy commented that this means that services such as CISP need to be viewed as 'part of the system' that criminalises people and should not be viewed as adequate support for remanded people.

Dorothy commented that it is difficult to discuss non-legal support needs in custody because it is unlikely that any remanded person will feel safe disclosing details of their substance use, mental ill-health, experiences of family violence or other complex issues in their lives. Consistent with what the interview participants stated, Dorothy commented that it is not possible to develop trust and rapport with a duty lawyer in a very brief meeting, and therefore remanded people are left feeling that they do not have anyone who knows or understands their history and circumstances.

Dorothy was struck by the shadow cast by the passing of Veronica Nelson at the Dame Phyllis Frost Centre on 2 January 2020. She noted that one participant linked her own fear and unmet medical needs on remand to the terror Veronica must have experienced as she begged for help. Dorothy commented that in an environment where remanded people know that unmet medical and support needs can lead to death, the ripples of Veronica's death must be terrifying.

Trauma-Informed Lawyers

In analysing the transcripts Dorothy found that there was a distinct sense that professionals who interact with remanded people do not generally take a trauma-informed approach to their interactions. Dorothy stated that again, the lack of trauma-informed practice means that remanded people feel unsafe, and do not disclose important personal information. At the systemic level, Dorothy stated that her interpretation of the transcripts led her to believe that not only do lawyers need to take a trauma-informed approach to their interactions with remanded people, but they also need to acknowledge systemic injustices, and make remanded people feel safe by discussing their understanding that lack of support and resources has contributed to their remand.

Lived experience stories: Kiara*

Kiara was 23 when she was first remanded. It was a frightening experience, and she had no idea of what to expect. The police had asked her to attend the station for breaching an intervention order, but because she was sure she hadn't breached it she thought it was just an interview to sort out a misunderstanding.

Instead, Kiara was arrested.

She was transferred between two different holding cell locations and was struggling to breathe because she didn't have access to the Ventolin in her handbag.

When I first got in, I was absolutely terrified. I remember being, I would say on the verge of hysteric. I was freaking out and I distinctly remember being brought from the Magistrates into the transport vehicle. Which basically felt like a truck that was refrigerated because it was very cold, and I had no shoes. And they transported me, it felt like it went on forever.

It was really scary because I had no idea what I, like, what to expect. I had never once ever thought that I would end up in prison and I did not know of anyone that had gone to prison, so I did not know anything about what to expect. So, after being, you go in, they take your clothes, they strip search you, you know, make you squat and cough and all of that.

And they put you in medical, I think it was, for the first night because they want to do some assessments on you... I think it was like three Valium to knock me out. They just go, yep here's your stuff. They walked me to my cell. Because it was night time there was no one else out and about.

Being put in custody without warning meant that Kiara was without essential items like her medication and prescription glasses.

It was thirty-six hours before Kiara could see a lawyer. Despite telling Corrections and the duty lawyer that she had a Victoria Legal Aid lawyer who had been working on her case for five months, her lawyer was not contacted.

The duty lawyer who Kiara saw did not explain the charges, and just told Kiara to plead guilty. Kiara did so and was convicted.

I've got no background in anything law, I don't know shit. I didn't know my options; I didn't know my rights. Like, I knew nothing.

Kiara had no understanding of terms like 'remand', 'bail', or 'custody'. She had not realised that when charged earlier for an indictable offence, that she had been on bail.

I didn't understand what bail meant. He literally just gives me these papers and he goes, 'You're free to go.'

Kiara later appealed against her initial sentence. For this, she was represented by a Victoria Legal Aid lawyer and a barrister. She felt this was the only time she had proper representation who could explain her situation.

Lived experience stories: Kiara*

We [could] sit there and actually talk. One, to be comfortable with each other, but also to have discussions. Like realistic discussions about what could these outcomes be, what happens if it goes right, what happens if it goes wrong.

What are our other options we can explore ... and after, it either goes well or it doesn't, what's next?

Any time I asked my Legal Aid lawyer a question, she would answer it and it would be realistic. Like it was never false hope, but...she kept me informed properly... And if she didn't know the answer, she would tell me she didn't know. So, I was confident because she was transparent with me.

Kiara's appeal was upheld.

[The original lawyer had me] plead guilty to ... two or three counts of contravening an IVO or whatever the term is. But the appeal [confirmed] I was not found guilty of breaching the IVO at all ... Which is ironic because it's the thing that put me in prison.

Because Kiara has experienced being on remand twice, she was able to see the differences that good representation and proper support can make.

It would have been great if, like if [the lawyer] had actually gotten the time to hear about my circumstances, she would have been able to make referrals to things that I did need. And the reason that I say that is because the second time around with the right people, I did get all those referrals and things started to, I was setting myself up well to exit the second time around. But the first time around, I was set up to fail.

Being released from custody was difficult. Kiara was released in the evening on a public holiday when most services are closed. Her clothes – that she was wearing at the time of her arrest – weren't suitable in the cold. She was given a public transport ticket and no help to find her way to the train.

But it was like a kilometre. In the dark, in broken flipflops, walking on gravel.

With no accommodation, Kiara returned to her parents' house, despite them being estranged.

So, it only took me two weeks to be arrested again. I was out, I was breaching curfew and yeah it was just, it was so frustrating.

Kiara knows that people with lived experience can help to design better services.

You need opposing views almost, to be able to refine a pot of ideas to find the most effective one. Because you need diverse experiences... You cannot design something for a group of people if no one from that group is involved in designing it. Because it will not be effective.

*Not participant's real name

3.2 Experiences of VLA's remand service lawyers

This section outlines what we heard from VLA's lawyers providing remand duty services

The research team held two focus groups with a total of 10 lawyers currently employed by VLA, whose roles regularly involve providing duty lawyer services to newly remanded people as well as assistance to clients who are on remand. Participants included lawyers in VLA's BaRC team, who primarily engage in remand duty lawyer work, and other lawyers for whom remand duties form a smaller component of their work. Lawyers from VLA's Melbourne office, metropolitan offices, and regional offices were represented.

We note that it is VLA practice to 'brief out' remand duty work from time to time, which means that private practitioners and barristers are regularly engaged to perform this work. However, representatives from those two groups were not included in the focus groups that this section of the report discusses. Our focus group with private practitioners included one participant who said they are often briefed to do remand duties, and that person's comments are reported on in section 3.4.

It is important to recognise that the sample size of VLA lawyers who participated in the focus groups that are discussed here is small. This research does not purport to, and cannot, provide a definitive picture of the views of all VLA staff on the issues raised, and may not be representative of this cohort as a whole. Further, the comments made reflect the thoughts of individuals, not the official position of VLA as an organisation.

The data we present is nonetheless extremely valuable, as it is drawn from the direct experiences of the people who deliver the remand service. Engaging with their unique experiences allows for a rich understanding of the remand service. In combination with other sources of information such as quantitative data and operational documents, insights gained from the comments of people who directly engage in this work help to build a multi-layered picture of the remand service.

3.2.1 Being a remand services duty lawyer

There is much at stake in this work – people's liberty is on the line

The VLA lawyers we spoke with consistently expressed the view that being a duty lawyer providing remand services carries with it a huge responsibility: protecting people's liberty. Their conviction was not confined to an abstract idea of the legal right to liberty, it was based on an understanding that being remanded is likely to be traumatic for people, and that people who are remanded tend to already be facing significant challenges in their lives.

I see it as the most important work I do at VLA. That's because the client is truly at their most vulnerable when they're first remanded...they're in acute crisis.

The lawyers noted that getting bail, or not getting bail was extremely high stakes for people, in terms of the immediate impact on people's mental and physical health, but also the flow on effects on their lives. Therefore, they tended to express feeling a great sense of responsibility in trying to advance their clients' interests.

You're dealing with extremely vulnerable people who are oftentimes very unwell. And you're dealing with their liberty and whether they're going to get appropriate treatment or sent off to prison.

The lawyers were clearly motivated by the desire to assist people on remand to the best of their ability.

3.2.2 Different functions of the role

When VLA lawyers talked about what was involved in their work, a picture emerged of a multi-faceted role, comprising three main elements: triage; representing individual clients and providing a service to the court.

Triage

The first task when starting each duty is to ascertain who has been remanded, and whether they have legal representation. This involves checking VLA's records and speaking with newly remanded people to determine whether a private lawyer (non-VLA)⁶⁵ is involved. If this is the case, the VLA duty lawyer contacts the private lawyer and notifies them that their client has been remanded.

...we spend a surprising amount of time finding out who's in the cells and chasing up their paperwork. Also, then checking ATLAS and working out who already has a grant and contacting those solicitors to try and get them to pick up their own clients. It can be a surprisingly large portion of the start to your day just trying to get people pointed in the right direction and find out what people are in the cells for.

Liaising with private practitioners can be quite involved and time consuming. It requires the duty lawyers to provide the private practitioners with the information they need to make a decision about how to proceed with their client's matter, such as deciding whether to brief a barrister to appear or asking the VLA duty lawyer to assist.

While the VLA lawyers seemed to accept that it was part of the role to liaise with private practitioners and noted that they were happy to assist to a reasonable extent, their comments indicated that, in their view, some private practitioners had unreasonable expectations of what the duty lawyer service could be asked to do. According to the VLA lawyers, some private practitioners expected them to provide complex and time consuming legal support and advocacy for their clients, while they themselves failed to take responsibility for clients with whom they had a pre-existing relationship and were funded to act for:

You said it could be an issue if the private practitioners ask for you to adjourn a matter. Why is that an issue? [Interviewer]

If it's going to be a straight remand, then it won't be an issue. But if there's anything more than that, then the question is you've got the open grant, for example, and there are five matters in remand. We are going to be pushed in doing that, whereas it's your responsibility because it's your client to come down and deal with it. Usually, a lot of them do. Either they'll ask whether there's a barrister at court, so we might say, "Yeah, there's X". So, they contact them or they ring up the court and say, "Can we have a Webex?" It's the difficulty when

⁶⁵ The term 'private practitioner' is used throughout this section to refer to any lawyer who is not directly employed by VLA, as this was the usage given to it by the VLA duty lawyers. It should be understood as encompassing lawyers from: Victorian Aboriginal Legal Service (VALS); other community legal centres; and private law firms.

the practitioner says, “Well, no, I’m not coming down and I don’t really know what it’s about and I don’t care”.

Differing experiences of individual private practitioners aside, the picture that emerged from the VLA duty lawyers’ accounts of liaising with the private profession was one of close collaboration. It seemed that the VLA duty lawyers were prepared, where time permitted, to provide extensive support to private practitioners, such as assisting them to brief matters, appearing in applications, having matters stood down and other forms of assistance. In some circumstances, VLA lawyers prepare and appear in bail applications and guilty pleas for people who have a private practitioner acting for them. If the private practitioner is unavailable on the remand date and the client instructs them to do so, the VLA lawyer will often appear. This is especially the case if the VLA lawyer forms the view that the client is likely to be released as a result of a bail application or plea.

Representing individual clients

The triage process serves to identify which newly remanded people already have representation. The VLA duty lawyers will then offer to act for those who do not, the latter becoming their clients if the newly remanded person agrees to be represented by a duty lawyer. Each client will be assisted by an individual duty lawyer, who is responsible for analysing the police brief, seeking the client’s instructions, and providing advice. If a bail application will be made on that day, the VLA lawyer will prepare the case and appear for the client.

When acting for newly remanded clients, the VLA lawyers identified two aspects to the role: first, a legal aspect, which requires the application of legal analysis, forensic judgment, and advocacy skills and the second, engaging with clients’ social support needs and making arrangements for these to be addressed. The lawyers who spoke with us said that aspects of the latter part of the role could mean that they effectively did the work of a social worker or case manager, even though, in their view, this is not meant to be part of their job:

...we’re not social workers. I was told this really early in my criminal defence career: “You’re not a social worker”. I kind of go, “Well, we kind of are, but you’re right, I’m not”.

...a lot of it is just yeah, real case manager work, support worker stuff, where you’re just chasing people up trying to get information you need. Yep, he’s got an appointment on this day with this psychologist. He’s got this appointment with an Aboriginal worker on this day.

The absence of Court-facilitated support programs such as CISP being available in regional areas resulted in lawyers from some of VLA’s regional offices doing even more tasks that could be considered social work, compared to the lawyers servicing metropolitan courts:

...we don’t have CISP bail, so there’s no central referral point to link clients in with support services. So, all of that work that we are doing out here to mitigate the risk posed by our clients is myself and my colleagues really doing social work. We’re calling the Aboriginal co-ops, seeing what programs they offer, seeing if they can get down to court that day. We’re obviously calling the family, seeing the families are happy to have them live there, making the referrals to the individual support services.

The two roles identified by the lawyers are intertwined, as addressing clients’ social needs is crucial to the success of their legal case. The lawyers explained that the most important factor in

whether a client is a good prospect for bail is the extent to which social supports can be put in place, so that they can reasonably argue that risk can be addressed.

...it's actually a specialised area of practice. It's really a particular set of skills, in that the speed and the pace of the Magistrates' Court and the complexity of the clients coming through and remanded often present with yes, complex legal needs, but also, complex social needs. So, it is the combination of both legal and social complexities in that fast-paced environment that means that the remand setting is a particularly unique, that first remand setting [requires] a particularly unique set of skills...the client group is, in my experience, uniquely and particularly vulnerable and there are different needs that need to be met, both legally and socially.

In addition to addressing a client's social support needs in order to provide a good foundation for a bail application, the VLA lawyers also said that part of the job involved assessing clients, to gauge whether they were well enough to give instructions, and whether there were any pressing issues that required an urgent referral for medical or mental health intervention:

A lot of what we do is that you're assessing a client by the way that they react to you, the way they give you their instructions.

Building trust and rapport

The VLA lawyers made it very clear that, for them, this aspect of the role – representing individual clients – was the most important. Above all, they agreed, having enough time to spend with individual clients was the top priority when on duty.

Uniformly, the VLA lawyers said that developing a good rapport with the client and obtaining good instructions from them was fundamental.

...the hardest thing you do on a remands duty and the thing that should take the most amount of time is building that trust and rapport with the client.

As noted above, the lawyers described newly remanded people as being vulnerable, in crisis, and presenting with multiple complex support needs. They explained that responding appropriately to people in this situation requires spending time with them:

...we need time to be able to speak to clients. Clients are often in not a good way, maybe withdrawing from drugs or having a number of health issues that might make it more difficult for them to be able to engage in a meaningful way in a very quick manner.

Providing a service to the court

The third aspect of the role that emerged from the VLA lawyers' descriptions of their work was providing a service to the court. From their statements, it seems that the court relies heavily on duty lawyers for the information it needs to manage the flow of cases. A common theme in the VLA duty lawyers' comments was that they felt that the court's demands on their time were often unreasonable and hindered their capacity to meet the needs of their clients.

3.2.3 Tensions between the different aspects of the role

The VLA duty lawyers acknowledged that assisting the court was a legitimate aspect of their job, but many felt that other aspects of their work were neither seen nor valued by the court.

They said that the demands the court placed on duty lawyers' time could compromise their capacity to perform the other parts of their role. As noted above, the VLA duty lawyers agreed that representing clients was the most important aspect of their work, and that the demands of the court took them away from their clients.

Some said that the court's priority – efficiency, or 'getting through the list' – created a constant tension with the aspects of the duty lawyer job that were focused on clients' needs:

It does sometimes feel that the court sees our role as basically assisting them with ensuring that their court list is run smoothly and little value is seen in our actual role, which is representing clients and ensuring that clients who shouldn't remain in custody do not stay in custody...It does feel like that sometimes, there is that big clash.

... while we're obviously there to assist the clients, I feel like the court relies upon Legal Aid more than anyone else for this specific service, particularly out of hours, like at night or on the weekends...really, we're there to assist the client, but it often feels like we're just at the whim of the court.

There was a view that some magistrates held impossible expectations of duty lawyers, in that they expected meticulously prepared bail applications which took hours to arrange, and at the same time expected that matters would be immediately ready to run as soon as they started sitting:

...some magistrates, they want you to jump through hoops. They want you to get all of this evidence. They want letters from caseworkers. They want family members in attendance at court. They want them to give evidence. They want all of this evidence, which could take you all day to get. You'll be chasing up Corrections officers, leaving voicemails, "Just want an update on how they're going on a CCO", things like that. That can take you hours and hours and hours.

In contrast, some lawyers said that there were magistrates who did have a realistic understanding of what was possible for duty lawyers:

Now, we're aided the majority of times by a bench who understands what duty lawyering's about and understands the pressures that we're under.

Overall, however, the VLA lawyers felt that their role was not well understood or appreciated by the court, and that the pressure applied by the court was a major challenge in their daily work. Some felt that things were getting worse: that the court was increasingly prioritising efficiency, or moving as quickly as possible through remand lists, above all else:

...the attitude of the courts, especially at the bail and remand court and the registry staff, is just very different to what it was before. Our role...sometimes feels that we're there to assist the court for the matters to move along and there is little consideration as to what it takes to actually be able to represent clients in a meaningful manner and in a dignified manner, really...if a person needs to speak to a lawyer for 25 minutes or 30 minutes in relation to their circumstances, they are entitled to be given that time. They are in custody.

The tension between providing a service to the court and representing the client was something that most of the VLA lawyers commented on. Tensions between the triage aspect of the role and the other aspects were not as frequently raised, although some did note that the amount of administrative work created a lot of strain:

The administration of the new remands is incredibly heavy and overwhelming at times and utterly uninspiring, in my opinion...For somebody who prefers to be in court and practising, it is incredibly disheartening and unmotivating. You might start a Sunday duty with 32 people in the cells and your whole duty is spent setting up files...it is not a job that I enjoy, nor is it to my skill set.

3.2.4 Challenges

One part of a broken system

Some VLA lawyers reflected that part of what makes their job so stressful is that the remand service is part of a broader system comprising social services, police and the courts. They noted that most of what happens in the wider system is out of VLA's control, and that the system is broken. They felt that VLA duty lawyers are left with the responsibility of trying to pick up the pieces when other parts of the system are failing.

...the problem that we face is that we're the end result of a system or a process that begins and things begin not in our control. From the police station level, from the police level, from the actual charging, et cetera, to the court is a whole process that we're not involved in. We just see the end of it and we then try and cobble together the best service we can

...the whole system is so messed up. Yeah. It is what it is.

...it's pretty wild that we are really often tasked, if CISP isn't available and if Youth Justice can't do an assessment either, it's kind of up to us.

As social supports were critical to a client's bail prospects, the VLA lawyers saw the providers offering these supports as playing an integral role in the service and legal system. However, the lawyers noted that too often these key services had no capacity, leaving the lawyers 'between a rock and a hard place'.

...there was a whole month that we weren't even allowed to make referrals to CISP because of their capacity. That was so devastating.

Some lawyers noted that while a lack of available services could prevent a bail application from being viable, another consequence was that vulnerable clients, for example those presenting with acute mental illness or withdrawing from alcohol or other drugs could go without appropriate assessment and treatment. Many also commented that access to services during night or weekend court was particularly limited:

But we are having a lot of difficulty with CISP. Youth Justice are not available after hours and weekends. Young adults 18 to 21 who need to have supports in place cannot be assessed for any support services. Their matters have to be adjourned to the Monday morning.

Lawyers work, but nobody else [does] after hours.

...those services are there to assist people to get bail, but if you're lucky enough to come to the court between nine to three, there's a possibility that you'll get those supports. But if you miss the cut off and have to go to BaRC at 3:15, then that becomes an issue.

The VLA lawyers also felt that some of Victoria Police's actions created additional strain for them. They said that police commonly lodged people within the allocated timeframe, but in reality too late for a bail application to be arranged:

Why is that we have to try to be as flexible as possible to be able to respond to a broken system and Victoria Police's very poor lodging services?

...people get lodged, yeah, between 7:00 and 7:30, it's bad...it often means the lawyer on duty calls this person and just says, "Hey, you're out of time. Yes, you've been lodged, but the court simply does not have time to hear this. Thank you very much. Someone else will speak to you tomorrow."

The VLA lawyers we heard from were also critical of the Victoria Police practice of sending a nominal informant to court.

It's infuriating. You get up to the bench. The magistrate says, "Oh, Mr [participant's name], do you have any issue with the fact that the informant's not available?" What am I going to say? "Oh, no. Just adjourn it for four days until they are." Of course I'm going to say, "No, there's no issue".

VLA duty lawyers also felt that their ability to challenge widespread problems with how the system is operating are constrained, because doing so in particular matters would negatively impact the client.

Legal Aid haven't, in my opinion, maybe they have, robustly challenged that practice of not having an informant at court. If you don't have an informant at court who is a senior constable or first constable, nobody is there to challenge them to say, "Why would you remand somebody when they have no prior convictions, they're intellectually disabled, they are not looking at a term of imprisonment?"

These comments suggest that VLA lawyers feel that other parts of the criminal justice system routinely failed to fulfill their responsibilities satisfactorily and that these failings impact the remanded person. As VLA duty lawyers are tasked with acting in the interests of the remanded person, they are required to navigate the systems failings that are not of their making, otherwise their client will be disadvantaged. For VLA duty lawyers, it can feel that all the problems of the system land on them.

Engaging with clients remotely

The VLA lawyers said that the shift towards online hearings and the introduction of night and weekend court had negatively impacted lawyers' capacity to engage effectively with their clients and to build a strong rapport. They said that some of the changes meant that they had less time to spend with clients, and that often they had to communicate with clients remotely, rather than face-to-face.

...the thing that used to take me the most amount of time was building trust and rapport with the client. That's something that can be lost in the way that the court designs, the Bail and Remand Court, for example, puts time pressures on duty lawyers. It's really difficult...to build trust and rapport with a client who's never met you, might have had really bad experiences with previous lawyers. You might have 15 minutes on the phone to them to get through all this stuff.

Some lawyers said that it was much harder to get an accurate sense of the client's current mental and physical state when not face-to-face with them.

A lot of what we do is that you're assessing a client by the way that they react to you, the way they give you their instructions...You lose that ability when you're speaking to them on the phone. There's no connection and part of what we do is at least making an initial connection, assessing your client.

Some VLA lawyers said that the WebEx platform used for online court hearings was adequate in terms of allowing court proceeding participants to hear and see each other during the hearing. However, they said that the issue with online hearings was that the available channels through which lawyers could communicate with clients outside of hearings were generally woefully inadequate. Many gave the example of the difficulties of trying to speak via phone to clients being held in police cells:

At some police stations, they will hand the client the phone. At other police stations, they will hand the client the phone only if they are behaving. And at some police stations, they absolutely will not hand that client that phone, full stop...they take them into the little shitty concrete and metal and glass boxes that echo and are really hard to hear in at the best of times. They put the phone on speaker on the lawyer's side and the lock the client on the other side of the glass. You're dealing with what I think must be a Nokia 3310 phone on speaker. They then put it in a really echoey space on the other side of glass with a client who is upset.

Some said that having face-to-face contact with clients should be non-negotiable:

Remand duty should be: you see your client physically, then you and your client physically go to court and you do it. I think that's what it should be.

...to do our job in a meaningful way, where we assess someone's capacity to give us instructions, meaningfully build trust and rapport, test the evidence and go through the legal brief with them, they have to be there in person with us. It is absurd that we have this situation where it's expected that we can do it remotely. You just can't.

However, the lawyers also acknowledged that insisting on having in-person access to clients could result in unpleasant experiences for the client, or the client spending longer in custody. When faced with these realities, lawyers said that they would opt for remote communication, notwithstanding their view that this was fundamentally inadequate.

I think [face-to-face contact is] critically important, but that's a lawyer-centric view, alright? As an accused person who's been arrested in Ararat, if you ask them, they probably don't want to be held overnight, put in a van and taken to Horsham police station waiting for their bail application and get strip searched between custody locations. That's awful. You'd much rather speak to a lawyer on the phone and get your bail application on ASAP.

...so either we pick it up in [regional location], we're two and a half hours away. We can't drive to you. So, either we do it by phone like this, or you are remanded. What are we going to do? We're going to take the very shitty phone line and hope for the best. But it's not conducive to anybody doing this job well.

These comments reflect a theme that we consistently observed, which was that the lawyers routinely prioritise their clients' interests over their own convenience. They are willing to navigate very challenging working conditions if this means clients spend less time in custody. They are also aware of their clients' overall experience. When a person in custody is transferred from one location to another, this does not necessarily impact their legal case. However, the lawyers showed that they understand that this process can be horrible for people, and that they did their best to ensure their clients were spared this ordeal.

Having the tools to do the job

VLA lawyers spoke of everyday, practical challenges with performing their roles due to limitations of technology. Lawyers' access to their clients, and the information necessary to prepare and make a bail application, is often dependent on the systems of other justice stakeholders. For instance, the use of Webex for court scheduling, access to clients in the cells (whether by video link or over the phone) and access to internet can be dependent on Court of police systems. Issues reported (in addition to access to clients in remote setting) were variable scheduling practices, lack of internet access at some settings, electronic briefs being incomplete or a size too large to be accessible, often in the context of trying to prepare a bail application under time pressure. Lawyers reported that at times, they felt hamstrung in their capacity to provide a good service to their clients:

we're the end result of a system or a process that begins and things begin not in our control. From the police station level, from the police level, from the actual charging, et cetera, to the court is a whole process that we're not involved in. We just see the end of it and we then try and cobble together the best service we can

Key to performing the role in the remand service was access to internet through Wi-Fi (such as through Wi-Fi extenders), better data capacity and having options to obtain information offline. Examples included printing police briefs so that information was at hand in the cells, because existing systems were not reliable.

Some lawyers reported that VLA had recently supplied additional and improved technology and this had made a tangible difference to lawyer's capacity.

We have the hotspot Telstra thing, so we can access the internet in the cells. It's a game changer... the organisation has seen the limitations and provided us with the tools.

While the number of focus group participants was small, lawyers reported this was not a consistent approach across VLA, and that some staff didn't receive these benefits.

Reflections on BaRC

From the VLA lawyers' perspective, the challenges that existed in the role generally were more acute in the context of night and weekend remand court at BaRC. They said that at these out of hours hearings:

- there was a huge volume of cases
- private practitioners were less likely to be available, and it was harder to brief matters to the private bar

- the services that are critical to engage in order to put supports in place for the client, including to make a successful application for bail, were generally unavailable
- police informants were often absent
- police briefs were of poor quality
- police prosecutors could be unavailable, thus limiting lawyers' capacity to negotiate charges.

These challenges left many of the VLA lawyers we spoke to who practised at BaRC feeling a sense of hopelessness in trying to achieve the best outcome possible for their clients. The perceived emphasis placed on 'getting through the list' at BaRC, together with the limitations at BaRC described above, creates a feeling of constraint amongst lawyers. Lawyers called on VLA to advocate for changes to improve BaRC's operation.

3.2.5 Impact of remand work on lawyers

While recognising how important the role of a remand list duty lawyer is, VLA lawyers also noted it was a difficult job that required a whole range of skills.

God, there's so many skills and I'm not saying I have them, but I think, you've got to have an ability to push back and you've got to be confident. I'm a more senior lawyer now, but even seeing the more junior lawyers do remands duty, it is so tough and taxing. You've got to learn to push back on so many different parties: the court, prosecutions, your own client. But then, there's also a calmness that you need and a reservedness that I am still trying to develop.

The VLA lawyers also described the work as draining and exhausting, with the potential for vicarious trauma to impact people doing this work.

You're constantly fighting all these different people ... being attacked from all these different angles, so by the time you get on to your bail application, you're just like 'please, just give them bail. I'm trying really hard here.' That pressure coming from all the different angles can be absolutely exhausting, in my experience.

[The remand list duty lawyer role] absolutely presents with unique trauma to all professionals in that space. You're dealing with extremely vulnerable people who are oftentimes very unwell. And you're dealing with their liberty and whether they're going to get appropriate treatment or sent off to prison. And for obvious reasons, that's extremely stressful.

The VLA lawyers also talked about the impact of experiencing behaviour from the court – magistrates and registry staff – that felt disrespectful and left them feeling unappreciated.

Sometimes, they make inappropriate comments about how slow things are. We're doing the best that we can and it puts us in a difficult position when comments are being made about our colleagues who are on their feet running, doing their best.

There's this disconnect in the judiciary between the judiciary and registry and the experience as a lawyer.

Impact of the passing of Veronica Nelson and the coronial inquiry

The VLA lawyers all talked about the implications of the passing of Veronica Nelson and the subsequent coronial inquiry for the way they thought about their own work. Many reflected on the fact that the lawyer who saw Ms Nelson was criticised for the short amount of time he spent with her:

When the lawyer was criticised for the time that they spent with Veronica Nelson, I would say that there was not a person in our team who wouldn't have gone, "That could've been me". The way that they conducted their job, that is not removed from what we do.

