In summary

Evaluation of the appropriateness and sustainability of Victoria Legal Aid's Summary Crime Program

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

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Hugh M. McDonald, Amanda Wilson, Zhigang Wei,
Sarah A. Randell and Suzie Forell

Law and Justice Foundation of New South Wales

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LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

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The Law and Justice Foundation of New South Wales is marking 50 years of improving access to justice in 2017.

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Shortened forms

ABS	Australian Bureau of Statistics
ASOC	Australian Standard Offence Classification
ATSI	Aboriginal and Torres Strait Islander
ALS	Aboriginal legal service
CAR	Court Attendance Record
CISP	Court Integrated Services Program
CREDIT/BSP	Court Referral and Evaluation for Drug Intervention & Treatment/Bail Support Program
CLC	community legal centre
CLE	community legal education
DLR	Duty Lawyer Record
DLS	Duty Lawyer Service
DJR	Victorian Department of Justice and Regulation
Foundation	Law and Justice Foundation of New South Wales
GLA	grant of legal assistance
ice	Crystal methamphetamine
LAC	legal aid commission
LAR	Legal Advice Record
LGA	Local Government Area
MWF	minor work file
NPA	National Partnership Agreement on Legal Assistance Services
PC	Productivity Commission
PPF	Victorian Public Purpose Fund
RRR	regional, rural and remote areas
SCP	Adult Summary Crime Sub-program
VALS	Victorian Aboriginal Legal Service
VLA	Victoria Legal Aid

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Overview

In 2012–2013 Victoria Legal Aid (VLA) changed eligibility for adult summary crime services, among others, to remain financially sustainable in a context of rising community demand for legal assistance services. Eligibility for summary crime grants of legal assistance was increased to those accused at risk of imprisonment. An assessment and triage model, incorporating an income test, was introduced into the Duty Lawyer Service. Overall the changes prioritised higher levels of service to priority clients and more serious matters.

This study has found that these changes substantially reshaped provision of adult summary crime services, initially substantially reducing the number of grants of legal assistance. The Duty Lawyer Service also changed to provide: more services overall, more in-custody services, more in-court advocacy services, more services for more serious matters and more services for priority client groups. As the volume and complexity of the matters and clients coming into the summary crime system has increased following the service eligibility changes, so too have the workload pressures faced by the Duty Lawyer Service.

While it was intended that accused ineligible for grants would access the Duty Lawyer Service, wider changes in Victorian community safety policies have subsequently overtaken and driven up demand for summary crime services, together with the overall summary crime workload of VLA, Victoria Police and the Magistrates' Court of Victoria. Key drivers of this include the increase in the number of police deployed to frontline duties, as well as change in the way in which family violence matters are policed and prosecuted.

Increased service demand and caseload appears to have stressed the efficient and effective operation of the summary crime system, with it described as 'approaching crisis' if not already in crisis, due to being 'overloaded, under-resourced and overborne'. There are clear indications that the summary crime system is operating under escalating workload pressure, and that practices and stakeholder relationships are breaking or have broken down at some locations.

Increased demand for summary crime services, in a constrained funding and resource context, threatens the appropriateness and sustainability of VLA summary crime services. VLA's summary crime services were characterised as vital to both the access to justice of Victorians, particularly those socially and economically disadvantaged, and the effective and efficient operation of the justice system. However, the wellbeing of Duty Lawyer Service staff is jeopardised by increased service demand, as is the willingness and financial viability of private practitioners doing VLA funded work. Analyses indicated that, within the current service eligibility settings, demand for grants and duty lawyer services can be expected to continue to increase.

The report sets out the analyses and findings, discusses their implications and recommends repairs and innovations to improve the appropriateness and sustainability of VLA summary crime services.

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Executive summary

This report

Victoria Legal Aid (VLA) provides legal assistance to people charged with summary crime through its Adult Summary Crime Sub-program (SCP). The SCP provides representation services through the provision of grants of legal assistance, a court-based Duty Lawyer Service (DLS), and in-office legal advice. VLA also provides services for summary crime through the Legal Help telephone service.

This report evaluates whether, following changes to the program in 2012–2013, VLA's SCP is *appropriate* to client need and capability and whether it is *sustainable*. The evaluation focuses on changes in the way that clients are selected for or 'triaged' to different levels of assistance, based on their legal problem and their capability.

However, the appropriateness and sustainability of VLA summary crime services both affect and are affected by the broader summary crime justice system. The evaluation is situated in this wider context.

This evaluation is the first project of a research alliance between VLA and the Law and Justice Foundation of NSW.

This executive summary reports the key findings. Note that, in the interests of brevity, key terminology and measures, and the wider context, as set out in detail in the report, are not repeated in this summary.

Reforms to the Summary Crime Program

The SCP is VLA's largest service delivery program. In 2015–2016 it provided some 14,591 grants and 56,034 in-house duty lawyer services at Magistrates' Courts throughout Victoria for adult summary crime matters. Within the duty service VLA may provide in-court advocacy, legal advice and legal information. SCP operating expenditure was $37.6 million, accounting for nearly a quarter of all program expenditure, and 64 per cent of all grants of legal assistance (VLA 2016a). As the largest service sub-program, increasing demand for summary crime services consequently increases pressures on the Legal Aid Fund.

The SCP has been operating in its current form since April 2013, following a period of change in SCP grant and DLS eligibility that commenced in June 2012. Prior to the June 2012 reforms to the DLS Guidelines, VLA's duty lawyer services were available to any accused seeking help. The reforms specifically targeted duty lawyer resources to certain priority accused, and to more severe matters. DLS resources are targeted by, first, assessing need against eligibility criteria, including an income threshold, and then triage to an appropriate level of assistance: 'legal information only', 'legal advice and information only' and 'in-court advocacy'. People remanded in custody, and appearing in court for the first time, are a priority for duty lawyer services, and are eligible to receive legal advice and in-court advocacy for bail applications, irrespective of income and matter type. The changes to DLS eligibility were expected to result in some accused above the income

threshold seeking services from private practitioners and accused facing minor matters self-representing. To support self-representation, the DLS provides legal information factsheets.

Eligibility for grants of legal assistance was also changed at this time, first in October 2012, and then again in April 2013. These changes were intended to bring eligibility into line with other Australian jurisdictions and were expected to move some accused out of the grants service stream and into the DLS. VLA expected that the changes would affect the work of private practitioners, who provide around 70 per cent of grants for adult summary crime, and the complexity and severity of the work handled by the DLS.

VLA faced an 'invidious choice about how to prioritise the Legal Aid Fund' with a necessarily 'imperfect solution to a wicked problem' because 'options for solutions are quite constrained and limited by the funding envelope'
VLA Manager

The SCP reforms were specifically intended to manage escalating demand for SCP services, and the consequential escalation in the cost of providing those services within a constrained funding environment. They were intended to ensure that SCP services were financially sustainable and targeted to people who are most in need. More intensive forms of DLS service were targeted to people who are more financially disadvantaged, facing more severe charges and consequences, and who fall into one or more priority client groups – people with an intellectual disability, acquired brain injury or other mental health issue; people experiencing homelessness; people who cannot effectively communicate in English; Indigenous Australians. More intensive forms of SCP services (e.g. grants and in-court advocacy) were targeted to disadvantaged and priority clients facing more serious criminal charges. The DLS reforms anticipated the impact of the Grant Guidelines changes, and sought to change its culture and operation as a targeted rather than a universal service.

Summary crime context

Notwithstanding service eligibility tightening in 2012–2013, there is evidence that demand for services within the high-expenditure SCP has increased following Victorian Government community safety and family violence policy initiatives.

The Department of Justice and Regulation (2016, p.380) *Access to Justice Review* observed:

> *The data show that there is underlying upward pressure on grants of legal aid. Thus grants of legal assistance will drift upward within the existing guidelines due to the underlying demand drivers such as population growth, socio-economic and demographic factors, and government policies to make the community safer. In the absence of additional funding, Victoria Legal Aid will need to tighten eligibility criteria to continually maintain financial sustainability.*

Further, tightening service eligibility criteria, such as targeting services to disadvantaged people with the greatest need, tends to increase the complexity of public legal assistance work because those who remain eligible typically have, proportionately, more complex and intertwined legal and non-legal needs and less personal and legal capability to effectively deal with those needs.

The evaluation

The purpose of the evaluation is to assess the appropriateness and sustainability of VLA's summary crime services following the program changes and in the context outlined above.

Appropriateness was primarily assessed in terms of the match between the type of service provided and the need, capability and circumstances of the client (i.e. offence and client characteristics etc.).

Sustainability was assessed by examining:

- whether or not the SCP has sufficient resources to effectively and efficiently provide appropriate services aligned with VLA service priorities, and meet demonstrated and projected future demand
- acceptance and support of VLA's targeted provision of summary crime services by key stakeholders, including VLA staff (managers, solicitors and clerks), magistrates and police prosecutors.

Together the findings are assessed and discussed in terms of key service principles of accessibility, equity, expediency, efficiency, effectiveness, durability, flexibility and responsiveness.

Key research questions

The evaluation addressed the following key research questions:

1. Are VLA's adult summary crime services appropriate and sustainable, and are they provided in line with VLA policies and guidelines?

2. What factors affect the appropriateness and sustainability of adult summary crime services?

3. Can the appropriateness, sustainability and strategic outcomes of adult summary crime services be improved?

4. How do VLA's adult summary crime services compare to those provided in other Australian jurisdictions?

Methodology

The evaluation had two main components:

- quantitative analysis of VLA's administrative data on SCP grants and duty services, together with a review of police initiation statistics
- qualitative analysis of documentary materials, in-depth interviews, focus groups and an online survey.

A total of 4.5 years of service data were analysed, from June 2011 to November 2015. This provided one year of data before the changes started, as well as data for the first 2.5 years of operation of the SCP after the 2012–2013 DLS and Grant Guideline changes. Data was

analysed by service type, service provider, matter type and severity, client characteristics and geographic location.

The qualitative analysis was primarily undertaken through case studies at four VLA offices and courts (Bendigo, Broadmeadows, Dandenong and Melbourne) selected to cover a range of service contexts. At these case study sites interviews were conducted with magistrates, police prosecutors, VLA lawyers and clerks, private practitioners providing DLS services and court support staff. The case study material was supplemented with a VLA staff survey sent to lawyers and clerks working in summary crime around Victoria, and a set of 'key stakeholder' consultations, including a focus groups with private practitioners convened by the Law Institute of Victoria, VLA's regional managing lawyers and the project advisory committee.

Secondary analysis of VLA's Client Satisfaction Survey 2015 was also undertaken to examine client experiences and views of the DLS.

In total, the evaluation is based on information and views of 314 clients, staff, stakeholders and advisers.

Findings

Overall, the findings demonstrate that the 2012–2013 grant and DLS eligibility changes initially improved the sustainability of the SCP by reducing provision of grants, and successfully reshaped DLS in-court advocacy to more serious criminal matters, more financially disadvantaged clients and priority client groups. Provision of SCP services was widely seen to be vital to the access to justice of vulnerable Victorians and to support the efficient operation of the summary crime system, including the operation of various court support programs. Evaluation participants, however, reported concerns with the appropriateness of the changes with respect to certain types of matters, clients and circumstances that have moved out of the 'grants service stream' and into the 'DLS service stream', and where the type of assistance offered is more limited. Consequently, the number of people having to self-represent has increased, impacting the work of Victoria Police Prosecutions and the Magistrates' Court of Victoria.

In the period following the SCP reforms, the findings also demonstrate that there has been a substantial increase in demand for summary crime services from accused eligible for grants and DLS advice and advocacy services. This increase was widely attributed by evaluation participants to Victorian Government community safety policies that have seen increased resourcing of frontline policing as well as change in the way in which some matters, particularly family violence related matters, are policed and prosecuted.

The demonstrated rise in demand for summary crime services has not only threatened the sustainability of the SCP, but also the workloads of Victoria Police Prosecutions and the Magistrates' Court of Victoria. All geographic regions have been affected by a rise in the volume of in-custody clients and more complex matters and clients, although some Greater Melbourne locations appear to be under greater strain from heightened workloads than others.

While the overall findings suggest that the 2012 DLS Guidelines have helped the DLS to cope with heightened demand for duty lawyer assistance, the findings also indicate that

demand for grants and DLS services should be expected to continue to increase. At the same time, private practitioners, who provide around 70 per cent of VLA's grants of legal assistance, reported that undertaking legally aided work had become less attractive as the gap between fees for private and VLA funded work has increased, and as VLA funded work has become more time consuming, with higher proportions of in-custody clients and summary case conferencing practices breaking down.

> *… we've got a system, I think, that's creaking at the seams. We are really busting across the board.*
> Magistrate

As the largest component of the justice system, and the point at which members of the community have the most frequent contact, there are community-wide interests in having an effective and efficient summary justice system that provides fair and equal access to justice.

Together, the findings suggested that continued rising demand for summary crime services, in a constrained funding and resource context, threatens the appropriateness and sustainability of VLA's summary crime services.

Specific findings are set out as follows.

How has VLA summary crime services changed?

This first set of key findings is based on the analyses of VLA's administrative data for the period June 2011 to November 2015.

Number and type of services

- There was an overall decrease in the number and percentage mix of grants of legal assistance, in-office legal advice and minor assistance, and an overall increase in duty lawyer and court attendance services. This finding indicates that as eligibility for grants was tightened, demand for duty lawyer services increased.
- Grants of legal assistance declined, on average, 440 per month between the pre-change and post-change period.
- Between the 12-month pre-change period and final 12 months of the post-change period, there was a:
  - 24.2 per cent decrease in grants of legal assistance
  - 17.2 per cent decrease in in-office legal appointments
  - 60.6 per cent decrease in minor work files
  - 14.8 per cent increase in duty lawyer services
  - 109.8 per cent increase in court attendance services.
- Within grants there was a:
  - 29.9 per cent decrease in grants by private practitioners
  - 9.4 per cent decrease in grants by VLA in-house practitioners.
- Within the DLS there was a:
  - 110.9 per cent increase in DLS 'legal advice and information only' services
  - 11.5 per cent increase in DLS 'in-court advocacy' services.

- Comparison of the change in provision of summary crime services across the change periods showed that:
  - grants of legal assistance initially declined, as expected, during and following the Grant Guidelines changes, but since December 2013 have trended upwards
  - as grants of legal assistance declined, provision of DLS services increased at a higher rate, suggesting substitution and replacement of grants by a higher number of DLS services
  - both grants of legal assistance and DLS services have trended upwards across the final two years of data examined, with the growth in grants (15.8%) overtaking the growth in DLS services (14.0%) in this period.
- Introduction of the assessment and triage model of DLS, as expected, transformed DLS services and workload. While the overall number of DLS services increased, the mix of services provided changed. During the 12 months of the pre-change period, 'in-court advocacy' comprised 89.4 per cent of DLS services, and 'legal advice and information only' comprised 10.6 per cent. However, in the final 12 months of the post-change period, 'in-court advocacy' decreased to comprise 77.1 per cent of all DLS services, notwithstanding an 11.5 per cent overall increase in the total number of in-court advocacy services. In the final 12 months of the post-change period 'legal advice and information only' increased to comprise 17.3 per cent of DLS services, while 'legal information only' comprised 5.6 per cent.
- The four criminal matter types that accounted for the highest increase in SCP services in the time period were 'Abduction, harassment and other offences against the person', 'Acts intended to cause injury', 'Illicit drug offences' and 'Offences against government procedures, government security and government operations'. These offence types include breaches of various types of orders and justice procedures, including breach of family violence intervention orders and breach of bail, as well as substantive offences potentially associated with family violence. These findings point to change in policing and prosecution of family violence, illicit drugs and breach of bail.

Geographic distribution of services

Geographic analyses of VLA's administrative data showed the following:

- The increase in provision of DLS services was not equally distributed across VLA office locations, with VLA offices within the Greater Melbourne area having higher increases in DLS services, compared to those in regional and rural Victoria.
- The increase in DLS services for the Melbourne office was exceptional, being more than 2.5 times that of the next highest increase. This finding suggests that factors and circumstances above and beyond the 2012–2013 service eligibility guidelines have affected service demand at Melbourne Magistrates' Court.
- Over the change period there was an intensification of DLS services to clients residing in the growth corridors west and south-east of Melbourne.

In-custody services

- The provision of in-custody DLS services doubled across the period June 2011 to November 2015, rising from 600 per month to around 1,200 per month.

- The increase in number of in-custody DLS services was not uniform across VLA offices, with a higher increase in Greater Melbourne areas compared to regional areas.

Outcome of summary crime services

Analysis of how the outcome of summary crime services changed across the guideline change periods showed that grants for matters receiving less punitive sentences decreased substantially, and provision of DLS services for matters receiving more punitive sentences increased substantially.

Who is assisted in the SCP and for what criminal matters?

Grants of legal assistance

Client demographic and criminal matter characteristics associated with grants of legal assistance have, as expected, been reshaped by the 2012–2013 Grant Guidelines changes. While there was an overall decrease in the number of grants in the post-change period, there was a higher concentration of grants to clients who were more disadvantaged, who were in custody and who were facing more severe criminal matters. Based on the data available, analyses showed the following:

- The number of grants per month decreased in the post-change most markedly for females, people aged 65 years and over, and people in full-time employment, and clients with no indicator of disadvantage.
- Grants increased to homeless people and self-employed people.
- Notwithstanding a lower overall number of grants in the post-change period, the number of grants per month provided to in-custody clients increased, while the number to clients not in custody was nearly halved.
- The number of grants per month decreased for most criminal matter types across the change period, although there was an increase for 'Abduction, harassment and other offences against the person' matters.
- As expected, given the 2012–2013 Grant Guidelines changes affecting eligibility for offences under the *Road Safety Act*, the largest decrease in number of grants per month was for 'Traffic and vehicle regulatory offences'.
- In their place was a higher proportion of grants for 'Offences against government procedures etc.', 'Illicit drug offences', 'Acts intended to cause injury' and 'Unlawful entry with intent/burglary, break and enter'.
- Overall, the post-change period has seen less and a lower proportion of grants for less severe criminal matter types.

DLS services

The 2012–2013 DLS and Grant Guidelines changes were expected to result in some people moving out of the grants service stream and into the DLS. The nature of the DLS work has shifted substantially, with the number and proportion of legal advice and in-court advocacy decreasing for 'Traffic and regulatory offences' and increasing for more serious types of matters. The findings demonstrate that while overall DLS workload has increased substantially, if the 2012 DLS changes had not been implemented, duty lawyer workload would have been even higher.

Analyses showed the following:

- The introduction of the assessment and triage model of service saw more and a higher proportion of 'in-court advocacy' services being provided to priority clients with higher levels of disadvantage.
- Between the pre-change and post-change periods, services to in-custody clients increased from 16.0 per cent to 24.4 per cent of all in-court advocacy services.
- With the exception of 'Traffic and vehicle regulatory offences', the number of DLS services per month increased between the pre-change and post-change period for nearly every criminal matter type and DLS service level. In particular, there were more and a higher proportion of in-court advocacy services for more severe criminal matter types. There has also been a large increase in the number of 'legal information only' and 'legal advice and information only' services for matters of all severity. This suggests that there is likely to have been a large increase in the number of defendants having to either self-represent or seek private legal representation. In fact, the number of accused receiving a DLS service *other than in-court advocacy* more than doubled to around 520-570 per month in the post-change period, notwithstanding the concurrent increase in the overall number of in-court advocacy services.

Service eligibility changes

To determine factors independently affecting the provision of grants and DLS services, a series of regression analyses was undertaken. This analysis showed the following:

- Consistent with the 2012 DLS Guidelines, in the post-change period in-court advocacy is more likely to be provided for DLS priority client groups and more severe matters, and 'legal information' was more likely to be provided for minor matters.
- After controlling for the factors in the regression, the estimated probability of receiving a grant of legal assistance was approximately halved for most demographic groups, matter types and matter severity groups in the post-change period, while the estimated probability of receiving a DLS service increased.

How may demand for SCP services change?

Analysis of VLA data, together with data on police initiations in the Magistrates' Court, was used to forecast demand for grants and DLS services to August 2017. Analyses showed the following:

- The number of police initiations broadly tracked with grants and DLS services until June 2013, after which the number of police initiations trended upwards. This period coincides with the deployment of additional officers to frontline policing roles.
- As police initiations increased, after June 2013 provision of DLS services and grants have both increased.
- Given the current VLA summary crime service eligibility settings, and the continued trend of rising police initiations, the demand for SCP grants and the DLS services can be expected to continue to rise.
- Anticipated rising demand for grants and DLS services is likely to exacerbate financial and workload pressures on VLA's summary crime services, and threaten the sustainability of the SCP within the current service settings and resources.

How satisfied are clients with VLA summary crime services?

Secondary analysis of DLS respondents in the VLA's 2015 Client Satisfaction Survey indicated the following:

- A majority of clients indicated the DLS was easy to access, expressed positive opinions about the service and lawyers, were satisfied with the service they received and the outcome of the matter, and would recommend the DLS to others.
- A small but sizable minority, however, had negative experiences. The most commonly cited areas for improvement concerned the perception that the DLS was under-resourced relative to the number of people seeking assistance, and how this affected the nature of the services provided, such as not getting enough time with lawyers, having to wait too long, and difficulty obtaining services they wanted.

What is the context to the changes in VLA summary crime services?

The focus groups, interviews, surveys and consultations canvassed factors affecting the appropriateness and sustainability of VLA's summary crime services, including factors affecting demand for services, the operation of the summary crime system and stakeholder relationships.

Critically, while the 2012–2013 DLS and Grant Guidelines changes were identified as one factor impacting DLS and system workloads, other factors were also identified as having increased service demand and system workload above and beyond the anticipated impact of those changes. Stakeholders widely identified the overall increase in the volume of summary crime matters as having strained the Victorian summary crime system.

> *When I first started prosecuting 10 years ago the majority of the Legal Aid stuff was pretty low level, whereas now it's really a lot more complex than it's ever been, and it's only getting more and more complex every day as the court gets pressure and they're dealing with more and more, I suppose, significant and complex matters.*
> Police Prosecutor

Noting how inextricably linked all the players in the summary crime system are, VLA, Victoria Police Prosecutions and the Magistrates' Court of Victoria have all had to cope with rising summary crime workloads. Summary crime work has become increasingly time-pressured due to more matters overall, more complex matters, more complex accused and a more complex service environment. There was a common concern among evaluation participants that if the system 'wasn't yet in crisis' it was 'approaching crisis' and was 'overloaded, under-resourced and overborne'.

Importantly, all geographic regions have been affected by heightened workload pressures associated with the rise in the volume of summary crime matters, in-custody clients, and more complex matters and clients, although some locations appeared to be under more strain than others. Greater Melbourne and regional and rural areas appeared to face distinct challenges stemming from the particular demographic and infrastructure features from region to region.

Systemic drivers of rising summary crime system workload

The Victorian Government community safety policies were identified by evaluation participants as a key driver of the rising summary crime system workload. Allocation of increased resources to frontline policing was observed to have had downstream impacts resulting in more Magistrates' Court prosecutions. Another key driver was the change in the way family violence was policed and prosecuted.

Additional factors reported to influence workload included population growth, tightening of VLA service eligibility guidelines, widening of the jurisdiction of the Victorian Magistrates' Court and the geographic boundaries of particular courts, and changes in sentencing, corrections, parole and bail practices. Together, these factors were seen to result in:

- residualisation (a higher concentration) of more disadvantaged and complex clients as services to these groups are prioritised
- more complex and serious matters
- rising in-custody matters
- outdated and outgrown infrastructure and facilities at some court locations
- insufficient resourcing for Police Prosecutions, resulting in police briefs not being available until the day of court and prosecutors only being available to summary case conference for half days at most courts
- increased self-represented defendants stemming from limited public legal assistance service capacity
- fraying relationships between agencies within the system.

Resourcing of summary crime system

The inter-dependent players in the summary crime system – the Magistrates' Court, Victoria Police prosecutors and VLA – were each identified as in need of resources to address the increased demand on the system. Further, each set of stakeholders reported how the effectiveness and efficiency of their work was detrimentally affected by resourcing deficits in the other parts of the system.

Resourcing of SCP

Magistrates and police prosecutors observed how VLA's tightening of eligibility for summary crime services in response to its funding pressures had affected the capacity of the DLS, court and Police Prosecutions. They saw this as one factor contributing to overall system inefficiency and cost. The fewer summary crime services VLA was able to fund, the more time taken by police prosecutors and the court dealing with self-represented defendants. An adequately funded SCP was reported by participants to be vital for the 'earlier' and 'cheaper' resolution of summary crime matters, by avoiding unnecessary adjournment and delay. A common view was that because court time is the most expensive part of the system, the more that can be done to progress matters in advance and outside of court in a 'timely and appropriate fashion', the better.

> *… the work keeps going up and up but the resources by way of secondary resources for VLA, Prosecutions, Registry, magistrates, aren't provided.*
> Police Prosecutor

VLA and private practitioners reported that the summary crime system was being 'propped up' by their commitment to providing legal assistance services for the public, and how they had had to work harder and longer in an inefficient summary crime system. According to VLA, practitioners had 'absorbed the deficit' by doing more and more, to the risk of staff wellbeing. Private practitioners thought that government neither understood nor appreciated their commitment to undertaking VLA funded work, and said that in addition to concerns with the growing gap between the fees paid by VLA and private work, they also bore the costs of system inefficiencies and breakdown in both their VLA funded and private work.

> *… what we want to achieve is just, obviously, helping a lot more people. But in doing so it's putting a strain on lawyers, court systems, prosecutors …*
> VLA Clerk

Stakeholder relationships

Another factor affecting SCP service capacity was the nature of relationships between key system players: magistrates, court staff, police prosecutors, private practitioners and VLA staff. Relationships varied by court, and practices appeared to be better in some places than others. Where key players work together effectively, the summary crime system appears to operate more efficiently. While goodwill and effective relationships appear to have allowed some places to cope with rising workload pressures, there was evidence of workload pressures straining relationships and practices breaking down. In general, the smaller the number of people filling key roles in a particular location, the stronger the interpersonal and working relationships, yet the bigger the impact of any particular individual.

> *…it's not just about more resources, there are a lot of things that could be improved in terms of efficiency, but I don't think that Legal Aid can do it on its own … I think it needs to be done with the courts and the prosecutors and everyone else …*
> VLA Managing Lawyer

Variation in operations and practices were found by geographic location and the relative size of court. In particular, Melbourne was characterised by evaluation participants as being 'too big' to work optimally. By comparison, suburban and larger regional courts, and smaller regional and rural courts, tended to have more established interpersonal relationships, although each tended to face particular service challenges.

Courts also varied in:

- approaches to case management
- attitude to sentencing indications
- availability of court support services
- infrastructure and some buildings no longer fit to cope with the number of accused summonsed to court or remanded in custody.

Are VLA's SCP services appropriate to legal need and capability?

The evaluation examined the appropriateness of VLA's SCP services by canvassing how well services are matched to clients' legal needs and capability. Optimal service settings appropriately meet legal need with the least intensive (and expensive) form of service.

Allocation of VLA's summary crime services

There was a consensus view that VLA resources were being expended on more serious and more complicated matters, and that, generally, the mix of summary crime services was appropriate given the resources available. While the 2012–2013 guideline changes were seen as having prioritised services to clients 'most in need', there were, however, concerns about service eligibility for particular types of people and matters. Views, however, differed as to the extent to which the grant and DLS eligibility guidelines could or should be amended, given the trade-offs between service eligibility, financial impact and workloads.

> *It might be a young person, who might be in the space of a diversion, but they wouldn't even know what a diversion means… Well, they might see a duty lawyer who might give them that advice, but there will be circumstances where they're not availing themselves of a better outcome.*
> Advisory Group Member

A particular concern was expressed about the appropriateness of assisting clients with complex needs and legal issues in the hectic, time-constrained environment of the DLS.

Mix of summary crime services

While VLA staff tended to see the mix of services provided as appropriate, views diverged as to the appropriateness of particular elements of the guidelines, VLA policies and practices. These are set out in detail in the report.

VLA lawyers indicated there was 'lost value', due to VLA's administrative systems not sufficiently capturing the level of work that was required for some types of matters and clients following the change of DLS model. A mechanism to recognise 'extended duty service', with improved clarity about the clients and matters where heightened services are appropriate was suggested as a way to improve appropriateness and quality of service.

Grants of legal assistance

VLA and private legal practitioners reported concerns over the tightened eligibility for grants, and consequently, matters slipping into the DLS where the type of assistance available is, in turn, limited by the DLS Guidelines. For instance, because DLS does not provide in-court advocacy for 'not guilty' pleas, legal practitioners thought that some people and matters missed out on legal assistance where it could make a difference. Key areas of concern included:

- lost opportunity for diversion and early intervention – first offenders and young people
- adverse outcomes beyond 'risk of imprisonment'
- a defendable case – a 'good' not guilty plea
- imprisonment for traffic and driving offences
- special circumstances for complex clients.

DLS services

The general view of participants was that the DLS targeted legal advice and in-court advocacy to the right type of matters and clients. VLA staff generally thought the assessment and triage DLS service model was vital for coping with heightened demand for

DLS services, and provides a useful framework for prioritising those seeking assistance. Nonetheless, there were also concerns with how the DLS Guidelines operated for some particular types of people and matters, and what it was realistic and appropriate to expect the DLS to do in a pressurised service environment. There was widespread concern about the volume of matters at some courts, and the time available for each client, particularly given an inescapable trade-off between the number of clients and the complexity of their matters, and the time constraints of the DLS service environment.

Overall, the DLS environment was said to 'work best' when the police brief was sufficient, and for clients who are more capable of helping themselves, who will be pleading guilty and who are looking at a fine or Community Corrections Order.

The DLS environment, however, worked less well where there were complicating factors associated with unavailable or insufficient police briefs of evidence, for high need and less capable clients facing all types of matters, including more minor and straightforward ones, where adjournments are required, and for those clients who have a defendable case or may have an opportunity to get a diversion or non-conviction.

> *… there's a clear gap between those who don't qualify for us and those who can afford to pay for someone.*
> VLA Lawyer

The report sets outs findings concerning the service challenges faced by the DLS, the impact of the 2012 DLS Guidelines changes, the appropriateness of different DLS services levels for particular clients, identified 'justice gaps', the appropriateness of the assessment and triage model, managing DLS client expectations and impacts of the Magistrates' Court on the DLS in different locations in detail.

System benefits of legal assistance services

VLA funded summary crime services contribute to the capacity and efficiency of the summary crime system. VLA's capacity to provide duty lawyer services was said to have a linear relationship with the number of self-represented defendants, and with court and system efficiency. Provision of in-court advocacy services and negotiation with police prosecutors at summary case conferencing reduces the time taken to dispose of matters. Duty lawyers fill a critical role connecting complex and high need clients with Magistrates' Court support services.

Are VLA summary crime services sustainable?

In the face of rising demand, there was a wide consensus that VLA's summary crime services had been tightened enough, or too much with respect to some types of matters and accused. Any further tightening was seen as detrimental both to access to justice and the effective operation of the summary crime system.

Grants of aid to private practitioners

Given that private practitioners perform some 70 per cent of the grants of legal assistance, sustainability of the SCP is contingent upon private practitioners continuing to take on VLA funded work. Factors affecting the sustainability include:

- private practitioner–VLA relationship, which VLA managers and private practitioners described as having been strained following the 2012–2013 Grant Guidelines changes. Private practitioners reported that poor communication and lack of clarity had created uncertainly about how they were expected to apply the eligibility criteria for grants of legal assistance
- administrative burdens undertaking grants of legal aid, which were a source of ongoing tension with VLA that made legal aid work less attractive
- practitioner goodwill and financial viability. While private practitioners said the work done for clients on a grant of aid went well beyond the level of funding they received from VLA, there was a view that VLA funded work was becoming less financially viable. Increased time demands associated with accessing in-custody clients, and police prosecutors being unavailable for summary case conferencing in advance of court, further affect the financial viability of VLA funded work. Some private practitioners have formed the view that VLA funded work may not be sustainable in the long-term without some action on fees, and the way in which VLA and the profession work together.

Evaluation participants also identified some regional and rural areas with few or no private practitioners prepared to do VLA funded work.

The Duty Lawyer Service

Threats identified by participants to the sustainability of the DLS included:

- increased volume and complexity of DLS workload in the face of static DLS resources
- increased volume of in-custody matters. In-custody work is both prioritised and resource-intensive, and is exacerbated by insufficient cells at courts and accused remanded in custody being brought to court late in the afternoon
- reduction in VLA staff wellbeing; fatigue. The demanding nature of duty lawyer work coupled with a lack of additional resources to manage escalating demands, threatens staff wellbeing and contributes to staff turnover. Staff identified a 'churn and burn' phenomenon, associated with the negative impact of constant workload pressure
- level of organisational support for staff in the face of escalating workload. VLA staff drew a distinction with how Victoria Police sought to ensure reasonable working conditions for its staff. Overall, the level of frustration among staff appeared to be higher at some offices than others, and was primarily driven by concerns with the caseload and how this affected the services they were able to provide. Other factors were associated with the particular service environment at the courts they work

> *… with the change of guidelines, I'm aware that some of the duty lawyers are under enormous pressure and have to stretch. They have an enormous caseload to get through each day. I sense that they're not adequately resourced. I sense there aren't enough of them …* Magistrate

- court infrastructure. Poor and outdated infrastructure at some courts makes for a more stressful working environment
- managing workload and competing demands at court. Duty lawyers often have to negotiate multiple competing demands on their time, which adds to the pressure of the DLS service environment. The productivity and demands on the DLS were said to rest

heavily on the Magistracy, and particularly the case management approach adopted, as well as how duty lawyers were managed by VLA regional managing lawyers
- sustaining the quality of service in the face of the volume and complexity of matters. At some point, weight of numbers inevitably impacts quality of services and the time available for each client.

