

Submission to Infrastructure Victoria’s 30-year strategy

October 2016

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Written requests should be directed to Victoria Legal Aid, Corporate Affairs, 350 Queen Street, Melbourne Vic 3000.

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# About Victoria Legal Aid

Victoria Legal Aid (VLA) is an independent statutory authority that exists to assist Victorians with their legal problems.

We provide legal information, education, advice and representation to Victorians across a wide range of legal areas, including criminal matters, family separation, child protection and family violence, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt. We have 14 offices across Victoria and, through a mix of staff and private practitioners, we assist over 80,000 clients every year.

Our clients are often people who are socially and economically isolated from society; people with a disability or mental illness, children, the elderly, people from culturally and linguistically diverse backgrounds and those who live in remote areas.

We provide:

* free legal information through our website, our Legal Help line, community legal education, publications and other resources
* legal advice through our Legal Help telephone line and free clinics on specific legal issues
* minor assistance to help clients negotiate, write letters, draft documents or prepare to represent themselves in court
* grants of legal aid to pay for legal representation by a lawyer in private practice, a community legal centre or a VLA staff lawyer
* funding to 40 community legal centres and support for the operation of the community legal sector
* some non-legal services, including mediation through VLA’s Family Dispute Resolution Service and non-legal advocacy through the Independent Mental Health Advocacy service.

VLA also works to address the barriers that prevent people from accessing the justice system by participating in law reform, influencing the efficient running of the justice system and ensuring the actions of government agencies are held to account. We take on important cases and advocate for reforms that improve the law and make it fairer for all Victorians.

# Executive summary

VLA welcomes the opportunity to contribute to Victoria’s 30-year Draft Infrastructure Strategy. We welcome the broad focus of the strategy, which looks not only at the physical infrastructure required in the future but the kinds of policy and regulatory changes that will contribute to a more vibrant and inclusive state.

Our submission draws on our practice experience across a broad range of areas of law, and in assisting some of Victoria’s most disadvantaged people. Various aspects of the state’s infrastructure impact on our clients – often disproportionately and in negative ways, due to the various forms of disadvantage they experience.

Our submission focuses primarily on three of the 19 ‘needs’ identified in the draft strategy, namely increasing demand on the justice system (Need 8), access to housing for the most vulnerable Victorians (Need 7), and responding to increasing pressure on health infrastructure (Need 3).

Across all three of these needs, we make a number of recommendations aimed at creating a strategy that better responds to the needs of disadvantaged Victorians. In particular, we advocate for:

* the inclusion of legal assistance services in integrated service delivery models across health, human services and justice contexts
* the inclusion of justice reinvestment principles and programs and policies aimed at diverting people from the criminal justice system as an essential part of reducing demand for prisons and related justice infrastructure
* appropriate recognition of the unique place Aboriginal and Torres Strait Islanders have in Victoria’s past, present and future, and ensuring their needs are recognised in the strategy
* protections to ensure disadvantages tenants can sustain their tenancies in the private rental market
* appropriate forensic mental health care facilities that respond to the areas of most demand
* greater recognition of the potential role online technologies can play in reducing demand on justice infrastructure, including through providing legal assistance
* expanded hours of operation for courts and tribunals to fully utilise existing courts infrastructure
* recognition of the potential equity and social impacts, as well as the downstream costs, of transport network pricing.

# Integrated service delivery models and planning

## The role of legal assistance in integrated service delivery models

A recurrent theme throughout the draft strategy is the need for greater integration between government service providers to more holistically meet the needs of its citizens. In particular, the strategy recommends greater integrated planning between justice and human services, including through co-location of justice facilities with relevant human services.[[1]](#footnote-1) With respect to improving health services, the strategy recommends the creation of integrated community health hubs ‘with a mix of health providers and other human services and justice service providers’.[[2]](#footnote-2)

VLA welcomes integrated service delivery models as a way to ensure people receive holistic assistance to address their various needs. However, we recommend that the strategy expressly recommend the inclusion of legal assistance in these integrated service hubs alongside other essential health, human services and justice services such as police.

There is extensive research on the increased barriers people experiencing disadvantage have in accessing legal assistance, often as a result of low legal capability, literacy issues and other language barriers, disabilities and other health issues, and cultural barriers.