Some VLA lawyers noted that the coroner had been critical of the lawyer's actions, and felt that this was unfair. Even though, as this inquiry made clear, the lawyer who saw Ms Nelson was a barrister, briefed to represent Ms Nelson, not a duty lawyer, the VLA duty lawyers seemed to identify with him. They noted that he was criticised for spending what was seen as an inadequate period of time with Ms Nelson, and reflected that they constantly see remanded people for similar lengths of time, out of necessity. They would prefer to spend longer with people, but their experience is that the constant time pressure that the court applies does not allow for this. Therefore, reflecting on Ms Nelson's passing, they felt that the tragic outcome that had happened there could easily occur in a case they were responsible for. They worried that if this happened, they would likely be publicly condemned, just as the barrister in Ms Nelson's case had been. The fact that the system created the conditions that limited the time a duty lawyer could spend with a client would not be acknowledged, they feared. Rather, they would be personally blamed for the failings of the system.

The lawyers' comments also implied that, in the aftermath of the coronial inquiry into the passing of Veronica Nelson, these lawyers were even more conscious that people in custody are often in a precarious state, in crisis, and felt under even more pressure to try to meet their needs in extremely challenging circumstances, as the following quotes illustrate:

'[they findings have] added another layer of stress, particularly to duty lawyers in this space around the competing pressures of the court and the duty to your client.'

...the fact that we are now operating in an environment post a coronial inquest of a woman who died in custody, alongside many other people who died in custody that shouldn't have died in custody, we are all hypervigilant. The pressures are immense.

The theme that the VLA lawyers felt that they were clients' last line of defence after every other aspect of the social service and legal systems had failed was also observable in the context of the VLA lawyers' reflections on the impact of findings of the coronial inquiry into the passing of Veronica Nelson. This research was conducted in the months immediately following the release of the inquest findings. At that time, lawyers expressed frustration that, in their view, they could not see other parts of the system changing in response to the findings. Lawyers reflected that this exacerbated their sense of responsibility to provide safety for their clients and a feeling of providing a safety net in the absence of other parts of the justice system operating to provide this outcome.

Training and organisational culture

We asked the VLA lawyers whether they thought that particular training was required to prepare lawyers specifically for remand work. However, no one suggested that more formal training would be helpful. Instead, the VLA lawyers tended to express that the only way to learn was by doing the job, and learning from your mistakes:

...I learnt the most by just getting in there and doing it. It was brutal, but good and informative.

...you can do as much as you like in terms of training and having someone holding your hand, but really, it's with the volume and just being exposed to the work and seeing more and more matters that you learn on the job, and you learn from your mistakes.

However, the VLA duty lawyers thought that it was critical for new lawyers to have access to quality on-the-job mentoring from more experienced practitioners. Some expressed concern about whether an appropriate mix of senior and junior lawyers was being achieved through current rostering practices:

...the weekend work, we've got very junior lawyers who've practised for a few months and then they're thrown into doing this work. Is that the best outcome for everyone? Probably not, because it's probably too intense for someone who's been practising for a few months to be running with five or six very vulnerable clients in custody on a weekend with no access to any support, doing very complex bail applications. Does it help the clients? No. Does it help the lawyer? It does not, because it's also very stressful to do it.

Many of the lawyers commented that they received excellent mentoring and on-the-job support from senior lawyers when they were starting out, and felt that senior lawyers had been very generous with their time and expertise. Generally, the VLA lawyers said that they experienced a positive work culture at VLA. They said that there was good camaraderie and a sense of shared values and purpose among staff.

However, there was one more negative comment made about internal culture at VLA, to the effect that the court's culture of celebrating efficiency above all else had seeped into VLA consciousness in a problematic way:

...in our team, there is some [perception], that a fast court is a good court. I do not subscribe to that at all. So, when we have a list of 32 people there can be high fives all around for getting through that list. In my opinion, that perpetuates the problem. That is not something that we should be celebrating.

3.2.6 Suggestions for change

VLA duty lawyers made a number of suggestions about changes they believed would assist them to do their work.

Multi-disciplinary teams of lawyers and social workers

In recognising that a lot of the work undertaken by VLA duty lawyers involved identifying clients' social support needs, and then attempting to address these by connecting the clients with social support organisations, some VLA lawyers suggested that it would be highly beneficial to have

social workers working alongside them. This would enable the lawyers to concentrate on the legal aspects of preparing the client's matter:

...the other thing which I just have constantly wished for is an embedded social worker in our office to help do the social work so we can focus on the legal work.

...a lot of it is real case manager work, support worker stuff, where you're just chasing people up trying to get information you need. Yep, he's got an appointment on this day with this psychologist. He's got this appointment with an Aboriginal worker on this day. [Having a social worker on staff] would take a huge bulk of the work off us.

The VLA lawyers did not go into detail about what a service model involving lawyers and social workers together in the same team might look like in this context. However, it was clear that they supported the idea of having social workers in-house. In their comments, they talked about the usefulness of a social worker performing the social work-like aspects of the work that duty lawyers currently do. That is, social workers contributing their skills to the task of getting bail for a client. This activity seems quite different to work that social workers at external organisations might engage in for the client, which may be beneficial and may be a factor in addressing risk during a bail application, but which is not undertaken intentionally with the objective of achieving a favourable legal outcome for a client.

Administrative support

It was also clear from the VLA lawyers' comments that administrative tasks could take up significant time for them. Whether the remand service includes administrative assistance staff varies across court locations and sittings. In some VLA offices, where administrative assistance is available to support duty lawyers, administrative staff make calls to private practitioners and other stakeholders; in other situations this task is performed by lawyers. The lawyers did not make any specific suggestions about whether or how administrative work could be performed differently, and this issue warrants further consideration amongst VLA's staffing profile.

Improved technology, equipment and resources to support lawyers

Much of VLA lawyers' work occurs in systems set up by other stakeholders in the justice system. For example, a lawyers' communication with their client may be affected by the available facilities and technology at a particular location. Lawyers told us that access to clients via phone or video conference varies across the state, and the scheduling practices for Webex conferences can also vary at Court locations. Improving the service that lawyers can provide therefore involves working with stakeholders to identify and progress solutions where issues arise.

However, lawyers also felt there were steps that VLA can (and sometimes, does) take to support its lawyers. Access to technology that supports lawyers performing their roles, or implementing different resourcing models, like administrative support, were seen as valuable ways to improve the work of lawyers. Lawyers reported positively when they had been provided with wi-fi extenders and data bricks to enable them to work better at court, but this was not a consistent experience.

VLA's role in addressing operational and systemic issues

A common theme expressed by the VLA lawyers was that they believed that many of the issues that they encountered on a day-to-day basis needed to be addressed by VLA as an organisation. They talked about VLA needing to do more 'at the stakeholder level' or 'to address systemic issues.' What this might look like in practice was not always clear, but there was a strong sense that the VLA lawyers wanted their organisation to rigorously raise issues with other justice system organisations. In particular, they wanted VLA to take action in response to the disrespectful attitude that the VLA duty lawyers said they commonly experienced from the court.

Many felt that lawyers routinely experienced inappropriate, and sometimes bullying behaviour from magistrates and court staff. They felt that this issue was pervasive, and needed to be addressed as such, rather than being seen as something confined to specific acts of individuals:

So much of the anxiety of this job is actually fed by the judiciary...And I think that's something that Legal Aid could do a better job of, quite frankly, is standing up to the court and saying, "We need to have a safe workplace"...When we raise it internally, the way it's responded to is 'make a complaint and we'll take it further'. And that's great, but it's not an individual thing, it's a culture thing...I think we need to be pushing back more generally against the way our staff are dealt with by registry and magistrates alike in the remand court context.

Another issue that the VLA duty lawyers we spoke with thought needed to be addressed at a systemic level was the practice of informants not being present at court:

...we don't have informants coming to court. When informants don't come to court, there is nobody holding them to account to say, "Why have you remanded this person?" ...So, Legal Aid haven't, in my opinion...robustly challenged that practice of not having an informant at court.

The VLA lawyers indicated that they would like to see VLA as an organisation taking on these issues in a more visible way. They tended to view VLA as being a significant stakeholder in the criminal law landscape, and felt that it should use its influence to greater effect:

...we're all very frustrated with a broken system, and there is no doubting that. But I guess, the other thing is that sometimes, it feels that we're not pushing as hard as an organisation, as a stakeholder, to effect some of those changes.

Some VLA lawyers commented that their experience of raising these points internally was to be told that they needed to challenge problematic practices at the time they arose. However, they said that their capacity to do so on a case-by-case basis was severely restricted, as doing so would be likely to harm the interests of the individual client. For example, a few noted, it was not practical to challenge the absence of an informant at court in an individual case, as this would only result in the case being adjourned off until the informant appeared. This would mean that the client spent longer than necessary in custody.

Addressing the impact of this work

The VLA duty lawyers felt that while the work they did was vitally important, it also had a significant impact on those who did it. Many thought that VLA as an organisation needed to do more to address these impacts. A few lawyers felt that the existing Employee Assistance Program was not helpful.

...obviously, we have the EAP, I think it's called. I utilised it once. I didn't find this very helpful. It was just very general advice. I'm not sure those people know what kind of roles we're doing, the kind of challenges we're facing, so it was just maybe you take deep breaths, maybe you go for a walk, that kind of thing. So, I never called them again.

Some of the lawyers suggested that VLA duty lawyers needed to have a much more structured form of supervision or debriefing than that offered in accordance with current practices, and that VLA should look to other professions for guidance.

I think it's something that the organisation really needs to invest in and have a really close look at what other professions do in similar traumatic environments. I can't imagine anywhere, in Australia at least, in a mental health setting where mental health practitioners are dealing with people with suicide risk or for that matter, in a medical setting where people are passing away, in any other setting where you're dealing with deprivation of liberty, you wouldn't have some sort of structured reflective practice embedded in the management of the organisation

There was a recognition that lawyers may not be comfortable with compulsory supervision.

I think people would hate it, but I think it would be good and it would be something that would encourage people to take seriously and create the space to identify when you're not coping, because you don't realise you're not coping until you're really not coping in this job.

Others referred to the practices engaged by other employers.

So, my job immediately before this was working for a community legal centre, where they sent us to a psychologist every six weeks and they paid for it. And the work was nowhere near as hard as the work is here. I mean, it's almost a no-brainer. There's no doubt about it, the work is really traumatic. The clients are traumatised. You're going to get affected at some stage.

The VLA duty lawyers strongly supported the idea of being provided with external, psychological supervision that was mandatory for everyone doing bail and remand work. It was noted that if the supervision was optional many would choose not to participate, as they did not like to voluntarily engage in work that took them away from their clients. Therefore, their recommendation was for a *mandatory* model.

VLA funding guidelines

Some VLA lawyers commented on the recent changes to bail funding guidelines that encouraged bail applications to be made when the client on remand is Aboriginal. The lawyers who commented were supportive of these changes.

One of the good things to flow out of the inquest and the change in the Legal Aid guidelines around Aboriginality is that there's an interest in applying the law that already exists in terms of informing yourself in terms of someone's Indigenous status.

Some VLA procedures are not workable in a remand context

One VLA duty lawyer commented that some of the VLA policies regarding the information lawyers are required to deliver to clients are unrealistic and unworkable, especially when the communication needs to be made via a telephone. The lawyer questioned how someone who is in a concrete room, with a telephone on loud speaker, could meaningfully engage with the legal services agreement that VLA lawyers are supposed to read out to people. This lawyer said that that doing so wasted precious time with a client, and was counter-productive to the task of building rapport.

We note that VLA has advised that there have been recent changes made to the legal service agreement in response to issues such as this being raised.

3.3 Experiences of VLA administrative staff

For this research, we invited VLA administrative staff to take part in a focus group. However, only one participant ultimately took part. Therefore, the comments discussed in this section are those of one person. This person was a current VLA administrative staff member. They regularly performed the role of providing administrative support to the VLA bail and remand list duty lawyer service.

The administrative staff member explained that it is usual VLA practice for administrative staff to assist lawyers with daytime, business hours remand duties, but that administrative staff do not support night or weekend remand duty shifts. They explained that when an administrative staff member supports a remand duty, this person will assist with a significant amount of the triage aspect of the duty lawyer role. This includes obtaining the list of new remands and searching each name in VLA's records to determine who is likely to already have private representation. The administrative staff member then plays a role in contacting private practitioners. They also assist in obtaining police briefs. Sometimes the administrative staff member will assist the lawyers in making referrals to social support organisations, but the participant said that the lawyers usually make these arrangements themselves, as the lawyer is the only person with the relevant information about the client.

The VLA administrative staff member expressed the view that the role of remand list duty lawyer was vitally important.

I think having a dedicated system where people don't often have access to lawyers, they don't even think about I might need a lawyer one day, to even consider that you might get remanded. You get thrown into all this scenario and to know that, okay, you're got some lawyers at court. Someone will be able to assist you in this stressful time. I think that's just really important that we keep that and that we have the support there for people because I couldn't even imagine getting remanded and then rocking up to court and just trying to figure out everything.

It was also observed that newly remanded people are likely to be having the worst day of their lives and needed to have someone in the system dedicated to helping them.

It's just having them there to have that support for people that have, might be going through the worst time of their life...They will have no understanding of what's going to happen, what the next step is, what's even going to happen that

day, it would be very traumatic. I think our lawyers do a really good job at easing people's concerns.

The participant identifies that the experience of being remanded would be highly traumatic and recognised that VLA duty lawyers are skilled in responding sensitively to people in these challenging circumstances. The participant also praised the VLA duty lawyers' capacity to make quick assessments and prioritise, and their ability to navigate the relationship with the court:

...the lawyers are pretty good in identifying those who may need more time and more assistance versus those that we can probably pop through a bit quicker. And they're really good at communicating with the court or the co-ordinators.

This participant noted that the VLA duty lawyers often had to be assertive in standing up to the court, because the court could hold unreasonable expectations of duty lawyers, and subject them to unrealistic time pressure:

[The court wants the duty lawyer to be able to say] 'okay, this is where we're at, this is what we're doing, this is who's ready, this is who's not', by that 9:00am mark. So it is a bit of a scramble in the morning. So it's harder for the lawyers to be able to be like, "Okay. Yeah. We've got three bail apps and we've got these ones that need referrals" because half the time, they probably can't even go down and speak to [people in the cells] before 9:00am.

This participant talked about the role VLA duty lawyers play in checking on people in the cells who are not in a fit state to give instructions:

They might go down there and then the person doesn't want to speak to us. It's then a bit of back and forth between the lawyer and the [court] co-ordinator... Sometimes, we get some people who are coming off drugs from the night before or mental health issues. They might just need a couple more hours to essentially dry out, for lack of a better term, and then decide later on when they're a bit clearer, when they can, whether they want assistance. Sometimes the lawyers might even use their judgement as well and decide whether to get maybe a mental health assessment in that time frame as well.

These observations reveal that VLA duty lawyers play an important role in carrying out informal welfare checks on newly remanded people, and that they can be the conduits for linking people with mental health services. VLA duty lawyers perform this service for people who are not technically their clients, although they might become their clients once they recover.

3.3.1 Organisational culture, support and training

This participant said that providing administrative support to the remand team could be demanding but was enjoyable and felt rewarding. Their experience was that there was a strong, positive sense of teamwork, and that each person's role in the team was valued. They said that they felt trusted and relied upon by the lawyers they worked with.

They explained in some detail about the extensive support and training that VLA provided them when they were learning the role of providing administrative support to remand duties.

Legal Aid are very good though when you're starting out and when you're learning BaRC that they provide you with another admin who's already done it for a while so there's two of you so that you can sort of bounce off each other. You

can question everything...So you're not thrown straight into this as a new admin. ...The lawyers are really understanding...Legal Aid definitely offer a lot of training around that. There was never a pressure to do this job. You don't have to do this role. You can choose, say, "That's too much for me. I'm not going to do that."

It was interesting to learn that VLA administrative staff seem to be offered a choice about whether to be rostered on to remand duties, or whether they felt that this work did not suit them. It is not clear whether VLA lawyers have similar conversations with their managers, or are offered a choice about whether to do remand services work.

This participant also described a conversation with their manager that indicates that an opportunity for debriefing and reflection was provided after they had been performing the role for a short period of time:

You could determine that yourself about how confident you were feeling...She would touch back in and say, "Are you confident doing it? Do you want some more time? Do you want to have a few more shifts of learning? Are you happy to jump in? What would you like?"

Given their sense that the administrative support person aided the team considerably, this participant commented that they could not understand why night and weekend remand duties were not supported by an administrative staff member.

And I think that is a big part of BaRC, is working together. That's why it's interesting to me that Legal Aid don't have admin on of a nightshift or a weekend, even though that BaRC system runs, BaRC runs day, night and weekends, but we only have the admin support for the daytime shifts. Yeah. I think it's quite interesting because I could arguably say some nights are just as busy and the weekends are just as busy as during the day.

The participant recommended that administrative staff be rostered on to support night and weekend remand duties, so the lawyers 'can focus on the stuff that the lawyers really need to focus on'.

3.4 Experiences of private practitioners

We conducted a focus group with private practitioners about their experiences providing assistance to people on remand, as well as working as partners with VLA in delivering the remand service.

Three lawyers participated in the focus group. Given this small sample size, the comments of the focus group participants should not be taken as representative of the entire non-VLA criminal lawyer cohort. Rather, the insights provided by these practitioners should be regarded as a source of rich detail that brings to life the experiences of those working in the field.

One of the lawyers was a sole practitioner, another worked at a private law firm, and the third worked at a community legal centre.

We have used the terminology of 'private practitioner' here, as this reflects the language used by our research participants to refer to criminal lawyers employed outside of VLA. Technically, the term only denotes those working for a for-profit law practice, however in common use it applies not only to lawyers working in such practices but also to those employed by community legal centres. We have adopted this use of the terminology throughout our report, unless otherwise specified.

All the private practitioners who spoke with us demonstrated a thorough understanding of the work of VLA lawyers who carry out the remand services work. Indeed, some had performed this role themselves, as they had previously been employed by VLA. One explained that they were regularly engaged to cover bail and remand duty lawyer shifts when VLA was short staffed, so they also knew the nature of this work very well.

Overall, the themes that emerged from our research with private practitioners were very similar to those we identified in the research with VLA duty lawyers. However, the private practitioners talked in much more depth about duty lawyer/private practitioner liaison in circumstances where the latter is being informed that a current client of theirs has been remanded. They also focused on the issue that there are key aspects of acting for newly remanded clients that are not funded by VLA. They called for changes in this regard.

3.4.1 How the duty lawyer role was understood

Similar to the VLA duty lawyers, the private practitioners all said that they saw the role as critically important. The private practitioners had high praise for the lawyers who did this work.

I think it's a very important service that can really alter the ... trajectory of the case. Legal Aid does an amazing job, really.

The private practitioners saw this work as highly demanding and difficult:

...it is a really fucking hard job. Being a remand solicitor is really hard. You've got to understand mental health first aid. You've got to understand particular vulnerabilities for different client groups. You're expected to do all of this preparation in the space of half an hour or an hour. You've got a grumpy Magistrate that keeps calling you into court to find out what's going on. It's a really, really, really hard job.

Like the VLA lawyers, the private practitioners identified that the role had multiple facets, and defined these in the same way that the VLA lawyers had, as including: triage, representation of clients, and providing a service to the court. Like the VLA lawyers, the private practitioners

expressed the view that of these different aspects, representing clients was the most important part of the work. The private practitioners also thought that developing a good rapport with the client was central to performing the role well:

...you actually need your experienced criminal lawyers to do be doing the remands. You do need to be able to develop a rapport with people that are really unhappy.

...they don't know you from a bar of soap most of the time and you've got to get them to trust you and develop a rapport within sometimes very short space of time.

I think listening is the important thing. We don't have a lot of time, but you've got to create the perception that you've got time so that your there to listen to them. You're hearing what they say, you may not be able to do anything for them on that day...just to have the time to speak with them. To give them an assurance that you have got everything in hand.

The private practitioners also noted that people on remand were invariably under enormous stress due to the experience of being remanded suddenly and are also likely to have multiple pre-existing challenges.

I think almost everyone coming into custody has some degree of vulnerability. Whether it be mental health issues, being substances affected. Being a victim of violence themselves, being homeless. There's always kind of layers of disadvantage and vulnerability that people in custody have.

3.4.2 Access to clients

Similar to the VLA lawyers, the private practitioners commented that the move to online hearings had created challenges for lawyers when communicating with newly remanded clients. Like the VLA lawyers, the private practitioners said that face-to-face contact with clients was actually the only suitable way to engage. However, they also noted that insisting on this would in many cases mean that clients had to endure the stress of being transported to different locations, or be remanded for longer than they otherwise would. Given these realities, the private practitioners seemed to accept that remote hearings and lawyers communicating remotely with clients would continue to be a feature of the work. However, they were adamant that more should be done to ensure that communication methods reached a minimum standard.

I think it's hard the way [newly remanded people are] presenting a lot of the time. So obviously if they've only been in custody for less than 24 hours and they're still substance effected, their decision making is not good and they're hard to get instructions from. That's quite challenging. So, you're trying to, you know, give them advice about what you think will happen if they do bail today. What the best way forward is...But I find if you physically get over there, face to face and look at them and actually go through everything face to face, they're a lot more receptive to your advice.

...we've got technology to enable Webex appearances with court but communicating with your client on a phone that's being held through a trap by a security guard or where there's no privacy, the line's really poor. That technology is just not able to facilitate meaningful engagement with your client. And it

shouldn't be that hard to upgrade if there is going to be scope for remote court appearances going forward.

...there just has to be a better way. And the police push back, they're not prepared to provide a smart phone or some sort of video capability to be able to link in with clients...a lot of the time you get a crappy phone where you can't hear your client and the client can't hear you.

3.4.3 The court does not demonstrate an adequate understanding of the role

Just as the VLA lawyers expressed the view that the court could place unreasonable pressure on them, the private practitioners also commented that they felt that the court (both magistrates and court staff) could demonstrate a lack of understanding of the extent of VLA duty lawyers' responsibilities, which created more pressure for the VLA lawyers:

...dealing with substance affected people, recognising mental health issues, knowing when to call in Forensicare, understanding what particular issues are for Aboriginal and Torres Strait islander clients and clients from diverse backgrounds. It's knowing when interpreters are needed. It's really, really hard and multilayered. And I'm not sure that decision makers on the bench, when they're running their court, really give lawyers enough respect in terms of the amount of different things that they're juggling on the day.

...not so much from the bench but more about the court staff. Well, there just really seems to be a real lack of understanding of what the role of a duty lawyer entails or the efforts that we need to go to do our job...we're actually assisting the court and I don't think that's recognised enough at some of the locations.

3.4.4 Private practitioners' experience of liaising with duty lawyers

While the VLA lawyers mentioned the triage function of the role, which involves them liaising with private practitioners, the private practitioners went into much greater depth in their discussions of this aspect of the duty lawyer role. Their comments demonstrate the extent to which VLA duty lawyers facilitate and support private practitioners' ability to act for their clients when they are newly remanded. From their accounts, a picture emerges of VLA duty lawyers doing much more than simply notifying private practitioners that a client is in the cells. The various tasks the duty lawyers did to help, according to private practitioners, included:

- obtaining the police brief and providing this to the private practitioners
- speaking with the client, assessing their presentation, and passing on this information to private practitioners
- providing private practitioners with information about what was happening 'on the ground' at the court that day, such as how busy the list was, which magistrates were sitting, whether CISP at that location was accepting referrals, and whether there were barristers at court who might be able to be briefed
- arranging with the court for the matter to be stood down to allow the private practitioner to get to court or organise an appearance via WebEx
- assisting with an adjournment application if the private practitioner was not going to appear, and a bail application was not going to be made that day. This could involve

appearing in court for the application, liaising with the court registry to ensure the matter was booked in correctly, and liaising with the prosecution to ensure they recorded relevant information, which was particularly important if the matter was going to be a bail application when next listed.

In relation to the last point, private practitioners explained that if the court does not correctly record that a matter is being adjourned off for a bail application, this can cause huge problems. The court may refuse to hear the bail application on the day the hearing has been adjourned to. Without the intervention of lawyers to ensure that the correct procedures are carried out and the correct records made, it seems that these problems would frequently arise:

...in a scenario where something gets rolled over to the next day or the day after but without a bail application booked in, the clients miss their opportunity for bail at first remand and then the private practitioner might find out about it the next day. 'Oh, your client's been rolled over to whatever day' but the court won't accept the bail application being lodged that late, so it actually keeps the person in custody for a lot longer. And either if the bail app had been done at the time or the duty lawyer was proactive in making sure that a bail app was listed on the next date, this would not happen.

In the above comment, the private practitioner seems to expect that the VLA duty lawyer should take the necessary steps to ensure the matter is properly booked in. The reality may be that without the duty lawyer's actions this would not happen. However, it does raise the question of the court registry's role in this context, and why responsibility for correctly listing matters, an administrative function of the court, lands with VLA duty lawyers. The VLA lawyers' reflections that they are too often required to go beyond their role in compensation for the other parts of the system that are not functioning adequately seem relevant here.

Examining the above activities performed by VLA duty lawyers in order to assist private practitioners, this aspect of the role appears to be potentially quite onerous and time consuming. The private practitioners tended to recognise that this was the case and said that they appreciated duty lawyers' efforts. They said that without this assistance, it would be much harder for them to help their clients, and that often the intervention of VLA duty lawyers can make a significant difference to the outcome of matters – even when VLA is not technically acting for the client.

...we've had examples of duty lawyers in those circumstances doing an amazing job in stepping in because they've had the read of the court. So, we've had a client at a suburban court that's far away from us. We've had no practitioners available. We've tried all morning to get a barrister, no one's available to go. The court won't let you appear on Webex... And if there is a duty lawyer on the ground who can then pick that up, it makes a huge difference to your client's outcome.

The private practitioners also gave some examples of VLA duty lawyers not being as helpful as expected. Sometimes, they said, duty lawyers would adopt a 'tick and flick' attitude when contacting private practitioners, meaning they would inform the private practitioner that their client had been remanded, but be unwilling to provide further information or take any further action to help:

I've had clients where, an existing client of mine gets remanded. Legal Aid say, 'here's your client.' I'll tell Legal Aid, 'I'm really pressed, I'm at capacity with my lawyers, can you assist?' And then Legal Aid says, 'oh well we're too busy, you

know, get a barrister there.' You can't get a barrister to do that for straight remand, you've got to pay them the fee and Legal Aid doesn't pay for that...I don't think that's a collegiate approach.

I think that a more collegiate approach is in the best interests of all our clients, so collaboration between the duty lawyer and the private practitioner that they're referring out to rather than flicking things to get them off the books.

Interestingly, both private practitioners used the word 'collegiate' in the above passages. It seems that they expect VLA duty lawyers to act in a collegiate way, which they understand as involving helping the private practitioner as much as possible to advance the matter, in service of the interests of the person on remand. A collaborative attitude seems to be expected, whereby the VLA duty lawyer and the private practitioner work together to try to get the best outcome for the client. VLA lawyers are seen as displaying a non-collegiate attitude when they do not take any responsibility for the remanded person, defining them as having private representation and therefore not VLA's problem.

It is important to note, however, that the private practitioners overall spoke highly of the VLA duty lawyer service and were at pains to express how grateful they were for the efforts of duty lawyers. The examples of poor practice they cited were framed as out of the ordinary, and indeed were remarked on because they differed from the behaviour that the private lawyers seemed to expect from duty lawyers. The private practitioners also explained that VLA duty lawyers are always under enormous time pressure, and they said that when the duty lawyers were less helpful than usual it was no doubt due to them being far over capacity.

...remand lawyers at VLA are often dealing with a huge list of people who are in the cells. And so [there is a risk that] the triage role becomes just getting as many off their plate as they can so they can focus on the ones that need them for the day.

The private practitioners also acknowledged that the relationship between VLA duty lawyers and private practitioners could be difficult for each side to navigate at times:

Legal Aid find it very difficult because they're often put in the position where they're asked by a private practitioner to basically look after the client. And that's in circumstances where there's either maybe a Legal Aid grant in place or there's maybe been some private funding in place, but they just can't get anybody there...it's an interesting issue and quite delicate. But really if there's an ongoing grant and you're holding instructions then they really shouldn't step in. And then I see it from the other perspective as well, as being a private practitioner and then getting some random phone call saying, 'your clients in the Sunshine cells, you need to be here.' And you're like, I can't be...so yeah, it's difficult on both sides.

The above passage sheds light on the situation whereby it is felt that the responsibility for a client properly rests with the private practitioner, however there are practical barriers preventing the private practitioner from acting for the person on the day. The reality seems to be that VLA duty lawyers are left to step in and fill the gap, even though doing so may fall beyond the scope of their role.

In addition to non-collegiate behaviour, the private practitioners noted two other aspects of VLA duty lawyer practice that, as they saw it, warranted improvement. The private practitioners all felt that unrepresented bail applications were inappropriate:

...bail applications shouldn't proceed unrepresented at the first remand hearing. It's a really dangerous practice to vulnerable people who find themselves in custody. And it's still a common practice with Legal Aid duty lawyers as we understand it.