How do VLA summary crime services compare to other jurisdictions?

The scope to compare the performance of VLA summary crime services with those in other jurisdictions is limited by lack comparable information about service inputs and outputs. Differences based on Australian Bureau of Statistics court data and National Legal Aid statistics are detailed in the report.

Our comparative analysis of service models and eligibility guidelines indicate the following:

- There is some consistency in the means, merits and other tests applied to eligibility for criminal grants of legal assistance across Australia (though the value in the means test varied), noting that some jurisdictions set out special circumstance exceptions to their grant guidelines.
- Most jurisdictions provide duty lawyer representation for adjournments, bail applications, people in custody for their first appearance and straightforward guilty pleas. Grants, rather than duty lawyer representation, are generally provided, subject to eligibility criteria, for complex guilty pleas or defended cases/hearings.
- In most jurisdictions, legal advice was provided to all people seeking duty lawyer assistance (though the terms of this advice and particular types of matters varied somewhat).

> *… the cost benefit of legal aid or the cost benefit of services. Spend one dollar on a legal aid lawyer being somewhere, whether it's private or in-house, what's the saving? The net saving of resolution, quickly dealing with matters, effectively sorting and triaging issues, not taking up valuable court time … If you don't look at [the system] holistically, you don't get that.*
> Advisory Group Member

How can VLA summary crime services be improved?

The evaluation canvassed participant views to improve VLA summary crime services. Suggested improvements included changes both internal and external to VLA.

Suggested change within VLA to improve SCP services concerned three main areas: summary crime resource allocation, service eligibility changes and changing the approach to service delivery.

Suggested external changes to improve SCP services were centred on improved working relationships, and a shared response to managing increasing summary crime workload.

What are the implications of the findings?

Taken together, the findings above indicate that in the short term, the 2012–2013 Summary Crime Program reforms improved the sustainability of the SCP and reshaped service provision to better target services by client need, income and capability. However, these changes have since been overwhelmed by factors largely beyond VLA control, including increased numbers of accused eligible for grants and DLS advice and advocacy services, and a constrained resource environment.

With a forecast further rise in service demand, under the existing SCP service settings and without *additional resourcing*, it is likely that the appropriateness and sustainability of services will be further compromised. In particular, the report identifies sustainability risks for:

- those working in the system, in terms of staff burnout and fatigue
- other parts of the system, with displacement of legal need onto other, more expensive, parts of the justice system, or other legal services already faced with funding constraints and little or no service capacity
- clients and services, with the increase in the number of self-represented defendants who are facing more serious charges, given that VLA has little or no scope to further limit eligibility for 'minor' matters.

If VLA resourcing remains constrained, VLA has limited options that it can take to improve SCP sustainability that will not have impacts and costs for others. Four options and their likely implications are canvassed in the report:

- changing SCP funding allocation, which shifts resourcing from other parts of VLA and consequently will reduce those service streams
- tightening eligibility for summary crime services, which, noting the already tight criteria, will have access to justice implications for low income accused, as well as system implications in terms of increased self-represented defendants
- replacing more intensive services with less intensive services, again putting more pressure on accused, particularly those with limited capability, and consequently, the system
- imposing service caps, which are likely to extend delay and case backlog in the Magistrates' Court.

Accordingly, the findings strongly indicate that while VLA can take various actions to support service appropriateness and sustainability, such change will have wider access to justice and justice system impacts, and can only be part of the solution. Increased demand is affecting the whole summary crime system and a system-wide response is required. Issues of appropriate resourcing are central, and inevitably underpin reform and redesign.

Summary of recommendations

The findings suggest that both system-level and VLA responses are required to improve the appropriateness and sustainability of VLA's summary crime services, with potential benefits also for the summary crime system more broadly. In fact, the findings demonstrate the interconnectedness between the key institutions that comprise the summary crime

system, how the actions of one can impact and/or undermine the initiatives of others, and the need for coordinated system-wide responses to system problems. The first recommendations are directed broadly to summary crime system stakeholders.

The findings also point to the benefit of VLA revisiting the purpose and aims of the SCP in light of the change to the wider summary crime system, and the challenge of appropriate and sustainable summary crime service provision. With this in mind, further recommendations are directed to VLA and what it intends to achieve with the SCP, including developing 'enhanced' and 'extended' service offerings to provided more client-focused legal assistance and improved client experience.

> *If you don't get the cogs all turning together, like the well-oiled machine that it has to be, then you get problems.*
> Advisory Group Member

The following lists the recommendations that are set out in more detail in Chapter 8 of the report. As such, in the interests of brevity, that wider context and discussion is not repeated here.

Collaboration and coordination

Recommendation 1: VLA together with other stakeholders should collaborate and co-ordinate actions taken in response to a growing summary crime workload. This could take the form of a high-level group (e.g. Summary Crime Working Group) comprising key stakeholders who are in a position to effect change.

Repair to innovate

Recommendation 2: The Summary Crime Working Group should be tasked to undertake the following:

- Examine and address the impact of increased workload on the efficient and effective operation of the summary crime system and its constituent parts, including VLA.
- Co-ordinate action taken to try to 'repair' those parts of the system breaking down, and/or to develop and implement new ways of working to manage system and workload pressures.
- Collect and share information, to better *anticipate* and *respond to* changing circumstances.
- Develop key lead indicators and other data to improve timely response to changing demand.
- Investigate resource needs relative to workload and the achievement of a minimum expected practices, and with a view to improving and maintaining overall system efficiency and effectiveness.

Specific changes in the summary crime system

The following recommendations concern more specific issues raised in this report which are broader than, but affect, VLA's SCP, and which require action from a range of stakeholders.

Reconsideration of flow into the system

Recommendation 3: The Summary Crime Working Group should review whether or not there are some types of minor matters that might be appropriate to dispose of without a court appearance.

Repair to innovate – effective summary case conferencing

Recommendation 4: The Summary Crime Working Group key stakeholders should recognise that the implementation of effective reforms to VLA's SCP will only be effective if key elements of the summary crime system are functioning as intended, and that some action and resources may be required to achieve this. In particular:

- the timely disclosure and sufficiency of police briefs should be reviewed
- the conduct of summary case conferencing should be reviewed, and where necessary improved
- VLA funded summary crime matters (undertaken by VLA or private practitioners) should be given appropriate priority by Police Prosecutions and the court.

Magistrates' Court environment

Recommendation 5: The Summary Crime Working Group should review the optimal 'size' of the summary crime jurisdiction of the Melbourne Magistrates' Court, with a view to decentralising or shifting some of its summary crime work to enhance overall efficiency.

Support for self-represented defendants

Recommendation 6: The Summary Crime Working Group should consider commissioning a trial to determine the cost effectiveness of providing increased legal assistance at the duty stage for low capability clients (with the potential savings to the court of reducing the number of self-represented defendants) versus the current system. The aim should be to determine the types of accused and summary crime matters where the benefits to the operation of the system outweigh the cost of providing legal assistance services to those accused that do not satisfy the current DLS service eligibility settings.

Managing serious driving matters

Recommendation 7: The Department of Justice and Regulation should consult relevant stakeholders, and review the operation of the relevant law and sentencing options for drive while suspended and drive while disqualified offences, and their impact on Magistrates' Court caseload, and consider law, court program and service reforms.

We now turn to recommendations specifically concerning VLA and its SCP.

Appropriate and sustainable funding

Recommendation 8: Funding of the SCP should be linked to demonstrated demand for summary crime services by those eligible for grants and DLS advice and advocacy services. Appropriate funding models should be developed, based on key lead indicators, to align SCP resourcing with demand. This will require the Department of Justice and Regulation and VLA to determine a minimum accepted level of service, and identify how upstream drivers affect SCP service demand. At a minimum this should cover grants of

legal assistance and duty lawyer services, and needs to be robust enough to model anticipated demand across the state. So long as SCP funding remains dislocated from demand from eligible clients, it is likely that there will be ongoing challenges to the appropriateness and sustainability of the SCP given the demand drivers that are beyond VLA's control.

Reshaped summary crime services

Recommendation 9: Given the changing environment and VLA's *Strategy 2015–18* strategic directions focused on timely intervention and matching services to the needs and abilities of clients, VLA should revisit the purpose of the SCP, its priority clients, the role of different summary crime services, and the difference they are intended to make. VLA should then consider further reshaping SCP services to better meet the needs and abilities of those priority clients for whom it seeks to make a difference. In particular, SCP services may be more appropriate and better matched to client legal need and capability through enhanced, client-focused services for defined priority areas.

Minimum standard of service

Recommendation 10: To support appropriate and sustainable services VLA should articulate a definition of 'minimum accepted standard of service' that it expects the DLS to provide clients. This should take into account client and matter type.

Grant Guidelines

Recommendation 11: VLA should review the operation of the Grant Guidelines, and investigate defining additional 'special circumstances' to meet the needs of people who may be at risk of significant detriment and/or where VLA funded services may be of substantial benefit. For instance, young people facing a first conviction who satisfy merits for a plea of not guilty and/or particular exceptional circumstances should be considered.

Enhanced legal information

Recommendation 12: VLA should determine what, if any, its role is in providing enhanced legal information for summary crime, especially for accused likely to have greater ability to self-represent with access to improved legal information offerings.

Enhanced and extended duty service

Recommendation 13: VLA should review the mix of its summary crime services and consider implementing 'enhanced' and 'extended' DLS services targeted to defined types of clients, matters and circumstances where it seeks to make a difference.

Recommendation 14: To improve capacity for timely intervention and match services to needs, VLA should investigate whether or not there are client and operational benefits in integrating social work capacity into the SCP. Any such service innovation should be trialled and evaluated to determine if benefits outweigh costs.

Recommendation 15: To improve capacity for timely intervention and to match services to needs, VLA should consider the utility of screening tools such as 'legal health checks' to identify the wider legal needs of particular identified priority client groups. Any such service innovation should be trialled and evaluated to determine if benefits outweigh costs.

Recommendation 16: VLA should consider defining 'exceptional circumstances' for enhanced DLS services for minor matters.

DLS client expectations

Recommendation 17: VLA should develop strategies to manage DLS client expectations. Where practices vary, information tailored to particular locations may be necessary.

DLS priority clients

Recommendation 18: VLA should review inconsistency between VLA's Priority Client Framework and DLS priority client groups. VLA should also provide further guidance to support and direct duty lawyer discretion to provide a higher level of service.

DLS assessment and triage

Recommendation 19: VLA should periodically review assessment of matter severity against Sentencing Council of Victoria data. To support and improve triage practice, VLA should consider developing a more comprehensive listing of criminal matter severity. There may also be benefits in trialling and evaluating alternative DLS assessment and triage models, and comparing them to the current practices, to determine operational cost-benefits, particularly at those locations with higher caseloads.

Capping the DLS

Recommendation 20: To improve services to clients and manage excessive demands on the DLS, VLA should investigate developing a framework to determine the maximum volume of work that a duty lawyer should be expected to deal with, to the minimum acceptable standard in the mentions list. Where caseloads are excessive, strategies to manage demand and preserve service quality and sustainability should be implemented and clearly communicated to key stakeholders.

Valuing VLA's summary crime services

Recommendation 21: VLA should review how it 'values' SCP services and develop indicators to monitor and report this value. For example, VLA might consider standard recording of some additional aspects of its summary crime services, such as number of summary case conferences, sentence indications, diversions and number of clients assisted to get into and complete various Magistrates' Court programs.

Smarter data

Recommendation 22: VLA should investigate and consider the utility of modifying what and how it records summary crime service data, and how the data it records can be used for routine monitoring and evaluation of program performance and change.

Smarter services

Recommendation 23: VLA should investigate investing in additional monitoring and evaluation intended to learn more about 'what works' in its summary crime service offerings, and improve capacity for evidence-based practice.

1. Introduction

In July 2015 the Law and Justice Foundation of New South Wales (the Foundation) and Victoria Legal Aid (VLA) entered into a research and evaluation alliance to build the strategic evidence base for the provision of legal aid for disadvantaged people, and share learnings across the legal assistance sector.

VLA subsequently engaged the Foundation to evaluate the appropriateness and sustainability of its summary crime services, its largest service delivery program, and in particular, changes to Summary Crime Duty Lawyer Service Guidelines and Summary Crime Grant Guidelines implemented in 2012 and 2013, as the first project under that research alliance.

That evaluation is the subject of this report.

This evaluation

The purpose of the evaluation is to inform VLA's future strategic and operational planning of summary crime services.

The evaluation is framed around the following key questions:

1. Are VLA's adult summary crime services appropriate and sustainable, and are they provided in line with VLA policies and guidelines?

2. What factors affect the appropriateness and sustainability of adult summary crime services?

3. Can the appropriateness, sustainability and strategic outcomes of adult summary crime services be improved?

4. How do VLA's adult summary crime services compare to those provided in other Australian jurisdictions?

The appropriateness and sustainability of VLA's summary crime services is examined using quantitative and qualitative analytical techniques. Appropriateness is assessed in terms of key service principles and the match between the type of service provided and the need, capability and circumstances of the client. Sustainability is assessed by examining whether or not VLA's Summary Crime Program has sufficient resources to effectively and efficiently provide appropriate services aligned with VLA service priorities, and meet demonstrated and anticipated future client demand. Sustainability is further examined by canvassing key stakeholder views of VLA's summary crime service and performance, including VLA staff (managers, solicitors and clerks), magistrates, police prosecutors and private practitioners. We draw on key access to justice service principles to examine whether VLA's summary crime services are appropriate to the clients' legal need and capability, and how accessible, equitable and consistent, targeted, timely, expedient and efficient, effective, and durable and responsive the services are.

Terminology

In this report, we use the terms **'public legal assistance'** and **'public legal services'** as they are commonly used by participants, and within the public legal assistance sector, to refer to legal assistance services provided with public funding. These terms are used interchangeably and refer to the suite of services – including grants of legal assistance, duty lawyer services, minor assistance, and legal advice, education and information – provided and funded by VLA and other publicly funded legal service providers.[1]

The term **'VLA services'** is used to refer to public legal assistance services provided and funded by VLA, and includes legal assistance provided by private practitioners under a grant of legal assistance.[2] Note also that in the qualitative material reported, some participants use the term 'legal aid' to refer to the public legal assistance services funded and provided by VLA, and use the term 'representation' to refer to services provided in-court by legal practitioners in pre-court processes such as summary case conferences. To aid clarity, we refer to representation services provided by duty lawyers in court as **'in-court advocacy'**.

The term **'duty lawyer services'** is used to refer to legal information, advice and in-court advocacy services provided by VLA or private practitioners attending the Magistrates' Court of Victoria in the 'mentions' and 'in-custody' lists. We used the term 'duty lawyer service' to also include any associated minor assistance work and subsequent court attendance work provided by VLA duty lawyers consequent of a duty lawyer service episode.

The term **'private practitioner'** is used collectively to refer to solicitors and barristers in private practice. Private practitioners often assist clients under a grant of legal assistance funded by VLA, and also provide duty lawyer services for VLA at some courts.

Legal practitioners tend to distinguish more complex and difficult matters and clients from ones more straightforward and simple. **'Complex matters'** are those that tend to be more legally involved, such as those that raise more issues of law and fact. In the summary crime context this tends to include those matters that are more serious and that are subject to more severe sanction, as well as matter types raising more evidentiary issues. **'Complex clients'** tend to be those with various non-legal needs that affect lawyer–client communication and client participation in the disposal of their matter. Examples of more complex clients include those experiencing cognitive impairment or mental illness, those with poor English communication skills, or with emotional and behavioural issues, and those experiencing multiple, intersecting disadvantage. **'Complex'** matters and clients tend to take more time and effort to assist.

'Self-represented defendants' is the term used to refer to people appearing in court who are not represented by a legal practitioner, also known as 'self-represented litigants', 'litigants in person' or '*pro se* litigants'. Self-represented defendants may have received

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[1] Other publicly funded legal assistance services in Victoria include community legal centres (CLCs) and Aboriginal legal services (ALSs).

[2] Note that under the Legal Aid Act 1978 (Vic) the strict legal meaning of the term 'legal assistance' refers to what is more commonly known in everyday discourse as a 'grant', a 'grant of assistance', and 'case work' services, and specifically excludes 'duty lawyer services or legal advice'. See section 2 *Legal Aid Act 1978* (Vic).

legal advice and information before appearing in court. We use the term 'defendant' here to describe the nature of self-representation in the criminal context.

The term **'summary crime matter'** is used to refer to a criminal matter that is proceeding summarily – that is, without an indictment or jury trial – in the Magistrates' Court of Victoria. We use the term here to include summary offences as well as indictable offences tried summarily[3], but not committal proceedings for indictable matters heard in the Magistrates' Court, nor summary offences that are tried in the County and Supreme courts in conjunction with indictable matters.[4]

We use the name **'Summary Crime Program',** shorted as **'SCP'** to refer to VLA's 'Summary Crime Sub-program'.

Victoria Legal Aid services

VLA is the largest provider of legal services in the state. Its objectives are to:

- provide legal aid in the most effective, economic and efficient manner
- manage its resources to make legal aid available at a reasonable cost to the community and on an equitable basis throughout the state
- provide 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.[5]

VLA's functions are to provide legal aid in accordance with the *Legal Aid Act 1978* (Vic) and to control and administer the Legal Aid Fund.[6] The Legal Aid Fund comprises all of the funding VLA receives for the purposes of providing legal aid services, together with other income and costs payable to VLA.[7]

In its strategic plan, VLA sets out its vision, purpose, values and three strategic directions that inform its work to improve Victorians' access to justice (VLA 2014). The overarching intent is to improve the way Victorians access justice by delivering the most appropriate legal services at the right time, based on client needs. This includes providing timely legal help and services matched to clients' needs and abilities.

The Victorian Department of Justice and Regulation (DJR) (2016, p.302–303) *Access to Justice Review* identified the key themes in VLA's statutory functions, powers and duties as independence, value for money, equity and fairness, innovation and collaboration.

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[3] Section 28 *Criminal Procedure Act 2009* (Vic) allows the Magistrates' Court to hear indictable matters punishable by up to 10 years imprisonment, or a fine of up to $120,000, summarily. Section 28 provides that an indictable offence eligible to be tried summarily can only be heard in the Magistrates' Court if the court considers it appropriate and the accused consents.

[4] Note also that while the Children's Court of Victoria has jurisdiction to hear and determine charges against young people aged between 10 and 17 years at the time the alleged offence was committed, the scope of this evaluation is specifically limited to VLA's adult summary crime services, that is, services for people aged 18 years and over at the time of the alleged offence.

[5] Section 4 *Victoria Legal Aid Act 1978* (Vic)

[6] Section 6(1)(a) and (b) *Victoria Legal Aid Act 1978* (Vic)

[7] Section 41 *Victoria Legal Aid Act 1978* (Vic)

VLA is principally funded by the Commonwealth under the National Partnership Agreement on Legal Assistance Services (NPA), appropriations from Victorian Department of Justice and Regulation through the Victorian Government budgetary process, and grants from the Victorian Public Purpose Fund (PPF), administered by the Victorian Legal Services Board.

The *Legal Aid Act 1978* (Vic) requires VLA to endeavour to make legal advice, education and information available throughout Victoria, and to determine eligibility criteria and guidelines for the provision of grants of legal assistance, duty lawyer services and other legal aid services.[8] VLA provides free community legal information and education across the state. Eligibility criteria prioritise more intensive forms of legal assistance, such as grants of legal assistance to people based on their financial circumstances, and the nature and severity of their legal problem.

While VLA is empowered to determine legal aid service priorities in terms of classes of people and matters, it is required to consider impacts on the Legal Aid Fund, and has a duty to ensure that legal aid services are provided in the most effective, efficient and economic manner.

High demand for VLA services, associated with population growth and socio-demographic factors, as well as Commonwealth and Victorian policy initiatives, has placed pressure on the Legal Aid Fund and VLA's budget, particularly in the high-expenditure programs of crime and child protection (DJR 2016, p.376). For instance, increased expenditure on frontline policing can be expected to have downstream impact on the demand for summary crime services, as well as associated downstream demand on other elements of the criminal justice system, including prosecution, court and corrections services.

It should be noted, however, that demand for public legal assistance services, in itself, is not a good indicator of community legal need, particularly in a context where tightening service eligibility dampens expressed demand among ineligible populations (see DJR 2016; PC 2014; Pleasence, Coumarelos, Forell & McDonald 2014). As community awareness of changes to eligibility criteria increases, those who have become ineligible, or who think they will be ineligible, become increasingly less likely to express their needs to those providers.

There is also evidence that people seeking legal assistance services from VLA are increasingly presenting with more complex legal matters as well as heightened legal and non-legal needs, together suggesting that the public legal assistance service challenge is becoming more difficult (see DJR 2016).

One explanation is that as public legal assistance service eligibility criteria is tightened, such as targeting services to the most disadvantaged and those with the greatest need, those eligible for assistance tend to comprise the most disadvantaged clients, who typically have more complex and intertwined legal and non-legal needs, and lower personal and legal capability to deal with those needs (see further Pleasence et al. 2014).

One service dilemma is the tension between the *intensity* and *reach* of legal assistance services. More intensive forms of legal assistance, such as grants of legal assistance and

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[8] Sections 7, 8, 9 *Victoria Legal Aid Act 1978* (Vic)

duty lawyer services, consume more resources than less intensive forms of service, such as legal information, advice and referral. Given limited resourcing, the choice is between providing more of the more intensive forms of legal assistance to *fewer* people, or more of the less intensive services to *more* people (see Pleasence et al. 2014).

To resolve this service dilemma, and meet statutory and funding obligations, VLA uses eligibility criteria. Generally, the more intensive and expensive the form of assistance service the more targeted and prescriptive the criteria. This approach allows VLA to extend the reach of its services by making legal information and referral services widely available, while restricting more intensive forms of legal assistance to priority matters and groups.

Another way VLA targets its services, is through its priority client framework. VLA targets its services to the following priority client groups:

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

VLA's services are accessed through various gateways. VLA's Legal Help telephone line is a legal triage, information, advice and referral service, and one of the main service gateways. Other access points include VLA offices and duty lawyer services provided at courts.

Client satisfaction is monitored through periodic client surveys conducted independently. While the most recent survey, in 2015, found overall satisfaction of 75 per cent, the most commonly cited suggestion for improving VLA services stemmed from client concerns regarding underfunding of its services, including lawyers being very busy, clients not having enough time with lawyers, having to wait too long, and services being difficult to access.[9] Clients reported the highest level of satisfaction for grants of legal assistance (85%), followed by the Legal Help telephone service (78%), duty lawyers services (75%), and legal advice services (72%) (see Colmar Brunton 2015).

Victoria Legal Aid Summary Crime Program

VLA provides a number of types of services through the Summary Crime Program (SCP).

Like other Australian legal aid commissions, VLA uses a mix of services to meet its statutory objectives. In the summary crime context this includes a portfolio of services: grants of legal assistance, duty lawyer services at court across the state, the Legal Help telephone advice, information and referral service, in-office legal advice appointments, and

[9] In total, 1,004 clients were surveyed about their experience of and satisfaction with VLA services (see Colmar Brunton 2015).

community legal education and information. VLA distributes legal information electronically through its website, and in hard copy publication distributed through the telephone service, offices, at court and other distributions points.

VLA provides services through the SCP to people charged with summary crime offences. In the 2015–2016 financial year VLA funded some 14,591 grants of legal assistance for summary crime (a 15.8% increase on the previous year), and 56,034 in-house duty lawyer services (a 2.4% increase on the previous year). In total, the operating expenditure for the SCP was $37.6 million (accounting for 24.8% of all program expenditure). The SCP accounts for 64 per cent of all VLA grants of legal assistance (VLA 2016a). As the largest service sub-program, increasing demand for summary crime services consequently increases pressures on the Legal Aid Fund.

Summary crime services are provided through the 'mixed model'.[10] Legal services provided under grants of legal assistance are either provided by VLA in-house staff or through procurement arrangements with private practitioners and community legal centres.

Private practitioners providing services under a grant of legal assistance are generally members of VLA's specialist Summary Crime Panel. Most of the Summary Crime Panel's member firms are private legal firms, although there are a number of community legal centres that are also members.[11] While membership of VLA panels is by legal practice, including sole practitioners, grants of legal assistance on behalf of an eligible client are made to legal practitioners certified by VLA to receive them.[12]

Panel members are able to self-assess client grant eligibility, or grants may be assigned to them by VLA. The eligibility requirements for a grant of legal assistance are the same irrespective of whether or not services are provided by private or VLA practitioners. Fees paid to private practitioners providing services under a grant of legal assistance are event-based lump sums.

Private practitioners also provide duty lawyer services from summary crime matters at Magistrates' Courts where it is uneconomic for VLA to provide those services.

Apart from grants of legal assistance and some duty lawyer services, the other legal assistance services VLA provides for summary crime matters are provided by VLA staff. VLA does not fund private practitioners to provide legal advice or minor assistance services. VLA also produces and distributes summary crime legal information resources.

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[10] The mixed model of public legal assistance services is discussed in further detail below in Chapter 2.

[11] Members of the Federation of Community Legal Centres Victoria who are members of the Summary Crime Panel include First Step Legal, Fitzroy Legal Service, Flemington & Kensington Community Legal Centre, Inner Melbourne Community Legal, Peninsula Community Legal Centre at Bentleigh East, Cranbourne and Frankston, Victorian Aboriginal Legal Service, Western Community Legal Centre (WEstjustice) and Young People's Legal Rights Centre (YouthLaw).

[12] Section 29A(7) of the *Legal Aid Act 1978* (Vic) provides that all of the legal practitioners who are partners, directors and employees of a panel are deemed to be included on the panel and as such they are able to work on VLA funded grants of legal assistance. Although a legal practice may be a panel member, to be an active grant recipient, the legal practice must employ individual practitioners certified to receive grants of legal assistance on behalf of clients.

While VLA is empowered to determine the eligibility guidelines for its summary crime services, it should be noted that both the level of funding that it receives and the demand for summary crime services are beyond its control. While VLA can determine the allocation of Victorian funding assigned to the SCP, it has to consider impacts on other services and programs. In 2012–2013 VLA tightened eligibility for summary crime services in the face of rising demand for summary crime services and funding pressures. These changes affected the operation of the Summary Crime Duty Lawyer Service (DLS) and grants of legal assistance.

Summary Crime Program reforms

Between June 2012 and April 2013 VLA made a series of changes to eligibility for DLS services and grants of legal assistance for adult summary crime matters. These changes were intended to strengthen VLA's financial sustainability by reducing overall summary crime service cost, as well as to change the focus and way its summary crime services were provided.

The changes were designed to target and prioritise summary crime resources to clients most in need of help (those in custody, certain demographic groups, and those at risk of more significant penalty), and bring VLA services into line with grant eligibility guidelines in other Australian states and territories.

It was expected that the DLS would absorb priority clients made ineligible for a grant of aid by increasing the eligibility threshold for grants. The DLS was therefore redesigned from a universal or 'one-size-fits-all' approach, to a service model intended to better match client legal need and capability, to different levels of service.

The new DLS model was specifically intended to:

- improve the quality of DLS services
- provide a structure to support quick, efficient and consistent decision-making, and a timely and appropriate level of service
- better support the timely and appropriate resolution of matters
- reserve and prioritise DLS service capacity for specified priority client groups, including to those unable to pay for private legal assistance
- introduce tiered service delivery, to ensure priority clients and those facing more serious charges receive higher level service
- improve the client experience for those eligible for higher level service by having duty lawyers adjourn matters to a date they are rostered or able to attend court
- improve access to legal information to better equip clients *ineligible* for higher level duty lawyer services to progress and resolve matters themselves.

Because the changes were expected to move some people out of the grants service stream and into the DLS service stream, VLA implemented and rolled out the changes to the DLS before implementing the grant eligibility changes.

Summary Crime Duty Lawyer Service Guidelines and Grant Guidelines

Table 1.1 provides an overview of the 2012–2013 DLS and Grant Guidelines changes.

Table 1.1: Summary of changes to DLS and Grant guidelines

	Pre-June 2012	June 2012	October 2012	April 2013
Duty Lawyer Service	Duty lawyer service available to all. Prioritise people in custody.	**Key changes:** **People remanded in custody** – remain a DLS service priority, have no income test applied, and can receive legal advice and in-court advocacy when appearing in court to face a charge for the first time. **Set out DLS priority groups** – people with an intellectual disability, acquired brain injury or other mental health issue; people experiencing homelessness; people who cannot effectively communicate in English; Indigenous Australians. **Introduce income test** – to exclude those people charged with summary crime with means to pay for assistance from private practitioners from legal advice and in-court advocacy. **Introduce severity test** – to exclude people facing only minor charges from legal advice and in-court advocacy. **Introduce assessment and triage service model** – to target more intensive DLS assistance (i.e. legal advice and in-court advocacy) to those people charged with summary crime (not in custody) who are most in need. DLS Guidelines triage clients to one of three service levels: • **In-court advocacy**: Provided to those who satisfy the income test and either fall within a priority group (intellectual disability, acquired brain injury, mental illness, Indigenous, homeless, cannot effectively community in English) or face a significant charge (i.e. depending on charge and prior convictions the accused is at real risk of imprisonment, a Community Corrections Order or substantial fine). Duty solicitors also have discretion to provide in-court advocacy to priority clients facing a straightforward charge. Accused who receive in-court advocacy can also receive legal advice and information. • **Legal advice and information only**: Provided to those who satisfy the income test but do not fall within a priority group, and who face a straightforward rather than significant charge. Those who receive legal advice may also receive assistance negotiating with the prosecution and also receive legal information to assist them to self-represent in court. • **Legal information only**: All people facing minor charges, including those who do not satisfy the income test, are provided with legal information about the specific offence they are facing and court process from the DLS. A series of factsheets, covering specific matters and the court process, are provided to assist accused ineligible for legal advice and in-court advocacy to self-represent in court.		
Grants of legal assistance	Means and merit tests and eligibility guidelines		Eligibility for grants of assistance for *Road Safety Act* offences limited to accused at risk of custodial sentence satisfying special circumstances test. Those ineligible have access to the DLS.	Eligibility threshold for grants of assistance increased from those at risk of a Community Corrections Order with 200 or more hours unpaid community work to those at risk of imprisonment. Those ineligible have access to the DLS.

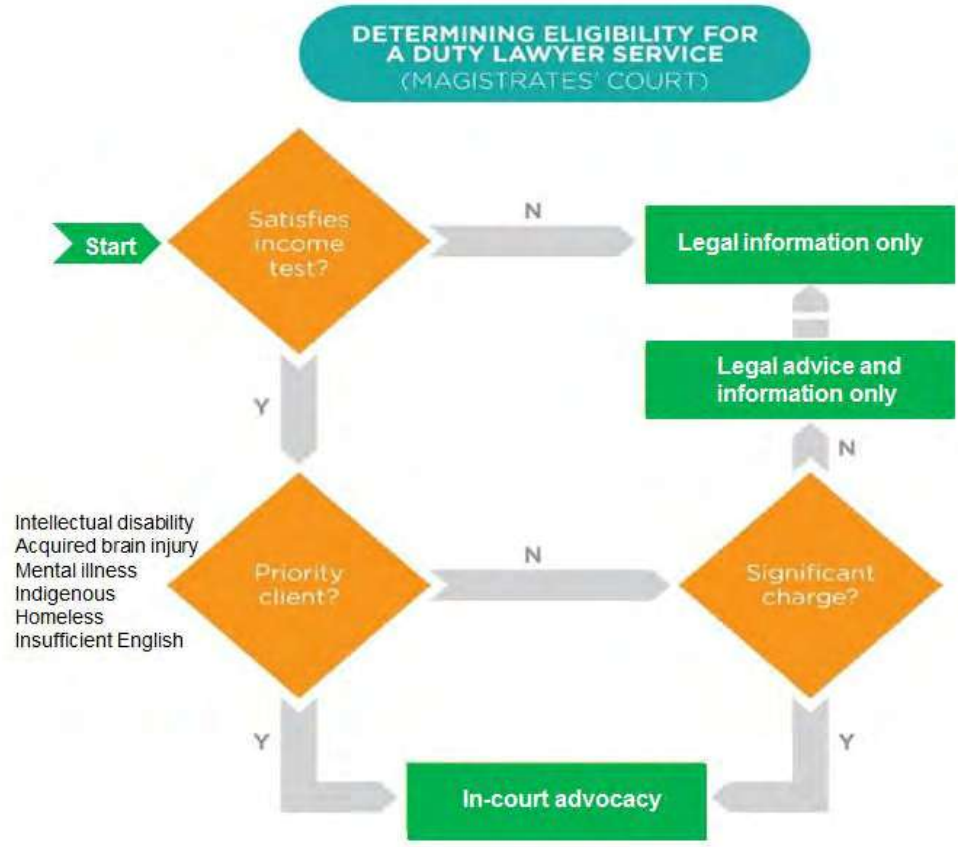
Duty lawyer service

The DLS is intended, so far as is practical and reasonable, to resolve matters on the first day that a person uses the service, and to support the effective functioning of the Magistrates' Court. The guidelines acknowledge that as priorities and demands can vary across the state, DLS arrangements may have to vary.

The DLS Guidelines also provide that any benefit of the doubt in assessing and triaging clients is to be exercised in favour of providing the service. Duty lawyers also have discretion, considering the competing priorities on the day, to provide in-court advocacy to accused satisfying the income test who are not facing a significant charge and are not within a priority group, where there are compelling reasons why the person cannot self-represent.

To support the provision of 'legal information only', which at some locations may be provided by VLA administrative staff assessing and triaging clients against the DLS Guidelines, VLA has a set of 38 legal information factsheets. These factsheets cover various aspects of the legal process, common offences where 'legal information only' is provided, as well as information about driving demerit points and criminal records. Figure 1.1 sets out the DLS assessment and triage service model.