The 2012 Legal Australia Wide Survey (LAW Survey) on legal need in Australia highlighted the high prevalence of legal problems in the community and the barriers people face in identifying and addressing legal problems. It found that 50 per cent of Australians have a legal problem in a year, with nearly a quarter having multiple legal problems.[[3]](#footnote-3) Over half of the people who had a legal problem experienced a ‘severe or moderate impact on everyday life’ as a result.[[4]](#footnote-4) It also found that over 50 per cent of people who seek advice about a legal problem do not consult legal advisors, preferring to consult with another trusted professional.[[5]](#footnote-5) Nearly one in five people take no action in response to their legal problems.[[6]](#footnote-6)

A failure to identify and address a legal issue early and in a timely way, or seek appropriate assistance, can exacerbate legal problems, lead to further hardship and often result in increased costs to other tax-payer funded services. This understanding of legal problems and the ways in which people respond, or fail to respond, points to the importance of a holistic approach to justice. The LAW Survey concludes from its research that integrated service delivery across legal and broader human services is critical, given that legal needs are often interconnected with non-legal needs.[[7]](#footnote-7)

In our recent submission to the Department of Justice and Regulation’s Access to Justice Review, we noted the potential for integrated service delivery models to:

* encourage and enable people to obtain timely help to resolve their problems
* increase the likelihood of an individualised response to a person’s circumstances and the likelihood of meaningful and enduring resolutions
* promote broad dissemination of legal information to a diverse range of communities, expanding the reach of legal assistance.[[8]](#footnote-8)

As referenced in Infrastructure Victoria’s draft strategy, greater integration between services was also a core focus of the Royal Commission into Family Violence. It recommended the creation of Support and Safety Hubs to ensure a multidisciplinary response to family violence. It was recommended that in the longer-term these Support and Safety Hubs include services such as legal services.[[9]](#footnote-9)

Given the significant impact that legal problems have on people’s lives and on other tax-payer funded services, and the wide spread prevalence of legal problems, integrating legal assistance into the kind of integrated service delivery models recommended in the draft strategy is essential.

## Different models for providing legal assistance as part of integrated service delivery models

This assistance could be provided through various models and at various levels of intensity. In its recent Access to Justice Review, the Department of Justice and Regulation examined Victoria Legal Aid’s Legal Help service as a specialist legal triage service that provides referrals, legal information and legal advice depending on a person’s priority status. Legal Help is already a high volume service, providing assistance to over 100,000 people each year across a broad range of civil, family and criminal matters and in around 20 different languages through multi-lingual staff. As noted in the Access to Justice Review, Legal Help deals with a wide range of civil, family and criminal law enquiries.[[10]](#footnote-10) The review recommends that VLA be positioned as the primary entry point to the legal assistance sector.[[11]](#footnote-11)

Given its expertise across legal issues and its role as the main entry point to the legal assistance sector, Legal Help workers would be well placed to provide the kind of generalist legal assistance required to make appropriate referrals, provide information and book people into appointments.

Other models of more intensive legal assistance could be through co-locating legal services with community health or human services organisations. A number of community legal centres have adopted co-location models, and VLA is about to open its first co-located office in the Mallee region in late 2016 where it will co-locate legal services with a community health organisation.

While the draft strategy acknowledges the need for justice to be integrated with human and health services, reference to the role of legal assistance would ensure that this is seen as a key aspect of integrated service delivery. For example, a specific reference to integrated service delivery in the courts context would ensure that legal assistance services are appropriately consulted and involved in the design of new court infrastructure. Given that agencies like VLA deliver a large proportion of services through courts (either through duty lawyer services or through appearing in courts and tribunals on a grant of legal assistance), our involvement in the early stages of court design and policy is essential to ensuring a well-operating, efficient court system. Further, our role advocating for and with clients often puts us in a unique role to be able to feed in the perspective of clients – especially those who are most disadvantaged – in considering court infrastructure developments.

**Recommendation 1: Incorporate legal assistance into integrated models of service delivery**

* That recommendations for integrated service delivery in health, human services and justice contexts (draft recommendations 8.1.1, 8.1.2, 8.1.3 and 3.2.3) specifically refer to the integration of legal assistance services.
* That the recommendation relating to justice and human services integrated planning refer specifically to the role of legal assistance in integrated planning.

# The role of justice diversionary policy and programs in effective infrastructure planning

In considering its options for Victoria’s infrastructure policy, Infrastructure Victoria considered inclusion of ‘justice diversionary policy and programs (JDP)’. This was considered as an option to address the expected demand on the justice system and reduce demand on prison beds. In particular, the option considered ways to reduce demand on the criminal justice system and prison beds by:

* strengthening diversion pathways for young people
* creating stable accommodation for prisoners post-release to support reintegration and employment
* introducing incentives to invest in proven outcomes to reduce recidivism
* implementing a new approach to the community correctional services mode to create a credible alternative to imprisonment
* improving transition and reintegration programs to meet demand for rehabilitation programs
* delivering relevant, offence specific or prisoner specific interventions to prisoners and offenders to support improved outcomes after release from custody.