One private practitioner also commented that they thought that VLA duty lawyers should do more to ensure that the court complied with the legislative provision that requires newly remanded people to make a bail application within eight days:

The other thing that practitioners need to consider is that there's the eight day remand rule in the legislation and that often gets overlooked... you should always, as a practitioner, make sure that they're only remanded for eight days. A lot of suburban courts will just let that ride and say, well we can't fit them in. I've pushed back on that a lot of times, you just say 'but that's what the law says, you have to do it.' And so, I've had magistrates tell the coordinator, 'it has to be done.' So that's just something I think that duty lawyers need to consider for minimising the amount of time people are on remand at that first stage.

In the above account, the private practitioner seems to be observing a need for greater collaboration and systemic action to uphold the rights of people in custody.

3.4.5 Impact of the passing of Veronica Nelson and inquest findings

As with the VLA duty lawyers, the focus group with the private practitioners was held in the months immediately following the release of the Coroner's findings from the inquest into the passing of Veronica Nelson. Some commented that the implications from the findings on how lawyers should carry out their duties to newly remanded clients had the effect of blaming lawyers for what are actually systemic problems. Like the VLA lawyers, the private practitioners talked about lawyers trying their hardest to engage meaningfully with clients, and to spend appropriate time with them. However, they felt that the demands of the system severely compromised their ability to do so:

Because obviously with the Veronica Nelson inquest there was some comments made about what the lawyer should be doing. Just in terms of what a basic kind of service looks like and let's say rewinding back to when we were during COVID; we were literally taking instructions from clients on the phone. Not even being able to see how they're presenting. Not being able to engage with them in any meaningful way. Not being able to develop trust, like, it was a really substandard service that we were all providing on the telephone. So we were, I think, lucky that not a lot more things happened during that period.

Similar to the VLA lawyers, the private practitioners also expressed frustration that they could not see other parts of the system changing in response to the findings. In particular, the private practitioners observed that no discernible changes to police practice had occurred. In their experience, police continued to remand people, including Aboriginal people, in relation to very minor matters, and continued to object to bail as a routine position.

3.4.6 Reflections on BaRC

The private practitioners expressed concerns that the services that need to be engaged in order to prepare a successful bail application tend not to be available at BaRC, due to it operating after hours and on weekends.

3.4.7 Training and support

Like the VLA lawyers, the private practitioners shared the view that the best way to learn the skills needed to be an effective remand lawyer was through practical experience. They also thought mentoring was extremely important. In addition, one private practitioner thought that it would be useful for remand lawyers to engage in cultural awareness training and for them to be fully equipped to argue the provisions of the legislation that require clients' Aboriginality to be taken into account:

...junior lawyers who are on remand duty, is just to embed cultural awareness training from the outset because, VALS might not always be available, junior lawyers coming into the system really need to understand how section 3 of the Bail Act operates. How they deal with vulnerable clients that the particular considerations that magistrates need to have for Aboriginal or Torres Strait Islander people. And that should be embedded in their practice from day one.

The private practitioners saw the need for VLA duty lawyers to have access to structured support and debriefing:

...debriefing as well, I think it's a really intense role that you're doing and the ability to debrief about it and what you've experienced is really important as well.

3.4.8 Suggestions for change

'Straight remands' should be funded

From the private practitioners' perspectives, the fact that straight remand appearances are not funded is highly problematic. They explained that when they are personally unable to act for a newly remanded client on the day, their preference is to brief the matter. However, if they cannot be certain that proceeding with a bail application is the best course of action, they cannot brief the matter out, as they cannot guarantee that they will be able to pay the barrister.

...there is no fee for a remand application. If your client is in the cells, you go and see them, the decision is not to run a bail application on that day. There's no fee for that so, if a barrister has been briefed to do that and they determine that a bail app's not going to be run, they get nothing. And same if a private practitioner goes to the cells to do the same thing, they get nothing.

Importance of point of release support

The private practitioners also called on VLA to make funding available to enable clients to be supported when they are released from custody. The private practitioners explained that clients can be extremely vulnerable when they are released and need immediate help. Without this, they said, it is less likely that the person will be successful in complying with their bail conditions,

such as remembering their CISP appointment, or safely making their way to their accommodation:

That point of release work, which at the moment in particular when bail apps are being run remotely, so the lawyer's not necessarily even with the client, that point of release care becomes even more important. Because you might have someone released from a police station with no one there to support them or from a prison, from DPFC, for women, again with no one really there to support them when they come out. So, an extension of that legal service to provide that point of release care would be really beneficial.

According to the private practitioners, some of the support that was needed at the point of release was around non-legal needs, such as being provided with appropriate means of transportation, given that prisons and police stations may be in difficult to access locations. Sometimes the lawyers seemed to be saying that emotional support was required, that after the traumatic experience of being remanded, it was crucial for clients to have access to someone who was simply 'there' for them. On the other hand, the lawyers also talked about the importance of explaining bail conditions to clients at the point of release, talking through the next steps in the case, and explaining any processes the client might be required to engage in, for example assessment appointments. Like many aspects of this work, as it was described by those engaged in it, there were legal and non-legal aspects to the point of release work the private practitioners described. However, the private practitioners conveyed the sentiment that if they did not do this work, no other system agency would, and without it, the client would be less likely to comply with their bail conditions or complete the tasks necessary for a good outcome in their case. They saw this work as important, and wanted to see this importance recognised through funding.

Bail guidelines should be clarified

Some private practitioners commented that in light of the Veronica Nelson coronial inquiry, defence practitioners were increasingly taking the view that bail should always be attempted at the first instance, certainly for Aboriginal people, but also for other vulnerable clients. However, they were uncertain about whether adopting this practice was in line with VLA funding guidelines and VLA's expectations. They said that it would be helpful for VLA to clarify its position on this issue. We discuss the scope of the funding guidelines at section 2.2 and the impact of funding guidelines at section 4.6.

VLA as an organisation needs to robustly address system operational issues

Echoing the theme that emerged from the research with the VLA duty lawyers, the private practitioners also thought that VLA as an organisation should play a greater role in addressing the ongoing issues that arise in the operation of the criminal justice system. In particular, a shared observation was that VLA had an obligation to challenge the court's (in their view) disrespectful attitude towards its duty lawyers. They felt that VLA was falling short in this regard, as the following comment illustrates:

Legal Aid needs to do a better job of showing the court that they're there, they're doing a job and they're assisting them...I just think that courts need to really respect the service that Legal Aid is providing more than they do.

In addition to urging VLA as an organisation to work with the courts with the aim of creating a more respectful environment for VLA duty lawyers, the private practitioners also made comments that indicated they saw VLA as an organisation as a key player in the criminal justice sphere. They said that they would like to see VLA use its influence to greater effect, not just to the benefit of its staff, but in the service of the criminal defence profession, and on behalf of the criminal law client group.

3.5 Experiences of support organisation staff

As part of our research, we held a focus group with people employed to provide social service support to people who come into contact with the criminal justice system. These support organisations were not from court-provided programs. All of them had contact with the VLA remand list duty lawyers as a regular component of their roles. In the focus group, they reflected on their interactions with duty lawyers, and also more broadly on the remand process and its impact on their clients.

It is important to note that the focus group with support staff consisted of three participants. Given the small numbers, their comments should not be read as representative of this sector. Nonetheless, their insights provide a rich data source, which allows us to understand the needs of newly remanded people through the eyes of non-legal professionals.

It should also be noted that the organisations represented by the three research participants from this cohort were not necessarily those whose primary function is to provide bail support services, even though this formed an aspect of their work.

3.5.1 Being newly remanded is highly traumatic

The support workers explained that being remanded is incredibly difficult for people. They drew attention to the practical realities of being remanded, such as being confined in an uncomfortable small space for hours at a time, losing contact with friends and family, not knowing what is happening, having no control over circumstances, and losing access to vital medication. They explained that this experience would be stressful for anyone, but for people who have pre-existing challenges, as people who are remanded usually do, the experience can be one of acute trauma that they may struggle to cope with:

...they were substance affected, they had dual diagnoses, they could have had an ABI or an intellectual disability on top of mental illness and withdrawing or under the influence of particular substances. And they've been locked in a cell for 12 hours and they've not seen anyone...Then they might get capsicum sprayed or restrained. Then Legal Aid comes in at 8:30 in the morning and they're screaming their head off.

3.5.2 Duty lawyers need to spend more time with people

The support workers acknowledged that newly remanded people's presentation could be very challenging for VLA duty lawyers, but they also expressed the view that newly remanded people, who may be in crisis, require more time and attention than they are given by VLA duty lawyers.

...the lawyer's needs are generally focused on what the lawyer needs to do to get through this as quick as possible...But really, simply, they're doing themselves a disservice by not actually finding out more about the client's circumstances around their supports. Because you might find that there is a CISP report from here or there is something over here that's going to help your bail application.

Support workers also noted the effect on the client when lawyers spend only a short amount of time with them, and communicate in a rushed manner.

I've often seen clients have no clue what is going on and it's really rushed.

...everyone's busy and stressed and you've got that high caseload and you do have to rush but that doesn't mean when you're sitting with a client that you can't be calm. The client shouldn't know that you've got a hundred other people you need to see today.

The support workers made many comments to the effect that VLA duty lawyers needed to slow down in their interactions with clients.

Just always take a breath every time you go and see a client. They are not a number. And look them in the eye and say, "Tell me what's happening for you right now. How are you right now?" ...I can tell you right now, if you give that person some eye contact, some respect and ask them some questions around their health, right in that moment, you are going to gain more traction and get more leverage and be able to continue a conversation where you get the results.

3.5.3 Showing care

Another support worker noted how important it is, in their view, that lawyers approach interactions with clients with empathy and a non-judgmental attitude.

There's also a lot of trauma and there's a lot of really sad, sad stories that have sort of perpetuated really sad lives for our clients...and I think that that going in there with that unconditional positive regard as the first step and not having that initial judgement or like, alright, well, I've got 12 people I need to get through so let's just smash through them all. Because people pick up on that stuff and they already feel like they're not valued members of society because they've been through this for years if not decades and the systems have continued to churn through them and spit them out.

3.5.4 Accessible communication

Another comment was that lawyers were often adept at recognising that a client has a cognitive disability and advocating for them to receive appropriate services and support, but less skilled at using plain language when communicating with clients:

I always found it interesting, with the checked sheet, where they'd tick, "Acquired brain injury would have this and this" because it's smart and it's advocacy, because they want the client to get everything. But then, I would watch the way they spoke to the client, which was so far over their head. So, I think there can be that disconnect at times.

3.5.5 Pressing non-legal needs

The support workers also said that sometimes newly remanded people have pressing concerns that need to be addressed before they can concentrate on legal advice.

I talked to one of my clients in the cells the other day and he'd wet himself, so he didn't have trousers on the bottom. That was all he wanted to talk to anyone about. I did manage to talk to him after he talked to the lawyer and I just phoned the police station and said, "Can we get him some bottoms?" and that was all.

That's all he needed and then he was okay and he got bail, and everyone was able to have a good chat to him.

3.5.6 Experience of liaising with VLA duty lawyers

One support worker said that it could be very difficult to communicate with VLA duty lawyers. They said that often VLA duty lawyers would contact the support organisation to advise that a mutual client had been remanded, and to request assistance such as the provision of documents or help to make arrangements in support of a bail application. However, if the VLA duty lawyer was unable to speak to the relevant person straight away and had to leave a message, the only phone number that was provided was the general VLA line. This meant that support workers struggled to get through when returning calls, causing frustration and delay.

Another support worker said that she often found VLA duty lawyers' manner abrasive when communicating with them about newly remanded clients:

A lot of the time they can be quite heightened and quite stressed. I get they have a stressful, busy job, but passing the stress on to other people in our office is not necessary.

3.5.7 Suggestions for change

Training for duty lawyers

The support workers made a number of suggestions about further training they thought that VLA remand duty lawyers would benefit from. These included:

- training on mental health, in particular around recognising signs of mental health conditions
- training on the effects of trauma, and how this can impact people's presentation
- training on communicating with people with cognitive disability
- training or structured support in relation to lawyers' own mental health, the impact of vicarious trauma and managing burnout.

More frequent communication and more holistic support for remanded people

The support workers said that ideally people on remand should be able to receive frequent updates about their case throughout the day, but that current practice meant that they were often waiting for hours without knowing what was happening.

The support workers also said that clients' non-legal needs, which might be very important to them, such as ensuring that their pets were fed, or, as in the example discussed above, that they were provided with clean pants, are not always attended to by VLA duty lawyers. The support workers did not necessarily hold the view that VLA duty lawyers should undertake these tasks. Rather, they sought to draw attention to the fact that it could be hard for clients to concentrate on an interaction with a lawyer when they had other needs that were, to them, more pressing. Their comments also point to a gap in the system, whereby newly remanded people may have a range of needs they require assistance with, which fall outside the scope of the VLA duty lawyer service, and currently go unaddressed.

VLA should play a greater role in systemic advocacy

Similar to the other focus group participants, the support workers commented that they would like to see VLA play a greater role in contributing to systemic advocacy, particularly around issues such as the housing crisis and lack of access to treatment and services. They felt that the court did not engage sufficiently with these issues, and that it was VLA's role to highlight them.

VLA is VLA right, and you stand for a cause because you are the gateway between the vulnerable and this system that is creating structural violence.

The support workers were critical of VLA remand duty lawyers in some respects, such as their manner of communicating, and their inability to spend enough time with clients. However, they also seemed to hold quite idealistic views on what the lawyers' role was – they saw them as 'the people that were championing the vulnerable.' One support worker commented, 'lawyers [should] remind themselves that they've got that super cape on sometimes because they are fighting the good fights.' These comments indicate that the support workers did hold the role of VLA remand lawyer in high esteem.

However, these comments may also suggest that the support workers' expectations of the duty lawyers may be unrealistic. Some comments showed that the support workers thought that good advocacy involved 'fighting hard' for the client. For example, one support worker talked about a recent example of a lawyer 'pushing back' against a magistrate. Apparently, the magistrate replied by calling the lawyer's behaviour 'cheeky.' The support worker who recounted this anecdote said that they were very pleased to witness a lawyer standing up for their client in this way. Although the support worker seems to equate this approach with a lawyer being more effective, another view might be that lawyers will prioritise the advocacy approach they feel will be most persuasive, which may not involve taking a combative or argumentative approach. Continuing this theme, a different support worker said that 'lawyers have an open forum to speak' in court and expressed disappointment that lawyers did not make bolder submissions challenging systemic failures such as clients' ability to access NDIS funding. The fact that a lawyer must first and foremost seek a positive outcome for the individual client, and that saying anything they wanted in court may not be a realistic way to acquit this duty, was not considered by this participant.

3.6 Stakeholder views

Consultations with stakeholders who interact with VLA's remand service were held to assist the CIJ understand the context of VLA's service delivery, to hear perspectives from stakeholders about VLA's service including any suggestions for improvements. The stakeholders included people working at Court such as court registry staff and Magistrates, members of Victoria Police including custody management staff and prosecutors. The views expressed about the remand service by these stakeholders are outlined below. The information is provided as a record of their views, and it is noted some suggestions are contrary to what we heard as being preferable by other participants in the system, including people with lived experience.

3.6.1 Role of VLA's remand service and high demands of the role recognised

There was recognition from all stakeholders consulted by CIJ that the provision of remand services by VLA was of great importance. There was an acknowledgment that the role of the duty lawyer providing remand services was a high pressure one, particularly at BaRC, where there is a large caseload. It was noted that VLA lawyers have shown great adaptability, for example, to the practices required to manage BaRC, and that VLA lawyers do an exceptional job in difficult circumstances.

3.6.2 Importance of support services

Stakeholders noted that there is a heavy reliance on support services by all involved in the bail and remand process. It was acknowledged that the need for specialist assessments is critical for lawyers to prepare a bail application and the lack of services available can result in delays for bail applications to be made.

3.6.3 Experienced legal advocates are valuable

Many stakeholders observed that experience and judgement was critical in being able to quickly assess whether an application for bail would be successful.

There was a view that more junior lawyers were frequently rostered for remand duty services, meaning that it was harder to progress matters smoothly. Suggestions included that VLA could review its rostering to ensure more experienced lawyers staff duty services, and that there is a better balance of junior and experienced lawyers.

Some stakeholders also suggested that lawyers needed to be agile and adaptable, in order to withstand the fast pace and unpredictability of the bail and remand environment. It was recognised that being 'young and fit' was a benefit for remand lawyers as the role often involved 'running' between buildings to see clients and to attend court.

3.6.4 Access to clients is essential for good legal assistance

All stakeholders noted the importance of having a lawyer be able to speak to their client in a timely way. There was agreement among stakeholders that lawyers often had limited time to speak with clients, which made their task difficult.

Stakeholders acknowledged that there are challenges associated with using technology when clients are held at a different location to their lawyer or the court. This was noted to have a

particular impact on a lawyer seeking to obtain instructions with clients who may have difficulty communicating, and to communicate and liaise with other stakeholders.

Stakeholders held differing views about clients appearing remotely with some suggesting it was better for the client and lawyer to meet remotely, because this provided quicker access to a client and remove the need for the client to be transported. Others stated that having the client appear in person – both in front of a lawyer and in front of the court – was important.

3.6.5 Variable practices across courts impacts the remand service

Stakeholders identified a number of different practices across court and police locations which impact the way remand services are delivered. Examples of this included practices for transporting people on remand to court, 'cut-off times' for lodging cases at court, access to audio-visual links (AVL) or phones, internet access in cells, communication methods between courts, prosecution and VLA.

Some locations, for example, use a Teams chat between court staff, Victoria Police and VLA lawyers to share information and keep up to date with when matters may be available for listing. Some locations facilitated audio-visual links for lawyers to speak to clients, while others used mobile phones.

Some of these variations are attributed to local practices that have been developed by stakeholders to improve operations at a particular location; others were described as gaps in consistent service delivery standards.

3.6.6 Alternate ways to deliver the remand service

Following on from the observation that the practice of remand services varies across courts locations, stakeholders observed that VLA could try different models of delivering services, particularly duty services at court. One suggestion was made that VLA could consider having a division of tasks so that a lawyer consistently appears in court (for instance, for all bail applications on a given day), with other lawyers or staff tasked with the triage, interview, liaison with family or services.

3.6.7 Training to benefit remand lawyers

Consistent with the feedback about the value of experienced lawyers in remand services, stakeholders commented that the key skill that lawyers required was the ability to make quick forensic or strategic decisions about how to proceed with a matter. Stakeholders suggested that lawyers would benefit from more practical training about making a bail application – having regard to what a judicial officer is required to focus on when considering a bail application – and in particular, looking at the question of risk and how this can be addressed. More generally, lawyers were encouraged to be “brave and back themselves” in making applications for bail on first remand. Some stakeholders observed that a “creep of conservatism” among lawyers had occurred, meaning that it was less likely lawyers would run a bail application.

3.7 Other services supporting people facing remand

In the course of the Review, the CIJ has learned of other models for providing legal and other assistance to people on remand. These services are in recognition that obtaining bail now requires an assessment of community safety and risk of future offending,⁶⁶ and that as a result, obtaining bail can be dependent on connecting to available supports in the community.

Bail support services, that is, the provision of services, intervention or support, designed to assist a person to successfully complete their bail period⁶⁷ “have contributed to reduced remand populations, reduced reoffending among participants, and improved sentencing and long-term outcomes for both accused persons and the criminal justice system”.⁶⁸

In Victoria, the Court Integrated Services Program (CISP), Youth Justice Court Advice Service (YJCAS) and Youth Justice Bail After-hours Service (YJBAS) are examples of bail support service programs. A person may be referred to these programs by police, a legal representative or a magistrate. A person who is referred may receive case managed support, and reports of participation and progress are provided to the court as part of adherence to court conditions.

Other models of bail support operate across Australia with varying levels of support intensity.⁶⁹ Some of the examples included here show the varying approaches that can be taken to bail and remand legal assistance and support. They are provided to illustrate examples of different approaches and for comparison. Further work would be required by VLA to determine the benefits or otherwise of adopting similar approaches.

3.7.1 Integrated legal assistance models

Different legal assistance models may seek to integrate the expertise of social workers alongside legal services, so as to better support a person’s prospects of complying with bail and reducing reoffending. Some examples of integrated models in Australia, specifically as part of bail and remand services, are the Reducing Avoidable Remand project, and the Women Transforming Justice project.

⁶⁶ McMahon, above n 13.

⁶⁷ See for example, Gabrielle Denning-Cotter, ‘Bail Support in Australia’, Indigenous Justice Clearinghouse (Research Brief 2/08, 2008) <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief002.v1.pdf>>

⁶⁸ Matthew Willis, *Bail Support: A Review of the Literature* (Research report No 04, Australian Institute of Criminology, 2017).

⁶⁹ See discussion of various programs: Ilya Klauzner, ‘An Evaluation of the Youth Bail Assistance Line’ (2021) 321 *Crime and Justice Bulletin* <<https://www.bocsar.nsw.gov.au/Publications/CJB/2021-Report-Evaluation-of-Bail-Assistance-Line-CJB237.pdf>>; Max Travers, ‘Bail Decision-Making and Pre-Trial Services: A Comparative Study of Magistrates Courts in Four Australian States’ (Australian Institute of Criminology, October 2020); Max Travers et al, ‘Bail Practices and Policy Alternatives in Australia’ (2020) 610 *Trends and Issues in Crime and Criminal Justice* 1.

WA Reducing Avoidable Remand Project

WA Legal Aid and the Aboriginal Legal Service of WA (ALSWA) are currently undertaking a pilot project aimed at Reducing Avoidable Remand. This project includes two key initiatives – bail support and targeted advocacy. Both organisations have established Bail Support Services (BSS). WA Legal Aid offers a Remand Advocacy Service while ALSWA offers a Prison In-Reach Service.¹

The Bail Support Service

The BSS assists people who either have bail, or would be a realistic candidate for bail if they had access to the right supports in the community to improve their ability to comply with their bail conditions (and reduce the risk of reoffending).

BSS at either ALSWA² or WA Legal Aid develop bail plans and support people to meet their bail conditions. The BSS are staffed by social support workers (including social workers) and paralegals who develop services depending on needs. Supports can include:

- referrals to drug and alcohol services, mental health providers, and accommodation providers
- arranging transport for example, to court or home from prison;
- reminders about court appearances and resolving barriers to court attendance;
- connecting with a range of community and government organisations.

The Remand Advocacy Service

The Remand Advocacy Service (RAS) is a team of WA Legal Aid duty lawyers who focus on rapidly progressing bail applications. Where appropriate, RAS assist clients remanded in custody to resolve their matters as quickly as possible, particularly where that client is not facing a sentence of immediate imprisonment. Resolution might include the making of a complex bail application or resolving matters through a plea – legal assistance that might take longer than is possible through standard duty lawyer services. To enable prompt hearings, an MoU commits the courts and WA Legal Aid to listing protocols for these matters. The RAS operates at Perth Magistrates' Court.³

The Reducing Avoidable Remand project commenced in April 2020 for a three year pilot but has been extended for a further two years. An evaluation is due to be completed by Western Australian office of Crime Statistics and Research.

¹ Aboriginal Legal Service of WA, *Annual Report 2020*, (2020) 20.

² Aboriginal Legal Service of Western Australia, *Bail Support Service* < <https://www.als.org.au/about/services/>>.

³ Legal Aid Western Australia, *Annual Report 21-22*, (2022).

<https://www.legalaid.wa.gov.au/sites/default/files/LAWA_Annual%20report%202022_Final_WEB.pdf>.

Women Transforming Justice Court Support Program

The Women Transforming Justice pilot project, conducted in 2020, sought to proactively advocate for decarceration. One aspect of the pilot project was the development of an integrated Court Support Program for women.

The Court Support Program, aimed to deliver expert, integrated and women-specific legal representation (through the Law and Advocacy Centre for Women), as well a gender-informed, outreach-based case management (through Flat Out). This was to improve women's prospects of being granted bail, as well as to support them to remain safe and stable in the community on release.

The Court Support Program was found to have 'improved legal outcomes for the majority of women accessing the program, with 76% of clients being granted bail at their first application'.¹ Women were also supported with their non-legal needs, with support provided by a case manager including intensive outreach; practical supports such as transport to and from appointments, as well as food or phone vouchers; and assistance for women to find housing as well as advocating for referrals to other services. The evaluation found that this 'work was intensive, time-consuming and complex' and that women's needs in the context of their contact with the criminal justice system were multiple, interrelated and not adequately met by the wider service system.²

¹ E. Campbell, L. Macmillan, and C. Caruana, (2020) *Women Transforming Justice: Final Evaluation Report*, Centre for Innovative Justice, RMIT University, Melbourne, 6.

² *Ibid*, 57, 42.

3.7.2 Bail information schemes

Bail information schemes are an alternative way for information about an accused to be collected at a pre-trial stage. They seek to address the gap in information that may otherwise exist for a bail decision-maker (and in doing so may also provide information for the prosecution and defence).

These schemes, introduced in the United Kingdom in the late 1980s and adopted in other jurisdictions⁷⁰ collect, verify and present evidence to the crown prosecution service about an accused's conditions and risk factors regarding bail.⁷¹ In the UK, this service is run by the Ministry of Justice and triages and prioritises remand prisoners who are suitable for bail, and may provide appropriate referrals to bail accommodation or other support services, and the use of electronic monitoring. The presence of bail information officers at courts, however, is 'patchy' and an evaluation of the program is pending.⁷²

⁷⁰ Such as the Manhattan Bail Project: see Travers, *Bail Decision-Making and Pre-Trial Services*, (n 69) 40.

⁷¹ Mandeep K Dhimi, 'Do Bail Information Schemes Really Affect Bail Decisions?' (2002) 41(3) *The Howard Journal of Criminal Justice* 245.

⁷² House of Commons Justice Committee (UK), *The Role of Adult Custodial Remand in the Criminal Justice System* (Seventh Report of Session 2022-23, 10 January 2023) 35 <<https://committees.parliament.uk/publications/33530/documents/182421/default>>; Christine Fiddes, 'Bail Information Schemes' (1989) 36(2) *Probation Journal* 50.

A pilot of bail assessment officers was introduced in NSW in 2016. Bail assessment officers were engaged to provide the courts with information about individuals to support applications for bail where it would otherwise be refused due to a lack of information. An officer interviewed accused in custody, and attempted to locate family, assist with referrals and arrange appointments. An evaluation of the program concluded there was no significant change in the number of defendants being granted bail as a result of the program, and there was no significant reduction in the number of days spend on remand. However, the researchers observed that the conclusions they could draw from the study were limited due to the lack of program data available.⁷³ Agencies also raised concerns about sharing of personal information and administrative burden.⁷⁴

⁷³ Neil Donnelly and Simon Corben, 'Evaluation of the Bail Assessment Officer (BAO) Intervention' [2018] (209) *Crime and Justice Bulletin*.

⁷⁴ Travers, 'Bail Decision-Making and Pre-Trial Services', (n 69) 42.

4 Discussion and findings

This section draws together the themes described in the sections above and provides an analysis of the issues.

Consistent with what we heard from participants and stakeholders, the literature indicates that people who constitute the remand population have a range of complex needs. They are often people who also experience social disadvantage. Aboriginal and Torres Strait Islander people, those who experience mental ill-health, disability and issues with substance use are over-represented in custody.⁷⁵ In Australia, it is well established that Aboriginal and Torres Strait Islander people are grossly over-represented in all areas of the criminal justice system, including remand.⁷⁶

During the course of this review, we heard from people with lived experience that being remanded in custody was extremely distressing. When people are arrested and remanded, they are drawn into a system that provides lawyers with limited time to respond to their needs. Within the system, courts, lawyers, police, prisons, legal services, support services and private custodial services often have conflicting views and aims, yet are charged with 'managing', or 'getting justice' for the same group of people. It is clear that mental illness and psychological distress are prevalent amongst people in custody, with evidence suggesting that the needs of remanded people are greater than sentenced prisoners.⁷⁷ Research also suggests that remanded people experience greater levels of distress than sentenced prisoners due to the process of adapting to the remand environment.⁷⁸

4.1 Importance of the remand service

The provision of legal services to people on remand is critically important. It is essential that the people who use the remand service are at the centre of its design.

It is clear from the themes that have been drawn out from our research participants that not only is the remand environment extremely difficult for both remanded people and lawyers, but the interactions between lawyers and their remanded clients are critical to the safety, wellbeing and legal outcomes of people who have been remanded in custody. In an under-resourced system, these interactions have implications far beyond the courtroom or prison, and can change the long-term trajectory of people's lives. Research shows that adequate legal representation for early bail applications is critical.⁷⁹

⁷⁵ Eileen Baldry et al, (2018) A Future Beyond the Wall: Improving Post-release Employment Outcomes for People Leaving Prison.

⁷⁶ Hilde Tubex, John Rynne and Harry Blagg, 'Throughcare for Indigenous peoples leaving prison: Practices in two settler colonial states', *European Journal of Probation* 2021, Vol. 13(3) 282–300.

⁷⁷ Joana Andrade, Marta Sousa, Rui Abrunhosa Gonçalves and Andreia Castro-Rodrigues, Remand Prisoners' Specific Needs: A Systematic Review, *Journal of Police and Criminal Psychology*, 2022.

⁷⁸ Ibid.

⁷⁹ See literature review at Appendix 7.1.