Figure 1.1: Duty Lawyer Service assessment and triage service model



Source: Adapted from Victoria Legal Aid (2016d, p.105) submission to the *Access to Justice Review*.

Grants of legal assistance

There are two main pathways to receiving a grant of legal assistance. First, applications may follow from people seeking help from VLA, such as via the Legal Help telephone service, an in-office legal advice appointment, or the DLS at the Magistrates' Court. People are advised of VLA's services when they receive a court summons, and may be referred to VLA services from a wide range of sources, including Victoria Police, community legal centres, colleagues, family and friends. Second, a client may receive a grant of legal assistance after contacting a private practitioner, such as a private practitioner on the Summary Crime Panel who is able to self-assess using the simplified grants process.

Depending on the circumstances, VLA may require a person to make a contribution to receive a grant of legal assistance, and may also determine to make the grant on particular conditions.

Report overview

The report is structured as follows:

1. Introduction – overviews the evaluation, use of terminology, and VLA's services and Summary Crime Program services.

2. Background and context – provides background context informing the evaluation, including public legal assistance funding, policy and service context; the legal needs and access to justice context; the Victorian criminal justice context, including crime and court data; and VLA's funding, summary crime and stakeholder relationships.

3. Methodology – sets out the quantitative (administrative service data), qualitative (focus groups, interviews, online VLA staff survey, stakeholder consultations, client satisfaction survey) and benchmarking information collected and analysed in the report; the measures and analytical techniques employed; and data limitations.

4. The changing profile of summary crime services: VLA data – provides the results of the quantitative and geographical analysis of VLA administrative service data.

5. Client experiences of the Duty Lawyer Service – reports secondary analysis of VLA's Client Satisfaction Survey 2015

6. The impact of change: appropriate and sustainable services? – sets out the qualitative analysis of the focus groups, interview, VLA staff survey, and stakeholder consultations, with respect to key themes concerning the operation of the Victorian criminal justice system and the appropriateness and sustainability of VLA's summary crime services.

7. How do Victorian summary crime services compare to those in other Australian jurisdictions? – compares Victorian summary crime statistics and service eligibility with other Australian jurisdictions.

8. Discussion and recommendations – discusses implications of the findings and recommendations to improve the appropriateness and sustainability of VLA's summary crime services.

2. Background and context

Service, policy and funding context

The appropriateness and sustainability of VLA's summary crime services must be understood within the funding, policy and service context in which it operates. Successive access to justice reports, reviews and inquiries have identified funding constraints and rising demand variously faced by legal aid commissions (LACs), community legal centres (CLCs) and Aboriginal legal services (ALSs). For example, recent reports by the Productivity Commission (PC) (2014) in their *Access to Justice Arrangements* report and the DJR (2016) in their *Access to Justice Review* raise and consider important access to justice concerns affecting Victorians, and particularly the vulnerable and disadvantaged Victorians who often rely on public legal assistance services for access to justice.

Public legal assistance services

Public legal assistance services perform a number of critical roles in supporting the ideals of access to justice and the rule of law. While citizens enjoy formal equality under the rule of law, empirical research makes clear that they do not come to the law as if on a level playing field. Public legal services therefore have a primary role in providing access to justice by helping to meet the legal needs of the community.

The DJR (2016, p.396-398) *Access to Justice Review* found:

> *Legal assistance services are an important part of the safety net for vulnerable and disadvantaged people in Victoria. These services help to ensure people are treated fairly in the justice system … Legal assistance services also support the efficient operation of the justice system.*
> *…*
> *Legal assistance services also support the operation of the courts by giving people information and advice when they engage with the justice system. Without this guidance and support, the courts are faced with additional work to support community members, which creates inefficiencies in the system.*

As discussed in the *Introduction*, VLA provides a suite of services with eligibility tightening as the level of assistance intensifies. More intensive (and costly) forms of service, such as grants of legal aid and advice and assistance from duty lawyers, are often prioritised to particular types of people facing particular legal matters. Less intensive (and cheaper) forms of legal assistance, such as legal information, education and referral services are typically provided to the community without eligibility requirements.

The mix of publicly funded legal assistance services together form a 'safety net' intended to both provide access to justice to the most disadvantaged and vulnerable members of the community, and also extend access for the broader community.

Public legal assistance services also perform a further critical role in supporting the efficient operation of the justice system. For example, duty lawyer services have been found to increase court effectiveness and efficiency by assisting people to *progress* their matter through the court (Forell & Cain 2012). Self-represented litigants who have obtained legal

advice and information may also be better equipped to deal with their matter themselves or obtain private legal assistance.

Successive access to justice reviews, however, have identified a gap between the legal needs of disadvantaged people and the funding of public legal services. For example, the Victorian *Access to Justice Review* found 'a significant gap between the legal needs of the most disadvantaged Victorians and the resources available for legal assistance services to meet those needs' (DJR 2016, p.290).

In addition to affecting the access to justice of Victorians, there are also consequences in terms of the effective and efficient operation of the justice system. For instance, public legal assistance services such as duty lawyer services typically support more efficient court operations (see Forell & Cain 2012).

Mixed model service provision

VLA uses a 'mixed model' to deliver summary crime services, whereby both VLA in-house and private practitioners provide legal assistance services. This means that VLA is both a *purchaser* and *provider* of services. Successive access to justice reviews have examined the mixed model. The recent PC (2014) and DJR (2016) reviews both cited benefits, but also noted that the way it is utilised could be improved.

Benefits cited by the PC (2014) included harnessing private sector expertise; having public sector specialising in areas where the private sector is unable or unwilling to provide services; greater flexibility in service provision and responding to a constantly changing justice system and needs; improved choice of provider by those who qualify for a grant of legal aid while managing quality and information asymmetry issues; overcoming conflict of interest issues; and competition between public and private providers.

The PC (2014) further noted international evidence suggesting that the mixed model is an appropriate model of service and that maintaining 'in-house capacity' helps keep costs in check. However, to exploit the benefits of the mixed model the PC further found that LACs need the capacity to identify where and when it is more efficient and effective to retain services in-house.

There are, however, a number of questions about the sustainability of the mixed model of legal service provision. For example, LACs have argued that funding constraints limit the fees they are able to pay to private practitioners and that consequently there is a risk they will be unable to obtain services from suitably experienced private practitioners (so-called 'juniorisation'), particularly in regional and rural areas (see PC 2014). To otherwise increase fees without increased funding would come at the cost of a decrease in the overall number or intensity of the legal assistance services provided.

While LACs may not be able to close the 'remuneration gap' between legal aid fees and the market rate, the 'overall package' has been identified as another factor affecting willingness to do legal aid work (see PC 2014). For example, increasing the volume of legal aid work going to particular private practitioners, through 'bulk tendering' and other outsourcing options, may affect the overall attractiveness of the package.

The DJR (2016, p.423) *Access to Justice Review* similarly pointed to the question of whether the fees paid to private practitioners are sufficient to maintain the desired level of participation and quality of service. The review found that while the fees paid to private practitioners for summary crime matters had slightly outpaced inflation, overall the relative remuneration for grants of legal assistance had declined compared to fees for work performed in the private sector. The review also found inherent tensions stemming from the 'cooperative', 'competitive' and 'purchaser-provider' aspects of the relationships between VLA, private practitioners, CLCs and ALSs.

In the Victorian context it is important to note that VLA relies on the goodwill and willingness of private practitioners to sustain the mixed model, particularly for summary crime services. Survey work has identified that one of the primary drivers of private practitioners doing legal aid work, which they typically perform at below market discounted rates, is a sense of 'moral obligation' and commitment to access to justice (see TNS Social Research 2006, 2007, 2013). The same survey research, however, also reported that lack of government resourcing for legal aid, and payments being insufficient to cover the cost of doing legal aid work, are drivers of private practitioners ceasing to do legal aid work.

There is also an important geographic dimension. NSW research has shown that the availability of private practitioners willing to do legal aid work is particularly important in regional, rural and remote (RRR) areas where high socio-economic disadvantage often coincides with low legal practitioner numbers doing legal aid work (Cain, Macourt & Mulherin 2014). While the provision of duty lawyer services in RRR areas extends access to grants of legal assistance, the lack of availability of local practitioners willing do legal aid work limits service options, and may require lawyers to travel to provide representation services under a grant of legal assistance (see Forell, Cain & Gray 2010). Compliance requirements associated with taking on grants of legal assistance can also disproportionally impact practitioners in RRR areas (see DJR 2016, p.416).

Fractured funding and service provision

Public legal assistance in Australia is fractured in terms of funding sources, service provision and governance, and further dislocation between supply side and demand side policy levers. Demand for public legal assistance is typically tightly coupled with social and policy drivers, especially within the criminal justice system. For instance, population growth, criminal justice policy, and changing policing practices and community attitudes can all be expected to affect demand for criminal legal assistance.

VLA is predominately funded through a mix of Commonwealth and Victorian government grants and funding from the PPF. It receives limited income from other sources (e.g. client contributions, and various one-off project, ad hoc or special purpose grants etc.) (VLA 2016a). Commonwealth Government funding is primarily to cover family law matters, and some Commonwealth criminal and civil matters, whereas Victorian Government funding is primarily to cover other matters, including state-based criminal matters.[13] The quantum of Victorian Government funding, however, is determined through budgetary processes.

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[13] The 2015 National Partnership Agreement on Legal Assistance Services (NPA) sets out the Commonwealth's financial contribution for legal assistance services by the legal aid commissions and community legal centres for the period 2015-2020 (COAG 2015). Under the NPA, Commonwealth funding of legal aid commissions is primarily

While VLA is the primary provider of public legal assistance for criminal matters in Victoria, it should be noted that the Victorian Aboriginal Legal Service (VALS) is funded by the Commonwealth outside of the NPA to provide legal services to Aboriginal people in Victoria, and provides criminal legal assistance services for summary and indictable matters. VALS is also a member of the VLA Summary Crime Panel, so is able to apply for grants of legal assistance on behalf of clients. In 2014–2015, most of VALS staff solicitors were in its criminal practice (12 of 20), and the overwhelming majority of its legal casework, and overall legal services, were provided in its criminal practice.[14]

While Commonwealth funded, demand for VALS criminal law services is principally affected by Victorian criminal law-making and policy. If VALS does not have the capacity to respond to the increasing demand for summary crime services by Aboriginal people, there is likely to be increased demand for VLA services by Aboriginal people.

Criminal, family and civil public legal services

Successive access to justice reports also note resource tensions between the criminal, family and civil parts of the justice system. For instance, the PC's (2014) *Access to Justice Arrangements* inquiry report canvassed the public legal assistance landscape and the tensions in the allocation of resources between criminal, family and civil matters by LACs, CLCs and ALSs. Criminal matters consume the majority of legal assistance resources because, as the PC (2014, p.740) observed:

> *Priority is given to criminal law issues not just because of the consequences these matters have on people's lives, but also because of the discipline imposed by the courts to do so. Criminal courts can, and do, stay proceedings involving indictable offices where parties are unrepresented. No such discipline exists in the civil space.*

This situation leaves civil and family matters, as well as some summary crime matters, vulnerable to being 'squeezed out' or otherwise given lower funding priority as compared to indictable crime matters (see PC 2014, p.740).

In particular, legal aid services for summary crime matters also lie at the heart of long running debates concerning the appropriate level of funding, and the most effective and efficient service provider (see further Noone & Tomsen 2006).

The PC (2014, p.738) found that measuring the adequacy of funding of public legal assistance services relative to need was 'plagued by a lack of data' – both in terms of the level of legal need and the cost of providing assistance services. Nevertheless, given the nature of the identified service gaps, the PC estimated that additional Commonwealth, state

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to be used for Commonwealth law matters, although there are limited exceptions for state law matters connected with family law proceedings and discrete assistance or community legal education. Clause 29 specifies that Commonwealth legal aid commission funding is to be used for Commonwealth law matters only except: '(a) where state law matters relating to the safety or welfare of a child are connected with family law proceedings; (b) where state law matters relating to a person's safety are connected with family law proceedings; or (c) in discrete assistance or community legal education, regardless of whether the matter relates to Commonwealth or state laws'.

[14] In 2014–2015 86 per cent of the casework services VALS provided was in its criminal practice, with eight per cent in its family practice and six per cent in its civil, while 92 per cent of its overall legal services was in its criminal practice, with four per cent in each of its family and civil practice (VALS 2015).

and territory funding of $200 million dollars was required each year for civil (and family) matters, and identified the Commonwealth Government share as 60 per cent.

While the PC (2014) report estimates the magnitude of the under-resourcing of public legal assistance services for civil and family matters, no similar analysis has been undertaken concerning the adequacy of funding for criminal matters or summary crime matters.

The DJR (2016, p.428) *Access to Justice Review* noted risks of legal assistance funding which is insufficient to keep pace with rising demand. Not only is reduced capacity to meet legal needs seen as detrimental to the community, but it may increase overall costs if burdens are displaced onto more expensive parts of the justice system. The *Review* (DJR 2016, p.428-429) further found that:

> *even if all steps are taken to maximise efficiency in the current system, there will still be significant legal needs in the community that legal assistance providers are unable to meet under current resourcing levels.*
> *…*
> *Demand pressures are expected to increase, and if the existing resourcing gap is not remedied, the justice system could reach something of a crisis point in the not too distant future.*

In particular, demand pressures on VLA's summary crime services were identified.

Summary crime services

The DJR (2016, p.380) *Access to Justice Review* found that VLA's 2012–2013 tightening of VLA service eligibility criteria had most strongly impacted upon the Summary Crime Program. The review observed:

> *The data show that there is underlying upward pressure on grants of legal aid. Thus grants of legal assistance will drift upward within the existing guidelines due to the underlying demand drivers such as population growth, socio-economic and demographic factors, and government policies to make the community safer. In the absence of additional funding, Victoria Legal Aid will need to tighten eligibility criteria to continually maintain financial sustainability.*

Previous research indicates tightening eligibility criteria is likely to displace legal need. First, demand on other forms and types of public legal assistance may increase. Second, demand may be displaced from public to private providers. Third, those who no longer qualify for a grant of legal assistance and who cannot or do not want to purchase legal assistance privately will have to take self-help actions. Unlike some other types of legal matters, 'resignation', 'avoidance', 'lumping it' or 'doing nothing' is not an option for the accused in summary crime matters (see further Feeley 1979; Galanter 1974; Genn 1999). Somebody summoned to court has to attend, voluntarily or under warrant. They will be either represented, or will have to self-represent. They will have to plead guilty or not guilty.

In its submission to the *Access to Justice Review* the Magistrates' Court of Victoria stated that VLA's changes to the summary crime guidelines had led to an increase in self-represented defendants who consequently required not only more intensive assistance from court staff but had increased adjournments and delay (DJR 2016, p.350):

> *Judicial officers and staff report a significant increase in unrepresented litigants before the court with the change to VLA guidelines in criminal lists. This means magistrates often refer a person out to get legal assistance where they consider the matter is too serious to proceed without legal advice. This often leads to adjournments, delays and matters not proceeding at an early date.*

> *Magistrates often feel constrained by the lack of legal advice and representation even where a person is not likely to face a term of imprisonment.*

Of course, VLA's ability to provide summary crime services is affected by its resourcing, and how it allocates the resourcing it has.

VLA resources

While the 2012–2013 tightening of service eligibility guidelines across VLA's programs was effective in terms of reducing operating expenses and improving financial performance, by 2014–2015 expenditure was approaching 2011–2012 levels, and VLA in its *Annual report* was anticipating demand for services to continue to rise and was likely to lead to a return to deficit (VLA 2015a). A year later, VLA noted that demand for higher intensive services and costlier forms of assistance had continued, that expenditure had increased another 11 per cent, and was likely to result in deficit in the 2016–2017 financial year (VLA 2016a). This means that VLA may have to consider further tightening service eligibility guidelines. The DJR (2016, p.346) *Access to Justice Review* found that VLA:

> *expenses will come under continued upward pressure from demand growth without further tightening of eligibility criteria. In its most recent annual report and the time of writing (2014–2015), Victoria Legal Aid notes that family violence, child protection, and criminal matters are up 19 per cent since 2013 and estimates that, without additional investment, it will return to deficit by 2018.*

The DJR (2016) *Access to Justice Review* examined VLA revenue between the 2010–2011 and 2015–2015 financial years and found an increase, on average, of 2.8 per cent per year. Victorian funding of VLA has increased in both nominal and real (i.e. adjusted for inflation) terms since 2011–2012, increasing, on average, by 4.4 per cent per year in nominal terms, and 2.4 per cent per year in real terms (DJR 2016, p.337).

Since the Global Financial Crisis and cuts to VLA funding from the PPF, there has been a new approach to the way the PPF distributes funding which has held VLA funding at $25.7 million indexed to inflation (DJR 2016). This means that PPF funding to VLA is not tied to other factors that affect demand, such as level of legal need or population growth.

Part of the increase in funding has been used by VLA to increase staff. Full-time equivalent staff numbers have increased by 12 per cent in the five-year period 2010 to 2015; these changes have primarily been to areas other than SCP.[15]

In the face of rising demand for summary crime services, funding that is not linked to demand or need jeopardises the appropriateness and sustainability of services.

Funding of services dislocated from need

Successive access to justice reviews have identified that funding based on a historical indexed approach, and determined through the annual budgetary process, rather than in response to the demonstrated or anticipated level of legal need, dislocates the funding of public legal assistance from need. The PC (2014, p.742) observed that this means:

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[15] The *Access to Justice Review* report notes that VLA full-time equivalent staff increased by 19 per cent from 2010 to 2016 and that the recent changes include increases in staff associated with the establishment of the Independent Mental Health Advocacy team and prisoner help line, the Legal Help telephone service, lawyers at regional offices to respond to family violence work, and introducing Aboriginal Field Officer positions (DJR 2016, p.330).

> *LACs have to perform a balancing act between managing the volume of clients, types of matters and private practitioner fees … This balancing act is made more difficult by the fluid nature of the external factors that impact on demand. For example, policy and legislative change can significantly impact on the demand for legal assistance services.*

Where public legal assistance funding models is not allocated according to models based on anticipated legal need, there is a risk that legal assistance services may become unsustainable in their existing form.

Capacity to balance demand, services and costs

LACs typically provide a mix of criminal, family and civil legal assistance services, however they have limited and 'blunt' policy levers to respond to demand and control costs. Finite funding creates a series of tensions concerning what, how and who should receive legal assistance, necessitating decisions about the priority of particular types of people, particular areas of law and particular types of legal services. These are typically zero-sum decisions. As noted previously, *less* intensive forms of assistance, such as legal information and advice, may allow *more* people to receive assistance. Conversely, *more* intensive forms of assistance, such as grants of legal aid, can be provided to *fewer* people. Also, demand for assistance in particular types of legal matters, and groups of people, may come at the expense of assistance to other groups and for other matters.

Price Waterhouse Coopers (2009) set out the tensions inherent in the three main LAC policy levers. First, LACs can adjust service eligibility by amending means or merits tests. While tightening of means and merits tests will ease demand on services, each has negative consequences, and is likely to increase the 'justice gap'. Tightening means tests are likely to further exclude some financially disadvantaged and vulnerable people, while tightening merits tests are likely to further exclude some serious and worthy matters.

Second, LACs can reduce fees paid to legal practitioners. They can also change the way in which they purchase services from private practitioners. Reduced fees, however, potentially result in legal aid work becoming less attractive.

Finally, LACs can adjust the mix of services, such as the allocation of resources to representation, minor or discrete assistance, legal advice and community legal education and information.

In 2012–2013 VLA implemented widespread changes to its criminal, family and civil law guidelines, including, as noted above, the tightening of summary crime service eligibility.

Targeted services

VLA targets grants of legal representation through means, merits and eligibility criteria. It is through setting eligibility criteria that VLA has to balance the provision of grants with the sustainability of the Legal Aid Fund. Given the funding envelope, this therefore requires decisions to be made about the relative priority of different types of legal need, client capability and potential consequences. It also requires consideration of the *anticipated* demand for services. In the summary crime context this requires consideration of key factors driving demand.

Justice gap

While public legal assistance services target legal assistance services to those who are unable to afford private services, there is still a 'justice gap' – that is, the gap between those ineligible for public legal assistance due to means, yet who cannot afford to pay for private legal assistance. Another expression of the 'justice gap' is the 'representation gap' – that is, the gap between those ineligible for a grant of legal aid that covers representation services, and those who can afford the cost of representation services from a private practitioner. The means tests applied to grants of legal assistance are such that many people living below the poverty line, as well as the 'working poor', fall into the justice gap (see Pleasence & Balmer 2012).[16]

The dynamics and consequences of the justice gap are well understood. It will increase when demand for legal assistance outstrips supply and will manifest as either unmet legal need, or a rise in self-help actions such as self-represented litigants, or in the case of criminal matters, self-represented defendants.

Consequently, some people ineligible for VLA summary crime services legal advice or representation may not be able to obtain other advice or representation services, and thus, will fall into the 'justice gap'. While wider costs in terms of loss of confidence in the justice system and rule of law are hard to quantify, there is also risk that where people do not believe the system is 'fair', or where they do not believe that they have substantive access to justice, they are more likely to offend (see e.g. Tyler 1990).

Increasing numbers of self-represent defendants may also have cost implications for the wider operation and efficiency of the courts and wider criminal justice system.

Research context – legal needs and access to justice

Successive studies and reviews of access to justice and legal needs have extensively canvassed legal needs, access to justice and the operation of public legal assistance services. Reports and reviews have also found that there are significant unmet legal needs in the community, and that it is therefore critical that public legal assistance resources are used as effectively and efficiently as possible (DJR 2016; PC 2014). The DJR (2016) *Access to Justice Review* stated that:

> *To maximise value for government's investment in legal assistance, it needs to be provided in the right ways, in the right places, to those most in need.*

While successive waves of access to justice reforms have transformed and reshaped the way the legal system and public legal assistance services operate, the consistent refrain of official inquiry reports is the need for remedial action and/or innovation to provide better access to justice, more efficient and effective services, better outcomes and better value for money.

Access to justice is an ideal generating angst and enthusiasm because of the implicit promise that it is achievable. As Sackville (2011, p.233) notes, there will always be more to be done to fulfil that promise, and the reality is that:

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[16] See for example, the PC's (2014) review of the means test for grants of legal aid across Australian jurisdictions.

> *the will always be a substantial gap between the ideals implicit in the concept of access to justice and the ability to realise those ideals, given the limitations on available resources.*

Legal need

The Legal Australia-Wide (LAW) Survey provided the first national survey of legal needs, and what people experiencing potentially justiciable problems do (or don't do) to try to solve those problems (see Coumarelos, Macourt, People, McDonald, Wei, Iriana, Ramsey 2012a). Pleasence et al. (2014) reviewed the legal and access to justice needs evidence base and considered how legal assistance services might be reshaped to better provide legal assistance services to disadvantaged people and the general community.

Notably, empirical legal needs research has established clear inequity in the experience of legal problems and the unequal distribution of legal need across the Australian community. The LAW Survey found that just 9 per cent of respondents accounted for 65 per cent of legal problems (Coumarelos et al. 2012a). Inequity is linked to social disadvantage (Pleasence et al. 2014). Research has consistently identified that legal problems are particularly prevalent among disadvantaged groups, including people with chronic ill-health/disability, single parents, the unemployed and people living in disadvantaged housing (Coumarelos et al. 2012a; Pleasence et al. 2014). Disadvantaged people also tend to have increased vulnerability to experiencing multiple legal problems, with vulnerability increasing with level of disadvantage (McDonald & Wei 2013; Pleasence et al. 2014).

Social disadvantage is also linked to lower personal and legal capability (Pleasence et al. 2014). For instance, those most vulnerable to experiencing legal problems tend to have less knowledge, self-help skills, motivation and resources to deal with their legal problems without assistance; tend towards delayed, crisis driven assistance-seeking; and tend to face additional access to justice barriers (McDonald & Wei 2016; Pleasence et al. 2014). As such, increasingly unbundled forms of legal assistance have limits, as their utility increasingly depends on the capability of the user (McDonald & Wei 2016; Pleasence et al. 2014). For instance, legal information resources may be ill-suited and insufficient to appropriately meet the needs of some people (McDonald & People 2014; McDonald, Forell & People 2014; Pleasence et al. 2014).

Legal problems do not exist in isolation, and tend to occur in clusters, often coexisting with other complex problems (Coumarelos et al. 2012a; Pleasence et al. 2014). Legal problems can escalate in severity and cascade, creating additional legal and social needs and reinforcing disadvantage (Coumarelos et al. 2012a; Pleasence 2006; Pleasence et al. 2014). For example, in analyses of the national LAW Survey dataset, Pleasence and McDonald (2013) found that experience of criminal legal problems co-occurred with both civil legal problems and disadvantage, with alleged offenders experiencing a broad range of civil legal problems at higher rates than others.

Consequently, potential benefits of more timely access to public legal assistance, particularly for the most disadvantaged members of the community, and particularly at 'points of crisis' have been canvassed as promising strategies to meet legal need before it escalates and potentially entrenches social and economic disadvantage (Coumarelos et al. 2012a; Forell 2015; Pleasence et al. 2014). Pleasence et al. (2014) further found that the empirical evidence also suggested benefits of client-focused services targeted to those with the highest need and lowest capability, 'joined-up' or integrated services to address

complex life problems, and design and provision of services appropriate to the need and capability of users.

From a legal service point of view, one important consequence of the links between legal need, disadvantage and capability is that more disadvantaged people experiencing multiple, complex needs are often more difficult to work with, tend to experience more complex problems, and require more intensive service effort (Forell, McDonald, Ramsey, Williams 2013; McDonald, Forell, Wei & Williams 2014; Pleasence et al. 2014). The links also point to the need to consider how to appropriately target and tailor services through a *combination* of legal assistance strategies, to effectively meet diverse need (Coumarelos et al. 2012a; Forell & McDonald 2015a; Pleasence et al. 2014). That is, more effective and appropriate services may well depend on being able to mix and match a suite of service options.

What works to address legal need

Understanding legal needs of the community and what works, in what circumstances, for whom, and at what cost, to address those needs, is vital for improving access to justice and developing more effective and efficient public legal assistance services that support the effective and efficient operation of the justice system.

Divergent legal needs and capability across the community suggests that particular forms of service may be more appropriate and better matched to certain types of people and legal matters. The key to unlocking effectiveness and efficiency dividends, and maximising value for money for public legal funding, may depend on being able to determine the optimal service settings to adequately meet legal need with the *least* intensive form of service (Pleasence et al. 2014). Lack of investment in public legal assistance services risks the appropriateness and sustainability of those services, and, in turn, the difference that those services can hope to make.

Monitoring and evaluation of legal assistance services is essential. Because the justice system is a complex and tightly coupled system, change in one part of the system can reverberate and impact on the operations of other parts. Better, more effective and higher value for money public legal assistance services depend upon improved understanding of how services 'work', and how they are affected by, and affect, the operation of the wider justice system. Better understanding of what works may in turn support the design of better, smarter systems (see Pleasence et al. 2014).

Criminal justice system context

The SCP does not exist in a vacuum. While there are many factors within the control of VLA – that will contribute to and affect the operation of the SCP – there are also external factors beyond its control affecting the operation and sustainability of the SCP. It is therefore important to consider some of these external influences and locate them within the wider criminal justice system context.

The criminal justice system is a complex web of actors and agencies (O'Malley 1999). Change in one the operation of one part, such as changes in policing, can have significant impacts on other areas. With this in mind, the following sections outline key developments in the Victorian criminal justice system impacting the system as a whole and, in particular,

the summary crime space. It starts with the court context including key legislative changes, caseload, and the number of defendants finalised before moving to look at police resources, trends in offending and police proceedings. Imprisonment rates and available data on the numbers of un-sentenced prisoners are also noted.

Jurisdiction of the Magistrates' Court

The Magistrates' Court of Victoria determines the majority of criminal matters in Victoria. Under s25 of the *Magistrates' Court Act 1989* (Vic), the Magistrates' Court has jurisdiction to hear the following (Magistrates' Court of Victoria 2012, p.34):

- summary offences
- indictable offences triable summarily
- committal proceedings
- bail hearings
- infringement matters.

Opportunities for diversion and therapeutic intervention also fall within the jurisdiction of the Magistrates' Court of Victoria. There are a number of specialist courts and support services and programs that the Magistrates' Court oversees to 'assist accused, and others involved in the court system, who are experiencing issues of social or cultural disadvantage, including having a disability, substance abuse, cognitive impairment or mental illness' (Magistrates' Court of Victoria 2014b, p.2). According to the court, these 'initiatives seek to address the pre-existing issues that lead to offending or other anti-social behaviour and thus reduce crime' (Magistrates' Court of Victoria 2014b, p.2).

Volume of legislative change

Various statutes govern the summary crime space, many of which are subject to frequent amendment. This makes for a dynamic and evolving system.

For instance, the following sets out the number of amendments made to key legislation affecting the summary crime space in the five-year period January 2010–December 2015:

- *Sentencing Act 1991* (Vic): 46 – averaging 9.2 per year
- *Crimes Act 1958* (Vic): 43 – averaging 8.6 per year
- *Criminal Procedure Act 2009* (Vic): 32 – averaging 6.4 per year
- *Summary Offences Act 1966* (Vic): 25 – averaging 5 per year
- *Drugs, Poisons and Controlled Substances Act 1981* (Vic): 22 – averaging 4.4 per year
- *Bail Act 1977* (Vic): 11 – averaging 2.2 per year.

This means that on average, the *Sentencing Act 1991* (Vic) was amended every 1.3 months, the *Crimes Act 1958* every 1.4 months, and the *Criminal Procedure Act 2009* (Vic) every 1.9 months. It is also worth noting that the *Magistrates' Court Act 1989* (Vic) had 40 tabled amendments over the same time period.

Of course, while not every amendment significantly impacts summary crime proceedings, these figures demonstrate that practitioners and judicial officers nevertheless have to grapple with the demands of monitoring change. A further implication for providers of legal information, such as VLA, is ensuring that the information is kept current.

Key legislative changes

Over the last decade, the jurisdiction of the Magistrates' Court has been expanded, and consequently, the severity and complexity of the matters dealt with has increased. In 2006, the *Courts Legislation (Jurisdiction) Act 2006* (Vic) amended s53(1), s53(1A), and Schedule 4 of the *Magistrates' Court Act 1989* (Vic) to increase the indictable offences that can be tried summarily. For example, for several indictable offences involving monetary values/amounts, the summary jurisdiction threshold increased from $25,000 to $100,000. These amendments 'were informed by the guiding principle that an offence should be tried in the lowest appropriate jurisdiction, so that the resources of the higher courts are not unnecessarily used for more minor offences' (Department of Justice 2010, p.62). Three years later, the introduction of the *Criminal Procedure Act 2009* (Vic) (CPA) further amended provisions in the *Magistrates' Court Act 1989* (Vic) concerning which indictable offences are able to be trialled summarily, replacing these with s28 and Schedule 2 of the CPA.[17] As will be demonstrated later, the expanded jurisdiction of the Magistrates' Court has led to an increase in the number of indictable matters being trialled in the summary jurisdiction, further stretching system workload.

Amendments to other relevant legislation in the last five years – including but not limited to the *Bail Act 1977* (Vic), the Crimes *Act 1958* (Vic), and *Summary Offences Act 1966* (Vic) – have had an impact on the system workload.

Family violence reforms

A suite of reforms have also substantially changed the way in which the criminal justice system responds to family violence. In particular, there have been widespread changes to both policing and court practices as part of the Victorian Government's response to the 227 recommendations of the Victorian *Royal Commission into Family Violence*. An ongoing period of change is expected as plans to action all recommendations are implemented, with concerted efforts to hold perpetrators to account as part of a whole-of-system response. Specialist Family Violence Courts are being trialled and are expected to further transform the way in which justice system responds to family violence.

A rise in family violence intervention orders (FVIOs), however, pre-dates the *Royal Commission into Family Violence*. Across the financial years 2009–2010 to 2011–2012, the number of FVIOs increased by 28.3 per cent (from 14,274 to 18,309) (Sentencing Advisory Council 2013, p.18). This increase has had a flow on impact on summary crime workload, due to an increased number of defendants being brought before the courts for breaching FVIOs, increasing by 55.2 per cent (from 3,850 to 5,977) over the same period. In addition, the number of family violence related incidents resulting in police charges increased by 86.8 per cent between the financial years 2009–2010 and 2011–2012 (from 9,382 to 17,528) (Sentencing Advisory Council 2013, p.17).

In their own response to family violence, the Magistrates' Court has implemented a number of changes including staged implementation of state-wide fast-tracking of family violence matters. Fast-tracking of family violence is intended to 'improve perpetrator accountability

[17] Section 29 sets out *when* indictable offences can be heard and determined summarily (i.e. the tests that must be met such as obtaining consent from the defendant).

and enhance the safety of victims by having criminal matters dealt with as early as possible' (Magistrates' Court of Victoria 2014c). These reforms have had, and are expected to continue to have substantial impact on the way in which the summary crime system operates, and in particular, on demand for legal assistance services by perpetrators.

Increased activity in the Magistrates' Court – data

The Magistrates' Court of Victoria reports case processing data in its annual report. Data collated from annual reports for the reference period 2010–2011 to 2014–2015 is reported below (see Magistrates' Court of Victoria 2011, 2012, 2013, 2014a, 2015).

Magistrates' Court criminal work

Overall, demand in the Magistrates' Court across many areas of work has increased over the financial years 2011–2010 to 2014–2015. The number of cases initiated increased 43.3 per cent (from 166,791 to 247,025) over this five-year period, the number of criminal listings increased by 33 per cent (from 559,060 to 766,091), and the number of cases finalised increased by 52.4 per cent. This suggests that an increase in the number of matters has increased the criminal work of the Magistrates' Court substantially.