However, in the draft strategy, this option is not recommended as the diversionary programs were considered ‘either too small scale or had too tenuous a link to infrastructure’.[[12]](#footnote-12) The options paper goes on to state that an infrastructure strategy is not ‘the place for advocacy for [these programs], nor is it our place to advocate changes to the criminal law for the same end’.[[13]](#footnote-13)

VLA welcomes the fact that Infrastructure Victoria has taken a broad approach to the infrastructural needs of Victoria, recognising the role that policy and regulation plays in sustainable infrastructure planning. It also welcomes the fact that the strategy takes an apolitical approach, making recommendations not based on ideology but on evidence as to current and future demands and the best responses to these demands. As noted in the draft executive summary of the strategy:

‘… infrastructure planning must be bold and responsible rather than populist … we hope [debate] is based on reason and evidence because the community deserves quality debate about infrastructure.’[[14]](#footnote-14)

A community’s response to criminal offending has extensive infrastructure implications. Prisons and court infrastructure are the most obvious direct infrastructural responses to criminal offending, however the impacts of polices in this area are far broader and flow into pressures on health and human services infrastructure, including housing. A more effective approach to criminal offending would have significant benefits in terms of reducing the mounting pressures on built infrastructure such as prison and courts, as would investing savings on establishment and maintenance costs into local infrastructure that supports community based programs which address the causes of offending such as access to health, counselling and education providers.[[15]](#footnote-15)

Reducing the use of prisons in favour of community-based diversionary programs offers the potential to realise significant cost benefits. In Victoria, it costs on average $98,389 per year to keep a prisoner in prison.[[16]](#footnote-16) Further, it costs an estimated $500,000 per prison bed in construction costs.[[17]](#footnote-17)

While prison is aimed at achieving various goals, including retribution, one of the primary goals of imprisonment is rehabilitation. Victoria, like many comparable jurisdictions, has been faced with the mounting evidence that in many cases prisons fail to achieve this goal – rather evidence suggests they have a ‘criminogenic’ effect and contribute to high rates of reoffending and recidivism.[[18]](#footnote-18)

Reducing the reliance on prisons to respond to criminal offending does not come from simply stopping the creation of prison beds. In recent years, Victoria has seen the impact of a burgeoning prison population without the necessary policy changes to reduce the number of people receiving custodial sentences. Essentially, there has been a significant increase in demand without the requisite increase in supply. However, due to the financial and social cost of prisons, there is an increasing recognition across many comparable jurisdictions that the solution lies not in increasing the supply but rather, in the long-term, in reducing demand. This comes through various policy and in places legislative changes that focus, for example, on:

* **Addressing the drivers of criminal offending, including forms of social and economic disadvantage that increase risk of offending:** for example, VLA’s research into its most high-contact users shows that young people who we assist in our child protection program are three-times more likely to come to us for assistance with an adult criminal law matter.[[19]](#footnote-19) This points to the need to intervene with strong, wrap-around supports at an early age to ensure those in the child protection system do not ‘graduate’ into the criminal courts and prison system.
* **Appropriately responding to the underlying behaviours that contribute to criminal offending and diverting people out of the justice system into other support services:** for many forms of criminal offending, responses outside of the justice system may be the most appropriate to curb offending behaviour. For example, alcohol and other drug addiction, homelessness, trauma, ABI, and mental health issues, may be contributing to offending behaviours that, unless addressed, are likely to feed into a continuing cycle of crime.
* **Ensuring social inclusion and effective participation in society:** people who have been involved in the criminal justice system will often remain on society’s fringes due to the impacts on imprisonment. Policies that aim to secure housing, jobs and other social supports post-release will increase the likelihood of a successful reintegration. Transitional facilities and programs aimed at putting supports in place prior to release are essential.
* **Appropriate sentencing that is focused on judicial discretion to allow the best response to individual circumstances:** When judicial discretion is unnecessarily fettered, it reduces the ability to respond to the individual circumstances of an offender and devise a fair and appropriate response that will best satisfy sentencing objectives.[[20]](#footnote-20)

Many of the specific programs and strategies that align with a focus on diverting people from custodial sentences are underpinned by the principles of justice reinvestment. Justice reinvestment involves diverting government spending from prisons in favour of strategies and initiatives that address the underlying causes of crime.

In her 2015 investigation into the rehabilitation and reintegration of prisoners in Victoria, the Victorian Ombudsman found that the current prison system is ‘not sustainable’:

‘We are witnessing spiralling numbers of prisoners and higher rates of return than ever before … [The] rapid growth in numbers of people in the system and behind bars has overwhelmed the capacity to deliver consistent and effective rehabilitation or reintegration for prisoners … While there are many reasons people reoffend and return to prison, it is evident that insufficient access to rehabilitation and reintegration programs has a significant bearing on the likelihood of returning.’[[21]](#footnote-21)

In her report, the Victorian Ombudsman makes the recommendation that Victoria should examine international examples, including justice reinvestment based on its success in other jurisdictions.[[22]](#footnote-22)

Given the significant potential to reduce pressure on prison beds, correctional facilities and the range of other justice infrastructure required in a custodial response to criminal offending, VLA considers that the inclusion of the JDP option is essential to addressing increasing demand in the justice system and the long-term sustainability of Victoria’s justice infrastructure. A specific option aimed at JDP in the strategy would assist in removing prison policy from the realm of political debate and populism, instead reflecting that it is intrinsically linked to the infrastructural needs of the State and worthy of a rational, evidence-based response that draws on evidence and international best practice. This option aligns well with the broader direction for addressing increasing demand on the justice system through a more integrated, preventative approach, which brings together the range of supports required in an effective justice response.