Data provided by VLA showed that in 38% of bail applications made by the duty lawyer service, a client is granted bail.⁸⁰ However, 58% of those applications result in a client being remanded in custody, either through an adjournment or refusal of the application for bail.⁸¹

As the themes described above demonstrate, the interactions that occur between lawyers and remanded people are complex and often fraught with miscommunication. In the context of the duty service, the aim of the lawyer may be to see every remanded client quickly to gain an understanding of their legal needs in that moment, whereas for the remanded person, the duty lawyer may be a 'lifeline' – the only 'friendly' person they have seen for several days who will have concern for both their legal and non-legal needs. Any other person who the remanded person has contact with – whether custody staff, police or court staff – is not seen as someone who can look after the person's welfare or interests.

While duty lawyers may need to ensure their interactions are quick because they are aware of the amount of remanded people they must see, the experience of the remanded person may be that the duty lawyer lacks empathy, views the person as 'just another number' and does not understand their current circumstances and non-legal needs. As different lawyers may be on duty each day, and do not then take carriage of a remanded person's matters to conclusion, the remanded person may feel that VLA's duty lawyer service lacks continuity, care and competence. The busy nature of the duty lawyer service may lead remanded people to view duty lawyers negatively, as duty lawyers simply do not have sufficient time to explain the remanded person's legal situation to them, hear about their circumstances and provide them with advice.

This is the situation that newly remanded people are in when they first encounter VLA duty lawyers. There is much at stake in these interactions. People with lived experience felt their life is in the hands of the duty lawyer. This sentiment is not hyperbolic. In light of the Veronica Nelson inquest findings, and as the Royal Commission into Aboriginal Deaths in Custody made clear, Aboriginal people's lives are at risk when they are in custody. Custody is risky for non-Aboriginal people too.⁸² One person with lived experience described experiencing an asthma attack when on remand, and waiting over 30 minutes to be provided with her Ventolin.

The lawyers who deliver the duty lawyer service are acutely aware of the traumatic impact of being remanded. They understand what an ordeal it can be for people and how being remanded can disrupt someone's entire life. They were fully cognisant of the responsibility resting on their shoulders, noting that a person's liberty is on the line. We heard from the lawyers that with this responsibility comes an enormous sense of obligation, as well as stress and pressure. Nonetheless, they are deeply committed to this work, and some said it was the most important work they do.

The private practitioners who spoke with us expressed similar sentiments to the VLA lawyers and described the work of the remand service as a critical safeguard of people's right to liberty. Other criminal justice system stakeholders, including magistrates and court staff, also recognised the crucial role of VLA's remand service.

⁸⁰ In 2022, 38% of bail applications resulted in a grant of bail.

⁸¹ Source: data from VLA. See Figure 7, section 2.4.

⁸² Philippa Tomczak, (2022) 'Highlighting 'risky remands' through prisoner death investigations: People with very severe mental illness transitioning from police and court custody onto remand' *Frontiers in Psychiatry: Forensic Psychiatry*, 13: 1–12.

4.2 More than a legal service

VLA's remand service is more than a legal service. In addition to providing advice and representation to people remanded in custody, it also provides non-legal services and triage and coordination services for the benefit of the court and the justice system as a whole. The scope of VLA's service is not well-understood, and recognising the multiple services provided by VLA, and resourcing them, will lead to better outcomes.

The objectives, functions and activities of the remand service are not currently designed around a unifying principle. A service model, informed and co-designed by people with lived experience, would help VLA achieve this.

4.2.1 Services to people in custody

Our research highlighted that newly remanded people have a range of pressing needs, many of which are non-legal. This is not a new phenomenon, and studies of the needs of people in custody recognise these non-legal needs.⁸³ In the absence of other services to meet those needs, we heard that lawyers (including duty lawyers and lawyers representing existing clients at first remand) attempt to provide a holistic service, without adequate resourcing or recognition for this task.

Lawyers do their best to provide a good service to people in custody, but their primary focus is on achieving the best possible legal outcome for the person. Furthermore, a duty lawyer service alone is not sufficient to meet the range of non-legal needs people who have been remanded need help with. In part, this is due to the nature of the service as a duty service, which has to provide immediate assistance in the context of relatively unpredictable demand, without any prior opportunity for planning or preparation. In this context, the duty lawyer may only have the capacity to address people's non-legal needs as they directly relate to the legal issues they face. Some of these challenges also exist for lawyers assisting their clients on first remand, irrespective of whether they are a duty lawyer, or the client's retained lawyer.

While we heard about lawyers' preparedness to go beyond their formal role to help people, we also heard (including from social workers employed by support organisations) that lawyers may not be equipped to address the multitude of non-legal needs newly remanded people present with. People with lived experience also emphasised that unless their practical and support needs were met, it was exceedingly difficult for them to respond to questions that will help the lawyer determine the prospects of a successful bail application.

The need to address the non-legal needs of people who have been remanded is also evident at their point of release from custody. We heard people's descriptions of being released from custody without basic necessities such as suitable clothing or appropriate access to transport, while others explained that they did not understand the conditions of their bail or how to engage with the support services they had been linked with.

Private practitioners recognised the need to provide support to clients at the point of release. Some said that they would provide this support themselves when they could but noted that their capacity to provide this would be greatly enhanced if this work was funded.

⁸³ See, for example, Anne Grunseit, McCarron and Suzie Forell, *Taking Justice Into Custody: The Legal Needs of Prisoners* (Law and Justice Foundation of New South Wales, 2008) < <http://www.lawfoundation.net.au/report/prisoners> > ('Legal Needs of Prisoners').

A note on our understanding of legal and non-legal needs and the relationship between these categories: it is clear that lawyers spend time addressing the needs of clients best defined as 'legal needs,' such as analysing the police case against the client, seeking instructions, providing legal advice, preparing the bail application and appearing in the bail application. These activities are squarely legal in nature, are required to be performed by qualified lawyers, and would be expected activities for lawyers to engage in.

However, a successful bail application requires satisfying the court that risk has been adequately addressed and the required bail threshold has been met. The way to address risk is often to demonstrate that appropriate social supports are in place. Depending on the individual client's circumstances, this may involve connecting them with crisis housing, alcohol and other drug treatment and/or mental health support. Lawyers require these linkages to be in place in order to achieve a good legal outcome for the client. As we heard in this Review, the CISP program (where it operates) may carry out these activities, however the program is often over capacity and is not available to, or suitable for, everyone who needs it. In such cases, lawyers undertake the work of connecting the client to social support services themselves. The lawyers recognised that this is not really part of a lawyer's job – they saw this type of work as 'social work' or 'case management.' However, if they did not do it, they could not run a viable bail application. Therefore, it seems that lawyers regularly address people's non-legal needs, in the service of achieving a good legal outcome. In this context, meeting the person's legal needs requires meeting certain non-legal needs, so the two categories of need are interrelated.

As we see it, newly remanded people also have a range of non-legal needs that do not directly impact the legal outcome of the case. These might include, drawing on examples provided during this review, arranging care of children, being given a clean pair of pants, or having your prescription glasses brought to you. Above all, people may need emotional support and reassurance. Needs such as these do not directly impact a person's prospects for bail, and are unlikely to be always attended to by a duty lawyer. People with lived experience told us that, for them, it is critically important to be able to access support around the issues that are most pressing to them when they are first remanded, whether or not they are relevant to the question of bail.

In summary: newly remanded people have a range of pressing legal and non-legal needs. Currently, the duty lawyer service can address people's legal needs, and people's non-legal needs to the extent that preparing a viable bail application requires this. However, there are a range of non-legal needs that fall outside of this category, that are both critically important from the perspective of newly remanded people and also assist engagement with lawyers, which currently go unaddressed.

4.2.2 Services to the court

Duty lawyers undertake a variety of tasks which are not specifically related to providing legal services to the people on remand who are (or will be) represented by VLA. Duty lawyers work with court staff to respond to newly remanded people, managing the list of cases to be brought before the court and ensuring magistrates have an understanding of who is in custody. This work can include vital reporting of a person's welfare and whether they can engage with services or make a decision about receiving legal advice. Our research found that the court and other justice stakeholders rely on duty lawyers for critical information about clients and about the availability of lawyers (who may be private practitioners). VLA is the conduit to ensure a person who has been deprived of their liberty, is afforded the opportunity to seek bail at the earliest opportunity.

Whilst the tasks largely involve triage and coordination services, it was also clear that in some circumstances, duty lawyers also provide a safety net of legal assistance. An example of this is when a person on remand cannot or does not wish to engage with a lawyer. In these instances, a duty lawyer appears as a 'friend of the court', to assist the court's consideration of the person's case. If a person in custody does have a private lawyer but that lawyer is not available to attend at court, duty lawyers may also assist that person.

The table below lists the tasks performed by lawyers irrespective of whether the person is a client, articulated by lawyers we spoke to in focus groups. The list is non-exhaustive and does not include the formal, or more recognised tasks of the duty lawyers, which are set out in section 2.3.

Services provided to a newly remanded person	Services to assist the court to administer the remand service
<ul style="list-style-type: none"> • performing informal 'welfare checks' such as lay mental health and medical assessments • identifying if a person is substance affected • attending to medical needs • contacting family members or friends • making arrangements for children to be collected from childcare or school • making arrangements for pets to be fed or cared for • organising clothes or other essential aids such as prescription lenses • ascertaining if the person can provide instructions • organising referrals to support services • establishing details of the person's existing medical or support needs • identifying suitability and eligibility for bail and other support programs for a person, such as alcohol and other drug treatment programs • ascertaining if interpreters are required and if so, arranging their attendance at hearings • making an adjournment application or running a bail application if the person's private lawyer is not going to appear / cannot appear 	<ul style="list-style-type: none"> • determining whether people in custody have a pre-existing relationship with a private lawyer • providing information about legal representation of all people in custody • allocating non-represented people to VLA duty lawyers • responding to 'callovers' to provide status updates • assisting magistrates to assist with people who do not wish to be represented or cannot express their wishes • following up requests for access to police briefs • providing private lawyers with information about what is happening 'on the ground' at the court (how busy the list is, which magistrates are sitting, whether CISP is accepting referrals) • making an adjournment application or running a bail application if the person's private lawyer is not going to appear / cannot appear • organising Webex appearances for a private lawyer

4.3 Urgent need for clients to have more time with their lawyers

Time pressures permeate all aspects of the remand service, to the detriment of the people remanded in custody. There is an urgent need for newly remanded clients to have more time with their lawyers. To fully address this issue, practice and service changes from VLA and a range of justice stakeholders are necessary.

Time pressure is a recognised feature of remand and bail decision-making and legal assistance.⁸⁴ A lack of time and the associated consequences of this, was a prevailing theme raised by every person we engaged with in the Review. People with lived experience were highly conscious that duty lawyers have multiple demands on their time and this meant they simply did not have the ability to spend more time with them, to get to know them and understand their circumstances. While not blaming the individual lawyers for the lack of time, people with lived experience said that knowing that the person representing them was so busy, and had very little time to spare for them personally was incredibly stressful, and exacerbated their feelings, described in section 3.1 of this report, of not being adequately heard or understood by duty lawyers.

For the duty lawyers, the lack of time they had to spend with clients was of great concern. This severely impeded their ability to build trust and rapport with their clients, which lawyers identified as being critical in being able to fulfil their role. In addition, the multiple aspects of the role of a lawyer providing remand services, as described in section 3.2.2 of this report, highlights the complexity of the role and the breadth of duties required to be undertaken to serve each client.

Support organisation staff also noted the lack of time lawyers had to spend with their clients and the consequences of this. They observed that time restraints often resulted in lawyers rushing their interactions with the client, using inappropriate and complex language which was not readily understood.

Magistrates, court staff, members of Victoria Police and broader stakeholders such as other legal aid service providers, also highlighted the time pressures associated with providing remand services. The VLA lawyers felt that their role was not well understood or appreciated by the court, and that the pressure applied by the court was a major challenge in their daily work.

Duty lawyers need to carefully manage multiple demands on their time. We heard that many of the tasks they are required to undertake, such as seeking access to a client to obtain instructions, finding an interpreter or arranging a CISP assessment, are not within the control of the duty lawyer.

We also heard that duty lawyers do not feel they have any input into service timeframes, such as the determination of cut off times for accepting new remand matters. To provide more time for lawyer-client communications, and more time for matters to be considered in court, it is necessary for all stakeholders, including the court and Victoria Police, to work together to devise practices that support this aim. For VLA, resourcing all the functions of the remand service is critical so the time between clients and lawyers is prioritised and maximised.

⁸⁴ See for example, Tom Smith, "Rushing Remand"? Pretrial Detention and Bail Decision Making in England and Wales' (2021) 60(1) *The Howard Journal of Crime and Justice* 46 and Literature Review, at Appendix 7.1.

For VLA, a starting point is to clearly communicate the different roles and functions of its remand service (including the activities that assist the court and justice system, and the activities that provide for VLA's clients) and the needs of that service to function effectively.

4.4 Tensions between objectives of the remand service, the court and the clients

A number of tensions exist in delivering the remand service. Improved communication and understanding of roles amongst all stakeholders could help to respond to and alleviate these tensions.

A significant tension for lawyers in the remand service is between representing the client and providing a service to the court. Duty lawyers say that when they are attempting to communicate with clients or prepare their cases, they are frequently interrupted by requests from the court to provide progress updates. They also experience court staff setting inflexible times for matters to be heard, without consideration of whether the lawyer will have had sufficient time to obtain instructions and prepare. These add to time pressures on lawyers. We heard from the VLA lawyers that they felt that their role was not well understood or appreciated by the court and that this resulted in unwieldy demands being placed on them.

It is also apparent that lawyers experience a tension between responding to the court's interest in achieving 'efficiency,' or moving through the list as quickly as possible, with their duty to their clients. There is a legitimate concern to bring people in custody before the court in a prompt and reasonable timeframe. Nevertheless, the situation where the magistrate who is perceived to be applying time pressure to a lawyer is also the decision maker the lawyer will appear before to seek bail for their client, creates an obvious tension for the lawyer. The lawyer's capacity to resist a magistrate's request to proceed with a matter the lawyer does not feel is ready, to insist that they need to spend more time with a client, is limited. A duty lawyer will be conscious that the magistrate will be the decision maker in every matter they appear in that day, and that keeping them 'onside' is going to be necessary if good outcomes are to be achieved for clients.

The people with lived experience we spoke to had a clear understanding that duty lawyers play a role in assisting the court, in addition to providing advocacy in individual matters. For some, this meant that the duty lawyers seemed like part of the court apparatus, and therefore less like someone who genuinely cared about their case. The lack of time for the lawyer to listen to the client exacerbated this feeling and resulted in people with lived experience who had multiple experiences of being remanded stating that they were better served with a private lawyer.

Even though the duty lawyers and private practitioners who participated in this review demonstrated an overwhelmingly positive regard for each other, there were also some indications of tension within this relationship. The VLA lawyers said that sometimes private practitioners had unreasonable expectations of what duty lawyers should be prepared to do to help them manage private clients who have been remanded. Some private practitioners commented that the extent to which a duty lawyer was prepared to help could vary considerably. The private practitioners also demonstrated a clear awareness of the time constraints affecting duty lawyers and suggested that when a duty lawyer was less prepared to help it was probably because they were trying to manage a long list of new remandees.

While there are system issues at play, tensions between parts of the system could in part be addressed by examining what each group expects from the other, and VLA determining and more clearly communicating the scope of the remand service provided by lawyers. This will

assist in improving relations between the different parties working in the system as well as ensuring the lawyers are recognised for the myriad of activities they currently perform without acknowledgement.

4.5 Variation in practices across the state

The delivery of the remand service is dependent on the court location, including local practices at court, VLA staffing composition and VLA resources.

A critical observation from all parties was the importance of support services being available at court. These were necessary for the wellbeing of clients remanded in custody, and to support lawyers preparing bail applications, and ultimately central to the magistrate determining the merits of the application, particularly the assessment of risk. It was noted that support services are not available in many regional areas of Victoria, while in other areas even if the service is said to be available, the demands on the service often outweighed the supply, meaning that assessments were not possible.

VLA lawyers spoke of the highly valuable assistance an ACE officer can provide when representing an Aboriginal or Torres Strait Islander client on remand. The assistance provided by the ACE officer included being able to support the non-legal needs of the client, such as through connecting with family or community supports, by helping to build trust between the client and the lawyer and by assisting the lawyer identify appropriate support services to enhance a bail application.

VLA lawyers also reported variation in the tools, equipment and services provided to do their work. While some of this reflects appropriate localised practice for local needs, for other matters the reason for these variations were not clear. For instance, variations in the technological equipment lawyers receive to do their job, or in the rostering and resources for a particular service.

Lawyers also observed that the operation of BaRC is a unique court service, including because it hears matters for people on remand from across the state, and operates at times when other services are not available. Magistrates' Court of Victoria data shows that in 2021 – 2022, 53% of accused appeared in the evening sessions.⁸⁵ For VLA, BaRC requires discrete rostering and gives rise to particular welfare and support considerations for staff. The current practice of VLA not to provide administrative support on a weekend at BaRC means that a senior lawyer is undertaking coordination and administrative duties. We heard from the senior VLA lawyers how frustrating this was and how it raised questions about whether it represented the best use of resources in what is already an extremely challenging setting.

⁸⁵ Magistrates' Court of Victoria, *Annual Report 2021 -2022 (2023)*, <https://www.mcv.vic.gov.au/sites/default/files/2023-02/MCV%20annual%20report%2021-22_0.pdf>, 22. That same data indicates that at BaRC, 65% of accused are remanded to custody, 17% have bail granted, and a further 18% have matters finalised.

4.6 Need for greater clarity of funding guidelines for bail applications

Lawyers support the recent changes to VLA's funding guidelines to encourage more bail applications for Aboriginal and Torres Strait Islander clients. There is a need for greater clarity about the application of funding guidelines for bail applications for priority clients including those with serious mental health diagnoses or cognitive disability.

VLA recently changed its guidelines around the 'merits' aspect of bail applications, particularly for Aboriginal people. The intention of these changes is to encourage bail applications to be made. In the context of the duty lawyer service, this is intended to prioritise the making of bail applications for first remand Aboriginal and Torres Strait Islander clients when a lawyer is instructed to do so, even if the prospect for success is remote. For funded bail applications, VLA's view is that 'there is always a reasonable basis to make a bail application where the applicant is a child and/or an Aboriginal or Torres Strait Islander person'.

VLA provided data to the Review that it has analysed about the impact of the guideline change. In particular, VLA has considered whether the guideline has increased the number of bail applications made for First Nations clients – both as performed by the duty lawyer service and as part of funded bail applications.



Figure 12: Duty lawyer services for bail applications for First Nations Clients, 2013 – 2022. Source: VLA

Grants and extensions for bail applications

Percentage of grants and extensions for bail applications that are provided to First Nations clients between 2014 and February 2023

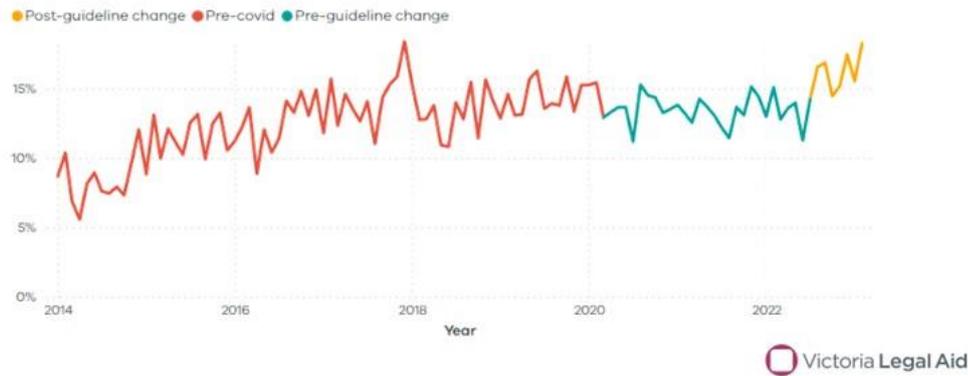


Figure 13: Grants and extensions of funding for bail applications for First Nations clients, 2014-2023. Source: VLA

This data provided by VLA suggests that since the changes to the duty lawyer guideline and criminal funding guideline (in 2021 and 2022 respectively), there has been:

- an increase in the *number* of First Nations clients for whom a bail application is made by duty lawyers; and
- an increase in the *proportion* of bail applications funded that are made for First Nations clients.

However, this data is not linked to other context about the client cohort who was on remand at this period. The analysis has only been able to consider a limited time period, and there is a lack of information about other conditions in the remand service (such as numbers of clients for whom a bail application was *not* made).

Other data, set out in Figure 14 and Figure 15, suggest that the proportion of criminal matters that have funding for a bail application has not changed since the funding guideline change 2022.

Grants and extensions

- Percentage of criminal law matters have funding for a bail application

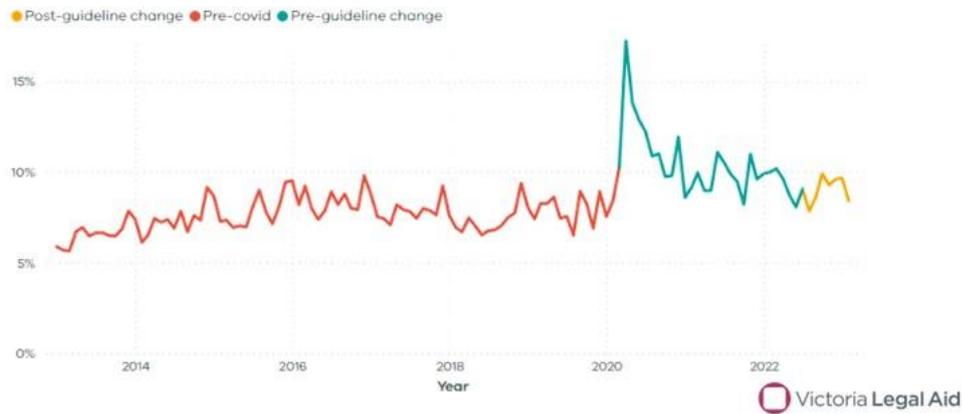


Figure 14: Grants and extensions of funding: criminal law matters that have funding for a bail application, 2014-2023. Source: VLA.

Grants and extensions

- Percentage of criminal law matters for First Nations clients have funding for a bail application

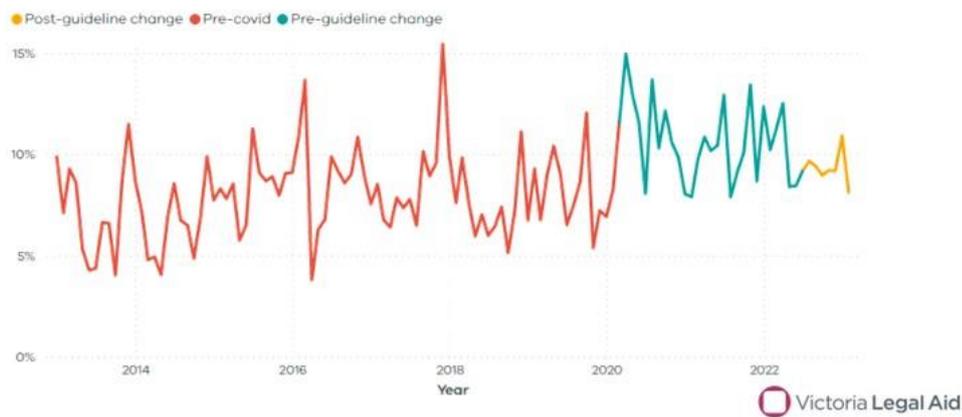


Figure 15: Grants and extensions of funding: criminal law matters for First Nations clients that have funding for a bail application, 2014-2023. Source: VLA.

The VLA lawyers and the private practitioners who participated in this Review were supportive of the funding guideline change. Some said that similar changes to funding guidelines should be made in respect of people with serious mental health diagnoses or cognitive disability, to

encourage bail applications to be made for these cohorts as well. VLA has advised that changes are not required for this, and that VLA supports bail applications to be made for all priority clients, which is consistent with its Client Priority and Capability Policy, discussed at section 2.1.8. The feedback we heard from our focus groups, including the suggestion by a number of practitioners that the funding guidelines be amended to cover people with serious mental health diagnoses or cognitive disability, suggests an opportunity for VLA to consider new methods of communication or education around the funding guidelines.

Some lawyers felt that more clarity from VLA about when it supports bail being sought would be useful. Concerns about workload in always running bail applications were voiced, as were concerns about the anticipated push back from the court, with lawyers concerned that running most matters as bail applications at first instance would blow out court lists.

There were also diverging views from lawyers about the best approach to running a bail application. While they understood the importance of prioritising immediately seeking bail for people, particularly Aboriginal people, some felt that a bail application often stood more chance of success if the application was delayed for a few days, to enable supports to be put in place. However, others thought that it was better practice to go for bail immediately, and then if the application was unsuccessful, follow up and make a new facts and circumstances argument. Some lawyers thought that this test was easily met, while others disagreed.

These discussions indicated that the lawyers – both VLA and private practitioners – were focused on the goal of getting people released from custody as soon as possible and were highly strategic in weighing up how this could best be achieved. We also heard that some stakeholders observed a “creep of conservatism” among lawyers, which in stakeholders’ views translated to it being less likely lawyers would run a bail application. It seems that the best course of action could vary depending on contextual factors. In light of this, it seems optimal for VLA to send broad messages to lawyers such as ‘we support you going for bail immediately.’ However, this should be balanced by the understanding that lawyers are able to read the nuances of each case, and their capacity to exercise judgment about the best way to achieve a good result should be supported.

Bringing in the perspective of people with lived experience, some of those who spoke with us did not necessarily think that an immediate bail application should be the priority when people are newly remanded. Some felt that engaging with a lawyer in order for a bail application to be made was too difficult when people were ‘in a bad way’, and that sometimes people needed some time and space, and – crucially – other needs addressed, before they were ready to concentrate on the issue of bail.

We also heard that VLA’s funding practices have an influence on the work performed by private practitioners and barristers. For instance, funding is not available to private practitioners or barristers for ‘straight remand’ appearances. That is, if a private lawyer sees their client in the cells, but the decision is made not to seek bail on that day, they are unable to claim any fees for this activity. This is clearly a disincentive to undertake this work.

Making funding available to lawyers to see newly remanded clients may also send the message that this activity is important – whether or not bail is applied for on the day. Newly remanded people are likely to be in a state of crisis, to be traumatised, and to have a range of pressing needs. As people with lived experience told us, a lawyer is usually the only person who is ‘on their side’ that they have access to in the first few days following their arrest. Therefore, we need to recognise the vital role lawyers play when they see clients in custody, and resource this work in a way that acknowledges its value. VLA should consider, in line with the recommendations

below, how funding rules can be used to influence legal practices the support greater access of people on remand to lawyers.

All these comments provide further support for VLA to engage with its clients and lawyers to design appropriate approaches to the design and outputs of its services.

4.7 Value of lawyer continuity

Private practitioners are critical to the delivery of remand services. The experience of people in custody improves significantly if they can see a lawyer they know.

This Review highlights the important role that private practitioners play in the legal assistance landscape. Without private practitioners assisting newly remanded people, the demands on the duty lawyer service would be greater, in circumstances where the service already carries a heavy load.

We heard from people with lived experience that having an existing relationship with a single lawyer, whether it be a private practitioner or a VLA lawyer, was highly beneficial. They spoke of the relief that came with having a lawyer they knew and trusted. They made it clear that preferring a “private lawyer” was not a reflection on individual duty lawyers, rather, they did not want to be another number on a busy duty lawyer’s list. They wanted someone with whom they already had a relationship to give their case the full attention it deserved.

These observations indicate that it is important to support a lawyers’ capacity to deliver services to existing clients when they are newly remanded. A barrier to their ability to do this, which was noted by both the VLA lawyers and the private practitioners, is that VLA does not fund ‘straight remand’ appearances.

It was not within the scope of this Review to determine appropriate funding models for the remand service. However, the provision of legal assistance at the point of first remand (including legal assistance that may not, after assessment, result in a bail application being made) should be prioritised, and lawyer continuity supported where it is feasible to do so.

4.8 Impact of remand duty work on lawyers

Working as a lawyer providing remand services, particularly as a duty lawyer, is highly stressful. It is essential that supervision and support are prioritised by VLA, tailored to those performing this work and made mandatory.

The VLA lawyers we spoke to demonstrated a strong concern for their clients’ legal rights and overall wellbeing. They saw remand duty work as extremely important and were highly committed to it. However, they also said it was incredibly stressful, for the following reasons:

- they are acutely aware that their clients’ liberty is at stake
- they are worried about their clients’ wellbeing. In the wake of the Veronica Nelson inquiry, the possibility for deaths in custody looms large
- they are regularly engaging with traumatised people, who may also be experiencing withdrawal from alcohol or other drugs or an acute mental health crisis
- they regularly hear stories of trauma from their clients
- they feel undervalued and disrespected in their daily work, particularly by the court

- they feel that they are constantly ‘battling’ other parts of the system, often simply to try to get another part of the system to do its job to an adequate standard
- they feel that they are one part of a broken system
- they are under constant time pressure.