Defendants finalised in the Magistrates' Court

The Australian Bureau of Statistics (ABS) report data on the number of defendants finalised in the various court levels in Australia. The proportion of defendants that were finalised in the Victorian Magistrates' Courts in 2014–2015 was 92.9 per cent (a further 5.2% were finalised in the Children's Court and 1.9% in the higher courts) (ABS 2016a). Review of ABS data indicates that the number of defendants finalised in the Magistrates' Courts has been steadily increasing since 2010–2011,[18] while the number finalised in the higher courts has been decreasing.[19]

Data on defendants finalised in the Magistrates' Court from 2010–2011 to 2014–2015 are reported in Table 2.1.

[18] From 75,351 in the financial year 2010-2011 to 101,106 in 2014–2015, representing a 34.2 per cent increase.

[19] Down 8.3 per cent from 2010-2011 to 2014–2015.

Table 2.1: Defendants finalised in the Victorian Magistrates' Court by finalisation method

Summary characteristics	2010–11	2011–12	2012–13	2013–14	2014–15	Per cent change from 2010–11 to 2014–15
Adjudicated outcomes	67,787	77,455	80,236	85,995	89,225	31.6%
Acquitted	3,052	4,045	2,276	903	844	-72.3%
Proven guilty	64,740	73,409	77,956	85,097	88,378	36.5%
Guilty plea by defendant	56,243	63,692	69,881	77,266	79,196	40.8%
Guilty finding by court	1,750	2,054	1,753	2,284	2,041	16.6%
Guilty ex-parte	6,730	7,624	6,286	5,544	7,148	6.2%
Transfer to other court levels	316	321	400	464	424	34.2%
Withdrawn by prosecution	7,248	9,487	9,864	10,516	11,458	58.1%
Total finalised	75,351	88,692	90,504	96,968	101,106	34.2%

Source: ABS (2016a).

As a proportion of adjudicated outcomes, the rate of guilty pleas by defendants has increased, on average, 1.7 per cent each year over the five-year period (from 83.0% in 2010–2011 to 88.8% in 2014–2015). This indicates an upwards trend in the proportion of cases finalised by way of guilty pleas.

We examine this further in Chapter 7 in the context of comparing Victoria to other Australian jurisdictions.

Increased police resources

From 30 June 2011 to 30 June 2015, the total number of Victoria Police increased by 10.1 per cent, going from 11,211 in 2011 to 12,341 in 2015, an at average growth of 3.0 per cent per year.[20]

Between 2014 and 2015 the government funded a total of 1,156 additional police personnel, comprising 530 sworn frontline and specialist officers, 400 Police Custody Officers, 109 Protective Service Officers and 117 specialist staff (State Government of Victoria 2016 p.23).

December 2016 saw the announcement of an additional 2,729 sworn police to be recruited over four years, on top of 406 new police that were announced in the 2016 Budget 'bringing the total number of new police to 3,135' (Andrews 2016). Among the new officers, 415 will be dedicated to frontline responses to family violence (State Government of Victoria 2016, p.11).

[20] These data have been collated from Victoria Police Annual Reports (see Victoria Police 2010, 2011, 2012, 2013, 2014, 2015).

These developments mark a significant increase in resources deployed on frontline policing. Overall, if we add the combined number police in positions of Sergeants, Senior Constables and Constables in 2011 (n=11,211) to the total number of new personnel (n=3,135), this represents a 28.0 per cent increase. This substantial investment in frontline policing is likely to impact summary crime prosecutions and workload in the Magistrates' Court, and is likely to continue into the future as the additional officers are recruited, trained and deployed.

Increased police court proceedings

ABS data on police proceedings is broken down by whether the police proceed by way of court or non-court action. Court action means that the police have laid charges against an alleged offender. Non-court action refers to instances where police have elected to take other actions – that is, a response that does not involve a summons or appearance in court. Examples include cautions/warnings, conferencing, counselling, Penalty Infringement Notice etc.

Over the five-year period (from 2010–2011 to 2014–2015), the total number of police proceedings by means of court action in Victoria was 320,350 (54%) and non-court action was 269,073 (46%). Overall, in the five-year period examined, the number of non-court actions decreased by 10.9 per cent and the number of court actions increased by 40.9 per cent. This indicates that Victoria Police are increasingly more likely to proceed against an alleged offender by way of court action than non-action in recent years.

Increased custody and remand population

From 2010 to 2015, the total number of prisoners in Victoria increased by 37.1 per cent (ABS 2015). The proportion of un-sentenced prisoners, that is those who have been remanded in custody pending trial, rose from 18.7 per cent in 2014 to 23.1 per cent in 2015 (ABS 2015). As the remand population increases, the demand for in-custody grants and duty lawyer services is likely to also increase, especially as accused in custody are a DLS priority group.

Summary crime service context

One long-standing access to justice issue concerns the level of criminal defence assistance provided for criminal matters in the lower courts. In contrast to the higher courts, the high volume local or Magistrates' Courts have been characterised as evolving more 'conveyor-belt' practices to quickly and efficiently move accused into 'slots' or 'streams' and process them through the system (see Bottomley, Gunningham & Parker 1991). This includes a magistrate sitting without a jury, police prosecutors, and defendants who are sometimes unrepresented. Typically, the lowest tier of criminal courts handle the overwhelming majority of criminal matters. They are able to do so because the overwhelming majority of accused plead guilty. What high rates of guilty pleas mean, including by those who are unrepresented, however, is contested.

On the one hand, it is explained by defendants who are guilty of the offences they have been charged with. Self-represented defendants pleading guilty may, thus, be seeking to

minimise their costs, and may have formed the view that legal representation may only make a marginal difference to the outcome of the matter, particularly where they have 'no defence' to the charges.

On the other hand, there is the risk that some defendants will mistakenly plead guilty to charges, particularly where they have not had the benefit of legal advice, or think that they do not have the capacity to defend the matter. Correctly determining whether or not someone is guilty of the particular charges they face, and correctly determining whether or not they have a viable legal defence, is a legal analysis task. Obtaining, interpreting and correctly applying the law to particular circumstances can be challenging, particularly for disadvantaged people and groups who tend to have comparatively lower ability to make effective use of self-help strategies, and who tend to depend on public legal assistance services to meet their legal needs (see McDonald & Wei 2016; Pleasence et al. 2014).

Right to a fair hearing

There is no right to legal representation under Australian or Victorian law. In *Dietrich v The Queen*[21] a majority of the High Court of Australia found that criminal accused do not have a right to legal representation at public expense, but rather, accused have a right to a fair trial for serious criminal offence, and that legal representation is an important aspect of determining a fair trial.[22]

The *Dietrich* principles have been widely applied in Australian courts in relation to indictable proceedings. The South Australian Supreme Court also held that there is no reason why the reasoning should not apply to hearings for serious criminal offence tried summarily before a magistrate.[23]

The right to a fair hearing is one factor that legal aid commissions in Australian states and territories therefore have to consider in determining eligibility for grants of legal assistance, and in particular for more serious criminal offences.

Some of these matters – where imprisonment is a possibility – fall into the summary crime jurisdiction. This means that VLA has limited discretion not to prioritise summary crime services to those at risk of imprisonment.

Any rise in accused facing imprisonment, who cannot afford private legal services, therefore increases pressure on the summary crime services, as grants of aid must be provided to these clients. In a constrained funding environment, VLA then has less to provide to others, such as those unable to afford private legal assistance who are facing

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[21] (1992) 177 CLR 292.

[22] The court explained that depending upon all the circumstances of the particular case, the lack of legal representation may mean that the accused will not have received a fair trial, and that an appellate court should therefore quash any conviction because of a miscarriage of justice.

[23] *Weinel v Fedchelshen* (1995) 65 SAAR 156. In 1993 Victoria legislated in response to *Dietrich* and amended the Crimes Act 1958 (Vic), since incorporated into to the Criminal Procedure Act 2009 (Vic). Refusal of a grant of legal assistance in respect of a trial is not a ground for an adjournment or stay of a trial. The court has the power, however, to order VLA to provide legal representation, and may adjourn proceedings until it is provided if satisfied that it is necessary to ensure that the accused will receive a fair trial, and the accused is unable to afford the cost of obtaining legal representation from a private practitioner. The court may refuse to order VLA legal representation if it is satisfied that the accused engaged conduct that contributed to inability to afford private legal representation.

less serious charges that may not result in jail time, but may nevertheless have substantial impact on their lives.

One way to manage this issue is to 'ring-fence' resources for more discretionary criminal legal assistance services, and have additional or 'top-up' appropriations in circumstances where demand for criminal legal assistance in 'non-discretionary' areas rises above the projected need.

Guilty and not guilty pleas

Australian legal aid commissions provide different levels of legal assistance depending on the severity of the matter and the type of plea the client intends to make. While there is no absolute right to legal aid representation in criminal matters, funding for legal representation is prioritised for more serious criminal matters to ensure a fair hearing. This creates a service tension between more serious and less serious criminal matters, and the merits of not guilty pleas. For example, legal aid commissions generally only provide legal representation services for not guilty pleas for more serious matters where clients satisfy means, merits and service eligibility guidelines. This means that accused not eligible for a grant of legal assistance due to lack of severity, may only be eligible to receive less intensive forms of legal assistance such as legal information and legal advice, or advocacy services to assist them to make a guilty plea. Consequently, some people with meritorious and defendable cases may not be able to obtain legal representation services if they are unable to afford private assistance. Public legal service eligibility requirements therefore have the potential to create particular 'pools' of legal need in the 'justice gaps' that sit between service eligibility.

Summary crime services in a changing environment

Given VLA's funding context, there are concerns that increased demand for summary crime services will be unsustainable. As such it is timely to examine how appropriate and sustainable VLA's summary crime services are, and in particular, how the 2012–2013 DLS and Grant Guidelines changes affected service provision.

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3. Methodology

This evaluation is based on mixed-method analysis of quantitative (administrative service) and qualitative data obtained from VLA and consultation with key stakeholders, together with other publicly available information. An overview of the data sources and analyses follows.

Victoria Legal Aid administrative data: ATLAS

VLA provided the Foundation with an extract of de-identified service event data from its ATLAS administrative data system. The extract comprised all records of grants of legal assistance (GLA), duty lawyer records (DLR), court attendance records (CAR), legal advice records (LAR) and minor work files (MWF) for summary crime matters in the period 1 June 2011 to 30 November 2015.

The data covers a period of 12 months before the June 2012 changes to the DLS Guidelines (the 'baseline'), a 12 month period during which changes to the DLS Guidelines were progressively implemented at VLA offices across Victoria and the Grant Guidelines were changed in October 2012 and then again in April 2013, and then a period of 2.5 years in which the DLS and Grant guidelines operated without change. In total, the data extract covers a period of 4.5 years (54 months) (see Table 3.1).

Table 3.1: Summary crime service periods, 1 June 2011 to 30 November 2015

Period	Dates	Duration
Pre-change (baseline)	1 June 2011–31 May 2012	12 months
During-change	1 June 2012–31 May 2013	12 months
Post-change	1 June 2013–30 November 2015	30 months
Total	**1 June 2011–30 November 2015**	**54 months**

This classification allows the impact of the changes to the DLS and Grant guidelines to be analysed across the three time periods, and allows service provision in the baseline or pre-change to be compared with that in the during-change and post-change periods.

Unit records for each of the five types of summary crime services (i.e. GLA, DLR, CAR, LAR, MWF), along with demographic information for each unique client who received a summary crime service, were provided to the Foundation in separate Excel worksheets. These worksheets were imported into SPSS and compiled into datasets for analysis.

Table 3.2 reports the total number of unique clients and service events in the data extract.

Table 3.2: Total number of summary crime service records and unique clients, June 2011 to November 2015

Record	Number
Grants of Legal Assistance (GLA)	69,746
Duty Lawyer Record (DLR)	193,629
Court Attendance Record (CAR)	62,039
Legal Advice Record (LAR)	57,350
Minor Work File (MWF)	20,727
Total services	**403,391**
Unique clients	128,751

Data fields extracted from ATLAS included:

- client number (de-identified)
- demographic information (gender, birth year, ATSI status, country of birth, homelessness status, disability status and type, employment status, benefits status and type, whether the client speaks English, whether language other than English spoken at home, need for an interpreter, residential postcode, in-custody status)
- service type (GLA, DLR, CAR, LAR, MWF)
- service information (e.g. approval or service date, VLA office, primary matter type[24], court or advice location)
- legal result, sentence or outcome of primary matter
- referral information (service and reason).

Due to the GLA, DLR, CAR, LAR and MWF records each having inconsistent data fields, some variables were regrouped when the datasets were compiled. To facilitate data analysis, variables were also recoded and/or combined, and a number of proxy measures developed. The limitations of the data fields and the proxy measures developed are discussed in further detail in the *Data limitations* section below.

Descriptive analyses, such as the mean number of services provided per month and percentages, were calculated to examine change in the provision of VLA summary crime services across change periods. Multivariate inferential statistical analyses were used to examine the relationship between demographic and criminal matter characteristics and VLA's summary crime services across the change periods. Multivariate regressions are used to examine the independent effects or influence that a set of variables have on various outcomes. Two different types of regression analyses were used. First, separate binary multilevel logistic regression models were used to examine the provision of different summary crime service levels, controlling for demographic and criminal matter characteristics (type and severity) and change period. The regression models were used to calculate the estimated probability of different levels of summary crime service in the pre-change and post-change period. Second, time-series analysis, employing vector

[24] It is common for people to be charged with multiple offences. The primary matter type is the most serious criminal matter that a client is either facing or is seeking advice for, and may also be known as the 'head' charge. The primary matter type is typically, but not always, the first charge listed on a summons. In total there were 280 different primary matter types in the dataset extract.

autoregression, is used to examine the relationship between the number of police initiations in the Magistrates' Court of Victoria and provision of grants of legal assistance and duty lawyer services. Data covering the period July 2011 to August 2016 was used for the time-series analysis. The regression analysis is then used to forecast demand for summary crime services though to August 2017 assuming the current service settings.

VLA administrative data was analysed using the statistical analysis software packages IBM SPSS version 19.0, STATA version 12 and MLwiN version 2.36, and examined geographically using QGIS version 2.12.

Measuring summary crime services

The unit of measure in VLA's ATLAS database varies in scope across service types. Each grant of legal assistance is recorded separately, irrespective of the number of separate service events that may be provided under that grant (i.e. one grant of legal assistance, one GLA record). As such, a grant of legal assistance can comprise *multiple* service events, including multiple instances of legal advice as well as representation at multiple court dates. A grant of legal assistance is a *bundled* form of legal service and creates an ongoing client–lawyer relationship with respect to the resolution of those matters for which the grant has been provided. Legal services provided under a grant of legal assistance may be provided by a VLA solicitor, a private solicitor on the Summary Crime Panel, a barrister within VLA Chambers or working privately, or through a combination of these service providers.[25] Note also that a person may receive a summary crime grant of legal assistance with respect to one or more sets of offences.

In contrast, DLRs, CARs and LARs count service events *separately*. That is, each instance of a duty lawyer service, court attendance service, or a legal advice service is recorded separately (i.e. one service event, one record). Note that legal advice may be provided as part of a duty lawyer service, a court attendance service, at an in-office legal appointment, or via VLA's Legal Help telephone service. DLRs, CARs and LARs record *unbundled* forms of legal service, and they do not create an ongoing lawyer–client relationship, notwithstanding that a lawyer may make an in-court appearance on behalf of a client. A MWF is a record of minor forms of assistance provided by a VLA solicitor. A client may receive *multiple* instances of duty lawyer service, court attendance service or legal advice service with respect to the same set of offences. For example, a client whose matter has been adjourned a number of times may receive multiple DLS services, and each new service episode is recorded separately.

Further, the DLS also has three service *levels*. A person seeking assistance from the DLS is assessed and triaged to one of 'legal information only', 'legal advice and information only' or 'in-court advocacy'. Note also that a client may receive one of more *types* of service for the set of charges they are facing, for example, a legal advice appointment, DLS and/or grant.

[25] Clients may receive services from a combination of providers under a grant of legal assistance.

VLA office location

VLA provides DLS services at courts across Victoria from various office locations. During the period of administrative data examined, VLA made changes in the way in which it provides DLS services. These included closing the Preston office and having the Melbourne office provide DLS services at the Heidelberg Magistrates' Court. To examine how provision of DLS services changed across the guideline change periods, DLS services provided by the Preston office in the period before it was closed were therefore attributed to the Melbourne office.[26] This allows the change in the workload of the Melbourne office to be measured independently of the closure of the Preston office.

DLS priority group status

To examine how the level of DLS service changed across the guideline change periods, a measure of DLS priority group status was developed based on a combination of a proxy measure of client income and the four identified DLS priority groups:

- people with an intellectual disability, acquired brain injury or mental illness
- homeless people
- people who cannot speak, read or write English well
- Indigenous Australians.

The following four mutually exclusive groups were constructed to approximate DLS priority group status:

- 'None' comprising those clients who do not meet the proxy income measure or any of the priority group criteria
- 'Income proxy only' comprising those clients satisfying the income proxy measure, but not any of the priority group criteria
- 'Priority group only' comprising those clients satisfying one or more of the priority group criteria, but not the income proxy measure
- 'Both' comprising those clients satisfying both the income proxy measure and also one or more of the priority group criteria.

We discuss the limitations of the income proxy measure and the priority group measure further in the *Data limitations* section below.

Level of disadvantage

To aid analyses of the impacts of the 2012–2013 DLS and Grant Guidelines changes a measure of clients' level of disadvantage was created. Level of disadvantage is a count of the following six indicators or types of disadvantage: having a disability[27] (including physical, intellectual, mental health etc.), being homeless, having an Indigenous

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[26] DLS at the Melbourne Magistrates' Court, Heidelberg Magistrates' Court and Neighbourhood Justice Centre in Collingwood are provided out of VLA's Melbourne Office. In total, across the period of administrative data examined 77 per cent of the DLS services (i.e. duty lawyer and court attendance services) by the Melbourne office were at the Melbourne Magistrates' Court, 19 per cent were at Heidelberg Magistrates' Court and 2 per cent were at the Neighbourhood Justice Centre.

[27] Note that clients were counted as having a disability if they had one or more of the following types of disability: acquired brain injury, intellectual, mental health, psychiatric, physical, hearing, visual, speech or other type of disability not further disclosed.

background, having a non-English main language (speaking language other than English at home or interpreter required), being unemployed and being in receipt of means-tested government benefits. Clients were grouped according to the number of types of disadvantage they had: 'None', 'One type' or 'Multiple (two or more types)'.

Severity of criminal matter measures

People charged with criminal offences are often charged with more than one offence. Court and crime data systems usually record only the most serious criminal matter, known as the 'primary matter'. VLA's ATLAS administrative data system records the primary matter type. In total, 280 different criminal matter types were recorded in the ATLAS data for the period June 2011 to November 2015.

To allow analyses of how criminal matter severity may have changed across the guideline change periods, two severity measures were developed. First, 'VLA Rank' was created by extending VLA's scheme for assessing and triaging DLS matters as 'minor', 'straightforward' and 'significant' to all 280 primary matter types in the dataset. To assist this classification the maximum penalties in the corresponding legislation and sentencing data were reviewed where available. The Victorian Sentencing Advisory Council webpage for the Magistrates' Court of Victoria was searched for each of the different matter types in the dataset (Sentencing Advisory Council 2016b). For those matter types that were unavailable, the Victorian Sentencing Advisory Council web page for the higher courts in Victoria was also searched (see Sentencing Advisory Council 2016a).

A second measure of matter severity, 'NOI 2009 Rank' was developed by applying the *Australian Standard Offence Classification (ASOC) 2008 Second Edition* code for each primary matter type in the dataset (see ABS 2008). The ASOC 2008 was used in preference to the later revision of the *Australian and New Zealand Standard Offence Classification (ANZSOC) 2011* because ASOC 2008 can be mapped directly to the *National Offence Index (NOI) 2009*.[28] NOI 2009 assigns a rank score to different criminal matter types in terms of severity: the lower the number the more serious and severe the matter. After applying the ASOC 2008 classification to the primary matter types in the dataset, NOI 2009 ranking scores of severity were generated. Analyses were undertaken using each of the measures of matter severity, and the results were broadly consistent. We are confident that each measure is useful for examining change over time in service provision by matter severity.

Mapping

VLA ATLAS data for summary crime services by client residential postcode was extracted for the pre-change (June 2011 to May 2012) and the post-change (December 2014 to November 2015) periods. Client residential postcodes related to any PO Boxes were excluded (which accounted for only 0.2 per cent of the service data). Any non-Victorian postcodes were also excluded (which accounted for only 1.0 per cent of the service data). Client residential postcodes coded as missing in the ATLAS data comprised another 4.7 per cent, and they were also excluded from the data.

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[28] ASOC 2008 was revised in 2011 and renamed ANZSOC (see ABS 2011a). The National Offence Index 2009 (see ABS 2009) was matched to the ASOC codes that were applied to each primary matter type.

A postcode to local government area (LGA) concordance was calculated to geographically map the data by LGA. Rates of services per 1,000 of the population aged 18 years and over were calculated for each LGA using LGA population data sourced from the Australian Bureau of Statistics (ABS) TableBuilder Pro software. This population data is based on the 2011 Census of Population and Housing database within TableBuilder Pro. The rates of service are calculated on these population figures and consequently do not take into account any changes to the adult population since the date of the 2011 census. We note that the period of administrative service data examined fell between census dates, and that expected fluctuation of the population across LGAs will have affected the accuracy of the calculation of service rates.

Data files with the calculated rates of service per 1,000 population by LGA were edited and analysed in the desktop geographic information system (GIS) software application QGIS, which was also used to generate maps depicting the data, as well as VLA office locations. For each map six classes of rates of service were used. These six classes were based on an equal count of services in LGAs. Note that this means the relative range of the rates in the six classes is proportionate to the overall number of services, and consequently, varies across the type of service analysed.

Case studies

Preliminary investigation suggested a number of factors may affect the demand for and operation of VLA's summary crime services, in particular the DLS, across the state. The number of people seeking legal assistance, stakeholder relationships, the operation of the Magistrates' Court and the nature of the local community served are all likely to vary from court to court and office to office. VLA provides a DLS at 22 Magistrates' Courts across Victoria from 14 office locations, and a VLA office may provide DLS at more than one court. At some courts the DLS is provided by private practitioners, or a combination of VLA offices, or a combination of VLA and private practitioners.

It was cost-prohibitive to undertake detailed investigation at each VLA office and Magistrates' Court. Therefore, a case study approach was taken.

In consultation with VLA, the following case study sites were selected: Bendigo, Broadmeadows, Dandenong and Melbourne. These sites were purposely selected on the basis of caseload and geographic location. Together the four selected case study sites provided exactly 45 per cent of summary crime services in the administrative service dataset.[29] As outlined below, the VLA staff survey and regional managing lawyer focus group supplemented the case studies, and provided information about summary crime services at other VLA offices and courts.

Two Foundation researchers visited each of the four case study sites between May and July 2016 and conducted semi-structured focus group discussions with VLA administrative service officers, VLA and private solicitors involved in the provision of DLS services, together with interviews with magistrates and registrars, police prosecutors, and the VLA

[29] Broken down by service type, the four case study sites together account for 14.8 per cent of the total grants of legal assistance, 51.4 per cent of all duty lawyer records, 50.9 per cent of all court appearance records, 55.9 per cent of all legal advice records and 38.8 per cent of all minor work files.

managing lawyer. Interviews were also undertaken with court support services, including the Court Integrated Services Program (CISP) and Court Referral & Evaluation for Drug Intervention Treatment (CREDIT) and Bail Support Program (BSP) operated by the Magistrates' Court of Victoria, and the volunteer Court Network.

The main Magistrates' Court at each case study location was visited, and the facilities and operation of the DLS observed. In preparation for the case study visits, Foundation researchers spent two days at the Melbourne Magistrates' Court observing the operation of the DLS and court, and piloted the case study focus group and interview questions with VLA solicitors and administrative staff working in the DLS.

Focus groups and interviews were undertaken face to face or by telephone and were recorded and transcribed, and key themes identified and analysed using the qualitative data analysis software package NVivo version 10.

In total eight focus groups and 16 interviews with 56 people were analysed.

VLA staff survey

A survey of VLA lawyers and administrative officers providing summary crime services was conducted. The questionnaire was piloted with VLA staff. The survey was open for a two-week period from 16 August 2016 to 29 August 2016. In total 82 lawyers and seven administrative staff completed the survey. The survey response rate for lawyers was 71 per cent, and as such, the responses of lawyers can be taken to be broadly representative of all VLA lawyers doing summary crime work. The response rate for administrative staff, however, was only 12 per cent, and as such the responses should not be treated as representative of all administrative staff, but rather as providing an indication of the range of views. Given the number of respondents, it was not possible to undertake location based analyses.

The staff survey was analysed using SurveyMonkey and Microsoft Excel.

Key stakeholder consultations

Key stakeholder focus groups and interviews were conducted after the completion of the case study fieldwork, and were recorded, transcribed and analysed. Other meetings were also undertaken that were not recorded.[30]

VLA convened a Summary Crime Project Advisory Group and invited representatives from key stakeholders including the Department of Justice and Regulation, Law Institute of Victoria, Magistrates' Court of Victoria, Queensland Legal Aid, Victoria Police Prosecutions, Victorian Bar and VLA. One meeting of the Advisory Group included a focus group discussion that sought to identify and test stakeholder views about pressure points within the summary crime jurisdiction and the difference that VLA funded services make to the operation of that jurisdiction.

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[30] This included meetings with people from VLA, the Victorian Department of Justice and Regulation and Neighbourhood Justice Centre.

The Law Institute of Victoria convened a focus group discussion with private practitioners involved in providing VLA funded summary crime services. A separate schedule was developed for this focus group which in additional to exploring the appropriateness and sustainability of VLA funded summary crime services, canvassed private practitioner experiences of doing VLA funded work, and relationship with VLA.

To further supplement the case studies and VLA staff survey, and obtain further regional information, a focus group with VLA regional managing lawyers was also conducted. This focus group provided opportunity to identify the particular service and sustainability challenges faced in regional VLA offices.

Interviews were also undertaken with VLA managers and lawyers concerning summary crime services at the Neighbourhood Justice Centre in Collingwood.

In total four focus groups and four interviews with 35 people were conducted, transcribed and analysed in the key stakeholder consultations. Additional information was obtained through another four meetings with eight people.

Secondary analysis of VLA client satisfaction survey

Due to the prohibitive cost and time required to undertake a representative survey of clients, secondary analysis of VLA's Client Satisfaction Survey 2015 was undertaken (see Colmar Brunton 2015). VLA provided the Foundation with Microsoft Excel worksheets containing survey responses. Respondents who received summary crime services duty service were identified, and their survey responses were extracted for thematic analysis.

In total, there were 120 clients who used a DLS provided by one of VLA's criminal sub-programs. Examination by sub-program revealed that 98 per cent of surveyed clients had used the adult summary crime DLS.[31] As such, survey respondents' views and experiences are highly representative of the summary crime DLS. Note that it was not possible to examine the satisfaction of grant recipients by private or VLA in-house practitioner, or by indictable or summary crime.

Benchmarking

To contextualise VLA's summary crime services with those in other Australian states and territories, publicly available information about the number and type of summary crime services was collected. Note, however, that comparison of Australian public legal assistance services is limited by lack of uniform data recording and reporting, and by lack of performance and quality measures.

Australian Bureau of Statistics court statistics and National Legal Aid reported legal assistance and statistics were collated and analysed. In addition, eligibility for grants and duty lawyer services across Australian states and territories was also collated.

Consultations were also undertaken with executive staff of Legal Aid NSW and Queensland Legal Aid, and with Legal Aid NSW summary crime managers. Legal Aid NSW and

[31] One per cent of clients used the youth crime and social inclusion duty lawyer services.

Queensland Legal Aid were selected on the basis that they are jurisdictions of a comparable size and demographic characteristics. In total, 10 people were consulted.

Other documentary materials

VLA provided the Foundation documents concerning the SCP. In addition, some focus group and interview participants forwarded or referenced documents, and other relevant publicly available documents were collected. These documents were reviewed and used to inform analyses.

Quantitative and qualitative analysis and reporting

The collected data were analysed using a mix of quantitative and qualitative analytical techniques. Quantitative and qualitative analyses are reported separately.

The qualitative analysis is set out thematically and variously draws upon the data sources. Evaluation participants were advised that their views would be treated confidentially, and as such we do not attribute any contributions to specific people. However, to aid interpretation, in text attribution is made to identify different participant categories (see Table 3.3).

Table 3.3: Qualitative data source and type of participant

Data source	Participant category
Case studies	Court Support Service Magistrate Police Prosecutor VLA Clerk VLA Lawyer VLA Managing Lawyer Private Practitioner
VLA staff survey	VLA Clerk VLA Lawyer
Key stakeholder consultations	VLA Manager VLA Managing Lawyer Private Practitioner Advisory Group Member

Where it assists interpretation we further locate the participant to Greater Melbourne or a regional area. It should be noted that within this schema, multiple participants may fall into the same attribution, and that to preserve confidentiality we do not further separate or identify participants. Where the analysis revealed consistency or variation in views or category of participants, this is reported.

In total, the evaluation obtained information from 314 clients, staff, stakeholders and advisers.

Data limitations

Data sources used are necessarily limited by the time and resources that were available for the evaluation, and by the available measures and information able to be collected. Key challenges in collecting and collating data about the operation of the justice system are limitations of administrative databases, which typically require the development and use of proxy measures to examine evaluation questions.

Administrative databases and proxy measures

Administrative datasets are established and evolve over time to meet administrative monitoring and reporting requirements. As such, they are often limited in the types of questions they can be used to answer, by the data fields they contain, and by the way in which data is recorded. For example, where there has been a systematic change in recording practice, or where the accuracy of recording certain information has been improved, any changes observed in services may simply reflect changed recording practices rather than changed service provision. VLA's ATLAS database was the best available data source for this evaluation, providing a large and robust dataset before, during and after the 2012–2013 DLS and Grant Guidelines changes. A number of limitations, however, should be noted.

First, VLA's ATLAS database does not separately flag summary and indictable crime. VLA used a combination of variables to identify summary crime services. After preliminary analysis the dataset was refined by Foundation researchers in conjunction with VLA by removing some indictable crime committals, and some other indictable crime matters that appeared to have been included in the dataset. While we are confident that the dataset accurately records VLA's summary crime services, it is possible some data entry and extraction errors remain.

Second, ATLAS records client demographic information as at the last point of service. That is, demographic data fields are overwritten where there has been a change in status from a previous point of service. We understand that routine VLA data entry practice is to first determine if a client is already known to VLA, and already has a record in ATLAS, and if so, to review whether or not demographic data fields need to be updated. This means that for some demographic variables the dataset contains only the clients' *most recent* information, and not necessarily the clients' information as it was at the time of service. In particular, clients' in-custody status can be overwritten. This is problematic as eligibility for VLA services varies by in-custody status. As such, we expect that there is some inaccuracy in the demographic data fields when used retrospectively due the way in which the ATLAS database is maintained, and the way in which the dataset has been compiled.

However, to minimise error stemming from the in-custody data field being overwritten, VLA supplied the Foundation with additional information detailing when the client in-custody data field had been changed. In total, there were 30,528 modifications to client in-custody status in the data extract.[32] This information was used in conjunction with examination of

[32] The number of modifications to the in-custody status data field ranged from 0–13. A total of 72.2 per cent of the clients in the dataset did not have any change to the in-custody status data field, and a further 13.7 per cent had only one or two changes.

whether or not a grant of legal assistance included a bail application to construct an updated measure of client in-custody status. While we are confident that this has improved the accuracy of client in-custody status, it may be that some error remains.

Third, the 2012 DLS Guideline change introduced a client assessment and triage model of duty service whereby service eligibility varies by in-custody status, income, priority group status and the severity of the criminal matter. The data analyses, however, are limited by the *precision* and recording of information affecting service eligibility. In particular, although client income level is recorded on DLR forms, is it not recorded in ATLAS, and therefore is not available for analysis. Consequently, an income test proxy measure, based on client employment status and receipt of means-tested government benefits, was created to examine how the introduction of the assessment and triage model of DLS affected service provision.[33] It should be noted, however, that the income test proxy measure developed is a *more stringent* measure as it uses a *lower income threshold* than the actual income test used in the DLS. That is, some people who meet the DLS income requirements for legal advice and in-court advocacy will not have satisfied the income test proxy measure used in the analysis. As a result, in the data analyses it may appear that some people have received a *higher* level of service than they were eligible to receive. We are confident those people who do satisfy the income test proxy measure are likely to also satisfy the DLS income requirements for legal advice and in-court advocacy, and that the income test proxy is both useful and the best measure available to examine change in service provision over time.

Finally, ATLAS is an administrative database that records client service rather than client outcomes. While some client outcomes, such as sentence and legal result are recorded, these outcomes are only known and recorded for some types of service. This includes grants of legal assistance, and DLS where in-court advocacy was provided at the point at which a matter was disposed of in the Magistrates' Court.[34] This means that client outcomes for other summary crime services are not known.

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[33] Proxy measures are used where a direct measure of phenomena is unavailable or immeasurable. They are an indirect measure designed to approximate a phenomenon. A better proxy measure is one that more closely approximates phenomena, although in the case of administrative datasets there may be limited options available.

[34] Note that the utility of these outcome measures is further limited because some 13.0 per cent of grants of legal assistance were still 'Ongoing' at the time of the data extract, and some 43.4 per cent of DLRs and 61.1 per cent of CARs resulted in an 'Adjourned' outcome. It also means that the outcomes for matters where clients received either 'legal information only' or 'legal advice and information only' from the DLS, legal advice at an in-office appointment, and assistance on a minor work file are not known.