**Recommendation 2: Include justice diversionary policy and programs, or a broader commitment to justice reinvestment**

VLA recommends that Victoria’s Infrastructure Strategy reflect the option relating to justice diversionary policy and programs (JDP) in addressing *Need 8: ‘Address increasing demand on the justice system’*, to ensure that demand on justice infrastructure (in particular, prisons and correctional services), which is largely driven by policy and legislation, is addressed. This could be done through either:

* creating a specific recommendation (what would be 8.4): ‘Reduce demand for justice services and correctional facilities through justice reinvestment and policies and programs that promote diversion from the criminal justice system’, with the selection of initiatives posed in the options paper provided as the more detailed actions, or
* incorporated as a specific action under the current 8.1 adding in what would be 8.1.4: ‘Reinvesting funds for prisons in appropriate diversionary programs that better address the social and health-related drivers underpinning offending and recidivism’.

# Responding to distinct needs of Aboriginal and Torres Strait Islanders

Aboriginal and Torres Strait Islanders are the First Peoples of Australia, and as a result have a unique place in our society – and its future. Currently, the draft strategy in no way reflects this position or the specific needs of Aboriginal communities in realising the goals outlined in the strategy.

While VLA recognises the necessarily high-level nature of a long-term infrastructure strategy of this kind, it considers it important that Aboriginal people are not treated as another ‘cohort’ with specific needs but rather their role as First Peoples is appropriately elevated and reflected. The Victorian Government’s current commitment to a treaty or treaties with Aboriginal Victorians, while in early stages, will potentially enhance the status of Aboriginal Victorians to appropriately reflect their unique role in Victoria’s past, present and future. Any long-term strategy of this kind should ensure that the perspectives of Aboriginal Victorians are appropriately reflected and, where possible, enhanced.

Victoria Legal Aid is not the best placed agency to provide insight into how, more generally, the strategy could speak to Victoria’s biculturalism; however, it would support a greater recognition of Aboriginal people and culture across all facets of the strategy and further consultation with Aboriginal agencies to ensure that this insight is captured.

However, based on our role in the justice system in which we provide legal assistance to Aboriginal and Torres Strait Islanders across criminal, family (including child protection), youth and civil jurisdictions, we have direct experience of the importance of Aboriginal-specific justice responses. In particular, we see the failure of current mainstream approaches that do not recognise and respond to the specific needs of Aboriginal people in the criminal justice system, where Aboriginal people are grossly over-represented especially in the prison system. In Victoria, Aboriginal and Torres Strait Islander people make up 0.7 per cent of the population and nearly 8 per cent of the prison population.[[23]](#footnote-23) The recidivism rate for Aboriginal and Torres Strait Islanders is 55 per cent compared to 45 for non-Indigenous prisoners.[[24]](#footnote-24) Victoria currently has the highest rate of increase in the imprisonment of Aboriginal and Torres Strait Islanders in the country.[[25]](#footnote-25)

One way that the strategy could better respond to the needs of Aboriginal people would be to recommend Aboriginal-specific diversionary policies and programs, with a view to reducing recidivism and reducing demand on the justice system in line with ‘Need 8’ of the draft strategy. Specific measures could include more and better coordinated culturally specific programs for Aboriginal and Torres Strait Islander prisoners, and increased use of Aboriginal specific wellbeing and liaison officers in prison contexts – both of which are recommended in the Ombudsman’s 2015 report.[[26]](#footnote-26)

**Recommendation 3: Reflect unique role of Aboriginal and Torres Strait Islanders in Victoria’s future**

* That Infrastructure Victoria consult with Aboriginal and Torres Strait Islander agencies to ensure the final strategy appropriately recognises the unique status of Aboriginal Victorians, and to ensure the strategy responds to their specific needs.
* That, in line with VLA’s recommendation for the inclusion of justice diversionary policy and programs, specific mention be given to diversionary policies or programs that will address the over-representation of and high rates of recidivism for Aboriginal people in the prison system.

# Protecting disadvantaged tenants to ensure access to housing

VLA welcomes the focus on providing access to housing for the most vulnerable Victorians, and the primacy that this takes in the overall strategy. It supports the proposed recommendations aimed at addressing this need; however, we recommend that attention be given to the policy and legislative frameworks that support low-income and otherwise disadvantaged tenants to maintain housing.