Looking at what the remand duty lawyers role involves, it is clear that this work is highly stressful, and carries a risk of vicarious trauma and ‘burn out’ for those who undertake it.

VLA recognises these risks, and has policies in place to address them, outlined at section 2.6 of this report. One aspect is ‘an embedded system of supervisory practice that proactively identifies and discusses work demands that may contribute to stress, enables early intervention and problem-solving approaches to help prevent and minimise any ongoing effects of stress.’ Responsibility for the supervision of each lawyer sits with their manager. Another aspect of VLA’s policies to address staff wellbeing is that staff members have access to the employee assistance program (EAP), a service that provides support services including face to face counselling with a psychologist, on the spot advice, and an online resources portal. Up to four counselling sessions are available to staff per year.

The VLA lawyers who spoke with us said that VLA’s existing mechanisms to address the impact of remand duty lawyer work on those who delivered these services were not adequate. Of those who had accessed the EAP, the consensus was that it was at best a waste of time, and at worst something that made them feel worse, as the experience could be so disappointing and frustrating.

The VLA lawyers did not specifically talk about VLA’s policy of ‘an embedded system of supervisory practice.’ However, they all talked about VLA’s strong culture of mentoring. Many also said that there is good camaraderie at VLA, and that they felt supported by their colleagues. These comments may indicate that VLA’s ‘embedded supervision’ approach to supporting staff is delivering positive outcomes.

Nonetheless, the VLA lawyers who spoke with us were clear that other ways of addressing the impact of remand duty lawyer work needed to be made available. Their suggestions included:

- regular structured reflective practice group sessions, to help people process the experience of witnessing people having their liberty deprived, and of facing the risk that people might die in custody
- regular one-on-one sessions with a psychologist.

The lawyers were clear that for these mechanisms to be effective, they must be mandatory. They recognised that all lawyers who deliver remand duty lawyer services would benefit from these activities, but that they would be unlikely to voluntarily engage in them, as they will not prioritise work that takes them away from their clients unless compelled to do so.

We note that VLA told us that bespoke debriefing sessions are being created for staff of VLA’s BaRC team. We encourage VLA to consider staff views (including those reflected in this report) when creating this program, particularly the view that debriefing must mandate participation to be effective.

VLA could also consider other models of staff support used in comparable workplace contexts. Given the reported negative experiences of accessing the EAP, VLA may wish to review this arrangement. It seems very important to VLA lawyers that the person who provides psychological assistance or debriefing to them understands the nature of their work.

4.9 Improving system responses through advocacy

VLA is an important public body, with a powerful role to play in advocating for people in custody and the remand service, at a systemic level.

A common theme that arose in focus groups with VLA lawyers, private practitioners and support organisation workers was the sentiment that VLA as an organisation could and should do more 'systemic advocacy.' However, what 'systemic advocacy' looked like varied considerably.

When the VLA lawyers said that they wanted VLA to do more at a systemic level, they tended to talk about issues they faced in their work every day, which they believed needed to be addressed, but which they themselves had a limited capacity to deal with. This was because, as discussed at 3.2.3 of this report, the lawyers felt that taking on ongoing issues as they arose in a particular case had the potential to jeopardise the outcome they were seeking for the individual client. The main issues they identified were:

- experiencing a disrespectful attitude from the court – both magistrates and court staff
- feeling that magistrates did not understand the full breadth of the duty lawyer role, and the workload being carried by duty lawyers, and therefore applying unreasonable pressure to duty lawyers
- feeling that the court values 'efficiency' – or getting through the list as quickly as possible – above all else, and that this attitude is pervasive and impacts all aspects of the way remands are managed. This is not appropriate, given that people's liberty is at stake. Some lawyers were concerned that this attitude could also influence the culture and practices within VLA
- Victoria Police informants not attending night or weekend court, with the result that the preliminary police case against the client cannot be adequately tested
- remand briefs are consistently of a poor standard, and do not contain enough information to allow lawyers to properly advise their clients
- when lawyers communicate with clients remotely, the available communication channels are often woefully inadequate. This is particularly the case when clients are in police cells, rather than the custody centre or a prison.

Similar observations were made by private practitioners.

Looking at the above list, there are two distinct themes that the lawyers were concerned about: (i) concerns about the court's underlying values and attitudes; and (ii) particular operational issues.

Both groups of lawyers said that, given the practicalities that made addressing these issues in individual cases untenable, VLA as an organisation needed to raise these issues in other forums.

Additionally, the private practitioners noted that VLA is a key player in the criminal justice sphere and that they would like to see VLA use its influence to greater effect, not just to the benefit of its staff, but in the service of the criminal defence profession, and on behalf of the criminal law client group.

The support organisations communicated a similar view. They saw VLA as an influential public body, with an important role to play in championing its clients' interests at the systemic, as well as individual level. They wanted to see VLA use its (in their view considerable) leverage to highlight issues including the housing crisis and lack of capacity of social services.

VLA has indicated that it participates in and uses a range of local relationships, regional forums and state level advocacy to raise issues of concern and practice matters. We were informed of many examples of how VLA tackles local issues, such as lawyers having difficulty accessing clients in police cells, inconsistent approaches of court registry staff (including where a practice direction is not being applied), delays in getting assessments by Forensicare or CISP, remands being listed before lawyers are ready to proceed, clerks not prioritising duty lawyer cases and issues with the court building or infrastructure (such as Wi-Fi access or access to interview rooms). Regional practice matters and conduct concerns were also raised by VLA in these forums. VLA also seeks system wide reform through its systemic advocacy activities particularly around the impact of legislation on legal practice and VLA's clients.

Irrespective of these activities, we heard that people wanted VLA to take a public leadership role.

5 Conclusions

In commissioning the Review, VLA sought to understand four key questions set out below. This Review has provided rich data about critical aspects of VLA's remand service, particularly from the perspective of people with lived experience of remand, and the providers of remand services. To the extent this Review provides relevant data, we set out responses to VLA's questions.

- (a) What are the most effective or important inputs and activities of our remand service to achieving our intended outcomes?
- (b) To what extent does the remand service meet the needs of our clients?
- (c) To what extent does the remand service achieve our relevant intended outcomes set out in the Summary Crime Program Logic?
- (d) What is the system impact of our remand services?

CIJ has interpreted the references in the questions to 'intended outcomes' as the four key outcomes set out in its updated (2023) Summary Crime Program Logic.

5.1 Achieving VLA's intended outcomes

The CIJ's comments on VLA's performance against the intended outcomes in its Program Logic are based on the data collected as part of the Review and subject to its limitations. This Review was not a program evaluation, and CIJ has not been provided with indicators that VLA uses to assess its stated outcomes.

5.1.1 VLA's Summary Crime Program Logic

In 2019, VLA established a program logic for its Summary Crime Program following the 2017 evaluation of its services. That program logic was updated in May 2023. The majority of VLA's remand services are provided for adult summary stream cases, although there are also indictable steam and Children's Court cases dealt with by the remand service.

The stated purpose of VLA's Summary Crime Program is "to make the biggest difference we can for our clients and the community by creating a fairer summary crime system every day". The goal of the summary crime program is that "People have increased access to justice in a fairer summary crime system".

The program logic sets out the key outcomes that VLA has identified as contributing to its goal being achieved, and the activities that form part of this work.

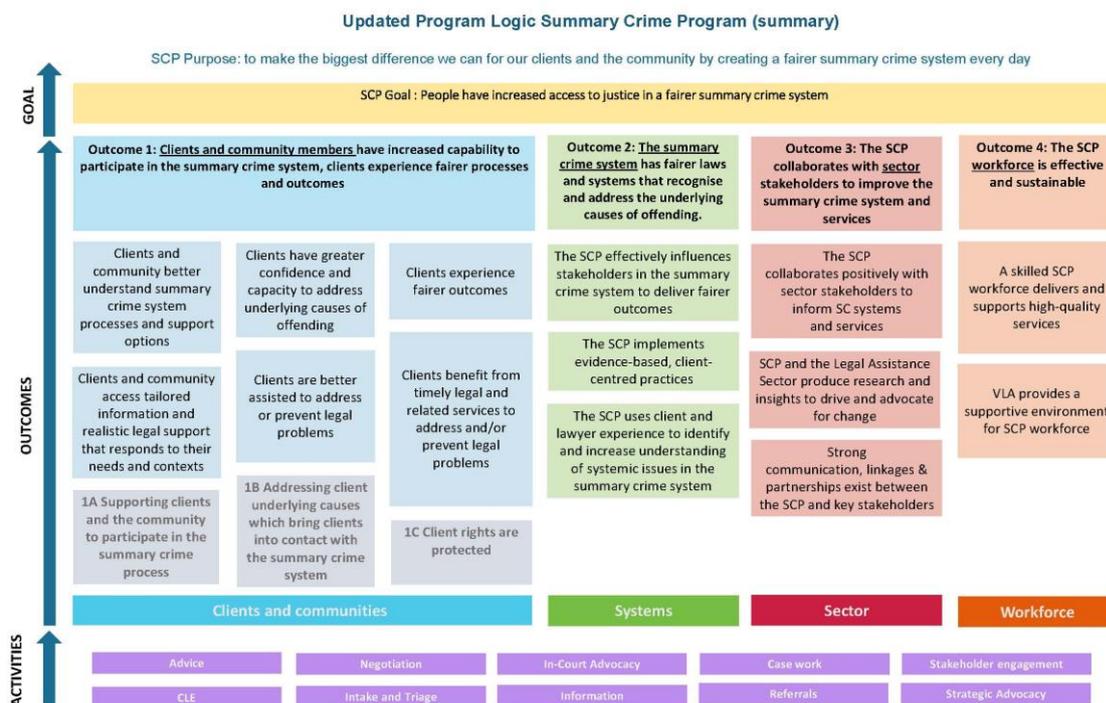


Figure 16: VLA Summary Crime Program Logic – summary version, May 2023

Figure 16 sets out these activities, which include many aspects of the remand service, including intake and triage, advice, in-court advocacy, case work and strategic advocacy. The 2023 program logic also groups the outcomes over four key domains: clients and communities, systems, sector and workforce.

5.1.2 Performance of the remand service against the program logic domains

The reflections below address VLA's questions (a) and (c).

- (a) What are the most effective or important inputs and activities of our remand service to achieving our intended outcomes?
- (c) To what extent does the remand service achieve our relevant intended outcomes set out in the Summary Crime Program Logic?

Outcomes: Clients and communities

Outcome 1:⁸⁶ Clients and community members have increased capability to participate in the summary crime system, clients experience fairer processes and outcomes.

⁸⁶ The Outcomes for clients and communities are grouped into 3 key themes.

Key Outcomes		Lessons from this Review
<p>1A Supporting clients and the community to participate in the summary crime process</p> <p>1B Addressing client underlying causes which bring clients into contact with the summary crime system</p> <p>1C Clients rights are protected</p>	<p>Clients and community access tailored information and realistic legal support that responds to their needs and contexts</p> <p>Clients and community better understand summary crime system processes and support options</p> <p>Clients are better assisted to address or prevent legal problems</p> <p>Clients have greater confidence and capacity to address underlying causes of offending</p> <p>Clients benefit from timely legal and related services to address and/or prevent legal problems</p> <p>Clients experience fairer outcomes</p>	<p>The experience of being remanded in custody, as described by the people interviewed in this Review, together with the nature of the remand environment, means that it is challenging to achieve outcome 1.</p> <p>Seeking to ensure people on remand have increased capacity to participate in, understand and influence their experience, and ultimately achieve a ‘fairer outcome’ is difficult to achieve, given the distress, loss of agency experienced on remand, the lack of opportunity to build rapport with a lawyer, challenges for processing information and often pre-existing mental and physical health issues experienced by clients.</p> <p>VLA should focus on providing legal support and information in a way that takes account of the experience of remand as described by people with lived experience.</p> <p>Many of the factors causing distress are systemic and cannot be remedied by VLA alone. However, opportunities for VLA to improve the experiences of people on remand identified in this Review include:</p> <ul style="list-style-type: none"> • recognising the critical role of the remand service to people in custody, and the system • clarifying the purpose and functions of the remand service • clearly communicating these functions and purposes, their value and limits, to system stakeholders. <p>The opportunities within VLA’s remit include:</p> <ul style="list-style-type: none"> • increasing the time available between lawyers and clients by

Key Outcomes		Lessons from this Review
		<p>applying additional resources to this function</p> <ul style="list-style-type: none"> • seeking to meet the non-legal needs of clients as a priority; this will provide a better opportunity for the legal needs of the client to be met • improving communication between lawyers and people on remand • simplifying the information provided to people on remand, and developing this material in collaboration with people with lived experience • continuing to advocate for more support services to be made available for remanded clients, to address the underlying issues contributing to their contact with the justice system.

Outcomes: Systems

Outcome 2: The Summary crime system has fairer laws and systems that recognise and address the underlying causes of offending.

Key Outcomes	Lessons from this Review
<p>The SCP uses client and lawyer experience to identify and increase understanding of systemic issues in the summary crime system</p> <p>The SCP implements evidence-based, client centred practices</p> <p>The SCP effectively influences stakeholders in the summary crime system to deliver fairer outcomes</p>	<ul style="list-style-type: none"> • VLA's commissioning of this Review is consistent with the focus of outcome 2, by using client and lawyer experiences to increase understanding and improve the summary crime system. • The focus groups with VLA lawyers and private practitioners highlight the rich insights people delivering these services can bring to identifying key issues, challenges and solutions. • The client voices heard in this Review provide the impetus for a re-design of VLA's remand services model. The re-design should occur

with people with lived experience of remand, consistent with VLA's stated intention to adopt evidence-based, client-centred practices and service design.

Outcomes: Sector

Outcome 3: The SCP collaborates with sector stakeholders to improve summary crime systems and services

Key Outcomes	Lessons from this Review
<p>Stronger communication, linkages and partnerships exist between the SCP and key stakeholders</p> <p>SCP and the Legal Assistance Sector produce research and insights to drive and advocate for change</p> <p>The SCP collaborates positively with sector stakeholders to inform summary crime systems and services</p>	<ul style="list-style-type: none"> • We heard from VLA lawyers, private practitioners providing remand services and other VLA employees about the importance of VLA as an organisation advocating to improve the experience of people on remand, and lawyers providing the remand service. • Lawyers expressed concerns about raising systemic issues in individual cases before the courts as this may be detrimental to their clients' interests. There is a need for these issues to be raised independently in other forums, which accords with the actions identified to achieve outcome 3. • The remand service is one part of a multi-agency remand system. More effective inter-agency communication and collaboration about systemic goals would assist in resolving ongoing issues arising between different agencies. • VLA is seen as an important public body, with a powerful role to play in advocating at a systemic level. • Advocacy arising from the findings of this Review, including the experiences of people with lived experience of the remand system, accords with VLA's stated aim to advocate for change based on client experience, research and evidence.

Outcomes: Workforce

Outcome 4: The SCP workforce is effective and sustainable

Key Outcomes	Lessons from this Review
<p>VLA provides a supportive environment for SCP workforce</p> <p>A skilled SCP workforce delivers and supports high quality services</p>	<ul style="list-style-type: none"> • Lawyers providing remand services (both VLA lawyers and private practitioners) said their work was critical and highly rewarding. It was also highly stressful, and the workforce often felt undervalued and disrespected in their daily work, particularly by the court. • Lawyers feel that they are constantly ‘battling’ other parts of the system. • The remand service is highly respected and valued by the wider legal profession and all stakeholders acknowledged that duty lawyers do an incredible job given the complex and stressful environment of the remand setting. • The people with lived experience of the remand system said that duty lawyers seemed over-worked, busy, rushed and often stressed. • These findings highlight an acute need for VLA to provide more targeted ways to support the lawyers who do this work, in order to meet the intended aims of outcome 4, including ensuring that the Summary Crime Program is effective and sustainable.

5.2 Meeting client needs

(b) To what extent does the remand service meet the needs of our clients?

Our research engaged with six people who have experience of VLA’s remand service. It is not feasible to answer this question from a limited sample. The six people we engaged with, also had some prior experience using their lived experience for research purposes, meaning that the sample could be considered biased towards people with the confidence to speak about their experiences and make criticisms of the systems and agencies. However, the data presented in this review, including demographics of users of the remand service, and the interviews with people with lived experience do provide valuable information about the needs of VLA’s clients.

Section 3.1 of this report sets out the experiences of the people we engaged with. Their experiences of remand and of the lawyers who assisted them varied and involved both positive and negative experiences. These participants all identified aspects of the service that could be improved to meet their needs. This supports the recommendation in this report for VLA to develop a new remand service model, developed in close collaboration with people with lived experience of remand.

5.3 System impacts

(d) What is the system impact of our remand services?

VLA's remand service is multifaceted with impacts on people on remand, and other stakeholders in the justice system, particularly courts, police and support services. The value of the remand service was articulated by clients, organisations, stakeholders and the lawyers themselves (explored at section 3) and its system impact is immense.

Key functions of the service are:

- representing clients facing remand, and providing legal outcomes for clients on remand
- triage and coordinating legal assistance for those facing first remand
- supporting clients to connect with support services, in order to increase compliance with bail conditions and reduce the risk of re-offending.

However, measuring the impact of VLA's remand service is hindered by:

- challenges defining VLA's service, with some activities not confined to representation of clients or the making of a funded bail application. In addition, some activities of lawyers (VLA and private practitioners) go beyond the scope of a strict legal function, yet all contribute to the remand service. We have articulated these matters at sections 4.2 and 4.5, and make recommendations for articulating this model at section 6.
- challenges measuring the discrete work, inputs and impact of the remand service.

Some examples of the challenges we heard about included:

- identifying the number of people on remand assisted where this assistance does not result in bail application or a grant of aid (for example, where they are assisted through the triaging process by VLA duty lawyers)
- understanding the number and nature of duty lawyer services when these are delivered by private practitioners (both VLA employed lawyers and private practitioners)
- end-to-end understanding of a client's contact with VLA, including the different services provided to a client and outcomes for the client. Current data practices (from ATLAS or LASO) does not allow for VLA to understand a client's journey the remand service.
- understanding the people and groups who are in custody but who do not receive assistance from the remand VLA service.

VLA should consider how its data intersects with system wide data, such as court data used and produced by the Magistrates' Court, or prisoner reception statistics from Corrections Victoria. This is supported by recommendations of the Victorian Parliamentary Inquiry into Victoria's criminal justice system which recommended that 'the Victorian Government work with key stakeholders across the criminal justice system to improve data collection, accessibility and transparency throughout the system.'⁸⁷

Understanding clients' experiences of its services is also key to understanding the delivery, impact and trends regarding VLA's service.

⁸⁷ Criminal Justice Inquiry, (n 19), recommendation 1. The Inquest into the passing of Veronica Nelson also made recommendations for improved data collection about bail applications and outcomes by Victoria Police and the Magistrates' Court: Veronica Nelson Inquest Findings, (n 19) recommendation 12 and 15.

6 Recommendations

This Review of VLA's remand service has brought to the fore the needs of its clients and the experiences of those working in the service. Our recommendations are centred on those perspectives, and the critical steps that VLA can take to improve outcomes in that regard.

In this section, we have sought to identify where recommendations should be prioritised for implementation in the short term, and where it might be more effective to undertake further work as part of the implementation process. This further work might include collaboration with people with lived experience as part of recommended journey mapping and design processes to ensure these important perspectives inform the implementation process. Where appropriate, we have added implementation considerations, and our assessment of whether additional funding would be required to implement recommendations.

We have made these recommendations conscious of the relatively small scale and short duration of this Review, and sensitive to the need to incorporate appropriate methods of working with people with lived experience in bringing these recommendations to life.

It is important to also highlight three of the most significant challenges evident from our research when considering how best to respond. These are:

Lack of time for lawyers to properly advise, support and communicate with clients

Lawyers working in the remand context simply do not have adequate time with clients to provide an appropriate service, to fully understand and respond to their client's needs and circumstances, or to communicate effectively with them.

There are many factors that contribute to this limited time, especially at first remand, and not all are within VLA's control. The evidence in this Review tells us there is an immediate need to address these time pressures. While doing so will have funding implications, one obvious way to provide more time for the lawyer-client interaction is to allow lawyers more time with each client by having more lawyers available to assist people on remand.

Meeting the non-legal needs of people in custody

A strong message from the people we spoke to with lived experience of the remand service was the need for their non-legal needs to be addressed, in addition to their legal needs. We heard that in many instances, it is not possible for a person remanded in custody to engage with a lawyer about their legal needs until other pressing concerns are responded to. While lawyers do their best to meet these non-legal needs, their predominant focus is on obtaining instructions and gathering information to support a bail application. The Review finds there is a clear case for VLA's remand service to provide for integrated legal and non-legal responses to address these needs, and proposes recommendations that would deliver this important change for remanded clients.

Better support for the remand service workforce

Lawyers providing remand services perform their duties under enormous pressure. They operate with an acute sense of responsibility knowing that their client's liberty is at stake. We heard from

many of the lawyers that they view delivering remand services as the most important work they do. Their working environment is highly stressful, and many of the contributing stress factors (such as a lack of time with clients, difficulties in obtaining supports and services for clients, or the expectations of other stakeholders) are not within their control. It is essential therefore that VLA provides the necessary investment in their remand services personnel to ensure they are adequately recognised, empowered and skilled to continue to serve people remanded in custody, as well as contributing to the justice system more broadly.

The following recommendations are divided into several themes:

1. Articulating the vision for the remand service
2. Designing a client-focused remand service
3. Improving the remand service to meet the needs of people remanded in custody
4. Prioritising the needs of people remanded in custody at first remand
5. Supporting the remand service workforce
6. Targeting systemic and practice advocacy
7. Improving data and understanding
8. Funding and resourcing the remand service

1. Articulating the vision for the remand service

The Review heard of the critical role the remand service plays in assisting people to obtain bail, and the support offered by the service to people remanded in custody.

Currently the remand service is defined according to the legal and supporting services provided by lawyers under the funding guidelines. This means that different activities, such as assistance to the court like triage, scheduling and administration, and services to clients such as first remand representation, and subsequent bail applications made for people remanded in custody are all considered part of the remand service. The service is provided by VLA lawyers, as well as private practitioners and barristers. However, the nature of the service and the priorities differ at different stages of the remand service.

The Review also found that the scope of the service was not well-understood by some clients and stakeholders. VLA has committed to embedding client-first approaches by involving clients and consumers in designing, delivering and review its services.⁸⁸ The way VLA defines its services should relate to how a person receives the service. Without a well-defined remand service model, some aspects of the current remand service are also difficult to measure and effectively resource.

It is recommended that VLA:

1.1 Define the purpose and scope of the remand service.

1.2 Promote awareness of VLA's remand service amongst people remanded in custody and stakeholders.

⁸⁸ VLA Strategy 26, above n 34, Strategic direction 1, Priority 1.5.

Implementation considerations

- The remand service vision should align with the Summary Crime Program Logic but enable VLA to differentiate and measure the distinct value of remand services to clients and to the system as a whole.
- Some elements of the remand service may require further development and consideration internally by VLA.
- This recommendation can be implemented by VLA in the short term and refined further in conjunction with the journey mapping and co-design processes recommended by this Review.

2. Designing a client-focused remand service

The unique perspectives of those with experience of the remand service has been highlighted throughout this Review. In seeking to understand how it might better meet the needs of its clients, the critical first step is for VLA to listen to and learn from those with lived experience of the remand system and of VLA's remand services.

It is recommended that VLA:

2.1 Undertake a journey mapping process to understand the needs of VLA's clients before, during, and after they come into contact with the remand system and VLA's remand service.

2.2 Undertake a co-design process to continue to improve the remand service, incorporating insights from client journeys through the remand system, and drawing on the findings and recommendations of this Review.

Implementation considerations

- The design and journey mapping processes should include people with lived experience and be conducted in line with best practice frameworks and approaches for enabling participation of people with lived experience. Further implementation advice on these principles is provided at Appendix 7.7.
- The Director, First Nations Services, VLA, and VALS should be consulted for advice about the most appropriate approach to ensuring the design process is respectful of Aboriginal people with lived experience, including whether there should be a concurrent Aboriginal-led process.
- These recommendations can be implemented in the medium term, and will require additional resources.
- The journey mapping process could incorporate outcomes of the staged implementation of an integrated service model (see recommendation 3). These might include the evaluation of pilots involving lawyers and social workers supporting remanded clients.

3. Improving the remand service to better meet the needs of people remanded in custody

People remanded in custody experience varied access to legal and non-legal support, depending on where they were remanded in custody, or whether they had been remanded after business hours. Clients could benefit from more legal and non-legal support at various points in their journey through the remand service.

It is recommended that VLA:

3.1 Establish an integrated service model that responds to the legal and non-legal needs of people remanded in custody.

Implementation considerations – non-legal needs

- It will be important to define the nature and scope of responses to ‘non-legal needs’, whether direct service provision responses, or referral and/or advocacy to support better client access to existing housing, mental health, drug and alcohol treatment services and other supports.
- Other considerations include: the potential implications of a multi-disciplinary service for client legal privilege; avoiding replication of existing support services; exploring whether similar outcomes could be achieved in other ways, including by better integration of existing support services within the model.

Implementation considerations – phased implementation

- This could be achieved in the short term by focusing on improving access to support for clients on remand by better integration of existing court support services such as CISP and Forensicare with the remand service. This would require VLA to direct its focus towards streamlining referral processes between the remand service and court support services.
- Access to bail support services is variable for VLA’s clients, so VLA could also continue its systemic advocacy with the aim of ensuring clients have the same level of access to these services wherever and whenever they are remanded in Victoria.
- In the medium term, VLA could pilot, test and evaluate the inclusion of social workers in the remand service at several sites. The role of social workers would be to assist lawyers to respond to the immediate needs of clients, and help them access support to improve their prospects of being released on bail. VLA could have regard to approach taken by other legal services to the inclusion of social workers such as those embedded in community legal centres and the Victorian Office of Public Prosecutions.
- In the long term, VLA should aim to develop an integrated legal and non-legal remand service model. It is important that any response to client needs is developed in collaboration with clients, so VLA could refine the integrated service model as part of the journey-mapping and co-design processes recommended by this Review.
- It is clear that additional funding and resources for implementation of an integrated service model.

3.2 Ensure clients have adequate time with lawyers so that lawyers can properly advise, support and communicate with them.

Implementation considerations

- This could be achieved by increasing the lawyer to client ratio for remanded clients. Implementing this recommendation would require additional funding and resources, as more lawyers' time would need to be available to deliver remand services.
- Separating the administrative and non-legal tasks and activities performed by VLA lawyers and allocating them to other roles such as integrated non-legal providers/social workers, administrative/ paralegal staff would support implementing this recommendation.
- This could also be supported by VLA continuing to play its role in systemic advocacy for better coordination between justice stakeholders including the courts and police in the listing of hearings and the provision of access to clients who have been remanded.
- This approach would also require additional funding and resources, as new additional staff would be required to provide administrative support and responses to clients' non-legal and support needs.

3.3 Improve access to information about the remand service, bail and associated court processes for people remanded in custody.

Implementation considerations

- This could be achieved by developing specific training for lawyers to communicate more effectively with remanded clients based on trauma-informed principles.
- This could also be achieved by developing resources that assist clients to understand the remand and bail process, taking into account the context in which information resources will be accessed, and the capacity of remanded clients to process such information.
- Information and communication must be informed by the client needs and the remand context, including cultural safety, disability and mental health, language and literacy, trauma history.
- These initiatives could be developed by VLA within existing resources, and would contribute to achieving recommendation 3.2 by providing lawyers with more time to acknowledge and respond to issues of importance to remanded clients.

Implementation considerations – phased implementation

- In the medium term, consideration could be given to how information can best be delivered within a re-designed remand service model. This could include whether legal or non-legal roles should be primarily responsible for responding to different information and communication needs.

4. Prioritising the needs of people remanded in custody at first remand

The Review heard that clients value continuity in legal representation, and that having an existing relationship with a single lawyer greatly improved the person's experience and their outcomes.

The Review also heard of the importance of a lawyer being able to meet with their clients when first remanded for establishing the welfare and safety of the client and to determine the prospects for making a bail application. It was acknowledged that this meeting may not result in a bail application being made on that day, but is important for subsequent legal work and for advising the court of any 'custody management issues'. The lawyer's meeting with the client in these circumstances is not separately funded and we heard this may be a disincentive for private practitioners to provide this 'on the day' assessment.

We also heard calls from lawyers that determining the priority of clients for making bail applications can be challenging. VLA's funding guidelines contribute to expectations about practice regarding the making of bail applications. There is also a need for VLA to clarify and communicate to practitioners the application of the funding guidelines for priority client groups, such as those with serious mental health diagnoses or cognitive disability.

It is recommended that VLA:

- 4.1 Prioritise support for people remanded in custody at the point of first remand by:
 - a. promoting their preference to be assisted by their existing lawyer; and
 - b. exploring whether VLA can fund the provision of legal assistance for straight remands.

- 4.2 Clarify and communicate to practitioners the application of funding guidelines to priority groups, including people with cognitive disability or serious mental health diagnoses, to encourage lawyers to make bail applications at the first opportunity.