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4. The changing profile of summary crime services: VLA data

In this section we present the results of the analysis of VLA's administrative service data along other analysis modelling the projected demand for grants and DLS under the current service eligibility settings.

We use these data to explore:

- change in the number and mix of summary crime services since the service eligibility changes
- who received summary crime services and for what type of offences
- the relationship between police initiations in the Magistrates' Court and demand for grants of legal assistance and DLS.

The results are contextualised in the *Discussion and recommendations*.

Change in the number and type of summary crime services

Table 4.1 reports the change in the number, mean and the percentage of summary crime services for the period June 2011 to November 2015. This table covers the period before, during and after the 2012–2013 changes to the DLS and Grant guidelines, and reports the number of grants of legal assistance (GLA), duty lawyer records (DLR), court attendance records (CAR), legal advice records (LAR) and minor work files (MWF). The DLS provides services in the form of DLRs, CARs and MWFs. The mean (i.e. the average) number of each type of summary crime services provided per month is also reported for six month periods, along with the percentage of each type of service.

The findings show that the mix of different types of summary crime services changed with the DLS and Grant Guidelines changes. There was an overall decline in both the number and percentage mix of GLAs, LARs and MWFs, and an overall increase in the number and percentage mix of DLRs and CARs. Grants of legal assistance dropped, on average, by 440 per month between the pre-change and post-change period, a decrease of 39.8 per cent (see Table 4.1).

Table 4.1: Number of summary crime services by type and change period, mean number per month and overall percentage per change period, June 2011 to November 2015

Type	Jun 2011 to Nov 2011	Dec 2011 to May 2012	Jun 2012 to Nov 2012	Dec 2012 to May 2013	Jun 2013 to Nov 2013	Dec 2013 to May 2014	Jun 2014 to Nov 2014	Dec 2014 to May 2015	Jun 2015 to Nov 2015	Total
GLA	Pre-change		Change		Post-change					
N	9,755	8,962	9,841	7,587	6,691	6,197	6,520	6,647	7,546	69,746
Mean	1559.8		1452.3		1120.0					1291.6
%	20.7		20.0		14.9					17.3
DLR										
N	22,775	20,593	18,132	17,456	20,221	20,764	23,892	24,285	25,511	193,629
Mean	3614.0		2965.7		3822.4					3585.7
%	47.9		40.9		50.7					48.0
CAR										
N	2,750	5,001	7,347	7,737	7,952	6,945	8,042	7,833	8,432	62,039
Mean	645.9		1257.0		1306.8					1148.9
%	8.6		17.3		17.3					15.4
LAR										
N	7,153	6,414	6,824	6,283	6,419	6,287	6,738	5,784	5,448	57,350
Mean	1130.6		1092.3		1022.5					1062.0
%	15.0		15.1		13.6					14.2
MWF										
N	3,660	3,402	3,084	2,759	1,949	1,687	1,406	1,379	1,401	20,727
Mean	588.5		486.9		260.7					383.8
%	7.8		6.7		3.5					5.1
Total										
N	46,093	44,372	45,228	41,822	43,232	41,880	46,598	45,928	48,338	403,491
Mean	7538.8		7254.2		7532.5					7472.1
%	100.0		100.0		100.0					100.0

Note: N=403,491 services.

Table 4.2 reports the change in the number of each type of service between the 12 month pre-change period and the last 12 months of the post-change period (covering the same calendar months).

Comparing the change periods suggests that VLA's summary crime services were transformed by the DLS and Grant Guidelines changes. Grants, legal advice appointments and minor work files went down as duty lawyer services and court attendance went up. Between the pre and post periods there was a 24.2 per cent decrease in grants, a 17.2 per cent decrease in legal advice appointments and a 60.6 per cent decrease in minor work files (see Table 4.2). At the same time, there was a 14.8 per cent increase in DLRs and a 109.8 per cent increase in court attendance. Note that while grants initially declined in the change and post-change period, after May 2014 the number has trended upwards.

Table 4.2: Number of summary crime services by type and change period, percentage change from pre-change to last year of post-change period, June 2011–November 2015

	Jun 2011 to Nov 2011	Dec 2011 to May 2012	Jun 2012 to Nov 2012	Dec 2012 to May 2013	Jun 2013 to Nov 2013	Dec 2013 to May 2014	Jun 2014 to Nov 2014	Dec 2014 to May 2015	Jun 2015 to Nov 2015	Total
Service type	Pre-change		Change		Post-change					
GLA	9,755	8,962	9,841	7,587	6,691	6,197	6,520	6,647	7,546	69,746
DLR	22,775	20,593	18,132	17,456	20,221	20,764	23,892	24,285	25,511	193,629
CAR	2,750	5,001	7,347	7,737	7,952	6,945	8,042	7,833	8,432	62,039
LAR	7,153	6,414	6,824	6,283	6,419	6,287	6,738	5,784	5,448	57,350
MWF	3,660	3,402	3,084	2,759	1,949	1,687	1,406	1,379	1,401	20,727
Total (N)	**46,093**	**44,372**	**45,228**	**41,822**	**43,232**	**41,880**	**46,598**	**45,928**	**48,338**	**403,491**
					% change pre to last year of post-change					
GLA					Decreased by 24.2%					
DLR					Increased by 14.8%					
CAR					Increased by 109.8%					
LAR					Decreased by 17.2%					
MWF					Decreased by 60.6%					

Note: N=403,491 services.

Table 4.3 breaks down provision of grants by VLA in-house and private practitioners, and DLS services by level of service – that is, 'legal information only', 'legal advice and information only', and in-court advocacy – by combining DLR and CAR services.

Table 4.3: Number of summary crime services by type and change period, percentage change from pre-change to last year of post-change period, June 2011–November 2015

	Jun 2011 to Nov 2011	Dec 2011 to May 2012	Jun 2012 to Nov 2012	Dec 2012 to May 2013	Jun 2013 to Nov 2013	Dec 2013 to May 2014	Jun 2014 to Nov 2014	Dec 2014 to May 2015	Jun 2015 to Nov 2015	Total
Mix of service	Pre-change		Change		Post-change					
GLA	9,755	8,962	9,841	7,587	6,691	6,197	6,520	6,647	7,546	69,746
VLA	2,759	2,445	2,508	1,808	1,760	1,885	2,120	2,195	2,520	20,000
PP	6,996	6,517	7,333	5,779	4,931	4,312	4,400	4,452	5,026	49,746
DLS	25,525	25,594	25,479	25,193	28,173	27,709	31,934	32,118	33,943	255,668
Info only	0	21	1,032	1,176	1,440	1,224	1,434	1,737	1,984	10,048
Advice & info	2,617	2,803	3,638	3,444	3,732	3,460	5,029	5,594	5,836	36,153
In-court advocacy	22,908	22,770	20,809	20,573	23,001	23,025	25,471	24,787	26,123	209,467
LAR	7,153	6,414	6,824	6,283	6,419	6,287	6,738	5,784	5,448	57,350
MWF	3,660	3,402	3,084	2,759	1,949	1,687	1,406	1,379	1,401	20,727
Total (N)	46,093	44,372	45,228	41,822	43,232	41,880	46,598	45,928	48,338	403,491
					% change pre to last year of post-change					
GLA					Decreased by 24.2%					
VLA					Decreased by 9.4%					
PP					Decreased by 29.9%					
DLS					Increased by 29.2%					
Legal information only					~					
Legal advice and information only					Increased by 110.9%					
In-court advocacy					Increased by 11.5%					
LAR					Decreased by 17.2%					
MWF					Decreased by 60.6%					

Note: N=403,491 services. PP=private practitioner. VLA=VLA in-house practitioners. ~ % change not calculated.

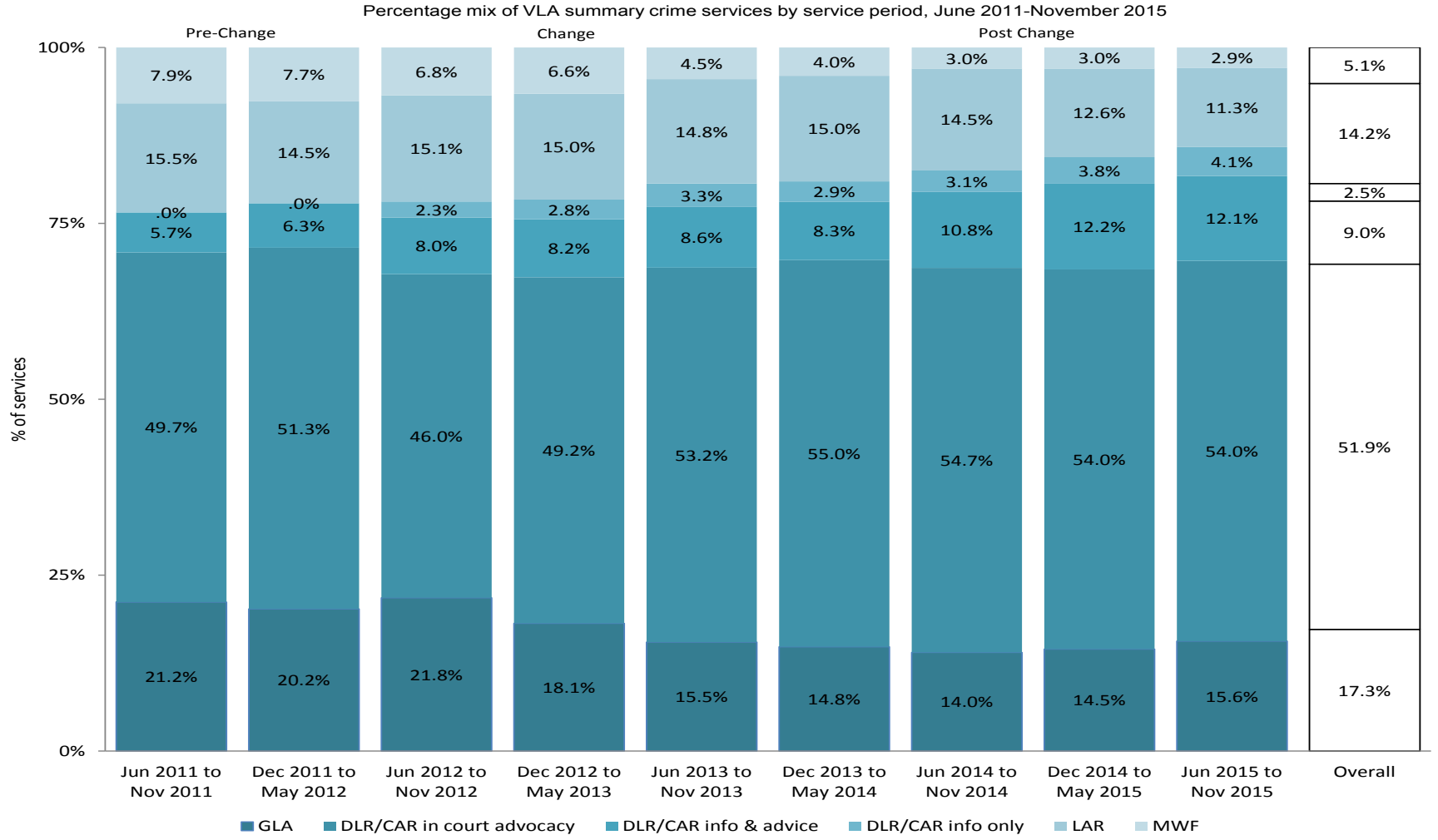
Table 4.3 shows that there was a larger decrease in the number of grants provided by private practitioners (29.9%) than by VLA in-house practitioners (9.4%).

Because the 2012 DLS Guidelines introduced the new 'legal information only' service level, the pre and post periods cannot be compared. However, Table 4.3 shows a 110.1 per cent increase in the number of 'legal advice and information only' DLS services and an 11.5 per cent increase in 'in-court advocacy' DLS services from between the pre-change period and the last year of the post-change period.

Change in the mix of different summary crime services

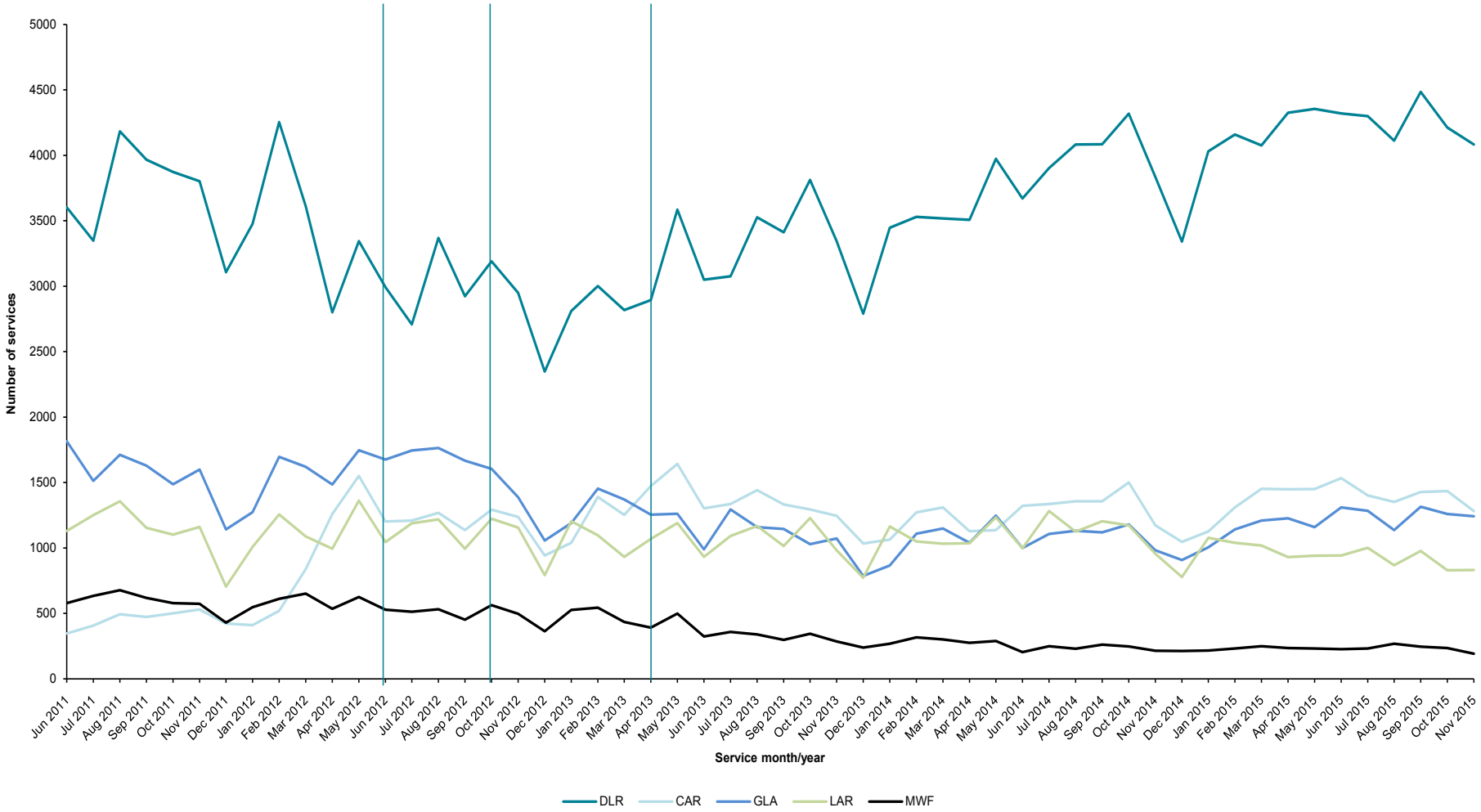
Figures 4.1–4.5 illustrate how the mix of summary crime services has been transformed by service eligibility changes. Figure 4.1 shows the overall proportion change in the mix of summary crime services from June 2011 to November 2014 for each six month period of the pre-change, change and post-change periods. Figures 4.2–4.5 show the change in the number of different types of summary crime services per month across the same period.

Figure 4.1: Percentage mix of summary crime services, June 2011–November 2015



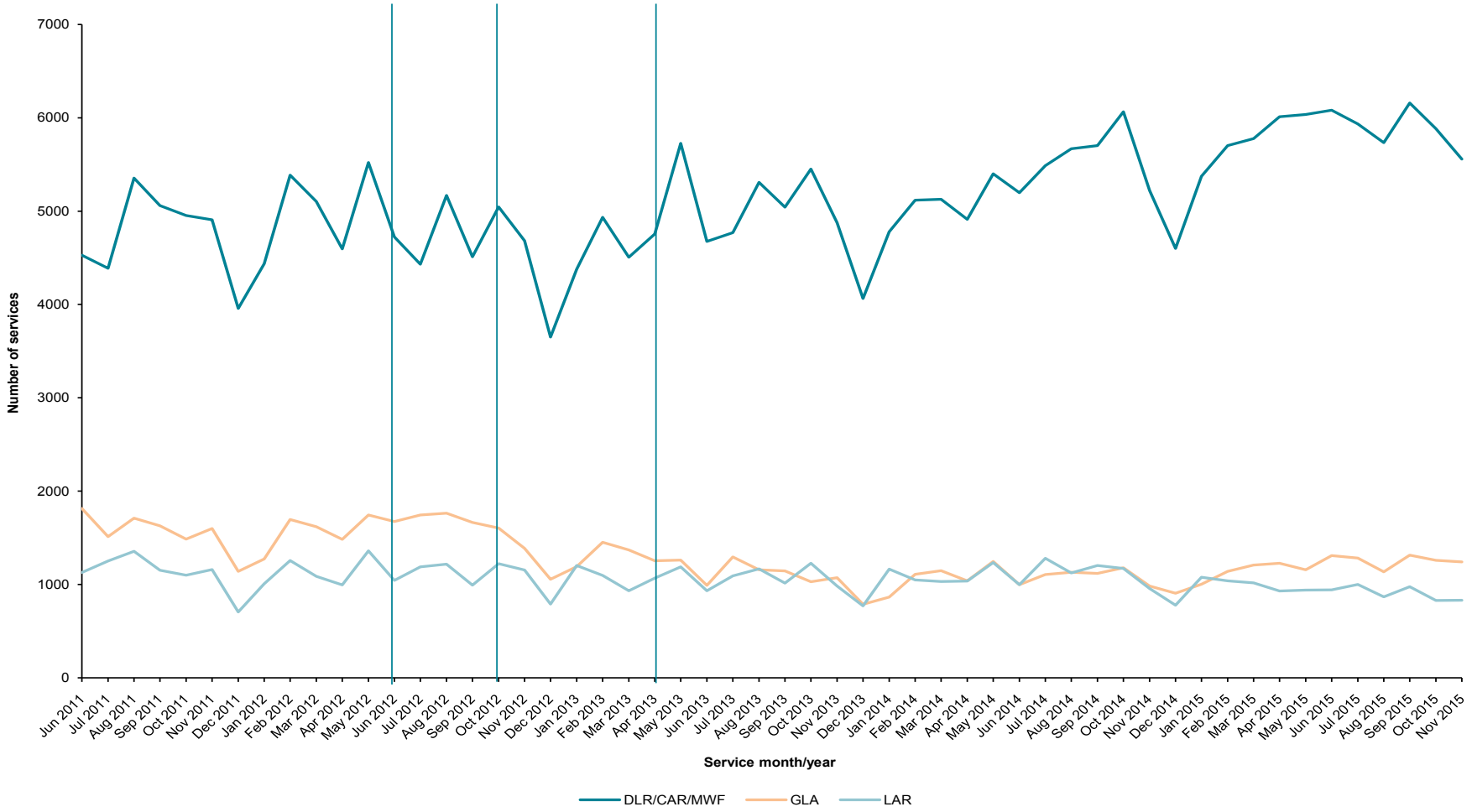
Note: N=403,491 services.

Figure 4.2: Number of summary crime service by type by month, June 2011 to November 2015



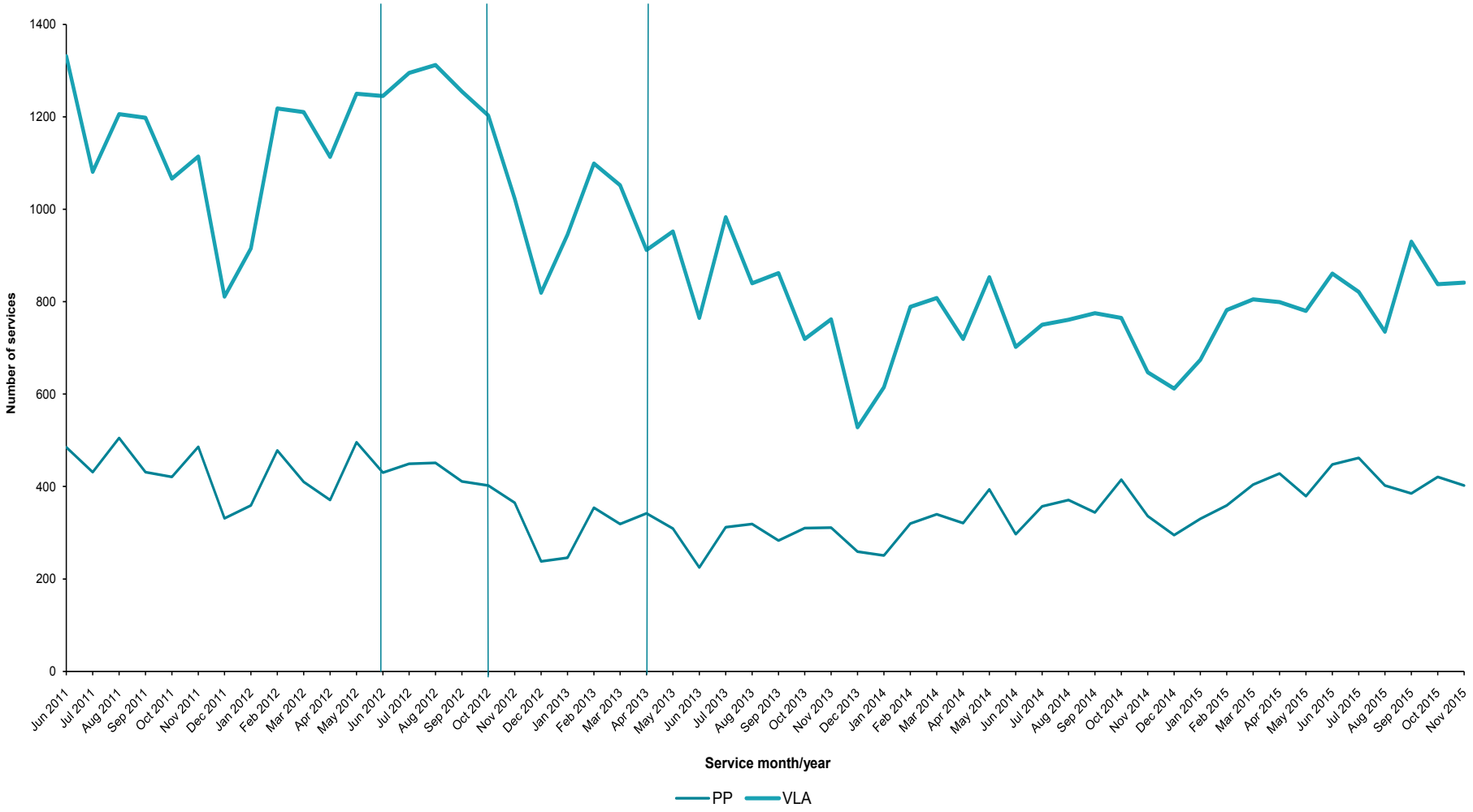
Note: N=403,491 services. Vertical lines on figure indicate the June 2012 DLS Guidelines, and October 2012 and April 2013 Summary Crime Grant Guidelines.

Figure 4.3: Number of DLS services, grants of legal assistance and in-office legal advice appointments per month, June 2011 to November 2015



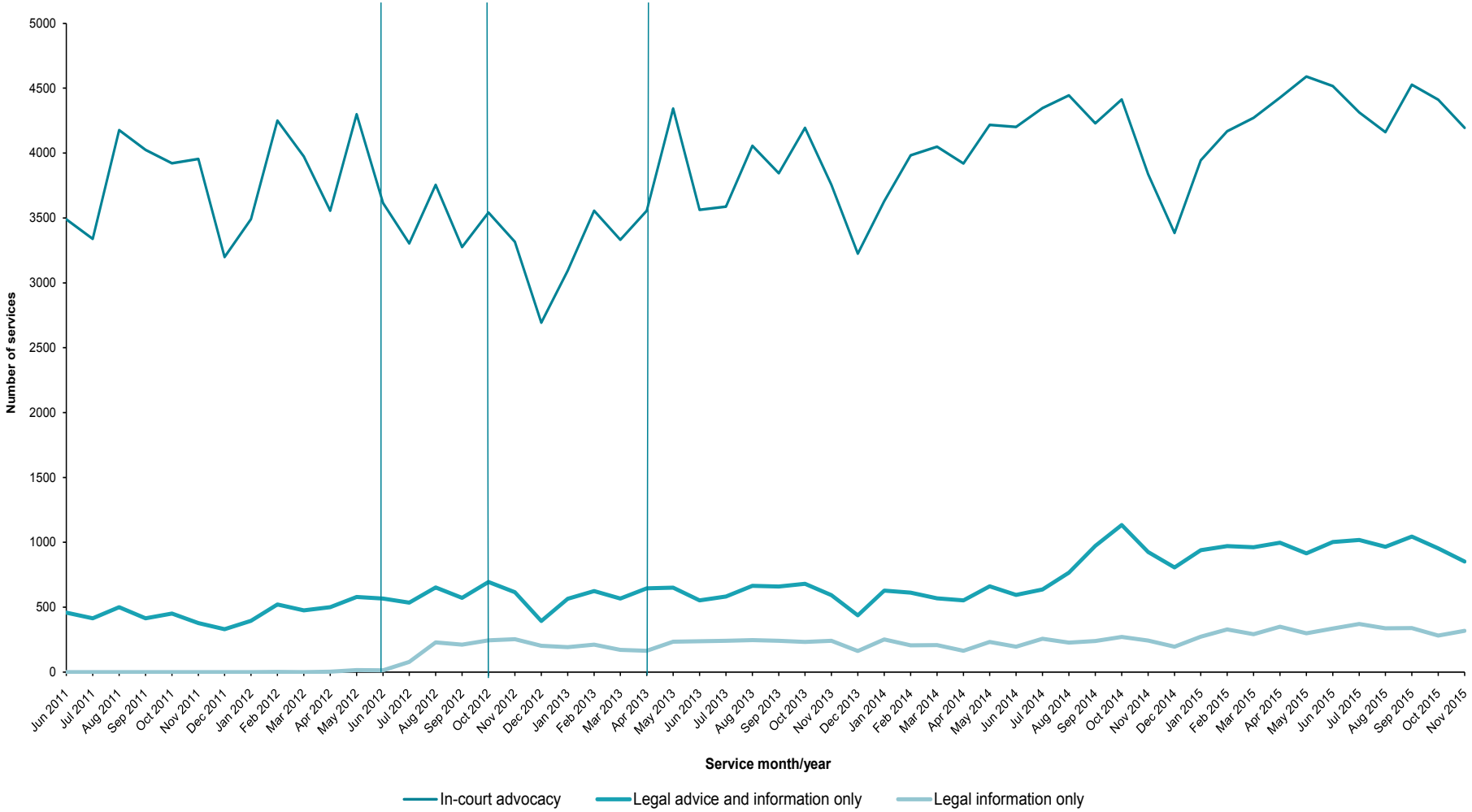
Note: N=403,491 services. Vertical lines on figure indicate the June 2012 DLS Guidelines, and October 2012 and April 2013 Summary Crime Grant Guidelines.

Figure 4.4: Number of grants of legal assistance by private and VLA in-house practitioners per month, June 2011 to November 2015



Note: N=69,746 services. Vertical lines on figure indicate the June 2012 DLS Guidelines, and October 2012 and April 2013 Summary Crime Grant Guidelines.

Figure 4.5: Number of 'Legal information only', 'Legal advice and information only' and 'In-court advocacy' DLS services per month, June 2011 to November 2015



Note: N=255,668 services. Vertical lines on figure indicate the June 2012 DLS Guidelines, and October 2012 and April 2013 Summary Crime Grant Guidelines.

Figure 4.2 shows how the number of different types of summary crime services changed with the DLS and Grant Guidelines changes. Note that number of summary crime services tends to drop in the month of December, indicating a seasonal pattern in the data, coinciding with the Christmas and New Year period. The strongest seasonal pattern appears to be in the provision of DLRs, particularly after the introduction of the 2012 DLS Guidelines. Note also that DLRs trend upwards year on year from about December 2012. In fact, there was a 38.4 per cent increase in the number of DLR services provided over the three-year period November 2012 to November 2015, indicating a large increase in demand for DLS services in this period.[35]

Figure 4.2 also illustrates the decrease in the number of grants per month following both the October 2012 and April 2013 Grant Guidelines changes. The number of grants continued to decline through to December 2013, after which there has been an upwards trend. In fact, there was a 15.8 per cent increase in the number of grants over the two-year period November 2013 to November 2015.[36] This suggests external factors driving the number of grants up.

While Table 4.2 showed a 109.8 per cent increase in DLS court attendance, it indicates that the upswing preceded the June 2012 DLS Guidelines changes. This suggests an earlier change in practice, with duty lawyers beginning to attend court for clients eligible for in-court advocacy, where the matter had to be adjourned. Figure 4.2 also illustrates how the number of minor work files declined over the period April 2012 to June 2014, after which they appear to have stabilised (at about 233 per month). By comparison, the number of legal advice appointments fluctuated in the period June 2011 to June 2014, after which they appear to have declined slightly to the end of November 2015.

Figure 4.3 presents the same information as Figure 4.2, except that DLRs, CARs and MWFs have been collapsed into a single group to better represent the overall change in duty lawyer workload given that a DLR can turn into a CAR, and will sometimes have an attached MWF. For ease of reference in the text we refer to these combined services as DLSs. Figure 4.3 shows an upwards trend in DLSs during the post-change period. For the three-year period November 2012 to November 2015 DLSs there was an 18.6 per cent increase.[37]

Figure 4.3 also indicates that as the number of grants declined in the first two years following the October 2012 Grant Guidelines change, the number of DLSs increased at a comparatively higher rate across the same period. This indicates that, as anticipated by the service eligibility changes, there was a *substitution* between grants and DLSs.

Note however, that in the final two years of the period examined, that is November 2013–November 2015, *both* grants and DLSs have trended upwards. The growth in grants (15.8%) has actually outstripped the growth in DLSs (14.0%) during this period. Critically, this finding suggests that while the DLS and Grant Guidelines changes initially achieved the intended change in summary crime service provision, in recent years there has been escalating service demand.

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[35] In November 2012 there were 2949 DLRs and in November 2015 there were 4082 DLRs.

[36] In December 2013 there were 1073 grants and in November 2015 there were 1243 grants.

[37] In November 2012 there were 4683 DLR/CAR/MWFs and in November 2015 there were 5556 DLR/CAR/MWFs.

Figure 4.4 illustrates how the number of grants provided by private and VLA in-house practitioners changed with the October 2012 and April 2013 Grant Guidelines. The number of grants by private and VLA in-house practitioners both declined with the October 2012 Grant Guidelines, and again with the April 2013 Grant Guidelines. The number of grants appears to trend upwards for both from around December 2013.

Figure 4.5 depicts the impact of the 2012 DLS Guidelines on the level of service provided by the DLS. Note that the number of 'in-court advocacy' services initially declined with the June 2012 DLS Guidelines, while the number of 'legal advice and information only' and 'legal information only' services both increased. This suggests that, as envisaged, the introduction of assessment and triage to tiered level of service resulted in the substitution of 'in-court advocacy' service with lower intensity services. However, from around January 2013, and following the October 2012 and April 2013 Grant Guidelines changes, there has been an upward trend in the number of 'in-court advocacy' services. In the final two years of the period examined, it appears that all three service levels have trended upwards, suggesting that the anticipated service substitution effect has been exhausted. This again points to external drivers of demand for DLS in recent years.