Across all practice areas, VLA’s service delivery is focused on the provision of assistance to low-income or otherwise disadvantaged Victorians. While around 14 per cent of the Australian population lives below the poverty line, only around eight per cent of Australians are eligible for legal aid. This points to the level of disadvantage in the clients VLA assists, making us well-placed to provide insight into how best to meet the housing needs of vulnerable Victorians over the coming 30 years. Further, VLA provides specialist services to tenants, including phone advice, in person advice and duty lawyer representation, with a focus on those experiencing the most acute disadvantage and hardship arising out of their circumstances.

Based on our practice experience, VLA has contributed extensively to the current Consumer Affairs Victoria *Fairer, Safer Housing Review*, which is primarily focused on potential changes to the *Residential Tenancies Act 1997* (Vic). A major focus of VLA’s submissions has been on ensuring our legislative framework provides for security of tenure for disadvantaged tenants, both in the private rental market and those in social housing. We support measures that ensure tenancies can be managed sustainably and evictions occur only as a last resort.

We support Recommendation 7.1 of the draft strategy, which recommends support for low-income households to access and remain the private rental market. As outlined in the options paper, this is one way to reduce the demand on higher cost social housing options.[[27]](#footnote-27) However, the current framing of the recommendation assumes that the only barrier to low-income people maintaining a private tenancy is financial. Our practice experience suggests that while this is a significant barrier, it is not the only barrier. Rather, arbitrary and unreasonable evictions, and limited recourse in these circumstances, have significant bearing on the ability of low-income households to sustain tenancies in the private rental market.

We consider that Recommendation 7.1 could be bolstered through the inclusion of an option that addresses the legislative and policy framework that supports tenants to remain in the rental market. As noted in one of our submissions to the *Fairer, Safer Housing Review,* the legal framework relating to tenancy terminations, managing tenancies and removing obstacles to secure housing, can directly influence security of tenure outcomes. In the context of Infrastructure Victoria’s aim to provide access to housing for the most vulnerable Victorians, consideration of the legal framework for managing tenancies is necessary to achieve the stated aim of supporting disadvantaged Victorians to maintain private tenure.

Currently, Victoria’s legislative framework for managing tenancies has a number of weaknesses that make tenants more vulnerable to losing their tenure and, in the instance of acutely disadvantaged people, vulnerable to homelessness or requiring social housing support. As explored in our submission to the *Fairer, Safer Housing Review* on security of tenure,[[28]](#footnote-28) some examples of these legislative weaknesses include:

* the existence of ‘no reason’ notices to vacate, which allow arbitrary and unreasonable evictions of tenants, and create significant pressure on tenants to find new accommodation
* the lack of an internal appeals mechanism or review right at VCAT, which means that tenants who seek to challenge a decision at VCAT (including of eviction) are required to appeal to the Supreme Court of Victoria. For the vast majority of tenants, especially those with additional vulnerabilities or on a low-income, this is beyond their means and removes an important safeguard for people to remain in their homes.

VLA recommends an additional option be considered as part of Recommendation 7.1 that promotes a strong legislative framework aimed at supporting security of tenure.

**Recommendation 4: Support low-income households to remain in the private rental market through a strong legislative framework**

* That a recommendation be added that reflects the importance of legislative protections aimed at security of tenure to ensure that low-income tenants remain in the private rental market and do not need higher cost social housing support. This could be added as 7.1.2 to support Recommendation 7.1, along with housing rental assistance.

# Ensuring appropriate forensic mental health care

VLA supports Recommendation 3.3.1 of the draft strategy, which recommends new or expanded forensic mental health facilities. While Infrastructure Victoria’s strategy is necessarily high-level, in the context of forensic mental health care it is important that the consideration be given to the varying forms of infrastructure required to appropriately serve the needs of Victorians in these circumstances. We suggest that the recommendation be expanded upon to ensure that new facilities built or expanded are done so in a way that will best respond to current pressures and needs in the system.

We have extensive experience working with people diagnosed with mental illness, intellectual disability and cognitive impairment in the criminal and civil justice systems. We regularly represent clients at every stage of the process established by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (the CMIA). We provide assistance to people detained in Thomas Embling Hospital, primarily through our Mental Health and Disability Law Program and through our non-legal advocacy service, Independent Mental Health Advocacy. We also provide assistance to prisoners, both on remand or sentenced, who experience mental ill-health and are facing compulsory mental health treatment under the *Mental Health Act 2014* (Vic) (MH Act).