Implementation considerations

- VLA should determine how to give effect to this recommendation by giving further consideration to:
 - a. protocols for determining who assists a newly remanded client (as between a duty lawyer or a client's retained lawyer)
 - b. funding guidelines (including how funding guidelines might incentivise certain practices)
 - c. advocating for court and custody practices that support this priority
 - d. articulating this priority in the remand service model.
- These recommendations will require additional resources.

5. Supporting the remand service workforce

The Review heard from lawyers that delivering remand services involves working intensively and in difficult conditions with people who may have histories of trauma, cognitive impairments or experiencing episodes of mental illness. Some lawyers experienced this work as challenging and exhausting, with the potential for vicarious trauma and 'burn out'.

It is recommended that VLA:

- 5.1 Ensure that lawyers and staff receive tailored and practical training on how to support clients on remand including the effects of trauma and how it can impact on people's presentation; communicating with people with cognitive disability and recognising signs of mental health conditions.
- 5.2 Continue to focus on creating a safe working environment that supports the health and wellbeing of staff delivering remand services by:
 - a. adding to the suite of current staff supervisory and wellbeing options, supports or services which are tailored to address the impact of remand services work; and
 - b. making participation in the tailored supports or services mandatory for all staff delivering remand services.
- 5.3 Review and determine the mix and proportion of managing, senior and junior lawyers in its remand service that is sufficient to provide adequate support and mentoring for staff delivering the service.
- 5.4 Explore opportunities to recognise the importance of the work of the remand service including by acknowledging the skills and special expertise of lawyers delivering remand services and fostering a culture of recognition and respect for the work of the remand service, particularly duty lawyers, across the courts and other justice stakeholders.
- 5.5 Provide access to technology and equipment to enable VLA lawyers to perform their roles effectively, and work with stakeholders in areas where this requires cooperation.

Implementation considerations

- In the short term, facilitating wireless access to the internet for lawyers and other staff at all court locations should be prioritised. This may require additional funding and resources, and collaboration with stakeholders.
- In the medium term, VLA could also survey lawyers and other staff to identify whether there are other barriers to their service delivery that could be addressed with improved technology and equipment.

6. Targeting systemic and practice advocacy

The Review heard different perspectives from stakeholders, lawyers and different parts of VLA about systemic advocacy. People involved in delivering remand services, and some stakeholders, felt that more could be done, and seen to be done by VLA to address the practice and operational barriers they faced when working to improve access to justice for their clients. VLA advised it undertakes both private and public advocacy, some of which may not be visible to some stakeholders. The Review has also identified that VLA has a unique opportunity to work with people with lived experience of these challenges to develop solutions.

It is recommended that VLA:

6.1 Advocate for collaborative system-wide stewardship and leadership that promotes better alignment of purposes and priorities a focus on people remanded in custody.

6.2 Strengthen its advocacy drawing on the lived experience of people who have been remanded in custody by:

- a. including and amplifying their voices in its systemic advocacy
- b. supporting the capability development of people with lived experience as self-advocates
- c. supporting the inclusion of people with lived experience in working groups and other stakeholder forums.

6.3 Work with stakeholders for system-wide legislative reform and operational practices that support the needs of people remanded in custody, including providing for:

- a. adequate time for people remanded in custody to receive legal advice and support
- b. timely and better quality access to people remanded in custody
- c. access to support services for people remanded in custody including court-based services such as the Court Integrated Services Program, Forensicare and Youth Justice
- d. timely access to prosecution case materials and prosecuting officers.

Implementation considerations

- VLA should communicate its advocacy activities and their impact, including private and public advocacy activities, and successes and challenges, to stakeholders and VLA staff and private practitioners involved in the delivery of remand services.

7. Improving data and understanding

The Review found that the work of the remand service is not always identified or separately measured and that improving data collection could provide a basis for measuring outcomes and impact, as well as demand and resourcing requirements.

It is recommended that VLA:

- 7.1 Measure the activities and impact of the remand service, including by:
 - a. collecting data on all activities undertaken as part of the remand service (such as those performed for remanded clients and those supporting the operation of the remand system as a whole); and
 - b. collecting data on clients' experience of the remand service, including the extent to which the service addressed their legal and /or non-legal needs.

Implementation considerations

- VLA should consider how its data intersects with system wide data sets, such as court data used and produced by the Magistrates' Court, or prisoner reception statistics from Corrections Victoria.

- 7.2 Monitor and evaluate the remand service.

8. Funding and resourcing the remand service

All of the people interviewed and consulted by the Review – people with lived experience, lawyers and justice stakeholders – recognised the significant pressures experienced by VLA in resourcing and delivering the remand service. These include the need to respond to increased demand for services and the significant and complex legal and non-legal needs of remanded clients. The Review also identified a range of activities being carried out by the remand service that, while contributing to the overall operation of the remand system, are not recognised as services to clients on remand and are effectively unfunded.

The Review found that the legal and non-legal needs of remanded clients should be addressed as part of the remand service, recommending that VLA establish a new integrated service to address them. The Review heard that VLA is already experiencing significant resourcing challenges in delivering its remand service. It follows that for VLA to also respond to the non-legal needs of VLA's clients, substantial additional resources will be required.

It is recommended that VLA:

- 8.1 Seek funding to implement the recommendations of this Review.

7 Appendices

7.1 Literature review

In December 2022, Victoria Legal Aid (VLA) engaged the Centre for Innovative Justice (CIJ) to undertake an external review of its remand services (the Review). As a component of that Review, VLA requested a literature review of available research about the provision of legal services in remand settings.

Context for the Review

VLA is a key provider of legal services to people on remand in Victoria. People on remand will generally receive assistance from VLA either through its duty lawyer (at court) service, or from a lawyer in receipt of a grant of legal aid. In 2022, over 10,000 duty lawyer services were provided by VLA where the client was in custody, or applying for bail.¹ VLA funded almost 8,000 grants of legal aid that included a grant to make an application for bail.² In addition to these services provided or funded by VLA, private legal practitioners across Victoria may provide legal assistance to people on remand, including clients seeking bail.

VLA's remand service therefore represents a significant component of service delivery, which warrants attention in its own right. However, the context for delivering remand services in Victoria has been impacted by significant legislative and subsequent practice changes.

Since 2013, Victoria's bail laws have changed to increasingly limit the circumstances when a person may be released on bail, and to change the consequences for breaches of bail conditions.³ The stated intent of those changes was to make access to bail more difficult for violent offenders, to manage risk and maximise community safety.⁴

Legislative amendments in 2018 saw the introduction of reverse onus provisions for a broad range of alleged offending, requiring that instead a grant of bail being presumed, an accused has to establish a 'compelling reason' or to demonstrate 'exceptional circumstances' why bail ought to be granted. The effect of these changes has been to make it more difficult for *all* people to access bail. This has seen an increase in number of people held on remand, both in terms of the

¹ Victoria Legal Aid, BIT-2587 - data provided to Centre for Innovative Justice, 9 May 2023.

² Ibid.

³ For instance, in 2013, the *Bail Amendment Act 2013* (Vic) introduced the offences of contravening a conduct condition of bail and committing an indictable offence on bail.

⁴ Amendments to the *Bail Act 1977* (Vic) made by the *Bail Amendment (Stage One) Act 2017* and *Bail Amendment (Stage Two) Act 2018*: see Parliament of Victoria, Legislative Assembly, *Bail Amendment (Stage One) Bill 2017*, Second reading, 25 May 2017, 1492 (Attorney-General Martin Pakula); see also Parliament of Victoria, Legislative Assembly *Bail Amendment (Stage Two) Bill 2017*, Second reading, 13 December 2017, 4366 (Attorney-General Martin Pakula).

number of people on remand⁵ and the proportion of the prison population,⁶ with particular impact on women,⁷ Aboriginal and Torres Strait Islander people.⁸

These changes reflected a trend, observed since the 1970s, of shifting bail considerations from an assessment of whether an accused would be at risk of not attending court, to considerations of community safety and the risk of future offending.⁹ Such changes have occurred alongside a broader ‘incarceration crisis’¹⁰ not bound to Victoria,¹¹ (or even Australia¹²) and which has human, fiscal and legal costs.¹³ From 2008 – 2018, the proportion of remand prisoners in the Australian prison population increased from 20 percent to 30 percent.¹⁴

In the context of these changes, together with changes internal to VLA’s operations, VLA has sought to review its service of providing legal assistance to people on remand. This context is also relevant to the state of the literature about legal services to people on remand.

Scope of this literature review

The purpose of this review is to understand the existing literature about the provision of legal services in remand settings. The key question to be answered is:

What are the characteristics of the provision of legal services to people on remand?

This literature review forms part of a research project undertaken by the CIJ at RMIT University in Melbourne, Australia between January 2023 and June 2023. This research is funded by Victoria Legal Aid. The purpose of this research is to provide VLA with findings to better understand how its remand services are operating and to make recommendations for improvements to its services. A critical part of the review was to consider the experience of its

⁵ As at 30 June 2018, 2711 people in prison were unsentenced, as at 30 June 2022, 2769 people in prison were unsentenced: Corrections Victoria, Annual Statistical Profile <https://www.corrections.vic.gov.au/annual-prisons-statistical-profile> to 30 June 2022. The number of people in prison records the number of people in adult prison custody in Victoria at 30 June and excludes people held in police cells, retained overnight at court, or held in detention by other authorities.

⁶ As at 30 June 2018, 35.4% of people in prison were unsentenced, as at 30 June 2022, 42.2% of people in prison were unsentenced: Corrections Victoria, Annual Statistical Profile <https://www.corrections.vic.gov.au/annual-prisons-statistical-profile> to 30 June 2022.

⁷ Emma K Russell, Bree Carlton and Danielle Tyson, ‘“It’s a Gendered Issue, 100 per Cent”: How Tough Bail Laws Entrench Gender and Racial Inequality and Social Disadvantage’ (2022) 11(3) *International journal for crime, justice and social democracy* 107 (‘“It’s a Gendered Issue, 100 per Cent”’).

⁸ Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report 133, March 2018) [3.35], Lorana Bartels, ‘The growth in remand and its impact on Indigenous over-representation in the criminal justice system’, (Research brief 24, Indigenous Justice Clearinghouse, 2019), *Finding into Death with Inquest - Veronica Nelson* [2023] Coroners Court of Victoria COR 2020 0027 (‘Veronica Nelson Inquiry’).

⁹ Marilyn McMahon, ‘No Bail, More Jail? Breaking the Nexus between Community Protection and Escalating Pre-Trial Detention’ (Research Paper No 3, Parliamentary Library and Information Service, Parliament of Victoria, 2019); Lorana Bartels et al, ‘Bail, Risk and Law Reform: A Review of Bail Legislation across Australia’ (2018) 42 *Criminal Law Journal* 91.

¹⁰ McMahon (n 9).

¹¹ For example, Adeshola Ore, ‘Unsentenced Prisoners Make up a Third of Australia’s Prison Population as Bail Refusals Boom’, *Guardian Australia* (Australia, online, 1 February 2023) <<https://www.theguardian.com/australia-news/2023/jan/31/unsentenced-prisoners-make-up-a-third-of-australias-prison-population-as-bail-refusals-boom>>, Matt Eaton and Alexandria Utting, ‘“Creating a Lost Generation”: Calls for Better Solutions as Queensland Tops Nation for Youth Repeat Offenders’, *ABC News* (online, 24 January 2023) <<https://www.abc.net.au/news/2023-01-24/qld-youth-detention-figures-show-high-recidivist-rate/101886998>>.

¹² See for example from the United Kingdom: House of Commons Justice Committee, *The Role of Adult Custodial Remand in the Criminal Justice System* (No Seventh Report of Session 2022–23, House of Commons Justice Committee, 10 January 2023) <<https://committees.parliament.uk/publications/33530/documents/182421/default/>>, and US: Michael Rempel and Krystal Rodriguez, ‘The Impact of New York’s Amended Bail Law on Pretrial Detention’ (Centre for Court Innovation, May 2020), Michael R Menefee, ‘The Role of Bail and Pretrial Detention in the Reproduction of Racial Inequalities’ (2018) 12(5) *Sociology Compass* e12576.

¹³ McMahon (n 9).

¹⁴ Australian Bureau of Statistics, *Criminal justice statistics 2017–18* (Canberra: ABS, 2018).

clients and those with lived experience of the remand system, lawyers and staff who deliver services, as well as engagement with stakeholders in the criminal justice system.

Methodology

Between January and May 2023 several database searches were conducted by the researchers to ascertain the current state of the Australian and international literature using the following search terms: 'remand'; 'bail'; 'pre-trial detention'; 'charge'; 'unsentenced'; 'legal advice'; 'legal service'; 'counsel'; 'solicitor' and 'attorney'. Literature less than 10 years old was prioritised.¹⁵ Systematic reviews and meta-analyses were considered the most rigorous form of evidence, and anecdotal opinion considered less rigorous.¹⁶ However, it is important to note that commonly in novel social and legal research there is an absence of literature that can be defined as 'rigorous', as the phenomena under investigation are often under researched. The specificity of research into legal assistance to people on remand means it is less likely randomised controlled trials have occurred and quantitative studies are likely to be grounded in a tradition focused on causal factors.¹⁷

Grey literature in the form of government reports, policy documents and submissions was included in this literature review for a number of reasons. Firstly, as the provision of legal services for people on remand is an under researched area, the grey literature contributes significantly to knowledge in this area, and provides additional context and situated ('on the ground' or 'at the coalface') material that the scholarly literature is unable to provide. Secondly, the grey literature provides essential information on legal, social and political contexts that influence the provision of legal services in Australia. Grey literature was searched for references to "bail", "remand" and "legal assistance", "lawyer", "solicitor" using search terms and purposively as the researchers were previously aware of relevant Victorian material such as the Coghlan review,¹⁸ the 2021 Parliamentary Inquiry into the criminal justice system¹⁹ and the Yoorrook Justice Commission.²⁰ The above search terms also were used to search for internationally relevant material.

The results of those searches are captured thematically in the report below.

The state of the literature

The provision of legal assistance to people on remand is an under-researched area. Where researchers have considered the remand or bail, the focus of the literature is generally on the

¹⁵ Note that regard was had to the most recent and comprehensive studies of the legal needs of prisoner study (2008) and Criminology Research Council funded research on remand (2006 – 2009) as directly relevant to the themes of this literature review.

¹⁶ Using a typology for social care studies: H Aveyard, *Doing a Literature Review in Health and Social Care: A Practical Guide* (McGraw Hill Education 2014).

¹⁷ See discussion in Max Travers et al (eds), *Rethinking Bail: Court Reform or Business as Usual?* (Springer International Publishing, 2020) 115 <https://doi.org/10.1007/978-3-030-44881-3_6> ('Rethinking Bail') 45-46, 70.

¹⁸ The Hon. Paul Coghlan QC, Bail Review: First advice to the Victorian Government (3 April 2017), The Hon. Paul Coghlan QC, Bail Review: Second advice to the Victorian Government (1 May 2017).

¹⁹ Legislative and Social Issues Committee, Parliament of Victoria, Inquiry into Victoria's Criminal Justice System (Final Report, March 2022) <<https://www.parliament.vic.gov.au/lsc-1c/inquiry/1003>> ('Criminal Justice Inquiry').

²⁰ For proceedings of the Yoorrook Justice Commission, including submissions and evidence, see <<https://yoorrookjusticecommission.org.au>>

legal tests, policy settings and legal consequences of remand.²¹ Limited Australian research has considered the specific issue of legal assistance at the time of remand,²² with an absence of extant research from the perspective of people on remand or the people who provide legal assistance. With a growing remand population in Australia, research has turned to the impact of bail laws on people on remand,²³ and the lawyers in that system,²⁴ and decision making by judicial officers and courtcraft.²⁵ Nevertheless, references to legal assistance generally assume that it will be provided, or that it ought be improved, without close analysis of the characteristics of that assistance.²⁶ It is recognised that accessible and appropriate legal assistance also provides advocacy, referral and representation services for individuals in contact with the criminal justice system.²⁷

What is evident from the literature is that *who* is affected by remand (and require legal assistance) and *how* that impact occurs is a product of the broader criminal law context of the jurisdiction. It is possible to understand from the literature the characteristics of remand decision making, its import on the trajectory of a person's case, and the circumstances and factors leading to their remand. Each of these elements reveals important lessons for the delivery of legal assistance to people on remand. These themes are discussed in turn below.

Characteristics of legal assistance in remand settings

Legal services to people on remand are subject to dominating criminal law context

Many studies note the importance of considering bail and remand issues in the context of increasing incarceration, law and order campaigns, or even relatively minor legislative changes that have significant impacts on the number of people on remand, the circumstances and conditions of remand. Key trends impacting how legal assistance is provided are the creation of new legal offences,²⁸ higher legal thresholds for obtaining bail,²⁹ leading to increasing incarceration rates, and an increase in people sentenced to imprisonment.³⁰

²¹ For example, Bartels et al (n 9); Max Travers et al, 'Bail Practices and Policy Alternatives in Australia' (2020) 610 *Trends and Issues in Crime and Criminal Justice* 1; Rick T Sarre, Sue King and David Bamford, 'Remand in Custody: Critical Factors and Key Issues' (Trends and issues in crime and criminal justice no 310, Australian Institute of Criminology, 1 August 2006) ('Remand in Custody').

²² But see Alfred Allan et al, *The Relationship between Bail Decision-Making and Legal Representation within the Criminal Justice System* (Edith Cowan University, 2003).

²³ Travers et al, *Rethinking Bail*, (n 17); Bartels et al (n 9).

²⁴ Emma Russell et al, *A Constellation of Circumstances: The Drivers of Women's Increasing Rates of Remand in Victoria* (Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society, July 2020).

²⁵ See also Ed Cape and Tom Smith, *The Practice of Pre-Trial Detention in England and Wales: Research Report* (2016) <<https://uwe-repository.worktribe.com/output/917566>>.

²⁶ See, for example, Paul Mazerolle and Jennifer Sanderson, *Understanding Remand in the Juvenile Justice System in Queensland* (Griffith University and Department of Communities, Queensland, 2008) <<https://research-repository.griffith.edu.au/handle/10072/75664>>.

see also Sue King, David Bamford and Rick Sarre, 'Discretionary Decision-Making in a Dynamic Context: The Influences on Remand Decision-Makers in Two Australian Jurisdictions' (2009) 21(1) *Current Issues in Criminal Justice* 24 ('Discretionary Decision-Making in a Dynamic Context') 34.

²⁷ Criminal Justice Inquiry (n 19), finding 36.

²⁸ Ibid.

²⁹ Bartels et al (n 9); *ibid*; Emma Colvin, 'Bail Decisions: Key Challenges Driving Bail Refusal' in Marg Camilleri and Alistair Harkness (eds), *Australian Courts* (Springer International Publishing, 2022) 121 <https://link.springer.com/10.1007/978-3-031-19063-6_6> ('Bail Decisions'); Sarre, King and Bamford (n 21).

³⁰ Criminal Justice Inquiry (n 19).

Alongside this increased volume of people requiring legal assistance on remand, are practice changes, with the introduction of a greater number of hearings where a person in custody will be remote from their lawyer, particularly hearings by audio-visual-links.³¹

Further, trends in legal requirements to manage risks of re-offending,³² as well as adoption of therapeutic justice approaches,³³ require that establishing how to mitigate the risk of a future breach of bail conditions and how to reduce reoffending are critical features of remand decision-making.³⁴ The task of providing legal assistance includes considering and sourcing support services needed and available for a person on remand to discharge these risk considerations.

The social and legal context therefore affects the nature of legal assistance that can be provided to people on remand, and the prospects of an accused obtaining bail. It affects legal and justice workforce requirements,³⁵ justice infrastructure and processes,³⁶ and the interaction between lawyer and client.³⁷

People on remand have acute and complex legal needs

Research into the legal needs of people in custody has been conducted across Australian jurisdictions but has not been updated in some time. The most comprehensive approach to this has been the Legal Needs of Prisoners 2008 study,³⁸ completed 15 years ago, which sought the perspectives of people in custody in NSW about their legal needs. The research found that limits to obtaining advice or representation created a significant barrier to participating in legal processes. In addition, people in prison are likely to experience multiple and interrelated forms of disadvantage, and may experience issues such as cognitive disability, lower levels of literacy, or difficulties comprehending legal processes and experience drug addiction.³⁹ Such findings are also reiterated in other analyses providing legal assistance in prison.⁴⁰

On remand, the defining characteristics were ‘that all remandees have criminal matters pending along with often acute civil issues relating to their sudden incarceration, including family law issues, particularly the placement of and access to children. The second is that, generally speaking, new remandees face more restrictions on their liberties than other prisoners, and that their access to legal help is correspondingly reduced’.⁴¹

³¹ Carolyn Mackay, *Prisoners and Detainees: Technology-Based Services* (Submission to the Law Council of Australia: the Justice Project, September 2017); Anne Grunseit, McCarron and Suzie Forell, *Taking Justice Into Custody: The Legal Needs of Prisoners* (Law and Justice Foundation of New South Wales, 2008) <<http://www.lawfoundation.net.au/report/prisoners>> ('Legal Needs of Prisoners'). See also Inspector of Custodial Services NSW, *Women on Remand* (Inspector of Custodial Services, 2020).

³² Yannick van den Brink, 'Remand Decision-Making in the Youth Court. A Comparative Analysis of Youth Remand and Bail in England & Wales and the Netherlands' (2021) 66 *International Journal of Law, Crime and Justice* 100487.

³³ Emma Colvin, 'Postcode (in)Justice: Location and Bail Support Services' (2019) 5(4) *Journal of Criminological Research, Policy and Practice* 307 ('Postcode (in)Justice') 309.

³⁴ See eg Travers et al, *Rethinking Bail*, (n 17) 32, Colvin, 'Postcode (in)Justice'.

³⁵ Colvin, (n 33), 311.

³⁶ Criminal Justice Inquiry (n 19), Kathy Mack and Sharyn Roach Anleu, 'Getting Through the List: Judgecraft and Legitimacy in the Lower Courts' (2007) 16(3) *Social and Legal Studies* 341.

³⁷ See discussion below.

³⁸ Grunseit et al, 'Legal Needs of Prisoners', (n 31)

³⁹ *Ibid.*

⁴⁰ See for example, Tracey de Simone and Chris D'Aquino, *Inside Out: The Access of Women and Girls in Custody to Legal Aid Services* (Queensland Legal Aid, 2014) <<http://202.74.68.47/media/insideout.pdf>>, Rowena Lawrie, 'Speak Out Speak Strong - Researching the Needs of Aboriginal Women in Custody - Digest' (2003) 8(2) *Australian Indigenous Law Reporter* 81, Victoria Legal Aid, *Prisoner Legal Help evaluation report* (VLA, 2018).

⁴¹ Grunseit et al, 'Legal Needs of Prisoners', (n 31) 181.

In addition, a feature of remand decision making is the ‘interdependency and interdisciplinarity’ of decisions, which rely on assessments from other practitioners about risk, vulnerabilities and welfare.⁴² Legal practitioners are therefore required to work within and as a part of an interdisciplinary system.

The characteristics of people on remand affect the nature of legal assistance required

In recent years, research has focused on the characteristics of people facing remand, both as a way of identifying drivers of increasing remand populations, understanding the impact of changes to bail laws, and researching the effect of specific legal tests to address vulnerability.⁴³ The literature variously adopts terms such as ‘vulnerabilities’, ‘disadvantage’, ‘structural inequalities’ or ‘needs’ to define these characteristics of people facing remand. The use of the term ‘vulnerabilities’ is contested, and scholars identify it to include personal and structural characteristics.⁴⁴

This body of research about vulnerabilities is also relevant to the task of providing legal assistance to people on remand. A person on remand’s social characteristics, attributes or ‘vulnerabilities’ may contribute to the legal assistance they need, and their interaction with a legal representative. A short survey of these matters is outlined below, recognising that it is beyond the scope of this literature review to explore all relevant factors and research.

There is some variation across studies on the characteristics of people who experience remand. Statistical analyses generally show that people on remand are overwhelming young males.⁴⁵ In addition, research identifies that people with certain characteristics may be overrepresented on remand, including people experiencing homelessness, unemployed, drug users, people with poor mental health, low education levels,⁴⁶ and Aboriginal people⁴⁷ or people from minority groups.⁴⁸

Indigenous Australians are much more likely to be on remand than non-Indigenous Australians.⁴⁹ The risks that remand poses for Aboriginal people – recognised since the Royal Commission into Aboriginal Deaths in Custody – has been recently affirmed⁵⁰ and bail legislation now requires consideration of Aboriginality.⁵¹ Culturally appropriate legal assistance and support services to Aboriginal people on remand is identified as important in addressing risks.⁵²

The number of women on remand is increasing at a more rapid rate than men,⁵³ particularly those affected by family violence.⁵⁴ Aboriginal women are likely to be overrepresented on

⁴² Yannick van den Brink, ‘Different but Equal? Exploring Potential Catalysts of Disparity in Remand Decision-Making in the Youth Court’ (2022) 31(3) *Social & Legal studies* 477, 490.

⁴³ Danielle Hughes, Emma Colvin and Isabelle Bartkowiak-Théron, ‘Police and Vulnerability in Bail Decisions’ (2022) 11(3) *International Journal for Crime, Justice and Social Democracy* 122; Travers et al, Rethinking Bail (n 17); Russell, Carlton and Tyson (n 7).

⁴⁴ For example, see the discussion of ‘vulnerabilities’ in Travers et al, Rethinking Bail, (n 17) 117.

⁴⁵ King, Bamford and Sarre (n 26) 31.

⁴⁶ Inspector of Custodial Services NSW (n 31) 26–34.

⁴⁷ Victorian Government, *Victorian Government Submission to the Yoorrook Justice Commission – Criminal Justice and Child Protection* (Submission to the Yoorrook Justice Commission, 2022) <<https://yoorrookjusticecommission.org.au>>. See also Pathways to Justice, (n 8), Criminal Justice Inquiry (n 19).

⁴⁸ van den Brink (n 32).

⁴⁹ Pathways to Justice, (n 8), see also Corrections Victoria, *Annual Prisons Statistical Profile* (2022), <<https://www.corrections.vic.gov.au/annual-prisons-statistical-profile>> .

⁵⁰ Veronica Nelson Inquiry (n 8).

⁵¹ See the Victorian bail legislation, *Bail Act 1977*, s 3A, amended by the *Bail Amendment Act 2010*.

⁵² de Simone and D’Aquino (n 40); Mazerolle and Sanderson (n 26); Criminal Justice Inquiry, (n 19); Veronica Nelson Inquiry (n 8).

⁵³ Inspector of Custodial Services NSW (n 31) 24.

⁵⁴ Russell, Carlton and Tyson (n 7).

remand⁵⁵ and have some of the most complex needs.⁵⁶ Research has identified interconnected 'constellation' of circumstances that contribute to being on remand, namely experiences of poverty and homelessness, domestic and family violence, untreated health problems, addiction and childhood trauma.⁵⁷ Again, the research points to legal assistance needing to respond to these factors and client needs in a culturally sensitive way⁵⁸ that is gender informed.⁵⁹

The number of young people is increasing and as with other cohorts, Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds are overrepresented.⁶⁰ Young people on remand may be in detention for shorter periods of time relative to adults.⁶¹ Legal assistance for young people may be mandatory,⁶² alongside provision of other support services.⁶³ The impact of this setting on the provision of legal assistance is under-researched. However, the importance of communication so that young people can understand and comply with conditions is acknowledged.⁶⁴ Some studies suggest that additional legal work is required when representing young people on remand, and that specialist expertise is required.⁶⁵

A recent review of bail hearings Tasmania, South Australia, Victoria and New South Wales concluded that in almost 50% of matters, vulnerability attributes of alcohol or drug consumption, mental ill-health or acquired brain injury were mentioned as relevant to the case.⁶⁶ This study observed that consideration of vulnerabilities was limited to application of tests at law, and some vulnerabilities may not be addressed in bail decision-making.⁶⁷

Use of drugs and alcohol is often a significant factor in bail-decision making.⁶⁸ Drugs of dependence are identified to impact a person in a remand setting in two ways. The first of these is legal, with alleged drug offences affecting the decision-makers assessment of risk, and the prospect that bail will be refused. The second impact is that a person affected by drugs on arrest will have reduced capacity, may create 'management issues' in custody that in turn affect access to legal assistance.⁶⁹

People with cognitive or psychosocial conditions are likely to be overrepresented in the number of people on remand. People with disability may experience particular language and terminology

⁵⁵ Pathways to Justice, (n 8) 348.

⁵⁶ Eileen Baldry et al, 'It's just a big vicious cycle that swallows them up: Aboriginal people with mental and cognitive disabilities in the criminal justice system,' (2012) 8(22) *Indigenous Law Bulletin* 10, 10-16.

⁵⁷ Russell et al (n 24). Constellation of circumstances, see also Russell, Carlton and Tyson (n 7).

⁵⁸ Russell, Carlton and Tyson (n 7); de Simone and D'Aquino (n 40), Lawrie (n 40).