Change in summary crime services by crime type

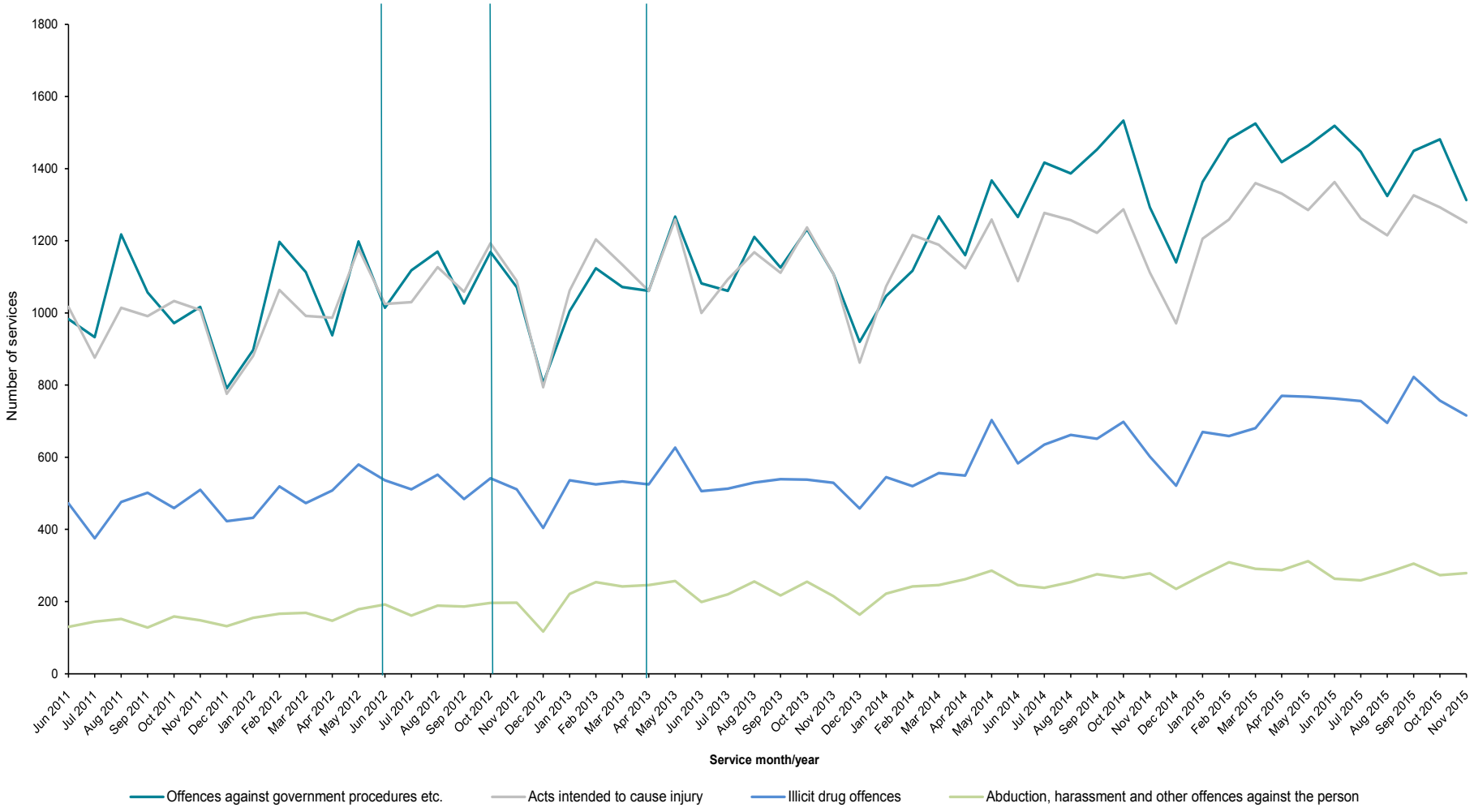
We investigated which criminal matter types accounted for the rise in DLS services. As noted in the *Methodology*, VLA criminal matter types were classified using ASOC 2008 codes. Figure 4.6 shows the number of summary crime services per month for the four criminal matter types identified as having increased the most during the time period examined: abduction, harassment and other offences against the person; acts intended to cause injury; illicit drug offences; and offences against government procedures, government security and government operations.

'Offences against government procedures etc.' includes offences associated with breaching various types of orders and justice procedures. We examined which particular offences had increased the most. 'Breach of family violence intervention order' and 'Breach of bail' increased 93.7 and 96.4 per cent, respectively, across the final four years of the period examined (see Figure 4.7).

Other than the 'Illicit drug offences' category, the other offence categories depicted in Figure 4.6 potentially include offences pertaining to family and other interpersonal relationship violence. 'Acts intended to cause injury' includes serious and common assaults, and offences such as stalking that are potentially related to family violence. 'Abduction, harassment and other offences against the person' includes harassment and private nuisance and threatening behaviour offences, all potentially related to family violence. These findings point to changes in the policing and prosecution of family violence as potentially contributing to increase in DLS demand.

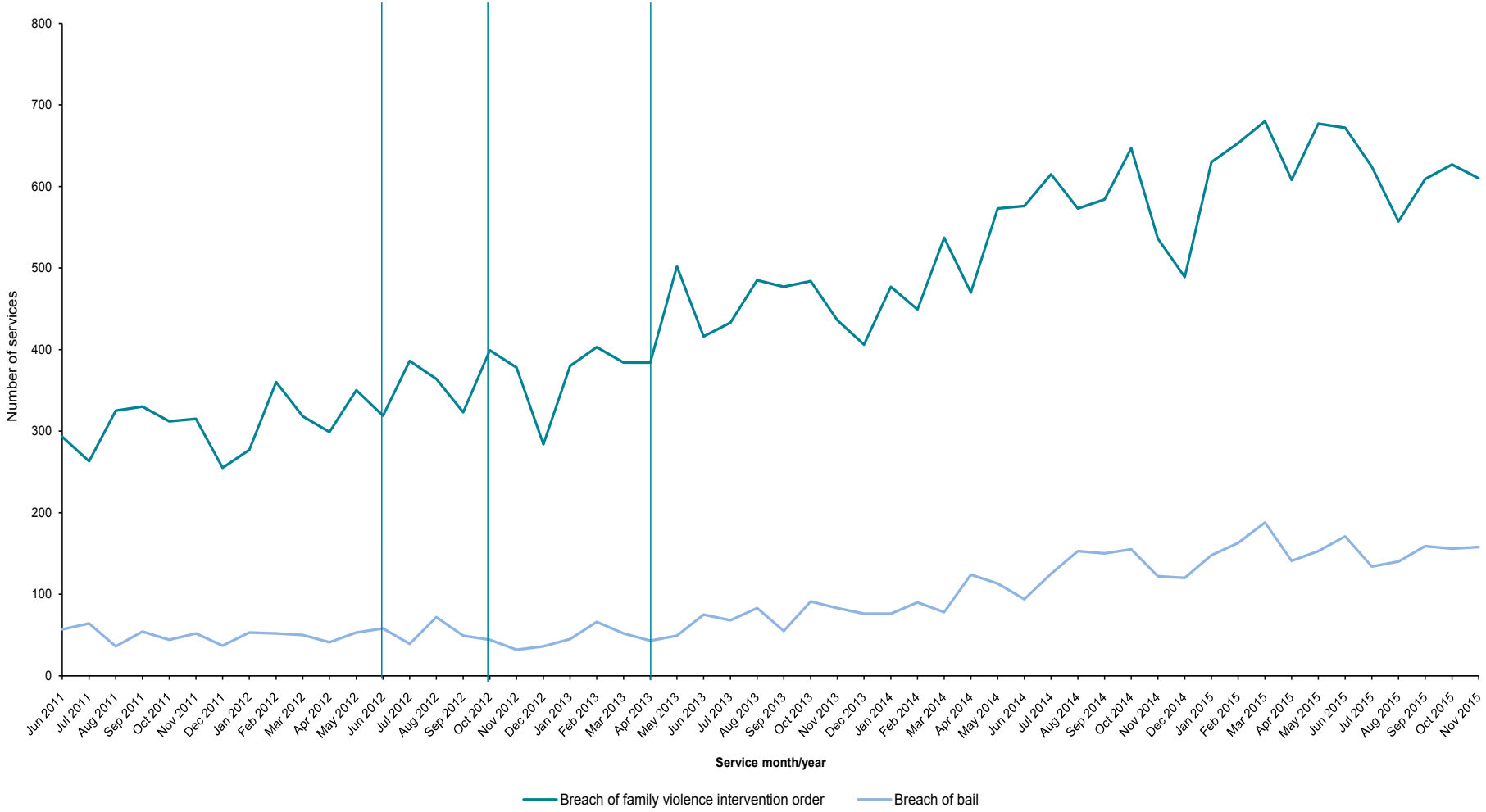
It is also notable that the increased DLS demand is potentially related to changes in offending or policing concerning illicit drugs such as crystalline methamphetamine (ice) (see Figure 4.6).

Figure 4.6: ASOC 2008 criminal matter categories with the largest change in the number of summary crime services per month, June 2011–November 2015



Note: N=167,735 services. Vertical lines on figure indicate the June 2012 DLS Guidelines, and October 2012 and April 2013 Summary Crime Grant Guidelines.

Figure 4.7: Number of summary crime services related to breach of family violence intervention order and breach of bail per month, June 2011–November 2015



Note: N=29,633 services. Vertical lines on figure indicate the June 2012 DLS Guidelines, and October 2012 and April 2013 Summary Crime Grant Guidelines.

Change in duty lawyer services by VLA office

We investigated how DLS services may have changed by VLA office with the DLS and Grant Guidelines changes. Table 4.4 breaks down the DLS services by VLA office for the three change periods, organised by Greater Melbourne and regional areas. It shows that for most VLA offices there has been an increase in the number of DLS services between the pre and post periods, but that this increase has not been equally distributed. The Melbourne[38] office recorded the largest percentage increase between the pre and post periods (71.0%), which translates to an increase of approximately 25 clients per day, (assuming 21-22 working days a month).

Table 4.4: Mean per month DLS by VLA office location and change period, percentage change pre-change to post-change, June 2011–November 2015

		Change period			
Office location		Pre-change	Change	Post-change	% change pre to post
Greater Melbourne	Broadmeadows	402.6	335.8	432.4	7.4
	Dandenong	817.5	842.6	932.3	14.0
	Frankston	304.6	313.1	389.5	27.9
	Melbourne	769.4	747.6	1316.0	71.0
	Ringwood	318.5	269.7	373.1	17.1
	Sunshine	571.7	559.6	615.4	7.6
Total Greater Melbourne		3184.3	3068.3	4058.7	27.5
Regional Victoria	Bairnsdale	55.8	53.0	58.7	5.2
	Ballarat	199.0	228.0	229.5	15.3
	Bendigo	199.6	204.8	226.5	13.5
	Geelong	228.9	200.1	248.0	8.3
	Horsham	94.8	87.2	91.6	-3.4
	Morwell	178.5	203.2	189.8	6.3
	Shepparton	150.3	163.2	148.7	-1.1
	Warrnambool	100.1	100.2	127.3	27.2
Total Regional Victoria		1207.0	1239.6	1320.1	9.4

Note: N=196,793 DLSs by Greater Melbourne offices and N=68,963 services provided by offices in Regional Victoria.

The next largest percentage increases were recorded for Frankston (27.9%), Warrnambool (27.2%), Ringwood (17.1%), Ballarat (15.3%), Dandenong (14.0%) and Bendigo (13.5%). The only offices where there was a small percentage decrease were the Horsham (-3.4%)

[38] As discussed in Chapter 3, VLA closed the Preston office during the guideline change period and continued to provide DLS services at the Heidelberg Magistrates' Court from VLA's Melbourne office. For the purpose of analyses, services provided by the Preston office have been attributed to the Melbourne office. Accordingly, the increase in services recorded for the Melbourne office is *not* due to the closure of the Preston office.

and Shepparton (-1.1%) offices. Overall, larger percentage increases tended to be recorded for VLA offices within Greater Melbourne compared to those in regional Victoria.

Figure 4.8 depicts the increase in the mean number of DLS services per month at the six VLA offices that had the highest increase in DLS services for the period June 2011–November 2015: Melbourne, Frankston, Warrnambool, Ringwood, Ballarat and Dandenong.

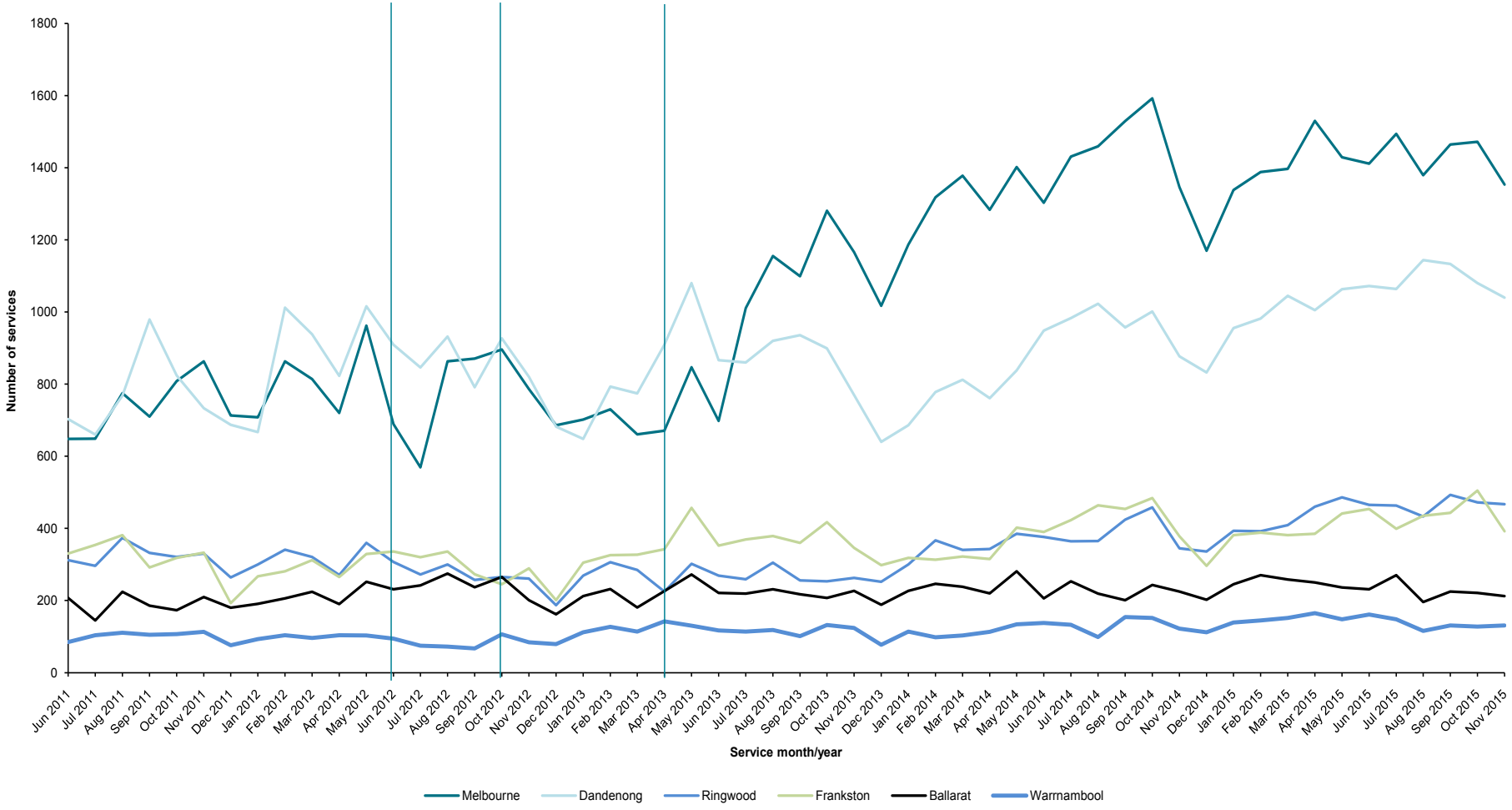
Together, Table 4.4 and Figure 4.8 suggest that the increase in DLS services at the Melbourne office is an outlier, increasing more than 2.5 times the percentage increase recorded for the next highest VLA office.

Excluding the Melbourne office, the total percentage increase between the pre and post periods for all the Greater Melbourne offices was 13.6 per cent, while the total percentage increase for all the offices in the regional Victoria was 9.4 per cent. This suggests that the DLS workload of the Melbourne office has been impacted by factors above and beyond the DLS and Grant Guidelines changes. Relevant factors might include VLA's organisation of the summary crime work done out of the Melbourne office, changes in the summary crime workload of the relevant courts covered by the Melbourne office (i.e. Melbourne Magistrates' Court, Heidelberg Magistrates' Court, Neighbourhood Justice Centre)[39], listing practices at those courts, and perhaps matters at Melbourne requiring a higher number of service events contacts.

The exceptional increase in the number of DLS services provided by the Melbourne office also point to the need to consider whether or not there are particular court practices or service challenges at the Melbourne Magistrates' Court affecting workload. These issues are explored further in the context of the appropriateness and sustainability of VLA's SCP services.

[39] Note that across the period of administrative data examined, 77 per cent of the DLS services provided by the Melbourne office was at the Melbourne Magistrates' Court, 19 per cent was at Heidelberg Magistrates' Court and 2 per cent was at the Neighbourhood Justice Centre in Collingwood.

Figure 4.8: Mean number of DLS per month at the six VLA offices with the largest increase between the pre-change and post-change periods, June 2011–November 2015



Note: N=161,153 services. Vertical lines on figure indicate the June 2012 DLS Guidelines, and October 2012 and April 2013 Summary Crime Grant Guidelines.

Change in summary crime services by client LGA

To examine how the geography of SCP services may have changed, client residential postcode across the service change periods was analysed. The number of grants and DLS services provided to clients by LGA adult population was calculated. This corresponds to the age profile of the population who may potentially seek adult summary crime services. We compare the service rate, expressed as a rate per 1,000 people aged 18 years and over. The service rate for the 12 month pre-change period was compared with the last 12 months of the post-change period, expressed as a rate per 1,000 people aged 18 years and over.

We report the geographic shifts in provision of grants of legal assistance first, followed by overall DLS services, and finally the three DLS service levels: 'in-court advocacy', 'legal advice and information only' and 'legal information only'.[40]

Grants of legal assistance

Table 4.5 compares the top ten LGAs that had the highest rates of grants to residents aged 18 years and over in the pre-change and post-change periods. It shows an overall *reduction* in the rate of grants in the ten LGAs with the highest rates in the post-change period.

Table 4.5: Grants of legal assistance, top ten LGAs, pre-change and last year of post-change periods, number and rate per 1,000 people aged 18 years and over in LGA

Pre-change				Post-change				
Rank	LGA	N	Rate / 1000	Pre-Rank	Rank	LGA	N	Rate / 1000
1	Latrobe	620	11.2	1	1	Latrobe	554	10.0
2	Ararat	78	8.9	7	2	Mildura	236	6.2
3	Central Goldfields	84	8.5	6	3	Ballarat	426	6.0
4	Frankston	793	8.2	4	4	Frankston	578	6.0
5	Maribyrnong	436	7.5	10	5	Wellington	187	5.9
6	Ballarat	536	7.5	3	6	Central Goldfields	55	5.6
7	Mildura	278	7.3	5	7	Maribyrnong	315	5.5
8	Hume	862	7.1	-	8	Melton	417	5.4
9	Wangaratta	140	6.8	-	9	Greater Dandenong	548	5.2
10	Wellington	207	6.5	-	10	East Gippsland	164	4.9

Source: ABS (2011b) and VLA ATLAS summary crime data, June 2011–May 2012 'pre-change' period, December 2014–November 2015 'post-change' period.

In the post-change period there were three new LGAs in the top ten LGAs (Melton, Greater Dandenong and East Gippsland). The LGAs of Central Goldfields and Maribyrnong moved down in their positions compared to the pre-change period, whereas the LGAs of Mildura,

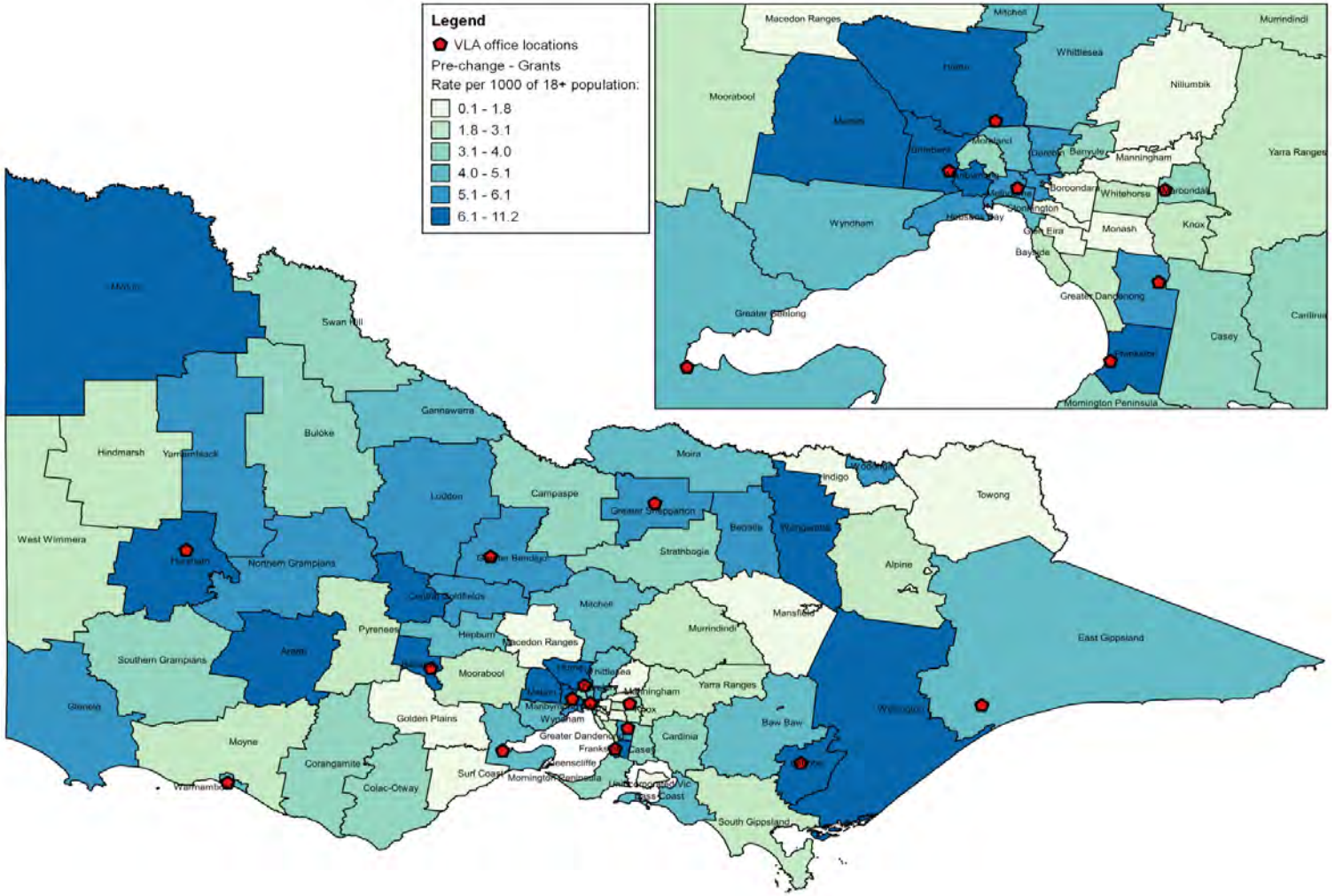
[40] Note that because the 'Legal information only' DLS service level was introduced by the 2012 DLS Guidelines, it is not possible to compare the pre-change and post-change periods for this service level.

Ballarat and Wellington moved higher in their positions, post-change compared to the pre-change period. The LGAs of Ararat, Hume and Wangaratta were no longer in the highest rates per 1,000 in the post-change period.

Maps 4.1 and 4.2 show the rates of grants per 1,000 of the population aged 18 years by LGA. The location of VLA office locations are marked in red. Comparison of Maps 4.1 and 4.2 illustrates the overall *reduction* in the rate of grants of legal assistance across Victoria in the post-change period, with about 60 per cent of LGAs changing to a lighter colour band, indicative of a lower rate.

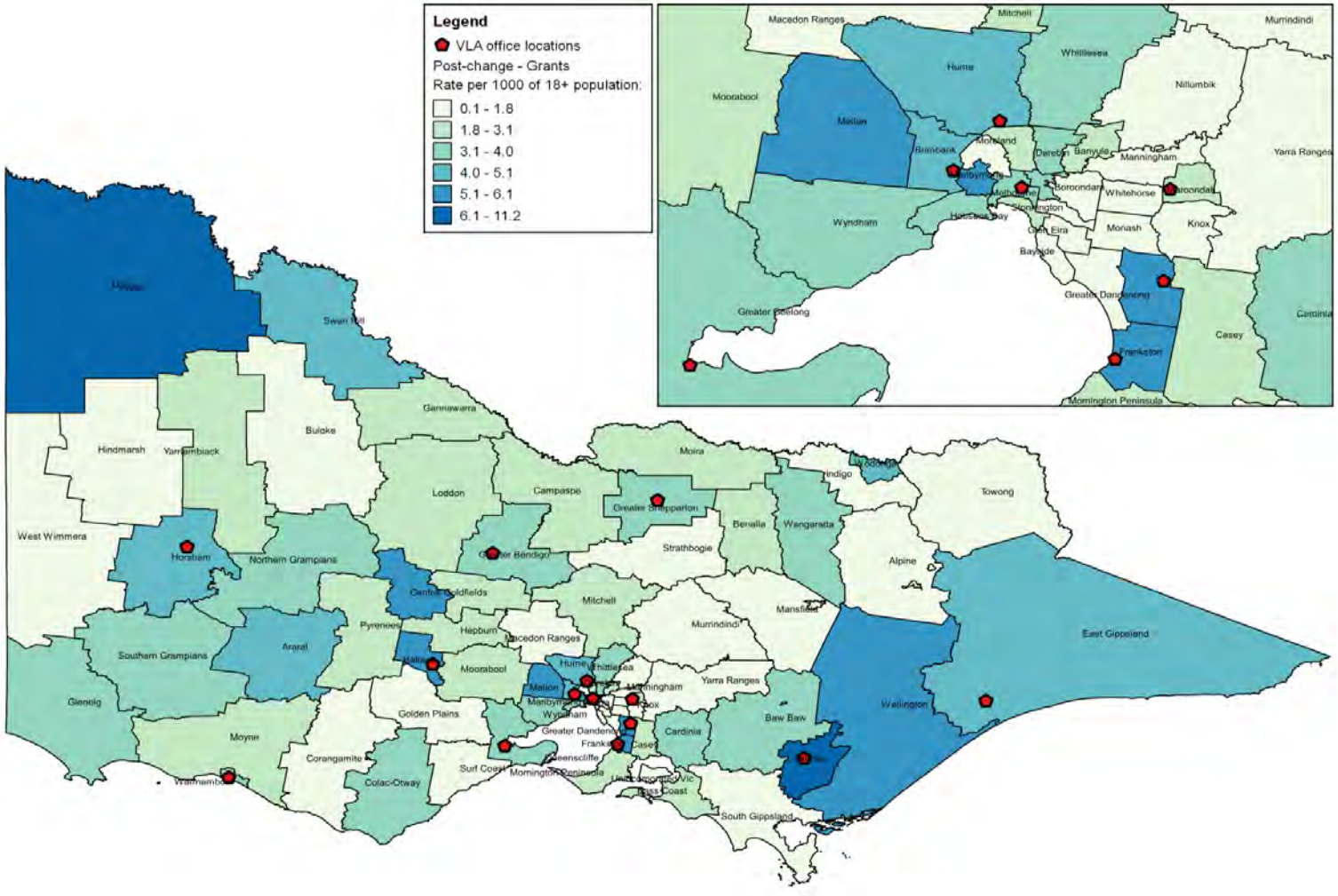
In the post-change period there is a smaller spread of grants of legal assistance across LGAs, and a concentration of LGAs with higher rates, above 6.1 per 1,000, in the LGAs of Mildura and Latrobe. These maps suggest that the overall reduction in the provision of grants of legal assistance was similarly experienced by clients resident in LGAs across the state, with the service rate for most LGAs tending to change to a lower rate by population.

Map 4.1: Pre-change period, grants of legal assistance, rate per 1,000 of population aged 18 years and over, by LGA



Source: ABS (2011b) and VLA ATLAS summary crime data, June 2011–May 2012 'pre-change' period.

Map 4.2: Post-change period, grants of legal assistance, rate per 1,000 of population aged 18 years and over, by LGA



Source: ABS (2011b) and VLA ATLAS summary crime data, December 2014–November 2015 'post-change' period.

Duty lawyer services

Table 4.6 compares the top ten LGAs in the pre-change and post-change periods that had the highest rates of DLSs (i.e. combined DLR/CAR/MWF). It shows an overall *increase* in the rate of DLS services to residents in the ten LGAs with the highest rates in the post-change period. Notably, there were larger increases in the rate of DLSs provided to residents of Greater Dandenong, Melton, Hume, Warrnambool, Central Goldfields and Frankston in the post-change period.

Table 4.6: DLS (i.e. combined DLR/CAR/MWF), top ten LGAs, pre-change and last year of post-change periods, number and rate per 1,000 people aged 18 years and over in LGA

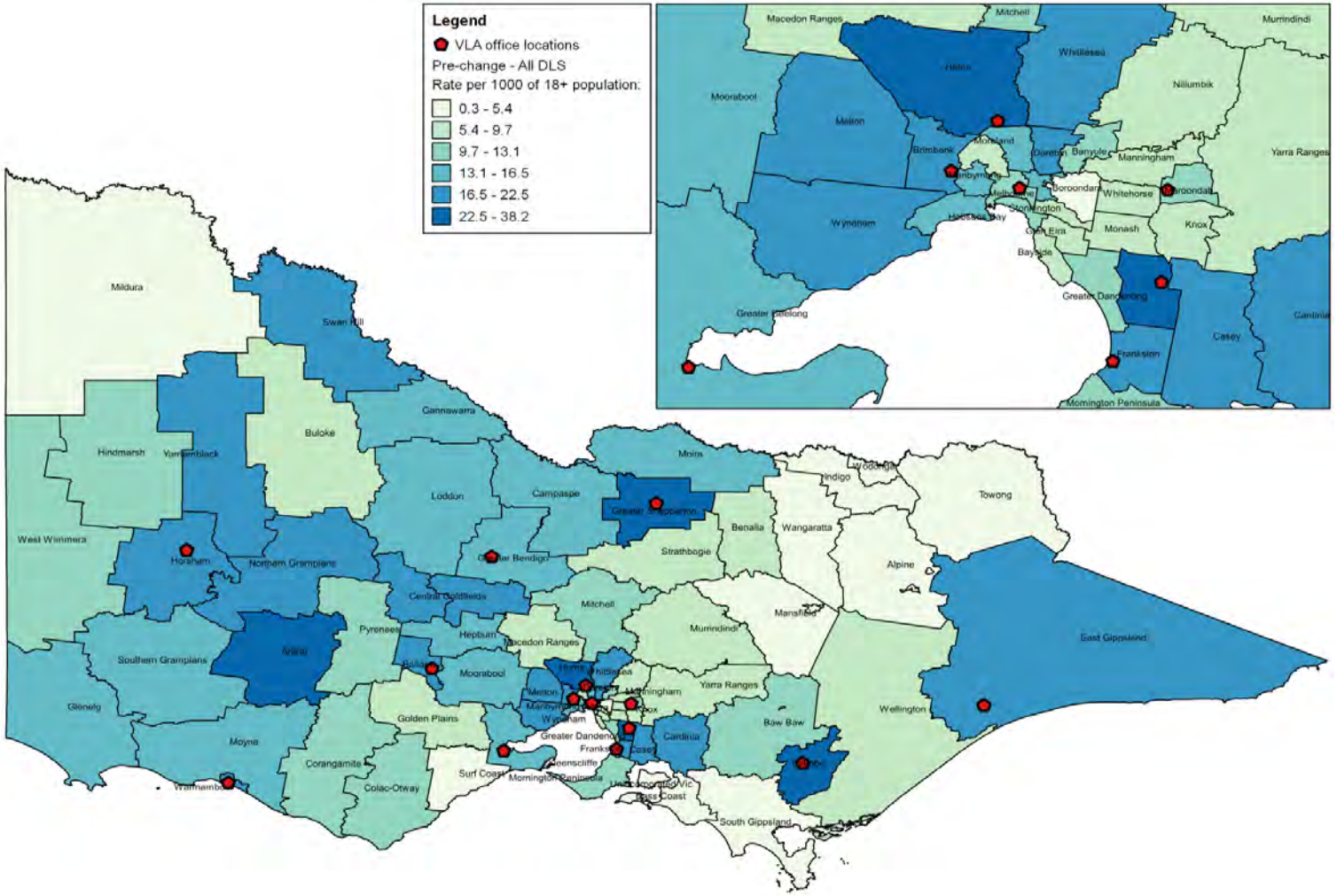
Pre-change					Post-change			
Rank	LGA	N	Rate / 1000	Pre-rank	Rank	LGA	N	Rate/ 1000
1	Ararat	261	29.6	2	1	Greater Dandenong	4,043	38.2
2	Greater Dandenong	3,114	29.4	8	2	Melton	2,433	31.3
3	Latrobe	1,379	25.0	5	3	Hume	3,405	28.0
4	Greater Shepparton	1,098	24.6	9	4	Warrnambool	679	28.0
5	Hume	2,916	24.0	-	5	Central Goldfields	274	27.7
6	Frankston	2,115	21.8	6	6	Frankston	2,606	26.9
7	Horsham	304	20.7	3	7	Latrobe	1,474	26.7
8	Melton	1,599	20.6	7	8	Horsham	390	26.5
9	Warrnambool	497	20.5	-	9	Brimbank	3,620	25.8
10	Swan Hill	309	20.1	1	10	Ararat	222	25.2

Source: ABS (2011b) and VLA ATLAS summary crime data, June 2011–May 2012 'pre-change' period, December 2014 –November 2015 'post-change' period.

Maps 4.3 and 4.4 show the rate of DLSs by LGA. Comparison of Maps 4.3 and 4.4 shows that more than a quarter of LGAs changed to a darker colour band, indicative of a higher rate of DLSs by population. In particular, there appears to be an intensification of DLS services through the population growth corridors west and south-east of Melbourne.