Our practice experience reflects the pressures on Thomas Embling Hospital that are outlined in the options paper. A prisoner, either on remand or sentenced, cannot be subject to a treatment order under the MH Act or given mental health treatment without their informed consent within the prison context; compulsory treatment can only be administered in a designated mental health service specified under the MH Act. Currently, the only designated mental health service to which prisoners are transferred is Thomas Embling Hospital. Given the small number of acute-care beds currently available at Thomas Embling Hospital, once a prisoner has been assessed to meet the criteria for compulsory treatment under the MH Act, they must continue to wait in prison, often for many months, until a bed becomes available at Thomas Embling Hospital. They cannot be given compulsory treatment during this time, and they will often be managed in seclusion or other highly-restrictive conditions because of the impact of their mental health on their behaviour and their increased vulnerability. When they are eventually transferred to Thomas Embling Hospital, their mental health has often deteriorated so much in the absence of treatment that it becomes much more difficult to treat them, and more restrictive and prolonged forms of treatment are usually required.

VLA supports the expansion of forensic mental health services to ensure that prisoners who require mental health treatment can be treated appropriately and in a timely fashion. We understand that it is currently proposed to build new mental health units *within* prisons, such as in the new Ravenhall Prison. We welcome this increased availability of mental health services for prisoners. We understand that these will not be designated mental health services under the MH Act and therefore will not administer any compulsory treatment to prisoners. If consideration is ever given to gazetting mental health units within prisons as designated mental health services under the MH Act, we consider it imperative that any such units be run independently and staffed by health professionals rather than correctional staff (akin to Thomas Embling Hospital) and be subject to the same safeguards and oversight of the MH Act.

VLA considers that reducing pressure on Thomas Embling Hospital beds would be best achieved by the development of a new medium-secure forensic mental health facility, as specifically recommended by the VLRC in its 2014 review of the CMIA,[[29]](#footnote-29) rather than through an increase in the number of high-secure beds. Our practice experience reveals that many of the forensic patients currently detained at Thomas Embling Hospital under the CMIA do not require such high levels of security as the facility provides. However, because no low- or medium-secure forensic facilities currently exist to which they could be transferred, there is no option but to continue to detain them in Thomas Embling Hospital until they are ready to transition to independent community living. Continuing to detain people in a facility which is more restrictive than necessary to manage any safety risks is inappropriate and arguably a breach of their human rights. This bottle-neck for transferring forensic patients out of Thomas Embling Hospital also has the effect of reducing the number of beds available into which prisoners can be transferred (thus exacerbating wait times in prison). The creation of low- and medium-secure forensic facilities would be less cost intensive than building further high-secure forensic facilities. We recommend that the strategy specify the creation of a medium-secure forensic mental health facility, which would achieve the goal of reducing pressure on Thomas Embling Hospital and also provide a more cost-effective and appropriate response for forensic patients who do not pose a high security risk.

We also suggest that the recommendation specifically reference the need for gender-sensitive facilities, aged facilities and youth specific facilities, all of which are currently most acutely lacking. The Women’s Mental Health Network advocates for gender-sensitive need, due to the fact that female consumers’ experiences in mixed wards include intimidation and harassment, unwelcome sexual advances, sexual assault and other forms of violence.[[30]](#footnote-30) There is currently no youth forensic mental health facility in Victoria. In its 2014 review of the CMIA, the VLRC specifically recommended the establishment of a multi-disciplinary youth forensic facility.[[31]](#footnote-31) With the recent expansion of the CMIA to the Children’s Court jurisdiction, this is a particularly pressing need. Further, our practice experience reveals that an increasing number of older forensic patients continue to be detained at Thomas Embling Hospital. Due to their increased physical frailty and cognitive deterioration, they are often at increased risk from others in this environment, and the Hospital is not well equipped to meet their aged care needs. Furthermore, they typically do not need such a high level of security to contain any risk they pose. Accordingly, they would benefit greatly from a purpose-built facility or unit more appropriate to their needs.

**Recommendation 5: Appropriate forensic mental health care that meets diverse needs**

* That Recommendation 3.3.1 specify the creation of a medium-secure forensic mental health facility, to address current demand on Thomas Embling in a way that ensures appropriate levels of security for patients (in line with the VLRC review of the CMIA).
* That Recommendation 3.3.1 refer to the need for tailored facilities that meet the diverse needs of forensic mental health patients, including consideration of women, older people and young people.
* That the option supporting Recommendation 3.3.1 make clear that if mental health units within prisons are ever to be gazetted as designated mental health services under the MH Act, they must be run independently and staffed by health professionals.