⁵⁹ E. Campbell, L. Macmillan, and C. Caruana, *Women Transforming Justice: Final Evaluation Report*, (Centre for Innovative Justice, 2020).

⁶⁰ Sentencing Advisory Council, *Children Held on Remand in Victoria: A Report on Sentencing Outcomes* (2020) <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-09/Children_Held_on_Remand_in_Victoria.pdf>.

⁶¹ Jesuit Social Services, *Thinking Outside: Alternatives to Remand for Children (Research Report)* (Jesuit Social Services, 15 May 2013) <https://jss.org.au/wp-content/uploads/2015/10/Thinking_Outside_Research_Report_-_Final_amend_15052013.pdf>.

⁶² See for example Children, Youth and Families Act 2005 (Vic) s 347.

⁶³ Jesuit Social Services (n 61).

⁶⁴ Criminal Justice Inquiry, (n 19) 446.

⁶⁵ Mazerolle and Sanderson (n 26).

⁶⁶ Travers et al, 'Bail Practices and Policy Alternatives in Australia' (n 21). This figure was acknowledged to be lower than other studies conducted in prisons.

⁶⁷ Max Travers, 'Bail Decision-Making and Pre-Trial Services: A Comparative Study of Magistrates Courts in Four Australian States' (Australian Institute of Criminology, October 2020) 14.

⁶⁸ King, Bamford and Sarre (n 26); Travers (n 66) 14, Lawrie (n 40).

⁶⁹ King, Bamford and Sarre (n 26) 33.

barriers and confusion or complexity could heighten the risk of a person being remanded.⁷⁰ There are also particular risks on remand for people with severe mental illness.⁷¹

Access to legal assistance may also be impacted by geography and the proximity or availability of counsel.⁷² The inability to access interpreters can impair access to legal assistance for timely bail hearings, and to even be aware of rights to legal assistance or translation of legal information.⁷³

In the Legal Needs of Prisoners study, mechanisms to respond to a person's circumstances on remand included resources for longer appointment times with legal advisers, taking into account the often reduced capacity and high need of prisoners when on remand, training for lawyers about factors affecting prisoner capacity, and assistance for immediate non-criminal needs.⁷⁴

Legal assistance changes outcomes on remand

While the import of remand hearings and outcomes on the trajectory of case is recognised,⁷⁵ the specific role of lawyers and legal assistance in these proceedings is sometimes overlooked. This may be because in Australia, there is a strong expectation that persons seeking to apply for bail will have the right to be assisted by a legal practitioner,⁷⁶ including through duty lawyer services. Generally, it is considered that access to adequate legal representation is an important factor influencing custodial remand'.⁷⁷

Few Australian studies have considered the specific question of legal assistance at the remand setting. Those that have done so are not published in peer-reviewed journals but have been prepared in partnership with state government bodies or organisations.

One Western Australian study has considered the relationship between legal representation and bail decision making.⁷⁸ Observation of court proceedings and analyses of accused's outcomes showed that bail was more likely to be granted in circumstances where a defendant had legal representation. This factor was present alongside others, such as whether there were arguments presented by defence counsel, where a warrant was in place and where the prosecutor did not oppose bail. An accused was less likely to be granted bail in cases where no formal application was made, the defendant was in custody and there were a large number of charges. In this WA study, characteristics that are usually identified to affect bail, such as age, gender or Aboriginality, were not evident. Statistically, accused with representation were more likely to be granted bail.⁷⁹

In Queensland, researchers investigated the experiences of Indigenous Queenslanders of bail and remand. That study, which included a literature review and analysis of Queensland justice data and stakeholder consultations, concluded that 'quality of the defendant's legal

⁷⁰ Criminal Justice Inquiry, (n 19) 452.

⁷¹ Philippa Tomczak, 'Highlighting "Risky Remands" Through Prisoner Death Investigations: People With Very Severe Mental Illness Transitioning From Police and Court Custody Into Prison on Remand' (2022) 13 *Frontiers in psychiatry* 862365.

⁷² Mazerolle and Sanderson (n 26) 39; Colvin (n 33).

⁷³ de Simone and D'Aquino (n 40).

⁷⁴ Grunheit et al, (n 31).

⁷⁵ Colvin (n 29), Pathways to Justice (n 8), Criminal Justice Inquiry, (n 19) Chapter 2.

⁷⁶ Rights to a fair hearing and a fair trial are recognised at common law and enshrined in Australia's treaty obligations under the International Covenant on Civil and Political Rights.

⁷⁷ Jennifer Sanderson, Paul Mazerolle and Travis Anderson-Bond, *Exploring Bail and Remand Experiences for Indigenous Queenslanders* (Griffith University, 2011) 45

<<https://www.premiers.qld.gov.au/publications/categories/reports/assets/exploring-bail-and-remand-experiences.pdf>>.

⁷⁸ Allan et al (n 22). Note the researchers identify that this study was of limited generalisability, and warrants further research.

⁷⁹ Ibid 64.

representation is an important factor influencing bail decision-making. Defendants with competent legal representation are more likely to receive bail in appropriate circumstances, or to serve shorter periods in custodial remand'.⁸⁰

An earlier study of youth justice remand identified access to adequate legal representation as a factor influencing remand rates, with the availability of counsel and a perception of the adequacy of representation.⁸¹ Participants in that study noted the lack of expertise in juvenile justice legislation, the time required to assist and lack of funding, high case loads, lack of access to culturally appropriate legal support and lack of access to clients as critical issues affecting legal service delivery. However, participants also reported that access to legal advice could affect the offer or uptake of diversionary options for young people. Further, participants told researchers that 'many young people do not fully understand the legal processes they are involved in, or the consequences of the choices they make'.⁸²

In Victoria, a recent evaluation found that targeted, gender-responsive legal and social support improved the rates at which women received bail, with 76% of assisted clients being granted bail on first application. The evaluation found that 'women applying for bail in the criminal justice system had multiple, interrelated needs, with trauma and abuse the driving factors. This made legal and ongoing support crucial, as was peer support, particularly in the context of a wider service system which was generally not equipped to meet these needs'.⁸³ Key factors in the support provided were addressing underlying trauma needs, and providing gender specific supports.

In the United States and United Kingdom, larger studies have analysed the impact of having counsel on first appearance, or early counsel, to the case trajectory of people on remand.⁸⁴ While these studies are grounded in the particular legislative context, they confirm the importance of counsel to an accused obtaining early release, low sentences, and the provision of supports to the accused. Legal assistance provides a 'fundamental safeguard' against wrongful conviction.⁸⁵

Regarding early release, it is recognised that even a short period in custody may result in loss of employment, access to children, or housing. Time in prison can have long-term health and welfare impacts, with deaths in custody or following custody a disproportionately high risk.⁸⁶ In particular, for Aboriginal people, there is a higher risk of death in custody, even if on remand for minor offending.⁸⁷

⁸⁰ Sanderson, Mazerolle and Anderson-Bond (n 75).

⁸¹ Mazerolle and Sanderson (n 26) 39.

⁸² Ibid 40.

⁸³ Campbell et al (n 59) 43.

⁸⁴ Derek Pyne, 'The Effects of Remand and Bail on Efficient Sentences' (2017) 154 *Economics letters* 51; King, Bamford and Sarre (n 26); Alissa Pollitz Worden et al, 'The Impact of Counsel at First Appearance on Pretrial Release in Felony Arraignments: The Case of Rural Jurisdictions' (2020) 31(6) *Criminal Justice Policy Review* 833 ('The Impact of Counsel at First Appearance on Pretrial Release in Felony Arraignments'); Alissa Pollitz Worden et al, 'What Difference Does a Lawyer Make? Impacts of Early Counsel on Misdemeanor Bail Decisions and Outcomes in Rural and Small Town Courts' (2018) 29(6-7) *Criminal Justice Policy Review* 710 ('What Difference Does a Lawyer Make?'); Fiona Brookman and Harriet Pierpoint, 'Access to Legal Advice for Young Suspects and Remand Prisoners' (2003) 42(5) *The Howard Journal of Criminal Justice* 452.

⁸⁵ Brookman and Pierpoint (n 84).

⁸⁶ Tamara Walsh and Angelene Counter, 'Deaths in Custody in Australia: A Quantitative Analysis of Coroners' Reports' (2019) 31(2) *Current Issues in Criminal Justice* 143 ('Deaths in Custody in Australia'), Willis, M., Baker, A., Cussen, T., & Patterson, E. (2016). Self-inflicted deaths in Australian prisons: Australian prison suicide statistics 1999-2013 (Trends and Issues in Crime and Criminal Justice, paper 513, Australian Institute of Criminology), Coroners Court of Victoria, 'Data Summary: Overdoes deaths of people recently released from prison and/or in the care of Corrections Victoria, 2000-2010' (7 October 2013).

⁸⁷ Travers et al, Rethinking Bail, (n 17).

Legal assistance on remand is affected by limited access to clients and limited information

When considering the nature of legal assistance available to people on remand, defining features of the engagement between lawyers and clients are its quick and constrained nature, with limited information available to parties. With these constraints, remand decision-making is referred to as 'inherently provisional in nature'.⁸⁸

As outlined above, there is little Australian research of the lawyer-client interaction at remand hearing. Limited access to a lawyer was, however, a key issue explored in UK research.⁸⁹ Access to lawyers was a concern raised by people in custody, as well as solicitors.⁹⁰ Young people in particular are less likely than adults to be informed of or request legal advice on remand⁹¹ making the need for access to a lawyer more pressing. These studies observed that because of difficulties with contact in custody, the main arena for access between defendants and their legal representatives was when a person was present at court for a hearing.⁹² This in turn increases the importance of the interaction between lawyer and client at remand hearings.

A lawyer's preparation time for obtaining instructions and preparing for a remand appearance is constrained by the court context. Research shows the nature of bail hearings is that 'submissions tended to be brief; prepared swiftly and at short notice; and based on limited, and possibly unreliable, information'.⁹³ In one UK study that surveyed 141 defence lawyers,⁹⁴ more than half of defence lawyers reported being informed of their client's case within six hours of it being heard; and a majority had less than 20 minutes to prepare. Duty solicitors had little notice of a case, and reported negotiating with the court to not call a case until they could prepare. Factors affecting preparation time included the practice of the parties and staff in particular courts, court busyness, lawyer's caseload, and whether there was difficulty accessing their client in the court cells.⁹⁵ It is not possible to generalise these studies across jurisdictions, but they do point to the particular legal, social and organisational contexts that impact the provision of legal assistance to people on remand.

In preparing for a court appearance, lawyers must assess the legal merits of the case but also undertake tasks such as negotiating sureties, obtaining or contacting support services, and providing advice to clients on the tactics of appearances and pleas. This activity has been described as employing 'craft skills': areas of specialist expertise that develop when pursuing occupational tasks.⁹⁶ Such skills are 'vitally important to making the system work'⁹⁷ and a key feature of providing legal assistance on remand.

⁸⁸ van den Brink (n 32) 4.2.

⁸⁹ Brookman and Pierpoint (n 84) 461.

⁹⁰ Fiona Brookman, Lesley Noaks and Emma Wincup, 'Access To Justice: Remand Issues And The Human Rights Act' (2001) 48(3) *Probation Journal* 195.

⁹¹ Brookman and Pierpoint (n 84) 459.

⁹² *Ibid* 462.

⁹³ Tom Smith, "'Rushing Remand"? Pretrial Detention and Bail Decision Making in England and Wales' (2021) 60(1) *The Howard Journal of Crime and Justice* 46, 56.

⁹⁴ *Ibid* 63.

⁹⁵ *Ibid* 64.

⁹⁶ Travers et al, 'Rethinking Bail' (n 17) 86.

⁹⁷ *Ibid*.

Legal assistance on remand is characterised by speed and volume

Lawyers also face the features identified as impacting on other actors in the system: the requirement to deal with large numbers of cases in an expeditious fashion. Studies on judicial decision-making in the remand context note that magistrates contend with multiple tasks, time pressures and unpredictability, alongside an imperative to 'get through the list'.⁹⁸ Estimates for median bail hearing times in Australia range from 5 minutes to 18 minutes.⁹⁹ It has been observed that the 'brevity of hearing and the levels of contestation suggest that court decisions are heavily influenced by the decisions made prior to court', including decisions by police, custody managers and prosecutors, but these aspects of the process are under-researched.¹⁰⁰

In addition, for bail and remand hearings, a key feature is 'reliance on police and prosecution information, rather than substantive evidence; brief and 'formalistic' hearings; and evident problems with sufficient and timely disclosure by the prosecution to the defence bail decision making.¹⁰¹ The limited information available to decision makers is identified in jurisdictions such as Australia, the United Kingdom and Netherlands. Factors includes limited witness evidence and a heavy reliance on police-supplied information.¹⁰²

Information that is available must be processed quickly.¹⁰³ Decisions may be made 'without full knowledge of relevant facts'.¹⁰⁴ Decision-making in the remand or bail decision context has been described as 'fast and frugal',¹⁰⁵ 'characterised by "routinization", revolving around standardised patterns of behaviour with limited depth of engagement'.¹⁰⁶

Legal work involves addressing risk

Legislative tests for bail now require decision-makers to conduct an assessment of risk.¹⁰⁷ A person's risk may be lowered dependent on the availability of appropriate supports in the community. Additionally, courts now often require the delivery of supports specific to people on bail,¹⁰⁸ particularly 'services, intervention or support, designed to assist a person to successfully complete their bail period'.¹⁰⁹ For instance, obtaining appropriate, available accommodation is a key challenge for accused seeking bail,¹¹⁰ especially for women¹¹¹ but also for children and young people.¹¹² A flow on of the legal tests for bail is that legal assistance¹¹³ involves establishing appropriate supports for the accused.

⁹⁸ Mack and Roach Anleu (n 36), Brookman and Pierpoint (n 84).

⁹⁹ King, Bamford and Sarre (n 26). See also Smith (n 90), 56 for observations in UK courts.

¹⁰⁰ King, Bamford and Sarre (n 26) 6.

¹⁰¹ Smith (n 93) 55.

¹⁰² Cape and Smith (n 25); van den Brink (n 42) 491.

¹⁰³ Travers et al, 'Rethinking Bail' (n 17) 72.

¹⁰⁴ Cape and Smith (n 25) 54.

¹⁰⁵ Mandeep K Dhami and Peter Ayton, 'Bailing and Jailing the Fast and Frugal Way' (2001) 14(2) *Journal of Behavioral Decision Making* 141.141

¹⁰⁶ Smith (n 93) 69.

¹⁰⁷ Ilya Klauzner and Steve Yeong, 'What Factors Influence Police and Court Bail Decisions?' (2021) 236 *Crime and Justice Bulletin* <<https://www.bocsar.nsw.gov.au/Publications/CJB/2021-Report-What-factors-influence-police-and-court-bail-decisions-CJB236.pdf>>; Travers (n 67) 26.

¹⁰⁸ See Colvin (n 29); Bartels et al (n 9).

¹⁰⁹ Gabrielle Denning-Cotter, 'Bail Support in Australia' (Research Brief 2/08, Indigenous Justice Clearing House) <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief002.v1.pdf>>.

¹¹⁰ Matthew Willis, *Bail Support: A Review of the Literature* (Research report No 04, Australian Institute of Criminology, 2017).

¹¹¹ Russell et al (n 24); Russell, Carlton and Tyson (n 7); Colvin (n 29).

¹¹² Klauzner and Yeong (n 104); Travers et al, 'Rethinking Bail' (n 17).

¹¹³ In some jurisdictions, the obtaining of information about available supports is not the responsibility of the lawyer, see for example Bail Information Schemes: House of Commons Justice Committee (n 12). and for further discussion Colvin (n 33) 308.

7.2 Research and consultation for the Review

Stakeholder group	Type of engagement	Number of sessions	Number of participants
Remand service professionals	Focus groups across: <ul style="list-style-type: none"> • VLA employed lawyers • Private legal practitioners funded by VLA to provide legal services • VLA Admin and Support Services • Support Organisations 	5	18
Justice Stakeholders	Consultations: <ul style="list-style-type: none"> • Victoria Police – Prosecutors / Custody Management • Court Services Victoria staff and Magistrates • Victorian Aboriginal Legal Service • Western Australia Legal Aid • Northern Territory Legal Aid 	6	14
People with lived experience	One-on-one interviews	6	6
Support Organisations	Consultations: <ul style="list-style-type: none"> • VACRO • Flat Out • Fitzroy Legal Service • Greg Thomas • Voices for Change 	5	10
Victoria Legal Aid	Consultations with key personnel including: <ul style="list-style-type: none"> • Managing Lawyer, Summary Crime • Regional Managers • Manager, ACEO Program, Aboriginal Services • Strategic Policy and Project Manager, First Nations Service 	6	4
Victoria Legal Aid	Weekly Project Team meetings	Weekly	2-5

7.3 Focus groups and interviews – questions guide

Indicative interview questions – people with lived experience

The interviews with people with lived experience of VLA's remand services will take the form of semi-structured interviews, with questions serving as prompts to invite discussion. In each interview, researchers will commence questions from the listed examples in order to guide the discussion.

Outline

This research is to help VLA improve the way it helps people who are on remand. We want to know about the legal help and other help that VLA provides. This could include connecting you to other services, arranging times to meet with people or come back to court.

We want to make VLA's remand services better by listening to people with lived experience.

Questions

1. Experience of VLA's remand services
 - a) Can you tell us about your experience of being arrested and held in custody?
 - i) Were you able to speak to someone?
 - ii) Had you met the person/lawyer before? Was the person a 'duty lawyer' or your regular lawyer?
 - iii) Were there things that you needed when in custody? Were they provided?
 - iv) What were the conditions like for you?
 - v) How were you feeling at the time? How long were you in custody?
 - vi) How did you feel?

The participant will be asked to describe their experience in their own words. To elicit information about the specific circumstances of that service, the following prompts may be used.

Prompts

- i) When (year)
 - ii) Where (location, court, and online or in person)
 - iii) What was it like being in court / not being physically present at court?
 - iv) What type of application (bail application etc)
 - v) What were the outcomes at that time?
2. Scope of the contact with the remand service
 - a) What sorts of help did the lawyer give you?
 - i) Legal
 - ii) Non-legal. Eg connecting to other services?
 - b) How many times did you speak with that lawyer?
3. Understanding of process
 - a) How did you understand the process?
 - b) Did your lawyer explain the process to you? Did you understand what the steps were?
 - c) Did you get a chance to say if you wanted to apply for bail?
 - d) Tell us what you knew about how the decision about bail would be made
 - e) Could you tell if the lawyer was from legal aid or another lawyer?

4. Talking with the lawyer
 - a) Can you describe the lawyer's manner?
 - b) Did you find you had enough time with the lawyer?
 - c) Did the lawyer give you enough time?
 - d) How much were you able to explain what you needed or wanted?

5. Client needs
 - a) Did you have any specific needs when on remand?
 - i) Eg Health/injuries/withdrawing
 - ii) Eg care of children, housing
 - b) How was the lawyer able to help you with those needs?
 - c) Was that help provided to you?
 - d) What support/service would you have liked? How would this have helped you?

6. Services working together
 - a) Were you connected to other support services? What sorts of services were they?
 - b) When did this happen?

7. Service improvements
 - a) What would have made the experience better for you?
 - b) What aspects of the remand process at court could be improved?
 - c) What could the lawyers do differently/
 - d) What are the most important skills/knowledge you think VLA lawyers need for their job?

8. Helping VLA to improve its services
 - a) Who do you think VLA should talk to about how it helps people?
 - b) Do you think it's important that people with lived experience have a say in designing the program?
 - c) What does being part of this review mean to you?
 - d) Would you want to be involved in designing services in the future?

Themes

The participants may also be asked how the service responded to their needs.

9. Can you comment on how the VLA's help was:
 - a) culturally safe,
 - b) accessible,
 - c) inclusive, and
 - d) respectful.

Focus group question guide – lawyers

The focus groups will take the form of semi-structured interviews, with questions serving as prompts to invite discussion. In each focus group, the CIJ will seek to elicit information relating to the themes listed below. Under each theme we have listed examples of the questions our researchers will ask in order to guide the discussion.

Key topics to discuss:

- Role of the remand service
- Tasks in the remand service
- Differences in providing the service on duty compared to after first remand
- Court practices post-COVID-19 pandemic
- Delivering the service to different client groups
- Training and support for staff
- Improvements to VLA's service
- Systemic challenges and improvements

We are seeking participant's reflections and experiences around the topics.

Prompt questions

1. Role of the remand service (duty service, triage, funded bail applications)
 - i. What do you see the primary purpose of the remand service as being?
 - ii. Noting the different aspects of the duty lawyer role in the context of remand, what's the most important function you deliver in the remand service? [*For PP lawyers: what are the key functions provided by VLA?*]
 - iii. Prompt – what about non-duty service?
2. Can you speak to the importance of having a dedicated legal service to people on remand?
3. Tasks in the remand service [*not relevant to PP lawyers*]
 - i. Are there things that you do that seem to take more time than is necessary? Are there tasks you'd like to be able to devote more time to?
 - ii. What gets in the way of doing what you feel you need to do?
 - iii. Are there aspects of what you do when you are on duty that could or should be performed by someone else?
 - iv. How could duty lawyers' time and expertise be more effectively used?
4. What are the differences between preparing a bail application (or providing other services) on duty and preparing a bail application that is booked in? [*For PP's - what are the differences between running a bail application for a newly remanded client, and a bail application that is booked in ahead of time?*]
 - i. Client experience and needs at the time?
 - ii. Information available
 - iii. Urgency/court demands
5. Post COVID-19 court practices
 - i. How has the move to online court hearings impacted your work as a duty lawyer? [*For PP's - How has the move to online court hearings impacted your work?*]
 - a. What access do you have to technology/documents/resources at different locations?
 - ii. What are the effects of a person on remand not being physically present at court?

6. Service/practice if client is an Aboriginal or Torres Strait Islander person
 - i. To what extent is your practice different if the person in custody is an Aboriginal person?
 - ii. To what extent does the court system (magistrates, court staff, custody staff, prosecutors etc) respond differently when there is an Aboriginal person in custody?
7. Service/practice if the client has a disability or mental illness, is a young person, is homeless or is a woman?
 - i. To what extent is your practice different if the person is a member of one of these groups?
 - ii. To what extent does the court system (magistrates, court staff, custody staff, prosecutors etc) respond differently to individuals in these groups?
8. Training/support
 - i. To what extent do you feel equipped to effectively perform the role of duty lawyer on remand court? *[For PP's - To what extent do you feel equipped to effectively prepare and appear in bail applications?]*
 - ii. What are the most important skills/knowledge you need for this role, and to what extent are duty lawyers supported to develop these? *[For PP's - What are the most important skills/knowledge you need for this work, and to what criminal lawyers supported to develop these?]*
 - iii. What are the most important resources/category?
 - iv. What it's like to provide services to people on remand?
9. VLA service improvement control
 - i. How could VLA improve the remand service?
 - ii. What could VLA do that would make your role easier? *[for PP's - What could VLA do that would make your role acting for people on remand easier/more effective?]*
10. Broader systemic challenges
 - i. What are the greatest challenges you have to navigate when operating in the court environment to deliver remand duty lawyer services? *[For PP's - What are the greatest challenges you have to navigate when operating in the court environment to seek bail for your clients?]*
 - ii. What are the hardest parts of being a duty lawyer on remand court? *[For PP's - What are the hardest parts of running bail applications?]*
 - iii. Are there any aspects of the court system that affect your ability to deliver an effective remand service? *[For PP's - your ability to run effective bail applications]*

Focus group questions – administrative and program staff

The focus groups will take the form of semi-structured interviews, with questions serving as prompts to invite discussion. In each focus group, the CIJ will seek to elicit information relating to the themes listed below. Under each theme we have listed examples of the questions our researchers will ask in order to guide the discussion.

Likely participants are Administrative Service Managers or Legal Assistants.

Key topics to discuss:

- Role of the remand service
- Tasks in the remand service
- Differences in providing the service on duty compared to after first remand
- Court practices post-COVID-19 pandemic
- Delivering the service to different client groups
- Training and support for staff
- Improvements to VLA's service
- Systemic challenges and improvements

We are seeking participant's reflections and experiences around the topics.

Prompt questions

1. Role of the remand service
 - What do you see the primary purpose of the remand service as being?
 - Noting the different aspects of the services in the context of remand, what's the most important function you deliver in the remand service?
 - Prompt – what about non-duty service (eg if person is not on first remand)?
2. Can you speak to the importance of having a dedicated legal service to people on remand?
3. Tasks in the remand service
 - Tell us about how you support/contribute to the remand service?
 - Are there things that you do that seem to take more time than is necessary? Are there tasks you'd like to be able to devote more time to?
 - What gets in the way of doing what you feel you need to do?
 - Are there aspects of what you see occurring that could or should be performed by someone else?
 - How could the service be provided more effectively? Would there be a better use of skills?
4. What are the differences between assisting lawyers on a bail application on duty and preparing a bail application that is booked in?
 - Client experience and capacity to assist at the time
 - Information available
 - Urgency/court demands
5. Post COVID-19 court practices and technology
 - How has the move to online court hearings impacted the work you do? Or the work of lawyers/VLA's work more generally?
 - Are there any other technological changes that affect your work?

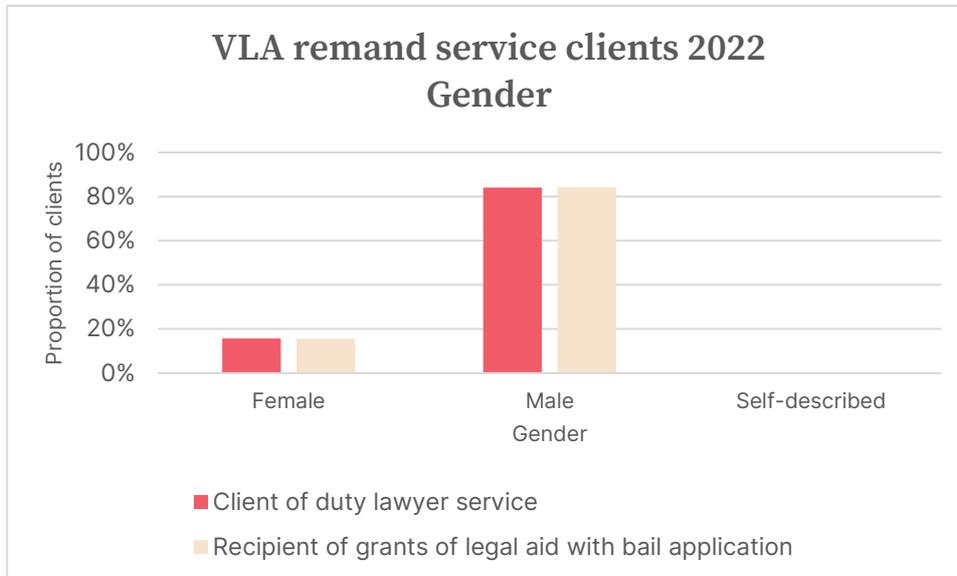
6. If client is an Aboriginal or Torres Strait Islander person, is there anything you do differently?
7. If the client has a disability or mental illness, is a young person, is homeless or is a woman, is there anything you do differently?
8. Training/support
 - To what extent do you feel equipped to effectively perform your role in the remand service?
 - What are the most important skills/knowledge you need for this role, and to what extent are you supported to develop these?
 - What resources or capacity do you need for your role?
 - What are the most important skills/knowledge of effective duty lawyers?
9. VLA service improvement control
 - How could VLA improve the remand service?
 - What could VLA do that would make your role easier or better?
10. Broader systemic challenges
 - What are the barriers to providing an effective remand service? What could be done differently?

Indicative focus group questions – stakeholders other than VLA duty lawyers

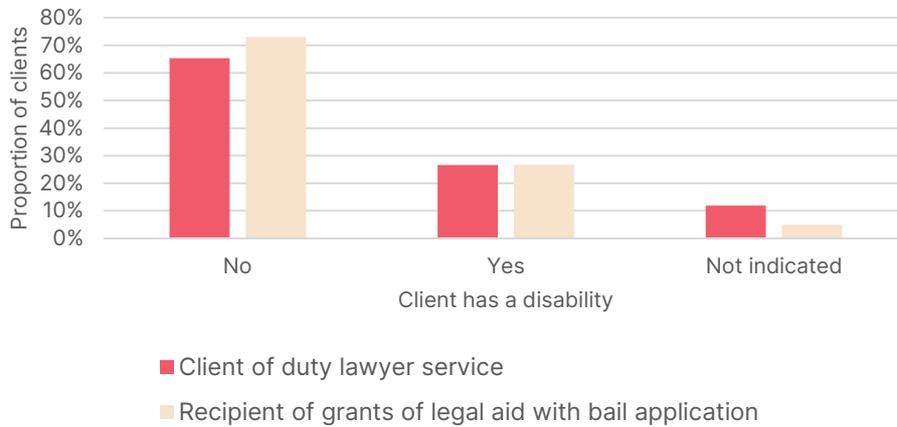
The focus groups will take the form of semi-structured interviews, with questions serving as prompts to invite discussion. In each focus group, the CIJ will seek to elicit information relating to the themes listed below. Under each theme we have listed examples of the questions our researchers will ask in order to guide the discussion.