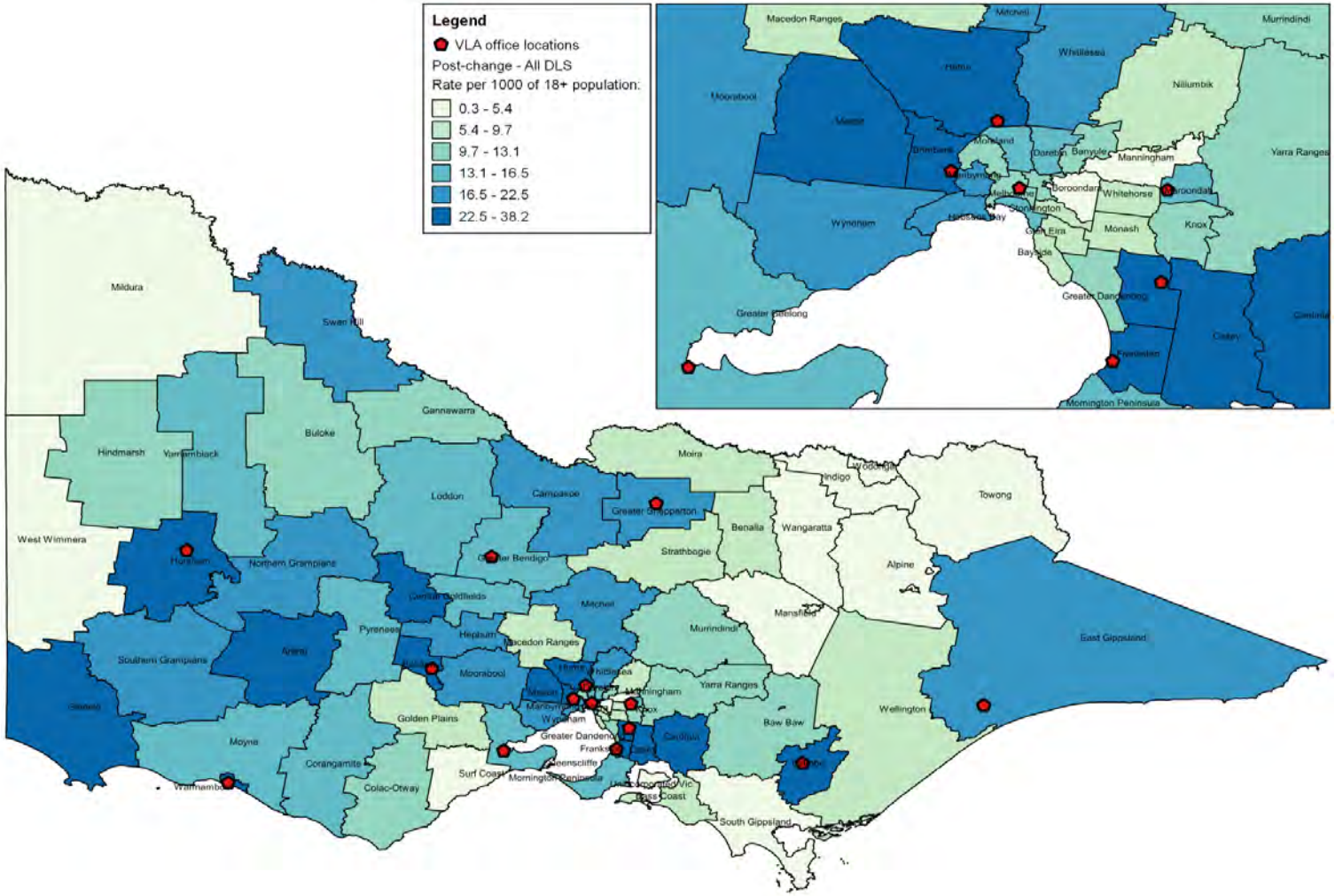
In the post-change period, there is a greater spread of LGAs with higher rate of DLSs, with rates above 22.5 per 1,000 in the LGAs of Glenelg, Horsham, Central Goldfields, Ararat, Ballarat, Melton, Hume, Brimbank, Greater Dandenong, Frankston, Casey, Cardinia, Latrobe and Warrnambool (see Map 4.4).

Map 4.3: Pre-change period, overall DLSs (i.e. combined DLR/CAR/MWF), rate per 1,000 of population aged 18 years and over, by LGA



Source: ABS (2011b) and VLA ATLAS summary crime data, June 2011–May 2012 'pre-change' period.

Map 4.4: Post-change period, overall DLSs (i.e. combined DLR/CAR/MWF), rate per 1,000 of population aged 18 years and over, by LGA



Source: ABS (2011b) and VLA ATLAS summary crime data, December 2014–November 2015 'post-change' period.

DLS in-court advocacy

Table 4.7 lists the top ten LGAs with the highest rates of DLS 'in-court advocacy' in the pre-change and post-change periods. It shows an overall *increase* in the rate of DLS in-court advocacy provided in the post-change period in a number of LGAs.

Table 4.7: DLS in-court advocacy, top ten LGAs, pre-change and last year of post-change periods, number and rate per 1,000 people aged 18 years and over in LGA

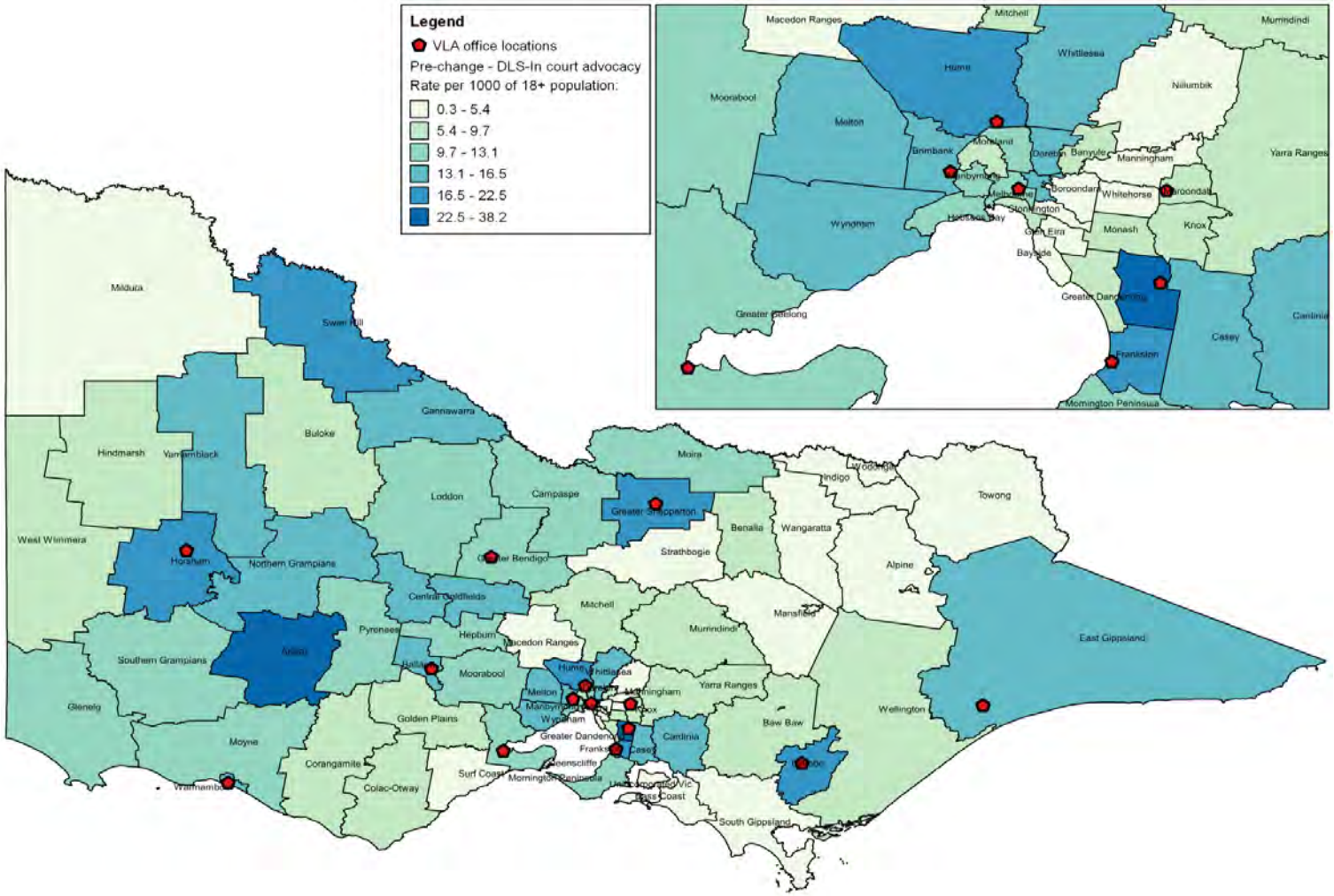
Pre-change				Post-change				
Rank	LGA	N	Rate / 1000	Pre-rank	Rank	LGA	N	Rate/ 1000
1	Greater Dandenong	2,636	24.9	1	1	Greater Dandenong	2,662	25.1
2	Ararat	215	24.4	3	2	Latrobe	1,289	23.4
3	Latrobe	1,119	20.3	10	3	Melton	1,761	22.7
4	Greater Shepparton	892	19.9	8	4	Horsham	310	21.1
5	Frankston	1,697	17.5	-	5	Central Goldfields	208	21.0
6	Hume	2,114	17.4	5	6	Frankston	2,028	20.9
7	Swan Hill	262	17.0	9	7	Warrnambool	498	20.5
8	Horsham	244	16.6	2	8	Ararat	176	20.0
9	Warrnambool	398	16.4	-	9	Brimbank	2,705	19.3
10	Melton	1,261	16.2	6	10	Hume	2,321	19.1

Source: ABS (2011b) and VLA ATLAS summary crime data, June 2011–May 2012 'pre-change' period, December 2014–November 2015 'post-change' period.

In the post-change period Greater Dandenong remained the highest LGA, while there were two new LGAs in the top ten LGAs (Central Goldfields and Brimbank). The LGAs of Frankston, Ararat and Hume moved down in their positions, whereas Latrobe, Melton, Horsham and Warrnambool all moved higher, and Greater Shepparton, Hume and Swan Hill were no longer among the top ten rates.

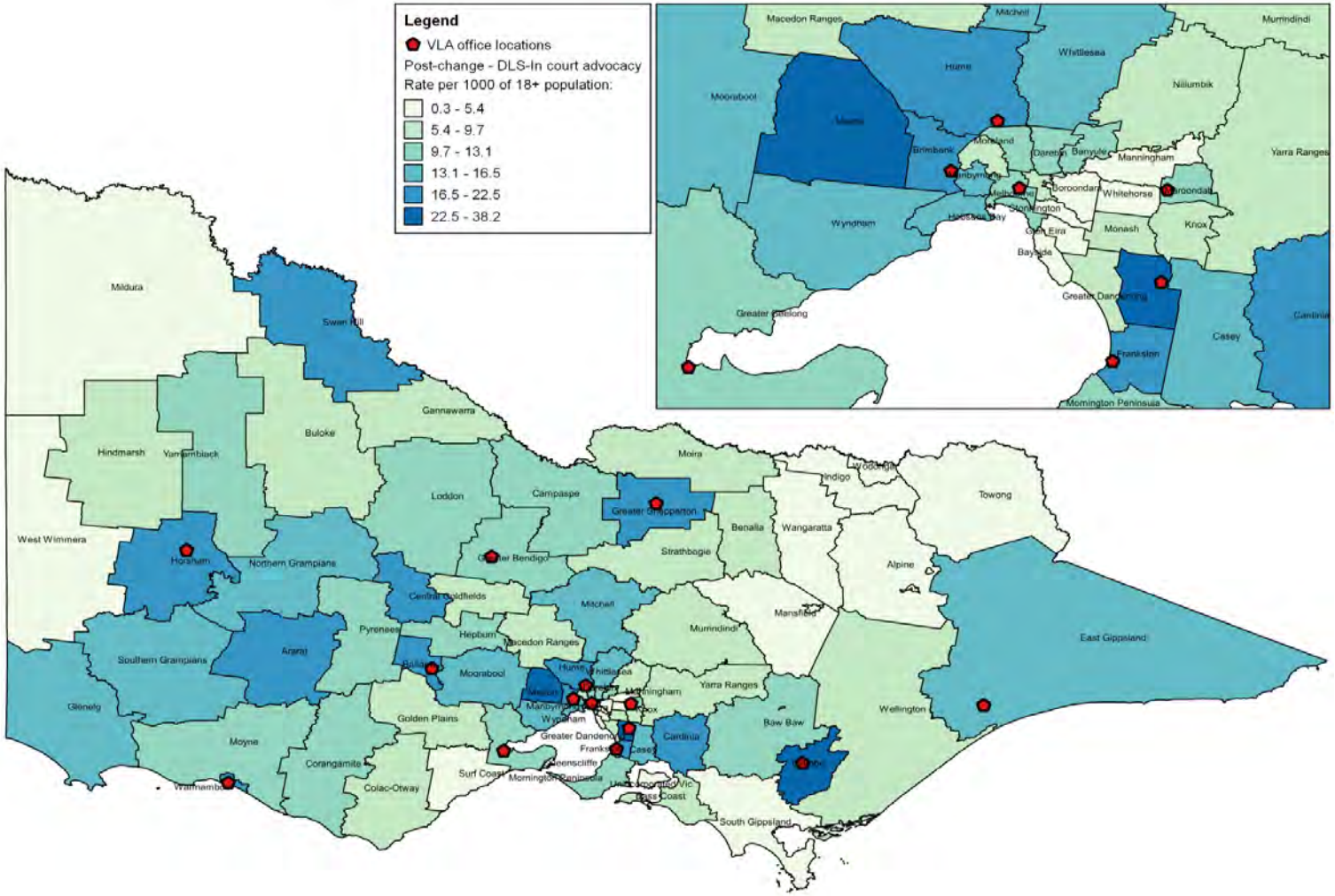
Maps 4.5 and 4.6 show the rates of DLS in-court advocacy by LGA. Comparison of these maps suggests intensification of in-court advocacy to people resident in around one-fifth of LGAs.

Map 4.5: Pre-change period, DLS in-court advocacy, rate per 1,000 of population aged 18 years and over, by LGA



Source: ABS (2011b) and VLA ATLAS summary crime data, June 2011–May 2012 'pre-change' period.

Map 4.6: Post-change period, DLS in-court advocacy, rate per 1,000 of population aged 18 years and over, by LGA



Source: ABS (2011b) and VLA ATLAS summary crime data, December 2014–November 2015 'post-change' period.

DLS legal advice and information only

Table 4.8 compares the top ten LGAs in the pre-change and post-change periods with the highest rates of DLS 'legal advice and information only'. There is an overall *increase* in the rate of DLS legal advice and information only in the top ten LGAs in the post-change period.

In the post-change period there were six new LGAs in the top ten: Casey, Cardinia, Glenelg, Moyne, Warrnambool and Wyndham. The LGAs of Hume and Melton moved down in their rank, whereas Greater Dandenong and Mitchell moved higher, while Brimbank, Darebin, Frankston, Maribyrnong, Moreland and Whittlesea were no longer in the top ten in the post-change period.

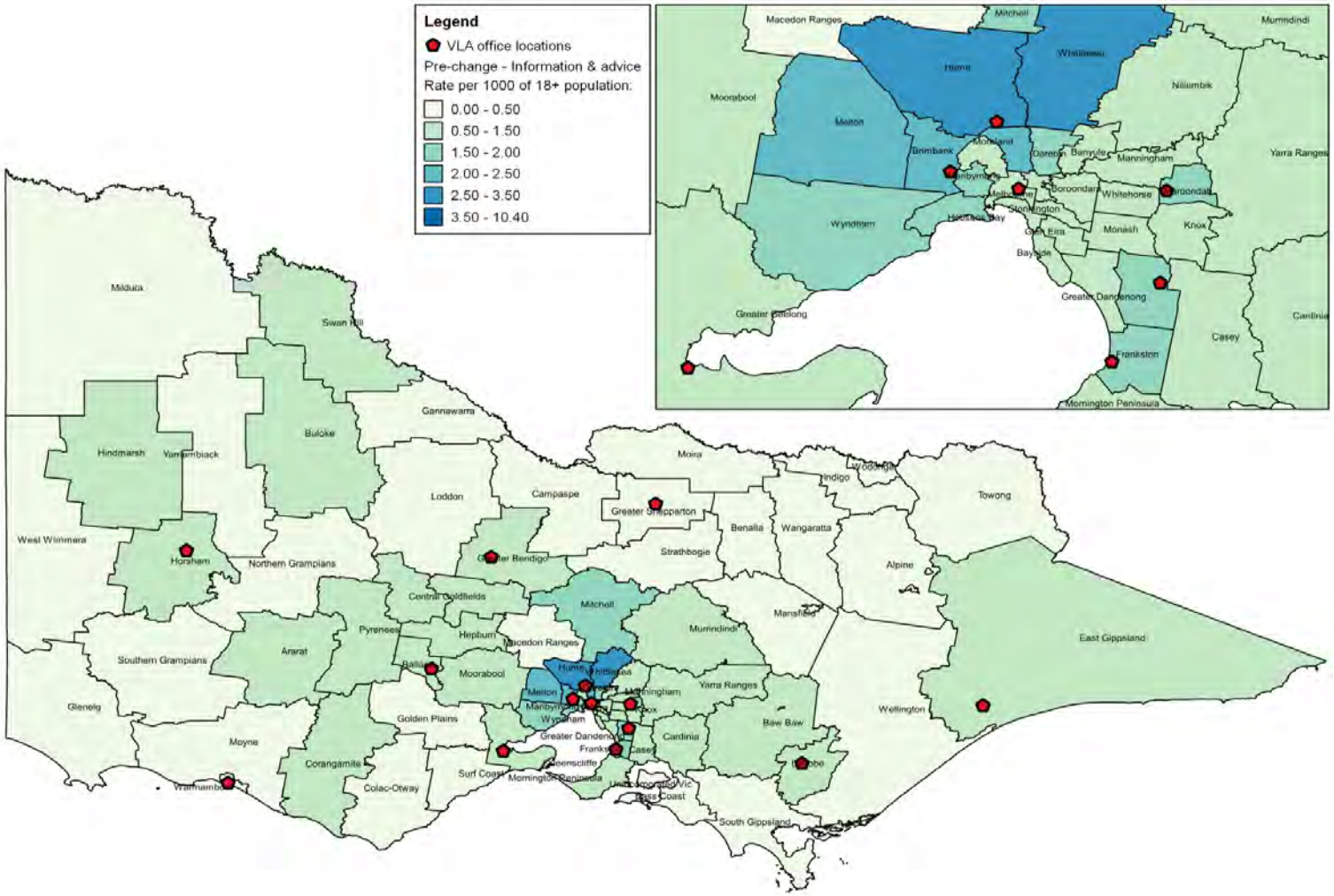
Table 4.8: DLS legal advice and information only, top ten LGAs, pre-change and last year of post-change periods, number and rate per 1,000 people aged 18 years and over in LGA

Pre-change				Post-change				
Rank	LGA	N	Rate / 1000	Pre-rank	Rank	LGA	N	Rate / 1000
1	Hume	406	3.3	6	1	Greater Dandenong	1103	10.4
2	Whittlesea	305	2.6	1	2	Hume	756	6.2
3	Melton	178	2.3	-	3	Casey	1088	6.0
4	Brimbank	320	2.3	-	4	Glenelg	81	5.4
5	Moreland	251	2.1	10	5	Mitchell	121	4.8
6	Greater Dandenong	209	2.0	-	6	Cardinia	248	4.6
7	Darebin	201	1.8	3	7	Melton	353	4.5
8	Maribyrnong	103	1.8	-	8	Warrnambool	107	4.4
9	Frankston	169	1.7	-	9	Wyndham	470	4.0
10	Mitchell	43	1.7	-	10	Moyne	46	3.9

Source: ABS (2011b) and VLA ATLAS summary crime data, June 2011–May 2012 'pre-change' period, December 2014–November 2015 'post-change' period.

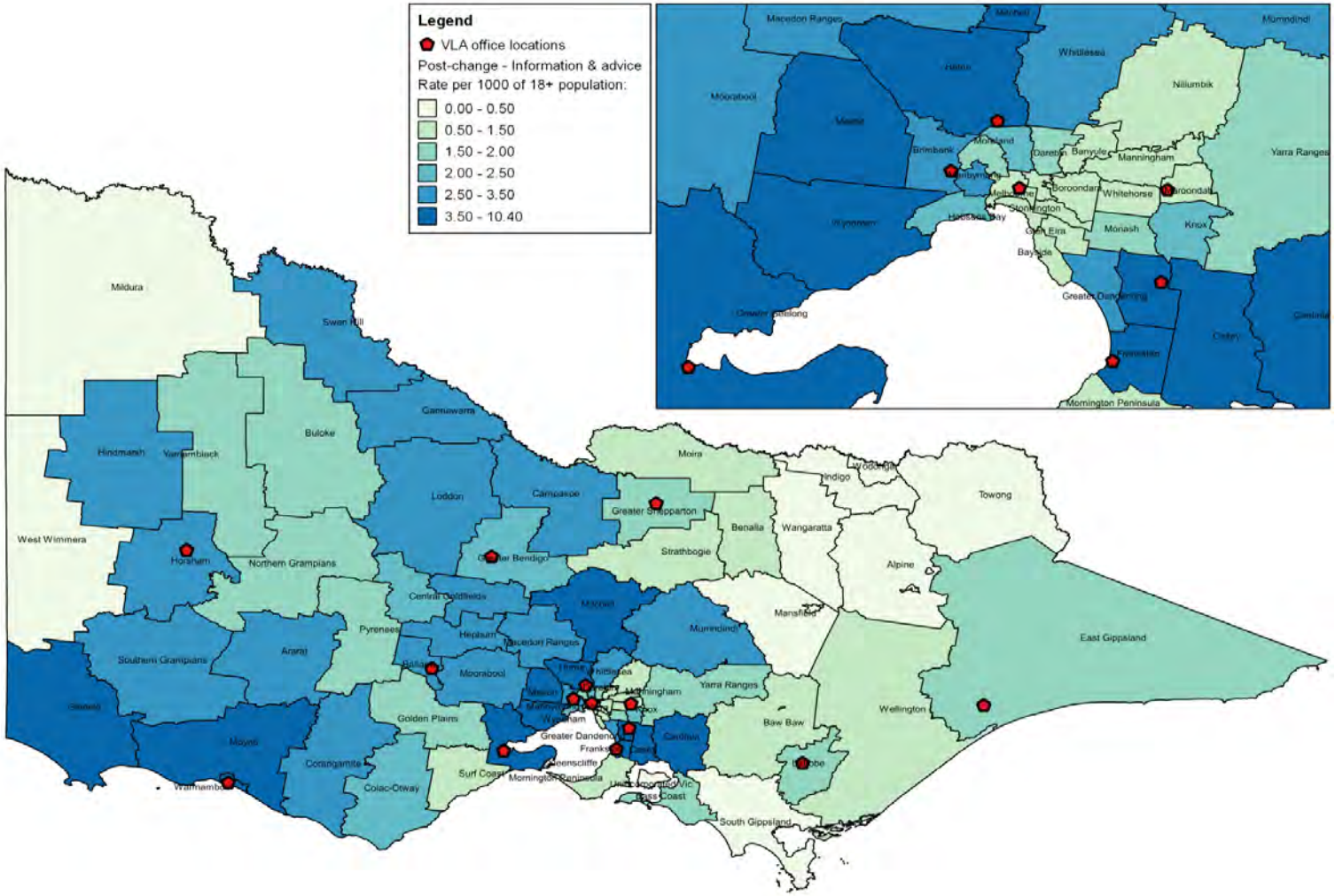
Maps 4.7 and 4.8 show the rates of DLS legal advice and information only by LGA. Comparison of these maps shows a striking intensification in the rate of advice and legal information only to residents in nearly all LGAs. Compared to the pre-change period, where the highest rate was 3.3 per 1,000 in Hume, in the post-change period every LGA in the top ten had a higher rate.

Map 4.7: Pre-change period, DLS legal advice and information only, rate per 1,000 of population aged 18 years and over, by LGA



Source: ABS (2011b) and VLA ATLAS summary crime data, June 2011–May 2012 'pre-change' period.

Map 4.8: Post-change period, DLS legal advice and information only, rate per 1,000 of population aged 18 years and over, by LGA



Source: ABS (2011b) and VLA ATLAS summary crime data, December 2014–November 2015 'post-change' period.

DLS legal information only

Because the DLS 'legal information only' service level was only introduced with the 2012 DLS Guidelines, it is not possible to compare the rate in the pre and post periods. Table 4.9 lists the top ten LGAs with the highest rates of DLS 'legal information only' in the post-change period. The highest rate was recorded for the neighbouring LGAs of Melton, Wyndham and Brimbank to the West of Melbourne, followed by Greater Dandenong and Horsham.

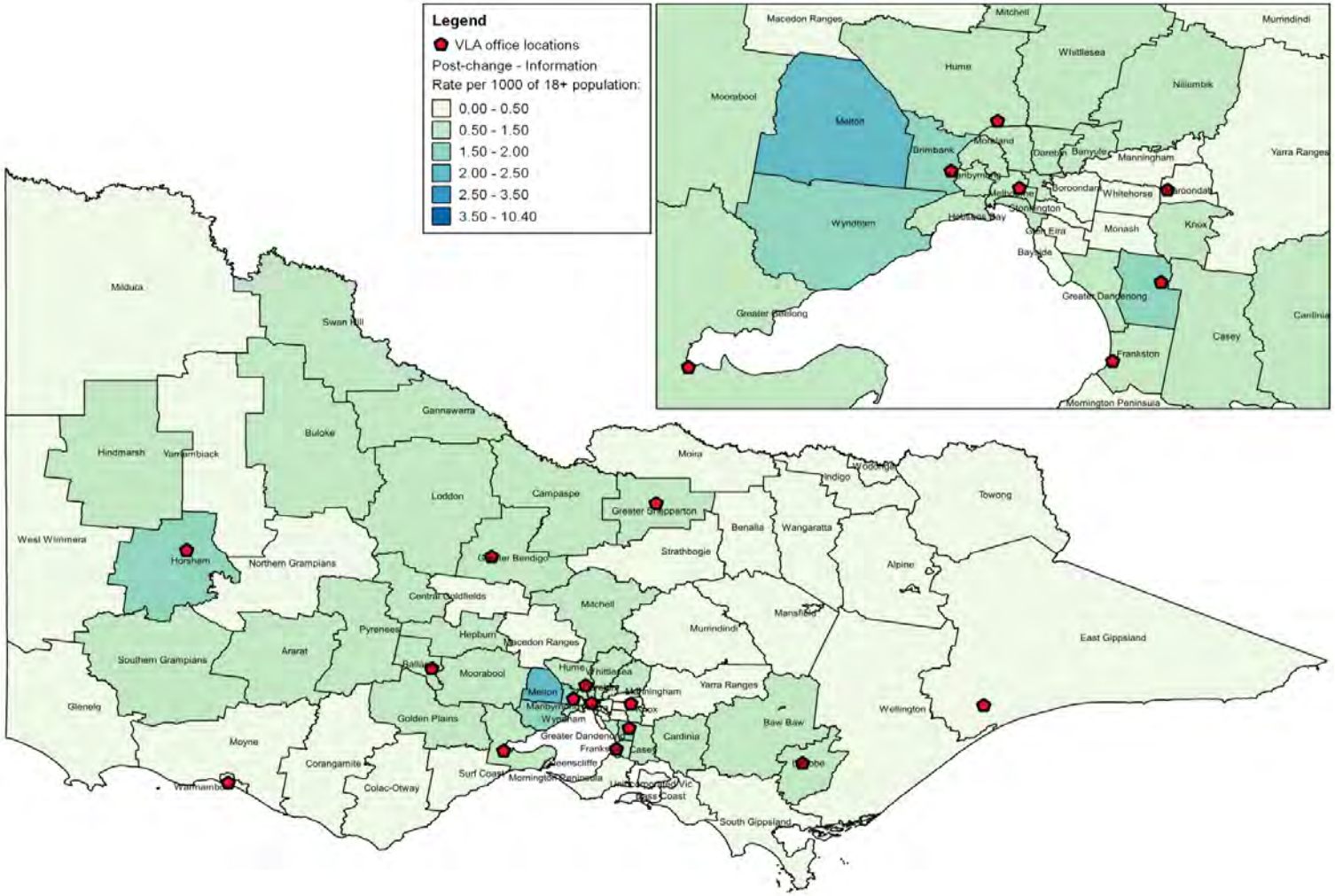
Table 4.9: DLS legal information only, top ten LGAs, last year of post-change period, number and rate per 1,000 people aged 18 years and over in LGA

	Post-change		
Rank	LGA	N	Rate / 1000
1	Melton	180	2.3
2	Wyndham	225	1.9
3	Brimbank	234	1.7
4	Greater Dandenong	173	1.6
5	Horsham	23	1.6
6	Hume	174	1.4
7	Hobsons Bay	94	1.4
8	Maribyrnong	81	1.4
9	Hepburn	16	1.4
10	Whittlesea	161	1.4

Source: ABS (2011b) and VLA ATLAS summary crime data, December 2014–November 2015 'post-change' period.

Map 4.9 shows the rates of DLS legal information only by LGA in the post-change period. It is notable that most LGAs fall into the bottom two bands (below 1.5 services per 1,000). Overall, Map 4.9 points to clients resident in some LGAs who are only eligible for legal information seeking assistance from the DLS at slightly higher rates. Note that this is likely to be explained, at least in part, by their income level and the severity of the criminal matter for which they have sought assistance from the DLS. Higher rates of 'legal information only' suggest higher rates of DLS clients in a LGA with incomes above the eligibility threshold or who are facing minor charges, including many driving and traffic offences.

Map 4.9: Post-change period, DLS legal information only, rate per 1,000 of population aged 18 years and over, by LGA



Source: ABS (2011b) and VLA ATLAS summary crime data, December 2014–November 2015 'post-change' period.

Change in summary crime services to clients in custody

VLA provides grants and DLS services to people who are remanded in custody. Figure 4.9 plots the number of grants and DLS services provided to in-custody clients for the period June 2011–November 2015.

Taking DLS services first, Figure 4.9 shows a broadly linear trend, starting in the period before the DLS and Grant Guideline changes, and continuing throughout the period examined. In fact, for the four-year period November 2011–November 2015 there was a 73.3 per cent increase in in-custody services, with an average increase of 14.9 per cent per year. In number terms, in-custody DLS services approximately doubled in this period, rising from 600/month to around 1,200/month.

Examining grants next, Figure 4.9 shows that grants to accused in custody have broadly changed in line with the overall change in the provision of grants. The number of grants to people who were in custody declines with the October 2012 and April 2013 Grant Guidelines, before increasing through the last two years of the period examined. In fact, the highest number of grants provided to accused in custody was recorded for the month of November 2015.

The increase in DLS and grants to accused in custody suggests that demand has been affected by broader changes in the operation of the Victorian criminal justice system, and is likely to reflect change in policing. This change is consistent with the overall change in the Victorian criminal justice system described in Chapter 2.

To determine how DLS workload has been affected by the increase in in-custody clients, the average number of in-custody DLS services per month was calculated for each VLA office by change period. Table 4.10 indicates that the increase is not experienced equally across office locations. Offices in Greater Melbourne experienced a higher increase in the average number of in-custody services per month (85.0%) compared to offices in regional areas (51.0%). However, the highest increase occurred in Warrnambool (139.6%), followed by Frankston (122.6%), Melbourne (117.9%), Ringwood (86.1%), Bendigo (83.1%), Bairnsdale (75.5%), Ballarat (60.9%) and Broadmeadows (58.8%).

Figure 4.9: Grants of legal assistance and DLS (i.e. combined DLR/CAR/MWF) provided in-custody by month, June 2011–November 2015

Note: N=31,886 GLA and N=53,346 DLS services. Vertical lines on figure indicate the June 2012 DLS Guidelines, and October 2012 and April 2013 Summary Crime Grant Guidelines.

Table 4.10: In-custody DLS (i.e. combined DLR/CAR/MWF) mean per month by VLA office location and change period, percentage change pre-change to post-change period, June 2011–November 2015

		Change period			
Office		Pre-change	Change	Post-change	% change from pre to post
Greater Melbourne	Broadmeadows	42.5	40.8	67.5	58.8
	Dandenong	26.3	27.1	24.9	-5.3
	Frankston	29.2	48.4	65.0	122.6
	Melbourne	165.6	183.3	360.9	117.9
	Ringwood	34.6	35.3	64.4	86.1
	Sunshine	86.4	94.2	118.2	36.8
Total		486.2	551.2	899.7	85.0
Regional Victoria	Bairnsdale	5.3	7.1	9.3	75.5
	Ballarat	23.5	32.1	37.8	60.9
	Bendigo	24.2	33.1	44.3	83.1
	Geelong	32.9	32.4	44.7	35.9
	Horsham	13.8	20.9	16.3	18.1
	Morwell	35.8	50.5	49.4	38.0
	Shepparton	23.3	33.3	29.5	26.6
	Warrnambool	9.6	16.6	23.0	139.6
Total		168.4	226.0	254.2	51.0

Note: N=39,440 in-custody DLSs by Greater Melbourne offices and N=12,358 in-custody DLSs by offices in regional Victoria.

Change in the outcome of summary crime services

We examined how summary crime sentence outcomes changed across the period June 2011–November 2015. As outlined in the *Methodology*, sentence outcomes are only available for grants that have been finalised and DLS in-court advocacy where the matter has been finalised by a duty lawyer, that is, where the duty lawyer has made a guilty plea for a client.

There are, however, a number of factors to consider in interpreting these findings. First, the nature and severity of the types of criminal matters eligible for grants and in-court advocacy, by definition, were different in the pre-change, change and post-change periods. Specifically, the 2012–2013 service eligibility changes increased the severity threshold for both grants and DLS in-court advocacy. Note further that sentencing legislation provides for more punitive sentencing outcomes as criminal matter severity increases. Second, sentence outcomes are affected by sentencing legalisation and practices. As noted in Chapter 2, in the period June 2011–November 2015 a number of legislative changes occurred, including abolition of suspended sentences and changes to what are now

community corrections orders. The findings, however, help to further contextualise the change in the nature of summary crime work across the change periods.