# The use of online technologies in the justice system

VLA welcomes the recommendation to build a more technologically supported and mobile police and justice workforce (Recommendation 8.2), as part of reducing demand on the justice system (Need 8). However, we suggest that these recommendations could be broadened in their focus in a number of ways to reflect the potential for technology to transform parts of the justice system, and improve the ability to meet future demand. This includes:

* expanding the scope of the justice case management ICT system recommendation (8.2.3) to include the civil and family law systems. Currently, the recommendation is aimed at ‘creating one view of the client across the criminal justice system’; however, we know that our clients often have intersecting justice needs that are located across the civil, criminal and family jurisdictions. We note that this will include collaboration between Victorian and Commonwealth agencies, as supported in the Royal Commission into Family Violence and the recently released final report of the Family Law Council in its reference on families with complex needs
* broadening the scope of the recommendation relating to dispute resolution technology. We note that this recommendation is aimed at reviewing and removing barriers to the introduction of technology by the *private sector*. However, there is significant capacity for online technologies and platforms to be used, too, by government and the legal assistance sector. This is reflected in the recent Victorian Government’s Access to Justice Review, which recommends greater use of online dispute resolution by government. In recent years, VLA has been examining the significant capacity to expand access to justice through online platforms. We expect that the use of online platforms to provide forms of legal assistance will be a major area of exploration and expansion in coming years, and recommend that Infrastructure Victoria look at incorporating these moves into its recommendations.

**Recommendation 6: Enhanced use of online technology in the justice system**

* That the recommendations relating to online technologies be broadened to include a more whole-of-justice system approach to case management, and to ensure that recommendations reflect the role of technology in facilitating access to justice not only in the private sector but in government and through publicly-funded legal assistance providers.

# Expanding operation hours of courts and tribunals

VLA welcomes the recommendations aimed at expanding the capacity of courts and tribunals through the creation of multi-jurisdiction facilities and other improvements to the built environment (Recommendation 8.3). However, the capacity of courts and tribunals could be expanded, too, through expanded hours of operation.

There are some international examples of courts and tribunals with expanded hours of operation, including weekend courts.[[32]](#footnote-32) Unlike other significant public infrastructure like hospitals and police, the courts operate only during business hours and with significant breaks at various times during the year. Using courts and tribunals outside of ordinary working hours would go towards creating a justice system that puts people at its centre, as is supported by the draft strategy. We note that there has been a pilot through the Magistrates Court in Melbourne of the court sitting on weekends to hear bail and remand matters.[[33]](#footnote-33)

VLA has committed to expanding the hours of operation for its Legal Help phone line to weekends and evenings, which demonstrates the capacity of justice agencies to create additional capacity and at times that may be more convenient for users.

**Recommendation 7: Expanded court and tribunal operation hours**

* That the strategy recommends the expansion of court and tribunal operation hours to increase supply of justice services and in order to better meet the needs of justice users.

# Addressing equity and social impacts in transport network pricing

VLA notes Recommendation 10.2.2 to introduce a transport network pricing regime. VLA acknowledges the intention of the recommendation to reduce crowding and congestion by changing behaviour and managing demand. This includes enabling faster travel times for high-value trips and improving transport choices, including encouraging more trips by walking and cycling.[[34]](#footnote-34) VLA welcomes the strategy’s acknowledgment of the need to address equity and social impacts of pricing regimes.[[35]](#footnote-35) However, the strategy does not fully articulate this ambition.

As at 30 June 2015, warrants for toll fines in Victoria totalled $686,924,234. This figure constituted 40 per cent of Victoria’s total infringement warrant debt. Outstanding toll warrant debt is rising exponentially, and increased 15 per cent from 2013–14 and 80 per cent since 2012.[[36]](#footnote-36) Around half of the impact on the Infringements Court and criminal justice system caused by infringements result from the use of privately owned toll roads.[[37]](#footnote-37) In 2014, the Sentencing Advisory Council recommended the need to ‘identify and implement potential solutions to the increasing burden of tolling infringement offences on the criminal justice system in Victoria’.[[38]](#footnote-38) Recently, together with Infrastructure Victoria and the Centre for Innovative Justice, VLA coordinated a design thinking workshop around this issue. Ensuring the equitable provision of transport and easing the disproportionate social impacts of transport network pricing, is central to these concerns.

**Recommendation 8: Address the equity and social impacts in transport network pricing**

* That Recommendation 10.2.2 acknowledge that people living in outer suburban areas, who already face disadvantage by due to the distance to economic opportunities, have fewer alternatives than driving on roads. Imposing a standard road network pricing scheme without acknowledging the lack of alternatives will further increase the disadvantage faced by these communities.
* That Recommendation 10.2.2 considers the impact on enforcing a road network pricing scheme on the criminal justice system and the legal assistance sector. The transfer of enforcement costs from private operators to the public sector de-incentivises innovation on enforcing mechanisms, and can further disadvantage those forced to rely on roads through interaction with the criminal justice system.