1. Role of the remand service
 - What do you see the primary purpose of the remand service as being?
 - Noting the different aspects of the services in the context of remand, what's the most important function you require in the remand service?
 - Prompt – what about non-duty service (eg if person is not on first remand)?
2. Functions and use of time
 - Thinking about the VLA duty lawyer service, what is the most important use of time for these lawyers?
 - What should be the greatest priority for VLA in delivering its service?
3. Court processes
 - What aspects of the remand process at court could be improved?
 - What gets in the way of a smoothly operating court system, in the context of bail applications?
4. Post COVID-19 practice
 - How has the move to online court hearings impacted remand processes?
 - What are the effects of a person on remand not being physically present at court?
5. Service/practice if client is an Aboriginal or Torres Strait Islander Person
 - To what extent does the court system (magistrates, court staff, custody staff, prosecutors etc) respond differently when there is an Aboriginal person in custody?
 - Are there ways to improve the court system response when an Aboriginal person has been remanded?
6. Service/practice if the client has a disability or mental illness, is a young person, is homeless or is a woman?
 - To what extent does the court system (magistrates, court staff, custody staff, prosecutors etc) respond differently to individuals in these groups?
 - Are there ways to improve the court system response when a person in these groups has been remanded?
7. Skills and knowledge of VLA duty lawyers
 - What are the most important skills/knowledge you think VLA lawyers need for their role?
 - Are there areas in which VLA lawyers could benefit from additional skills and knowledge?
8. Practice within VLA's control
 - How could VLA improve its remand service?

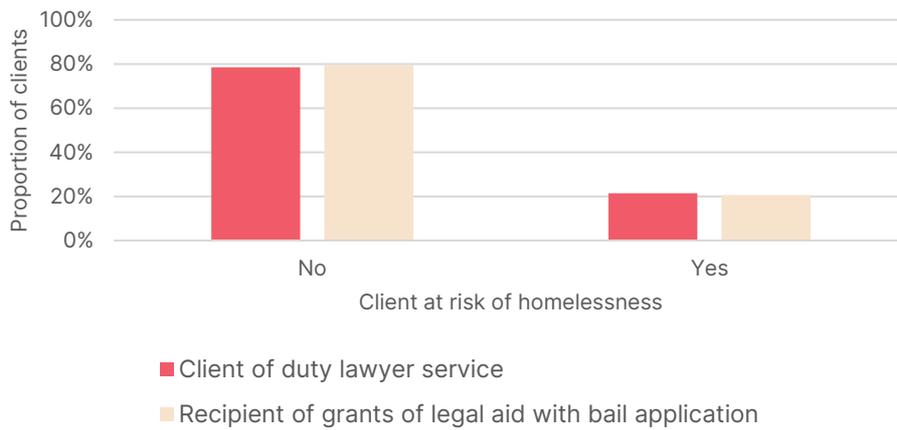
7.4 Remand service client demographics



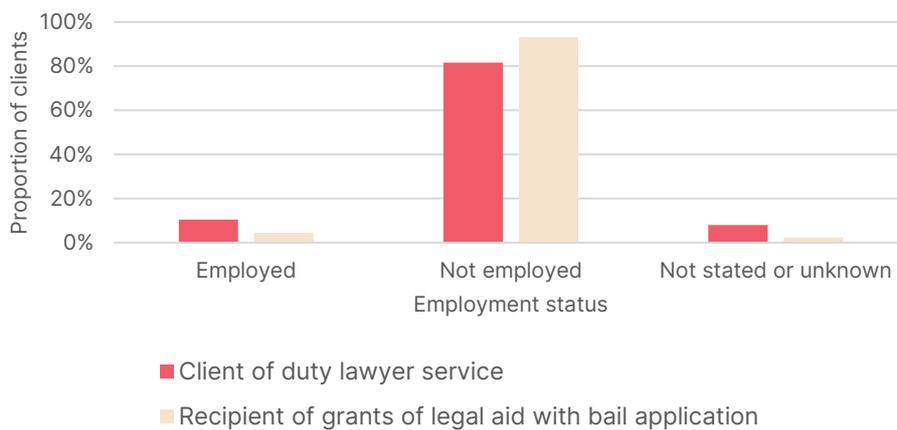
VLA remand service clients - 2022 Disability



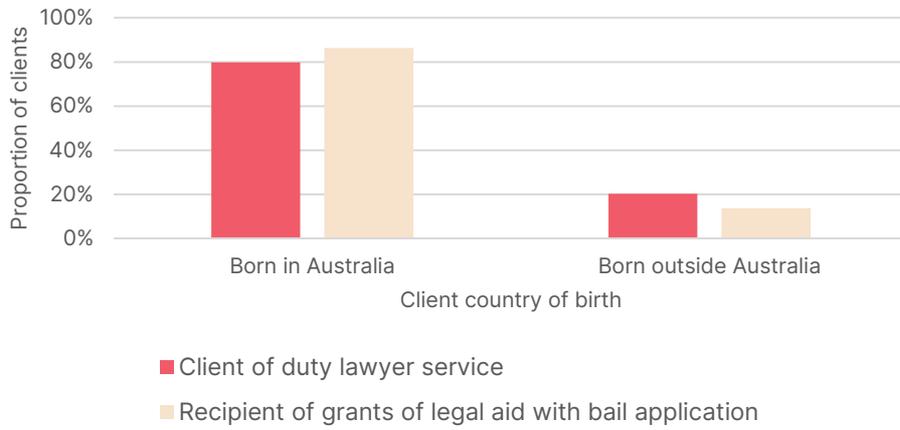
VLA remand service clients 2022 Client at risk of homelessness



VLA remand service clients 2022 Employment status



VLA remand service clients 2022 Client country of birth



Source: Data provided by VLA to the Review

7.5 VLA outcomes framework 2022-2030

Outcomes Framework

Based on our organisational mandate and commitments, the outcomes of Victoria Legal Aid's work focus on five key stakeholder groups: clients, the Victorian community, the legal assistance sector, laws and systems and our own organisation.

01



Clients have increased access to justice

- 1.1 Clients are assisted to address or prevent legal problems
- 1.2 Clients equitably access timely legal and related services, including early intervention and preventative services, that meet their needs and capabilities
- 1.3 First Nations clients experience culturally safe legal services and increased access to justice
- 1.4 Clients experience culturally safe, accessible, inclusive, and respectful services
- 1.5 Clients have a strong voice in services and systems affecting them

02



Improved legal understanding in the community

- 2.1 Community members have improved understanding and capability to address or prevent legal problems
- 2.2 Community members access reliable, timely and targeted legal information that meets their needs and capabilities

03



Collaborative legal assistance sector

- 3.1 The legal assistance sector works together to deliver coordinated and responsive services and advocacy
- 3.2 VLA effectively supports self-determination of Aboriginal and Torres Strait Islander legal services
- 3.3 The legal assistance sector shares and uses evidence to design and deliver services

04



Fairer laws and systems

- 4.1 Laws and policies address systemic injustices and improve equality for clients and communities
- 4.2 Changes in practices by government, courts, tribunals, police, corrections, and service providers to be people-centred and embed self-determination

05



Effective and sustainable Victoria Legal Aid

- 5.1 VLA services and advocacy are shaped by people with lived experience
- 5.2 VLA practices are culturally safe and embed First Nations peoples' self-determination
- 5.3 VLA is a safe, inclusive, and equitable organisation, with diverse and skilled staff
- 5.4 VLA is equipped with sustainable resources and technology, that reduce our environmental impact and enable us to deliver services
- 5.5 VLA's data capabilities are strengthened to support outcomes - and evidence-based services

7.6 Key evaluation questions

When engaging the CIJ to undertake this review, VLA posed some key evaluation questions. Summary responses to those questions are provided below. Some questions were not able to be answered because of the nature of data collection and research of this project, or data was not available.

7.6.1 Access

Key evaluation questions

- *What percentage of people facing remand in Victoria receive a remand service from either or both of the duty lawyer service or under the funding guideline*
- *Who does VLA provide remand services to? Is this changing as a result of the funding or duty lawyer guideline changes?*

Data available about the remand services provided by duty lawyers or under the funding guideline are provided at section 2.4.

From the data provided by VLA, it is not possible to ascertain how many people facing remand present at court but are *not* assisted by the duty lawyer service or under the funding guideline.

The Magistrates' Court of Victoria publishes annual data about the number of bail matters (not persons remanded) who make a bail application, or are refused bail. Corrections Victoria publish data on the number of prison receptions (however this does not include people held in police custody, retained at court overnight, or held in detention by other authorities).

There are differences in these data sets that could not be reconciled within the scope of this Review.

The demographic characteristics of who VLA provides remand services to is outlined at section 2.4 and Appendix 7.4. The duty lawyer changes, from September 2021 and the funding guideline changes from July 2022, are relatively recent.

VLA's data shows that as after the date of these changes, there has been some increase in the proportion of clients who are First Nations and receive a duty lawyer service or grant of aid for a bail application (see section 4.6). However, the data provided by VLA to the review showed:

- a decline in the number of Indigenous clients receiving inhouse duty lawyer services (from 756 clients in the 2021 financial year to 673 in the 2022 financial year),¹¹⁴ and
- a decline in the number of Indigenous clients receiving a grant of aid with a bail grant extension (from 939 clients in the 2021 financial year to 794 in the 2022 financial year).

Data provided for the 2023 financial year to date (to 21 December 2022) did indicate an increase in the number of Indigenous clients. Proportionally, there has been an increase in First Nations clients when comparing 2023 financial year figures from prior to the guideline changes (2021 financial year).

¹¹⁴ There was an increase in the number of clients in the 'not indicated' category.

Table 3: Proportion of duty service clients who identify as First Nations

Indigenous status	FY2019	FY 2020	FY 2021	FY2022	FY2023 to 31/12/2023
Yes	89%	88%	87%	86%	83%
Not indicated	1%	2%	3%	5%	5%
No	10%	10%	10%	9%	12%

Table 4: Proportion of clients with a grant of aid including a bail application who identify as First Nations

Indigenous status	FY2019	FY 2020	FY 2021	FY2022	FY2023 to 31/12/2023
Yes	86%	86%	86%	87%	84%
Not indicated	0%	0%	0%	0%	0%
No	14%	14%	13%	13%	15%

7.6.2 Functions

Key evaluation questions

- *What functions are performed by the remand duty lawyer service?*
- *Are there non legal functions which need greater resourcing or clearer articulation?*
- *Should functions related to intake, triage, co-ordination and follow up be performed differently including by different types of roles or organisations.*
- *What is the system impact of these functions, including on Court listings and hearings and Victoria Police custody management.*

The functions that we identified as being performed by the remand duty lawyer service are detailed at section 2.3.

They include intake, triage and co-ordination of matters so that each person in custody can access a legal representative, including their chosen representative if possible. This process of ascertaining and if necessary, allocating a lawyer can involve receiving response irregularly during the duty service, necessitating further contact with the court, magistrates etc.

After allocation to a duty solicitor, all the tasks of representing a client, including related to conference, information gathering, obtaining referrals and support information, and appearance. Again, contacting services or a person's supports may involve multiple attempts at contact, awaiting responses and further information. Generally, there is limited preparation time for the

actual appearance, and information may be limited. The 'coordination' tasks of updating magistrates, court staff and prosecution continue while individual clients are attended to.

After an appearance, a lawyer will conduct a further client conference and needs to attend to follow up, including administration.

It is important to note that depending on the remand duty service, all these tasks may be performed by one or two people. The people staffed to provide the duty service may or may not divide duties between coordination and representation.

These functions warrant greater articulation by VLA. They are currently not captured in activity data provided by VLA to the review, which included the number of clients and ultimate output of a duty lawyer service. However, other activities are not accurately captured, such as referrals. Moreover, the time and resources required for the coordination aspects is not articulated.

Being clear about the necessary activities of the remand duty lawyer service will assist VLA, and its stakeholders, to understand:

- what functions relate to legal services, VLA's administration, or assistance to the court
- what functions could be performed by other roles, such as by providing new or additional administrative or paralegal assistance, or using social or support workers
- what functions could be performed by other entities.

This report outlines many of the system impacts of the remand service:

- we heard that legal assistance on remand is a 'very important service that can really alter the ... trajectory of the case'. In addition, a 'client is truly at their most vulnerable when they're first remanded'
- in the context of Victoria's strict and technical bail laws, having legal representation for a bail application is vitally important. This is recognised in VLA's duty lawyer guideline, which states that 'wherever possible unrepresented bail applications should be avoided'
- courts rely on duty lawyers to not only represent their clients in custody, but to arrange legal representation, follow up with private practitioners, liaise with court required services (such as CISP and Forensicare) and appear as a 'friend of the court' for people who decline legal assistance or are unable to express their wishes
- generally, duty lawyers work within the frame of systems established by other system stakeholders. For instance, obtaining instructions and providing legal advice within the constraints of the police/court/prison environment, may mean that people in custody are only accessible at particular times or by particular modes (such as only by phone), or being required to represent clients when a court calls a matter, even if the person in custody is not able to provide adequate instructions, or information is not available
- if a person is released on bail, tasks associated with point of release support fall to lawyers.

The suite of services provided by remand duty lawyers contribute to ensuring people on remand have access to legal representation, and to the effective functioning of the court's remand hearings.

7.6.3 Client experience

Key evaluation questions

- *What do clients facing remand need from VLA's service?*
- *What is the client experience of VLA's remand services?*
- *Are our services meeting the needs of priority clients, particularly Aboriginal people, people with a disability and women?*
- *What is the experience of children facing remand outside of specialist Children's Court venues?*

Our research, particularly with people with lived experience of remand and support organisations, showed that clients facing remand need:

- someone who listens, understands and reflects back their circumstances to the court
- information about the processes affecting them, what is happening and what will happen next
- legal assistance that is communicated in way that the person can understand. Lawyers should speak plainly, and avoid using legal terms without explanation
- someone to address non-legal needs that arise for the person as a result of being remanded, such as care arrangements for children, or other family and pets, obtaining medication, contact with employers etc
- demonstration of care, provided through the above actions.

All participants noted the challenges of providing legal assistance on remand due to two key factors: the environment, and the state of the person in custody at first remand. Being in a crowded police or court cells without privacy, poor or untimely access to telephones, limited time with duty lawyers and no or limited access to custody supports. For clients, experiencing shock or anxiety, possible drug or alcohol intoxication or withdrawal, unstable mental health, limited English language skills or cognitive disability can all impair a client's capacity to provide legal instructions. Clients may need medical attention or support, or more intensive time with their lawyer, so that instructions can be sought and advice be provided.

These factors mean that clients also need:

- to the extent VLA can provide it, face-to-face, private time with their lawyer
- lawyers trained and competent in trauma-informed practice, mental health first aid, and communicating with diverse client groups.

Further information about the client experience of VLA's remand service is at sections 3.1 and 3.5.

The limited nature of the research with people with lived experience meant that we cannot determine if the services are meeting the specific needs of priority clients, including Aboriginal people, people with disability, women or children.

7.6.4 Lawyer experience

Key evaluation questions

- *What is the experience of lawyers providing remand duty lawyer services?*
- *Does VLA provide appropriate training and support to our in-house practice, panel practitioners and barristers who provide remand services?*
- *What is the experience of panel practitioners with VLA's remand services (both in providing and interacting with the services)?*

The experience of lawyers reported to the Review is outlined at sections 3.2 and 3.4. Our findings from lawyers providing duty lawyer services (both VLA employed lawyers and private practitioners) was that the work was critical and highly rewarding. It was also highly stressful and they often felt undervalued and disrespected in their daily work, particularly by the court. Lawyers feel that they are constantly 'battling' other parts of the system. These findings highlight an acute need for VLA to provide more targeted ways to support the lawyers who do this work.

Regarding training and support, we heard that VLA provides many resources to its in-house lawyers to assist with learning and making a bail applications. We also heard that experience in doing the work is essential, and this needs to be obtained 'on the job'.

However, different groups of stakeholders suggested mentoring and rostering arrangements to provide better support to less experienced lawyers learning about advocacy and strategic bail applications. Suggestions for improved support systems for VLA lawyers are outlined at section 4.8.

The experience of panel practitioners with VLA's remand services is reported at section 3.4.

7.6.5 Collaboration

Key evaluation questions

- *How do the funded and duty lawyer remand services interact following the guideline changes? Are there opportunities to improve this?*
- *What are stakeholder experiences and views of VLA's remand services?*
- *How do interactions with other key stakeholders, particularly the Magistrates Court of Victoria and Victoria Police, affect our remand services?*

Section 2.4 outlines some of the data available about duty lawyer and funded remand services. This data indicates there is a shift in the proportion of delivery of services towards grants of aid, relative to duty lawyer services from the 2020-2021 financial year (prior to the guideline changes).

Sections 3.2.6 and 3.4.8 of the report provide lawyers' comments about the guideline changes. In general, lawyers did not report significant changes to their practice arising from the guideline

changes. Rather, lawyers reported that the high legal threshold for bail in the *Bail Act 1977* was the key determinant for whether to make a bail application. Lawyers reported that the funding model does not provide for the significant work that is involved in attending to client needs and determining if a bail application ought to be run, nor does it incentivise bail work because of absence of funding for 'straight remands' and limitations to bail application funding through grants of aid. In addition, private practitioners suggested that VLA articulate a clearer strategy or expectation about remand service delivery.

Stakeholder views about VLA's remand services are provided at sections 3.5 and 3.6. All stakeholders observed the importance of VLA's work and considered that VLA lawyers do an exceptional job in difficult circumstances. Stakeholders variously highlighted the importance of care and attention to the needs of people on remand, access to clients, lawyers having experience, judgement and excellent communication. All stakeholders acknowledged the critical role of non-legal support services to people on remand and the operation of remand services.

Interactions with other stakeholders, their processes and practices, significantly affect the delivery of the remand services. Almost every aspect of VLA's remand service is interdependent with other parts of the criminal justice system. These impacts are outlined (from lawyers' perspectives) at section 3.2.4 and more generally at section 3.6. Key interactions that were highlighted by lawyers as affecting the remand service included:

- custody management practices, including where clients are located and when they are brought to court
- facilities and services at court, including access to audio-visual facilities, internet access, distances from cells to court
- information available, particularly police briefs and informants at court
- listing practices at court (including access to AVL bookings)
- availability of bail support services, CISP, Forensicare
- individual conduct of stakeholders.

7.6.6 Systemic impacts

Key evaluation questions

- *What is the impact of VLA's remand services on outcomes for the underlying charges?*
- *Do VLA's remand service settings help to achieve relevant outcomes set out in the Summary Crime Program Logic.*
- *Are there any unintended impacts of VLA's remand service settings or opportunities for improvement?*
- *Are there differences in the experience of staff and clients in:*
 - o Regional Courts;*
 - o Metro Courts; and*
 - o the Bail and Remand Court?*

• *What is the system impact of VLA's remand services, including on the number of people on remand in Victoria?*

It was not possible for this review to quantify the impact of VLA's remand service on outcomes for underlying charges, in part due to the scope of this review and data provided by VLA. Further research is required on the impact of timely and appropriate legal assistance on remand to client outcomes.¹¹⁵

The Review considered how the remand service delivers on outcomes from the Summary Crime Program Logic at section 5.

Opportunities to improve VLA's remand service outcome, as well as unintended impacts, are discussed at sections 3.6, 5 and at the Recommendations.

There are differences in the experiences of staff and clients in regional, metropolitan and BaRC settings. Because of the limited scope of this Review, it is not possible to generalise the reflections to each different court setting or VLA location. However, the research did suggest that:

- some experiences of staff and clients vary across court locations, with different structural settings (for instance, different conditions in court cells, access to internet etc) and different practices (for instance, listing practices, lodgement 'cut-off' times)
- the operation of the Bail and Remand court is distinct and poses particular challenges for clients and lawyers.

Further information about this is provided at section 3.2.4 and 4.5.

The system impact of VLA's remand service is immense. The value of the remand service was articulated by clients, organisations, stakeholders and the lawyers themselves and is explored at section 4. Challenges with identifying system impact are discussed at section 5.3.

¹¹⁵ The Sentencing Advisory Council has reported on Victoria's increasing remand population, and the impacts on time served sentences: Sentencing Advisory Council, *Time Served Prison Sentences in Victoria* (2020) <<https://www.sentencingcouncil.vic.gov.au/publications/time-served-prison-sentences-victoria>>

7.7 Working with people with lived experience

... having people with lived experience involved in designing anything...[is important]...how would you design something about a particular cohort, and you have nobody in that cohort to inform that design? How the hell can you predict what that cohort needs? It doesn't matter if it's for VLA. It doesn't matter what it's about. You cannot design something for a group of people if no one from that group is involved in designing it.

During the course of this Review, we were frequently told that people with lived experience must be engaged in developing solutions to the failings of the remand system. We heard that for services to better meet the needs of the people who use them, people with lived experience must be involved in their design. A range of ways in which lived experience expertise can be used by organisations was discussed by participants, who suggested VLA bring people with lived experience into the development and delivery of staff training, peer support roles and co-design of the remand service. In response to what we heard, we made several recommendations to VLA to specifically draw on this expertise to improve the remand service. We have recommended that VLA:

- Undertake a journey mapping process to understand the needs of VLA's clients before during and after they come into contact with the remand system and VLA's remand service (recommendation 2.1)
- Undertake a co-design process to continue to improve the remand service, incorporating insights from client journeys through the remand system (recommendation 2.2)
- Prioritise advocacy for reforms that will meet the needs and address the harms experienced by people remanded in custody by:
 - a. including and amplifying the voices of people with lived experience of being remanded in its systemic advocacy
 - b. supporting the capability development of people with lived experience as self-advocates
 - c. supporting the inclusion of people with lived experience in working groups and other stakeholder forums (recommendation 6.2)
- Collect data on clients' experience of the remand service, including the extent to which the service addressed their legal and/or non-legal needs (recommendation 7.1)

This section aims to provide some preliminary suggestions for the key principles that VLA should consider when working with people with lived experience to implement the recommendations of the Review.

Background

While progress has been slower in the area of justice, recognition of the expertise of 'clients', 'service users', 'consumers' and 'participants' of social and clinical services has been growing since the 1990s, with the inclusion of this expertise in policy, practice and service design becoming a greater priority within the past decade. The rise in awareness of the importance of including lived experience perspectives in service design has been matched by the development of design methodologies for doing so, such as co-design, co-creation and co-production.

Critically, there has also been an increased focus on understanding how to undertake these processes ethically and effectively. Often such guidance is to be found in lived experience frameworks. This is important as the literature and our own experience suggests that lived experience work is not straightforward. For people with lived experience, it carries the risk of exposure to re-traumatisation, exploitation and tokenistic gestures from organisations who wish to claim legitimacy through their use of lived experience.

While it is not within the scope of this Review to develop a lived experience framework for VLA, we have identified several key principles drawn from the literature, our own work with people with lived experience during this Review, and our considerable experience working with people with lived experience in similar contexts¹¹⁶ that should form part of VLA's implementation considerations alongside VLA's own organisational expertise.¹¹⁷

Awareness of the challenges for lived experience work in the justice context

While it is now common in the social services, health, mental health and disability sectors for lived experience and co-design to be viewed as desirable, it also the case that it can be particularly challenging to implement in contexts where the needs and interests of systems have been prioritised over the needs of their service users.

This is certainly the case in the criminal justice system, as it is in the remand system where concerns over community safety and risk to the public take priority over the wellbeing, human rights and participation of service users. This means that implementing client-centred practices as a means of achieving better outcomes and providing clients with a greater sense of control and participation will be particularly challenging.

Similarly, people who have been remanded or who have experience of justice involvement will have had long term experiences of being excluded from decision making in their own lives and at a systemic level, and will require minimum conditions to be in place to support their participation in any journey mapping or design process. These conditions include sufficient time, appropriate recognition of expertise, safety, and adequate resources to support participation. A genuine organisational commitment to establishing these conditions may require more flexibility with process and timelines than the organisation is familiar with.

It may, for example, require a greater period of time allowed for the recruitment of participants. There may be few potential participants who have the capacity to engage in processes such as these, so it may require training or capacity building for participants. It may also require consideration of governance structures to ensure lived experience participants have input into project management decision making.

¹¹⁶ Our own experience includes our work establishing a Lived Experience Framework for the forensic disability and complex needs programs operated by the Department of Families, Fairness and Housing, our *Enabling Justice* and *Just Voices* projects which draw on people with lived experience of justice involvement and disability to improve the justice and corrections systems. See <https://cij.org.au/research-projects/just-voices/> and <https://cij.org.au/research-projects/enabling-justice-abi/>.

¹¹⁷ VLA is also well placed to draw on learnings from its own experience, as it already works with people with lived experience in several contexts, for example by ensuring consumer perspectives are central to the Independent Mental Health Advocacy Service. VLA has also committed continuing to focus on doing so as part of its *Client-first strategy 2020-2023: Improving how we listen to and assist people with legal needs* in the ongoing development of its services.

Key principles

The following are some key principles that we suggest VLA has regard to in the context of ethical and trauma-informed approaches working with people with lived experience to implement the recommendations of this Review.

Recognising and valuing lived experience

Lived experience work should be supported as a legitimate form of knowledge. People who use their lived experience professionally are understood to have unique and valuable perspectives, as well as the capacity to narrate their own experiences to create powerful stories that can be used as tools for advocacy.

Engagement and design processes must be of sufficient duration to reflect and recognise the value of including people with lived experience, by enabling meaningful participation.

Time pressures are often applied to lived experience work, and the lack of recognition of the complexities of the lives of people with lived experience do not accord with project timelines and limited funding.

Lived experience work should be valued for its process, not just its product. However, organisations involved in this work sometimes struggle to recognise iterative ways of engaging with people with lived experience in an ongoing developmental manner.

Commitment to support and resources

Organisations should commit to supporting lived experience work by allocating sufficient resources.

Recognition of expertise should include payment for contributions and identification of reciprocal benefits for participants.

Reasonable adjustments, training and professional development should be provided to people with lived experience.

Trauma-informed, safe practices should be used.

Staff who work alongside people with lived experience should receive training to develop skills, and learn to work sensitively and effectively alongside people with lived experience.

People with lived experience of justice involvement often have complex lives and may require support during engagement processes with other challenges they face.

Large organisations should consider contributing funding to building the capacity of self-advocacy organisations to support lived experience engagement.

Influence

The degree of influence people with lived experience have within organisations and institutions is a fundamental element of ethically inviting people into an organisation to share their expertise.

The degree of influence people with lived experience can have should be discussed early and in a transparent manner.

In working with people with lived experience, it is important for them to be advised on what they can influence (such as policies and practices) and what they cannot (such as legislation) to ensure that lived experience expertise is used effectively, safely and respectfully.

How their influence has contributed to change should be regularly reported back to people with lived experience.

Redistribution of power

Genuine power sharing is necessary for effective and ethical work with people with lived experience. Co-design and co-production are ways of describing this power sharing relationship whereby people with lived experience are deeply involved in the design and creation of policy and services.

Without careful scrutiny of power relationships, there is a risk that co-design and co-production become meaningless and tokenistic and can entrench marginalisation, exclusion and discrimination.

Inviting people with lived experience to participate in consultation or sit on committees is not a remediation of power imbalances. Decision-making and direction power must be shared between professional and lived experience participants in genuine co-design processes.

Future focussed

Lived experience work must be future-focused and not remain located in the problem-saturated and trauma-filled stories that people with lived experience often come to their work with.

Creating opportunities for change and development is crucial, and remaining focussed on people's strengths and capacity to contribute ensures people with lived experience feel safe and respected.

Self-determination

Lived experience work should be grounded in self-determination. People with lived experience must enjoy self-determination individually and collectively.

Social justice and human rights

Lived experience work is inherently about the social justice work of making the personal political.

Many organisations who employ people with lived experience support the advocacy, self-advocacy and activism of people with lived experience and recognise that lived experience work is a social movement.

Commitment to organisational change

Deep commitment to organisational change is a fundamental element to the success of integrating lived experience into institutions. This commitment must take a 'whole systems' approach and be driven from the top down, through executive and management structures, to ensure a respect for lived experience expertise is embedded in the culture of the institution.

To ensure organisational change is genuine and meaningful, managers and executives need to adopt a 'transformational leadership approach' and work to feel comfortable with 'messy', non-linear, time and resource-intensive processes.

Organisations and staff must learn to 'sit in the grey' of ambiguity when working with people with lived experience and learn to become reflective rather than outcome and timeline focussed.

Practices around organisational commitment to working with people with lived experience share some similarity with the decolonising practices First Nations people have taught governments and organisations in Australia in recent years.¹¹⁸

Cultural safety

Engagement with people with lived experience should be culturally safe and respectful of Aboriginal and Torres Strait Islander people with lived experience.

Cultural safety can be addressed by ensuring engagement and design processes are Aboriginal-led.

¹¹⁸ Laird et al, (2021), Conducting decolonising research and practice with Australian First Nations to close the health gap, *Health Research Policy and Systems*, 19(1).