1. Infrastructure Victoria *Victoria’s Draft 30-Year Infrastructure Strategy*,October 2016, 99. [↑](#footnote-ref-1)
2. Above n 1, 68. [↑](#footnote-ref-2)
3. Christine Coumarelos, Deborah Macourt, Julie People, Hugh M McDonald, Zhigang Wei, Reiny Iriana, and

   Stephanie Ramsey, *Legal Australia-Wide Survey: Legal Need in Australia* (Law and Justice Foundation of

   New South Wales, 2012), xiv. [↑](#footnote-ref-3)
4. Above n 3, xvi. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Above n 3, xxi. [↑](#footnote-ref-7)
8. Victoria Legal Aid, Submission No 67 to Department of Justice and Regulation, *Access to Justice Review*, March 2016, 89. [↑](#footnote-ref-8)
9. State of Victoria, Royal Commission into Family Violence: *Volume II: Report and recommendations*, March 2016, 271. [↑](#footnote-ref-9)
10. Department of Justice and Regulation *Access to Justice Review* Volume 1 (2016) 102 – 103. [↑](#footnote-ref-10)
11. Above n 10, recommendation 2.1. [↑](#footnote-ref-11)
12. Infrastructure Victoria, *Draft Options Paper Version 2,* October 2016,432. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. Infrastructure Victoria, above n 1, 5. [↑](#footnote-ref-14)
15. <http://www.smartjustice.org.au/resources/SJ_JusticeReinvest.pdf> referring to Schwartz, Building Communities not Prisons: Justice Reinvestment and Indigenous Over-Imprisonment, Australian Indigenous Law Review, 14, 1 (2010) 2. [↑](#footnote-ref-15)
16. Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, September 2015, 16. [↑](#footnote-ref-16)
17. For example, in 2014 the Government signed a $670 million dollar contract to build a 1,300 bed prison at $515,000 per bed. See SmartJustice ‘Justice reinvestment: investing in communities not prisons’ (July 2015), accessible at <http://www.smartjustice.org.au/resources/SJ_JusticeReinvest.pdf>. [↑](#footnote-ref-17)
18. See, for example, Jose Cit ‘Is Imprisonment Criminogenic?: A comparative Study of Recidivism Rates between Prison and Suspended Prison Sanctions’ (2009) 6 *European Journal of Criminology,* 459 – 480. [↑](#footnote-ref-18)
19. Victoria Legal Aid *Victoria Legal Aid client profiles – high contact users of legal aid services*, June 2014. Accessible at <https://www.legalaid.vic.gov.au/about-us/what-we-do/research-and-analysis/client-profiles>. [↑](#footnote-ref-19)
20. See VLA’s submission to the Sentencing Advisory Council’s [↑](#footnote-ref-20)
21. Victorian Ombudsman, above n 15, 8 – 9. [↑](#footnote-ref-21)
22. Victorian Ombudsman, above n 15, 8. [↑](#footnote-ref-22)
23. Victorian Ombudsman, above n 15, 150. [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. Ibid. [↑](#footnote-ref-25)
26. Victorian Ombudsman, above n 15, 151. [↑](#footnote-ref-26)
27. Infrastructure Victoria, above n 12, 389. [↑](#footnote-ref-27)
28. Victoria Legal Aid, Submission to Consumer Affairs Victoria Safer, Fairer Housing Review: Security of Tenure Issues Paper, December 2015. Accessible at <https://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/other-activities#Residential_Tenancies_Act_Review>. [↑](#footnote-ref-28)
29. Recommendation 100 [↑](#footnote-ref-29)
30. Victorian Women and Mental Health Network, *Report of Listening to Women Consumers’ Experiences in Mixed Sex Psychiatric Wards,* 2007, 5, accessed at <http://www.wmhnv.org.au/wp-content/uploads/2013/09/Nowhere-to-be-Safe-Final-layout.pdf>. [↑](#footnote-ref-30)
31. Recommendation 49. [↑](#footnote-ref-31)
32. See for example, Robert Smith et al, ‘Drug Night Courts: How Feasible Are They? Assessing Cook County’s Example’ (1993) *Bureau of Justice Assistance,* Vol 1, Issue 1. [↑](#footnote-ref-32)
33. Magistrates’ Court of Victoria ‘Weekend Bail and Remand Court’, updated 17 March 2015. Accessed at https://www.magistratescourt.vic.gov.au/news/weekend-bail-remand-court. [↑](#footnote-ref-33)
34. Infrastructure Victoria, above n 1, 114 and 123. [↑](#footnote-ref-34)
35. Infrastructure Victoria, above n 1, 123. [↑](#footnote-ref-35)
36. VLA, WEstJustice, Mooney Valley Legal Service, CommUnity Plus and Peninsular Community Legal Centre, ‘A more fair and efficient toll fines system for Victoria’. [↑](#footnote-ref-36)
37. Ibid. [↑](#footnote-ref-37)
38. Sentencing Advisory Council *Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria* (May 2014), Recommendation 40. [↑](#footnote-ref-38)