Table 4.11 shows how the sentence finalisation of grants changed across the change periods. The average number of grants per month handled by VLA in-house and private practitioners that resulted in a bond, fine, community order, suspended sentence and non-sentence finalisation all decreased substantially, while the average number of grants resulting in a jail sentence, and where bail was both granted and refused, remained broadly the same across the change periods. This finding indicates that, as was intended by the service eligibility changes, grants for matters with less punitive sentences have decreased.

Table 4.11: Grants of legal assistance sentence finalisation mean per month by VLA in-house and private practitioners and change period, percentage change pre-change to post-change period, June 2011–November 2015

	Pre-change			Change			Post-change		
Outcome	PP	VLA	Total	PP	VLA	Total	PP	VLA	Total
Sentence finalisation									
Bond	69.3	35.8	105.2	60.2	25.8	85.9	24.2	17.8	42.0
Fine	174.2	56.4	230.6	139.0	37.6	176.6	59.1	22.9	82.0
Jail	216.1	85.3	301.3	237.3	83.3	320.6	212.4	94.2	306.6
Community order	204.3	100.1	304.4	182.6	81.9	264.5	140.5	76.1	216.6
Suspended sentence	142.3	61.6	203.8	125.2	43.6	168.8	56.1	21.1	77.2
Non-sentence finalisation	67.0	23.5	90.5	75.5	20.8	96.3	37.3	15.8	53.1
Bail									
Bail granted	15.0	8.2	23.2	19.2	6.8	26.0	18.6	7.2	25.9
Bail refused	7.2	3.4	10.6	5.7	2.9	8.6	5.3	2.7	8.0
VLA closure	73.5	28.3	101.8	69.3	29.7	99.0	37.2	24.9	62.1
Not elsewhere classified (NEC)	15.6	2.9	18.5	15.7	4.1	19.8	9.0	3.6	12.6
Total	**984.4**	**405.4**	**1398.8**	**929.6**	**336.3**	**1265.9**	**599.7**	**286.2**	**885.9**

Note: N=58,447grants of legal assistance with a finalised outcome

Table 4.12 reports sentence finalisation for DLS in-court advocacy. The table shows a substantial drop in the average number of matters resulting in a fine and a smaller drop in the number of matters resulting in a bond, between the pre-change and post-change periods. As was intended by the change in the DLS service model, there was a substantial increase in the number in-court advocacy matters that had more punitive outcome finalisations – jail and community orders.

Table 4.12: DLS in-court advocacy sentence finalisation mean per month by change period, percentage change pre-change to post-change period, June 2011–November 2015

		Change period			
Outcome		Pre-change	Change	Post-change	Total
Sentence finalisation	Bond	276.5	214.6	235.0	239.7
	Fine	814.7	540.8	549.5	606.5
	Jail	47.2	69.0	99.0	80.8
	Community Order	178.1	183.9	275.8	233.6
	Suspended sentence	58.2	81.3	71.9	71.0
Non-sentence finalisation		142.0	144.6	156.4	150.6
Bail	Bail granted	60.8	79.6	108.5	91.5
	Bail refused	25.3	30.5	52.3	41.5
Not elsewhere classified (NEC)		39.1	38.3	41.4	40.2
Total		**1641.8**	**1382.6**	**1589.9**	**1555.4**

Note: N= 83,990 DLS in-court-advocacy services with a finalised outcome.

Change in the profile of clients and matters

We examined how the profile of summary crime clients and their criminal matters changed through the service eligibility change periods. Analyses of grants are reported first, followed by the DLS. This section examines how both the *number* and *proportion* of grants and DLS services changed.

Grants of legal assistance

The 2012–2013 Grant Guidelines tightened the eligibility for grants by increasing the severity threshold of the likely sentence. This is likely to have impacted different client demographic groups differently.

Client demographics and criminal matter characteristics have, as was intended, been reshaped by the 2012–2013 Grant Guidelines. Table 4.13 indicates that, overall, between the pre-change and post-change period, the mean number of grants per month decreased by 28.2 per cent, with the proportion of grants by VLA in-house practitioners increasing 3.4 per cent.

Table 4.13: Mean number per month and percentage of total grants by level of service and change period, June 2011–November 2015

	Pre-change		Change		Post-change	
Grants of legal assistance	Mean/month	% of total	Mean/month	% of total	Mean/month	% of total
VLA in-house practitioner	433.7	27.8	359.7	24.8	349.3	31.2
Private practitioner	1126.1	72.2	1092.7	75.2	770.7	68.8
Total	**1559.8**	**100.0**	**1452.3**	**100.0**	**1120.0**	**100.0**

Note: N= 69,746 services.

Clients assisted

Tables 4.14 and 4.15 show how the mean number per month and proportion of grants varied by client demographics, practitioner type and change period.

Table 4.14 shows a decrease in the mean number of grants per month in the post-change period for every demographic group except homeless people, which increased 25.1 per cent, and self-employed people, which increased 23.5 per cent. The other demographic groups all had a decrease in the mean number of grants in the post-change period, compared to the pre-change period, between 22.1 and 66.6 per cent. Those demographic groups that had the largest *decreases,* of at least 40.0 per cent or more, included:

- females (40.1%)
- people aged 65 years and over (45.9%)
- people in full-time employment (66.6%).

Table 4.15 shows a number of changes in the proportion of grants by demographic group and practitioner type. In the post-change period, compared to their counterparts, there was an *increase* of at least 2.0 per cent in the overall proportion of grants to the following groups compared to the pre-change period:

- males (3.2%)
- 25–34 year olds (2.2%)
- 35–44 year olds (2.2%)
- homeless people (3.9%)
- unemployed people (3.9%)
- people not in receipt of means-tested government benefits (7.0%).

Table 4.14: Mean number of grants of legal assistance per month by client demographics, practitioner type and change period, June 2011–November 2015

		Pre-change			Change			Post-change		
Demographics		PP	VLA	Total	PP	VLA	Total	PP	VLA	Total
Gender	Female	219.2	77.1	296.3	202.1	60.5	262.6	124.0	53.4	177.4
	Male	906.9	356.6	1263.5	890.6	299.2	1189.8	646.7	295.9	942.6
Age	18-24	280.2	102.2	382.3	264.7	92.1	356.8	157.0	76.7	233.7
	25-34	404.0	150.3	554.3	391.9	120.9	512.8	292.0	130.0	421.9
	35-44	298.5	111.8	410.3	298.1	92.0	390.1	226.2	93.0	319.3
	45-54	114.2	51.2	165.3	110.4	39.4	149.8	77.0	38.2	115.2
	55-64	22.7	13.7	36.3	22.3	12.0	34.3	15.4	8.6	24.0
	65+	6.6	4.5	11.1	5.3	3.3	8.5	3.2	4.8	6.0
Indigenous status	Indigenous	72.7	19.7	92.3	75.9	17.3	93.3	62.0	17.1	79.2
	Other	1053.4	414.0	1467.4	1016.8	342.3	1359.1	708.7	332.2	1040.9
Disability status	Disability	317.8	133.8	451.7	300.8	107.8	408.7	202.6	109.9	312.5
	No disability	808.3	299.8	1108.1	791.8	251.8	1043.7	568.1	239.5	807.5
Homeless status	Homeless	57.2	24.8	82.0	65.4	26.3	91.7	67.3	35.3	102.6
	Not homeless	1068.9	408.8	1477.8	1027.3	333.4	1360.7	703.4	314.0	1017.4
Speaks English	Not well/ interpreter required	19.7	19.7	39.3	18.2	15.3	33.5	12.0	14.1	26.1
	Well/not required	1106.4	414.0	1520.4	1074.5	344.3	1418.8	758.7	335.3	1093.9
Employment status	Full-time	24.4	13.6	38.0	17.8	9.4	27.2	6.5	6.2	12.7
	Casual/part time	45.1	26.9	72.0	39.0	20.3	59.3	14.3	14.4	28.8
	Self-employed	0.9	0.8	1.7	1.5	0.8	2.3	1.1	1.0	2.1
	Unemployed	1042.9	380.2	1423.1	1024.8	321.6	1346.4	744.8	320.2	1065.0
	Not stated	12.8	12.3	25.0	9.6	7.7	17.3	4.0	7.5	11.5
Benefit status	In receipt of benefit	826.7	331.4	1158.1	785.5	270.9	1056.4	499.1	253.9	753.0
	No	299.4	102.3	401.7	307.2	88.8	956.9	271.6	95.4	367.0
Remoteness	Major city	749.0	300.2	1049.2	723.4	230.5	953.9	486.8	228.4	715.2
	Inner regional	248.2	87.8	335.9	229.5	82.8	312.3	167.4	69.6	237.0
	Outer regional	55.5	15.6	71.1	60.6	15.7	76.3	37.8	11.9	49.8
	Remote	0.3	0.3	0.6	0.7	0.3	0.9	0.4	0.0	0.4
Total		**1126.1**	**433.7**	**1559.8**	**1092.7**	**359.7**	**1452.3**	**770.7**	**349.3**	**1120.0**

Note: N=69,746 services. Due to 6,073 services having missing information for remoteness, the total mean is based on the number of non-missing demographics.

Table 4.15: Percentage of grants of legal assistance by client demographics, practitioner type and change period, June 2011–November 2015

		Pre-change			Change			Post-change		
Demographics		PP	VLA	Total	PP	VLA	Total	PP	VLA	Total
		%	%	%	%	%	%	%	%	%
Gender	Female	19.5	17.8	19.0	18.5	16.8	18.1	16.1	15.3	15.8
	Male	80.5	82.2	81.0	81.5	83.2	81.9	83.9	84.7	84.2
Age	18-24	24.9	23.6	24.5	24.2	25.6	24..6	20.4	22.0	20.9
	25-34	35.9	34.7	35.5	35.9	33.6	35.3	37.9	37.2	37.7
	35-44	26.5	25.8	26.3	27.3	25.6	26.9	29.4	26.6	28.5
	45-54	10.1	11.8	10.6	10.1	11.0	10.3	10.0	10.9	10.3
	55-64	2.0	3.2	2.3	2.0	3.3	2.4	2.0	2.5	2.1
	65+	0.6	1.0	0.7	0.5	0.9	0.6	0.4	0.8	0.5
Indigenous status	Indigenous	6.5	4.5	5.9	6.9	4.8	6.4	8.0	4.9	7.1
	Other	93.5	95.5	94.1	93.1	95.2	93.6	92.0	95.1	92.9
Disability status	Disability	28.2	30.9	29.0	27.5	30.0	28.1	26.3	31.5	27.9
	No disability	71.8	69.1	71.0	72.5	70.0	71.9	73.7	68.5	72.1
Homeless status	Homeless	5.1	5.7	5.3	6.0	7.3	6.3	8.7	10.1	9.2
	Not homeless	94.9	94.3	94.7	94.0	92.7	93.7	91.3	89.9	90.8
Speaks English	Not well/interpreter required	1.7	4.5	2.5	1.7	4.3	2.3	1.6	4.0	2.3
	Well/not required	98.3	95.5	97.5	98.3	95.7	97.7	98.4	96.0	97.7
Employment status	Full-time	2.2	3.1	2.4	1.6	2.6	1.9	0.8	1.8	1.1
	Casual/part time	4.0	6.2	4.6	3.6	5.6	4.1	1.9	4.1	2.6
	Self-employed	0.1	0.2	0.1	0.1	0.2	0.2	0.1	0.3	0.2
	Unemployed	92.6	87.7	91.2	93.8	89.4	91.7	96.6	91.7	95.1
	Not stated	1.1	2.8	1.6	0.9	2.1	1.2	0.5	2.1	1.0
Benefit status	In receipt of benefit	73.4	76.4	74.2	71.9	75.3	72.7	64.8	72.7	67.2
	No	26.6	23.6	25.8	28.1	24.7	27.3	35.2	27.3	32.8
Remotenes s	Major city	71.1	74.3	75.1	71.3	70.0	73.6	70.3	73.7	75.7
	Inner regional	23.6	21.7	20.3	22.6	25.1	21.7	24.2	22.5	20.3
	Outer regional	5.3	3.9	4.4	6.0	4.8	4.6	5.5	3.8	4.0
	Remote	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.1
Total		**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: N=69,746 services. Due to 6,073 services having missing information for remoteness, the total mean is based on the number of non-missing demographics.

Level of client disadvantage

Table 4.16 reports how the mean number per month and proportion of grants have changed by clients' level of disadvantage. While the average number of grants dropped for all levels of disadvantage, the largest decrease was observed for clients with no indicators of disadvantage. There was also a shift in the proportion of grants, with a decrease in the proportion of grants to clients with no indicator of disadvantage and an increase in the proportion of grants to clients with one or more indicators of disadvantage. This change in number and proportion indicates a 'concentration effect' in the provision of grants to people who are more disadvantaged, as intended by the Grant Guidelines changes.

Table 4.16: Mean number per month and percentage of grants of legal assistance by client level of disadvantage, practitioner type and change period, June 2011–November 2015

		Pre-change			Change			Post-change		
		PP	VLA	Total	PP	VLA	Total	PP	VLA	Total
Level of disadvantage	None	29.4	17.2	46.6	22.8	11.5	34.3	10.0	8.7	18.6
	One type	193.1	69.4	262.5	191.0	54.8	245.8	158.0	55.6	213.6
	Multiple	903.6	80.0	1250.7	878.8	81.6	1172.3	602.7	81.6	887.8
Total		**1126.1**	**433.7**	**1559.8**	**1092.7**	**359.7**	**1452.3**	**770.7**	**349.3**	**1120.0**
		%	%	%	%	%	%	%	%	%
Level of disadvantage	None	2.6	4.0	3.0	2.1	3.2	2.4	1.3	2.5	1.7
	One type	17.1	16.0	16.8	17.5	15.2	16.9	20.5	15.9	19.1
	Multiple	80.2	80.0	80.2	80.4	81.6	80.7	78.2	81.6	79.3
Total		**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: N=69,746 services.

Clients in custody

Table 4.17 reports the mean number per month and proportion of grants provided to in-custody clients by guideline change period. The average number of grants per month provided to in-custody clients increased by 4.8 per cent between the pre-change and post-change periods, while the number of grants to clients who were not in custody nearly halved (-47.1%).

There has been a marked shift in the proportion of grants to clients in custody across the guideline change periods, going from just over one-third (36.4%) in the pre-change period, to more than one-half (53.2%) in the post-change period (see Table 4.17).

These findings indicate that private and VLA in-house practitioners are both faced with having to work with more clients on an in-custody basis. This is likely to have both time and cost implications, as in-custody clients can be more difficult to access in advance of court.

Table 4.17: Mean number per month and overall percentage of grants of legal assistance by client in-custody status, practitioner type and change period, June 2011–November 2015

		Pre-change			Change			Post-change		
		PP	VLA	Total	PP	VLA	Total	PP	VLA	Total
In-custody status	Yes	420.0	148.5	568.5	450.6	146.9	597.5	416.7	179.1	595.8
	No	706.1	285.2	991.3	642.1	212.8	854.8	354.0	170.2	524.2
Total		**1126.1**	**433.7**	**1559.8**	**1092.7**	**359.7**	**1452.3**	**770.7**	**349.3**	**1120.0**
		%	%	%	%	%	%	%	%	%
In-custody status	Yes	37.3	34.2	36.4	41.2	40.8	41.1	54.1	51.3	53.2
	No	62.7	65.8	63.6	58.8	59.2	58.9	45.9	48.7	46.8
Total		**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: N=69,746 services.

Note that while it is to be expected that tightening of the Grant Guidelines would result in an increase in the proportion provided to in-custody clients, given that those in custody are likely to be a greater risk of imprisonment, other factors are also likely to have affected the rate at which people are remanded in custody.

Matter type

Tables 4.18 and 4.19 set out the mean number per month and proportion of grants by criminal matter and practitioner type and guideline change period.

Table 4.18 shows a general decrease in the mean number of grants per month for most criminal matter types across the guideline change periods. The 2012–2013 Grant Guidelines removed eligibility for *Road Safety Act* offences. The impact of this change is demonstrated by the large decrease (-94.6%) in grants for 'Traffic and vehicle regulatory offences' between the pre-change and post-change periods. The only other matter types with a *decrease* of at least 40.0 per cent in the post-change period were 'Dangerous or negligent acts endangering persons' (54.8%), 'Miscellaneous offences' (55.5%) and 'Other court orders and applications' (79.4%).

While the overall proportion of most criminal matter types fluctuated by less than 2.0 per cent between the pre-change and post-change periods (see Table 4.19), the large decrease in the number of grants for 'Traffic and vehicle regulatory offences' resulted in an overall decrease of in overall proportion of grants of 12.6 per cent. In fact, this decrease accounted for most the percentage decrease in grants by matter type, and was the only matter type that dropped more than 2.0 per cent.

The decrease in the proportion of grants for 'Traffic and vehicle regulatory offences' appears to have been replaced by an increase in the proportion of grants in the post-change period for the following criminal matter types:

- 'Offences against government procedures, government security and government offences', which includes family violence intervention orders breaches, community corrections orders breaches and bail breaches (5.4%)

- 'Illicit drug offences' (2.5%)
- 'Acts intended to cause injury' (2.4%)
- 'Unlawful entry with intent/burglary, break and enter' (2.0%).

The findings in Tables 4.18 and 4.19 indicate an overall shift and demonstrate that the matter type most negatively impacted by the 2012–2013 Grant Guidelines changes was 'Traffic and vehicle regulatory offences'.

Table 4.18: Mean number of grants of legal assistance per month by criminal matter type, practitioner type and change period, June 2011–November 2015

		Pre-change			Change			Post-change		
Criminal matter type		PP	VLA	Total	PP	VLA	Total	PP	VLA	Total
Type	Acts intended to cause injury	180.2	73.4	253.6	194.6	68.3	262.9	143.7	65.9	209.6
	Sexual assault and related offences	12.0	10.9	22.9	11.0	11.5	22.5	6.3	8.1	14.4
	Dangerous or negligent acts endangering persons	47.7	17.6	65.3	32.0	14.8	46.8	19.3	10.3	29.5
	Abduction, harassment and other offences against the person	31.5	16.0	47.5	44.1	16.3	60.3	35.1	18.4	53.5
	Robbery, extortion and related offences	14.7	7.2	21.8	16.3	6.8	23.1	11.7	6.4	18.1
	Unlawful entry with intent/burglary, break and enter	111.3	38.5	149.8	16.3	39.5	155.8	91.4	38.7	130.1
	Theft and related offences	208.8	62.8	271.6	203.5	54.0	257.5	151.1	47.9	199.0
	Fraud, deception and related offences	26.1	11.8	37.9	27.7	11.0	38.7	18.9	12.3	31.2
	Illicit drug offences	93.8	28.5	122.3	107.1	26.5	133.6	82.7	32.8	115.5
	Prohibited and regulated weapons and explosives offences	22.6	5.7	28.3	23.7	3.8	27.4	16.5	4.9	21.4
	Property damage and environmental pollution	32.1	12.3	44.3	31.8	10.7	42.4	19.8	8.8	28.6
	Public order offences	18.3	6.2	24.4	18.0	5.2	23.2	10.8	4.2	15.0
	Traffic and vehicle regulatory offences	148.9	62.8	211.7	75.8	20.3	96.1	8.1	3.4	11.5
	Offences against government procedures, government security and government operations	163.9	74.6	238.5	178.9	67.8	246.7	150.1	81.6	231.7
	Miscellaneous offences	8.7	3.0	11.7	9.2	1.3	10.5	3.6	1.6	5.2
	Drug Court orders and applications	0.1	0.8	0.9	0.6	1.2	1.8	0.4	3.3	3.7
	Other court orders and applications	0.5	1.7	6.8	2.1	0.8	2.8	0.8	0.6	1.4
Total		**1126.1**	**433.7**	**1559.8**	**1092.7**	**359.7**	**1452.3**	**770.7**	**349.3**	**1120.0**

Note: N=69,746 services.

Table 4.19: Percentage of grants of legal assistance by criminal matter type, practitioner type and change period, June 2011–November 2015

		Pre-change			Change			Post-change		
Criminal matter type		PP	VLA	Total	PP	VLA	Total	PP	VLA	Total
Type	Acts intended to cause injury	16.0	16.9	16.3	17.8	19.0	18.1	18.7	18.9	18.7
	Sexual assault and related offences	1.1	2.5	1.5	1.0	3.2	1.5	0.8	2.3	1.3
	Dangerous or negligent acts endangering persons	4.2	4.1	4.2	2.9	4.1	3.2	2.5	3.0	2.6
	Abduction, harassment and other offences against the person	2.8	3.7	3.0	4.0	4.5	4.2	4.6	5.3	4.8
	Robbery, extortion and related offences	1.3	1.7	1.4	1.5	1.9	1.6	1.5	1.8	1.6
	Unlawful entry with intent/burglary, break and enter	9.9	8.9	9.6	10.6	11.0	10.7	11.9	11.1	11.6
	Theft and related offences	18.6	14.5	17.4	18.6	15.0	17.7	19.6	13.7	17.8
	Fraud, deception and related offences	2.3	2.7	2.4	2.5	3.1	2.7	2.4	3.6	2.8
	Illicit drug offences	8.3	6.6	7.8	9.8	7.4	9.2	10.7	9.4	10.3
	Prohibited and regulated weapons and explosives offences	2.0	1.3	1.8	2.2	1.0	1.9	2.1	1.4	1.9
	Property damage and environmental pollution	2.9	2.8	2.8	2.9	3.0	2.9	2.6	2.5	2.6
	Public order offences	1.6	1.4	1.6	1.8	1.4	1.6	1.4	1.2	1.3
	Traffic and vehicle regulatory offences	13.2	14.5	13.6	6.9	5.6	6.6	1.0	1.0	1.0
	Offences against government procedures, government security and government operations	14.6	17.2	15.3	16.4	18.8	17.0	19.5	23.4	20.7
	Miscellaneous offences	0.8	0.7	0.7	0.8	0.4	0.7	0.5	0.4	0.5
	Drug Court orders and applications	0.0	0.2	0.1	0.1	0.3	0.1	0.1	0.9	0.3
	Other court orders and applications	0.5	0.4	0.4	0.2	0.2	0.2	0.1	0.2	0.1
Total		**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: N=69,746 services.

Matter severity

Tables 4.20 and 4.21 report the mean number per month and proportion of grants by criminal matter severity and practitioner type and guideline change period. As noted in the *Methodology*, two measures of matter severity were used in the analyses: VLA Rank and NOI 2009 Rank. It should be noted that lower NOI 2009 scores indicate more serious and severe criminal matters, and that in Tables 4.20 and 4.21 NOI 2009 Rank scores have been grouped into four categories.

Table 4.20 indicates that there were relatively larger decreases in the number of grants for 'Minor' and 'Straightforward' matters in the post-change periods (-68.6 to -71.7%), and a smaller decrease in grants for 'Significant' matters (-13.4%). Similarly, the NOI 2009 Rank shows that the largest decrease in the number of grants was for the least severe grouping (i.e. 124–155, -76.4%), compared to the three more severe NOI 2009 Rank groups (-18.0 to -18.8%).

Table 4.20: Mean number of grants of legal assistance per month by criminal matter severity (VLA Rank and NOI 2009 Rank), practitioner type and change period, June 2011–November 2015

		Pre-change			Change			Post-change		
Matter severity		PP	VLA	Total	PP	VLA	Total	PP	VLA	Total
VLA Rank	Minor	14.3	4.6	18.8	8.9	3.2	12.1	1.9	4.0	5.9
	Straight	260.8	98.8	359.7	180.3	48.8	229.2	73.7	28.1	101.8
	Significant	832.0	325.4	1157.4	887.3	305.0	1192.3	688.1	314.6	1002.7
Total		**1107.1**	**428.8**	**1535.9**	**1076.5**	**357**	**1433.6**	**763.7**	**346.7**	**1110.4**
NOI 2009 Rank	124 to 155	194.3	65.3	259.6	136.4	27.7	164.1	47.0	14.2	61.2
	76 to 123	234.8	105.2	340.0	239.3	85.7	324.9	185.6	93.3	278.9
	39 to 75	386.7	135.8	522.4	404.3	126.9	531.2	302.4	123.1	425.5
	7 to 38	304.7	124.8	429.5	309.8	117.4	427.3	234.1	114.7	348.8
Total		**1120.5**	**431.1**	**1551.5**	**1089.8**	**357.7**	**1447.5**	**769.1**	**345.3**	**1114.4**

Note: N=68,947 services for VLA Rank. Information on VLA Rank was missing for 799 services. N=69,420 services for NOI 2009 Rank. Information on NOI 2009 Rank was missing for 326 services.

Table 4.21 demonstrates that the proportion of grants by matter severity was shifted by the 2012–2013 Grants Guidelines. The VLA Rank measure shows a decrease in the proportion of grants for 'Minor' and 'Straightforward' matters, and an increase in the proportion of grants for 'Significant' matters across the guideline change periods. Similarly, the NOI 2009 Rank measure shows a decrease in the percentage of grants for the least severe grouping (i.e. 125–155) and an increase in the proportion of grants for each of three more severe NOI 2009 Rank groupings.

Tables 4.20 and 4.21 demonstrate that the provision of grants was shifted, as expected, with the change to the severity threshold in the Grant Guidelines.

Table 4.21: Percentage of grants of legal assistance per month by criminal matter severity (VLA Rank and NOI 2009 Rank), practitioner type and change period, June 2011–November 2015

		Pre-change			Change			Post-change		
Matter severity		PP	VLA	Total	PP	VLA	Total	PP	VLA	Total
VLA Rank	Minor	1.3	1.1	1.2	0.8	0.9	0.8	0.2	1.2	0.5
	Straightforward	23.6	23.0	23.4	16.8	13.7	16.0	9.7	8.1	9.2
	Significant	75.2	75.9	75.4	82.4	85.4	83.2	90.1	90.7	90.3
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
NOI 2009 Rank	124 to 155	17.3	15.1	16.7	12.5	7.7	11.3	6.1	4.1	5.5
	76 to 123	21.0	24.4	21.9	22.0	24.0	22.4	24.1	27.0	25.0
	39 to 75	34.5	31.5	33.7	37.1	35.5	36.7	39.3	35.6	38.2
	7 to 38	27.2	28.9	27.7	28.4	32.8	29.5	30.4	33.2	31.3
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: N=68,947 services for VLA Rank. Information on VLA Rank was missing for 799 services. N=69,420 services for NOI 2009 Rank. Information on NOI 2009 Rank was missing for 326 services.

Together, Tables 4.14–4.21 indicate that the 2012–2013 Grant Guidelines resulted in grants of legal assistance being concentrated to clients facing more severe criminal matters, and that while there was an overall decline in provision of grants of legal assistance the decrease was greater for more less severe matters, and in particular, 'Traffic and vehicle regulatory offences', notwithstanding that there are some serious traffic and driving offences that can result in imprisonment.

Duty lawyer service

The client demographic and criminal matter characteristics associated with DLS services have transformed across the period June 2011 to November 2015. It is important to note that there are likely to be at least two main contributing factors.

First, following the Grant Guidelines changes some people who were made ineligible for grants (due to insufficient matter severity) were expected to seek assistance from the DLS. Second, as outlined above, there appears to have been an *increase* in demand for DLS services above and beyond the anticipated impacts of Grant Guidelines changes most presumably associated with external drivers of demand. Irrespective of the cause of the increase, the findings make clear that overall DLS workload has increased in the post-change period.

Table 4.22 shows the mean number and overall proportion of DLS services by level of service and guideline change period. While the mean number of all levels of DLS service increased, the proportion of DLS services was transformed by the introduction of the tiered service model. Between the pre and post periods 'legal information only' *increased* to comprise 5.1 per cent of DLS services, 'legal advice and information' *increased* 4.8 per cent to comprise 15.4 per cent of DLS services, while in-court advocacy *decreased* 9.9 per cent to comprise 79.5 per cent of all DLS services. Put simply, the redesign of the DLS service model successfully substituted in-court advocacy for legal information only and legal advice and information only.

Table 4.22: Mean number per month and percentage of total DLS services by level of service and change period, June 2011–November 2015

	Pre-change		Change		Post-change	
Service level	Mean/month	% of total	Mean/month	% of total	Mean/month	% of total
Legal information only	~	~	184.0	4.4	260.6	5.1
Legal advice and information only	451.7	10.6	590.2	14.0	788.4	15.4
In-court advocacy	3806.5	89.4	3448.5	81.7	4080.2	79.5
Total	**4259.9**	**100.0**	**4227.7**	**100.0**	**5129.2**	**100.0**

Note: N=255,668 services. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

These findings suggest that if the changes to the DLS service model had not been implemented, then DLS workload would have been even higher in the post-change period. Unless clients subsequently obtained services from private practitioners, the large increase in the number of clients receiving 'legal information only' and 'legal advice and information only' is also likely to have translated to a higher number of self-represented defendants in the Magistrates' Court.

Clients assisted

Tables 4.23 and 4.24 show how the mean number per month and proportion of DLS services changed with the DLS and Grant Guidelines changes.

Table 4.23 shows an increase in the mean number of DLS services per month for all demographic groups other than people in full-time employment and those whose employment status was not stated, which were both lower in the post-change period compared to the pre-change period. There was a *decrease* in the number of in-court advocacy services per month in the post-change period, compared to the pre-change period, of at least 5.0 per cent for the following demographic groups:

- 18–24 year olds (-5.9%)
- people without a disability (-4.0%)
- people in full-time employment (-42.3%)
- people in casual/part time employment (-12.0%)
- people whose employment status was not stated (-40.1%)
- people not in receipt of means-tested government benefits (-10.9%).

By comparison, there were large *increases* of at least 20.0 per cent in the number of in-court advocacy services per month in the post-change period, compared to the pre-change period, for the following disadvantaged groups:

- Indigenous Australians (25.0%)
- people with a disability (3.3%)
- homeless people (86.7%)
- people who do not speak English well/require an interpreter (23.3%)
- unemployed people (30.3%).

Table 4.23: Mean number of 'legal information only', 'legal advice and information only' and 'in-court advocacy' services per month by client demographics and change period, June 2011–November 2015

		Pre-change				Change				Post-change			
Demographics		Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total
Gender	Female	~	79.6	832.5	912.4	32.2	116.2	740.9	889.3	54.3	166.6	871.9	1092.9
	Male	~	372.1	2973.9	3347.4	151.8	474.0	2707.6	3333.4	206.2	821.5	3207.6	4035.3
Age	18-24	~	121.8	1111.9	1234.1	49.5	190.5	966.5	1206.5	66.8	209.5	1046.7	1323.0
	25-34	~	140.4	1223.7	1364.3	60.0	187.9	1119.2	1367.1	88.3	263.0	1376.1	1727.4
	35-44	~	98.5	867.2	966.3	40.6	119.8	831.0	991.3	57.2	185.3	1009.8	1252.3
	45-54	~	57.6	414.7	472.6	21.3	59.8	365.6	446.7	31.9	89.8	459.4	581.0
	55-64	~	24.3	136.1	160.5	8.9	23.4	118.2	150.5	11.4	28.9	134.8	175.2
	65+	~	9.1	53.0	62.1	3.7	8.8	48.1	60.5	5.0	11.9	53.4	70.3
Indigenous status	Indigenous	~	6.9	124.2	131.2	2.2	11.4	132.5	146.2	6.2	17.0	155.3	178.5
	Other	~	444.8	3682.3	4128.8	181.8	578.8	3315.9	4076.5	254.5	771.3	3924.9	4950.7
Disability status	Disability	~	59.3	902.8	962.3	24.4	98.3	972.0	1094.7	46.7	166.0	1294.0	1506.7
	No disability	~	392.4	2903.8	3297.6	159.6	491.9	2476.5	3128.0	214.0	622.4	2786.2	3622.6
Homeless status	Homeless	~	7.8	127.4	135.4	3.1	11.8	157.7	172.5	7.6	24.7	237.9	270.2
	Not homeless	~	443.8	3679.1	4124.5	180.9	578.3	3290.8	4050.1	253.1	763.7	3842.3	4859.1
Speaks English	Not well/interpreter required	~	11.3	162.7	174.3	88.2	20.3	159.3	187.8	10.5	28.3	200.6	239.4
	Well/not required	~	440.3	3643.8	4085.7	175.8	569.9	3289.2	4034.9	250.1	760.1	3879.6	4889.8
Employment status	Full-time	~	136.5	542.7	679.5	66.2	146.2	327.6	539.9	72.0	141.7	313.3	527.0
	Casual/part time	~	70.2	453.4	523.7	26.8	104.2	382.7	513.7	41.1	118.2	398.8	558.2

	Self-employed	~	2.8	13.8	16.5	1.3	4.8	12.3	18.4	6.4	15.0	33.7	55.1
	Unemployed	~	183.7	2356.3	2540.8	68.6	274.0	2424.6	2767.2	115.9	453.6	3070.8	3640.3
	Not stated	~	58.6	440.4	499.4	21.1	61.0	301.4	383.5	25.2	59.9	263.6	348.6
Benefit status	In receipt of benefit	~	183.3	2291.6	2475.7	71.5	276.6	2264.4	2612.5	114.8	417.4	2730.7	3262.8
	No	~	268.4	1514.9	1784.3	112.5	313.6	1184.1	1610.2	145.9	371.0	1349.6	1866.4
Remoteness	Major city	~	391.0	2789.3	3181.8	153.7	459.9	2441.1	3054.7	199.1	605.6	2931.2	3735.9
	Inner regional	~	40.7	701.1	741.8	22.1	100.0	687.2	809.3	44.2	129.5	746.3	920.0
	Outer regional	~	6.7	146.8	153.5	3.2	13.3	135.3	151.8	7.0	22.6	144.7	174.3
	Remote	~	0.3	2.4	2.7	0.0	0.3	2.1	2.4	0.1	0.4	2.1	2.5
Total		**1.8**	**451.7**	**3806.5**	**4259.9**	**184.0**	**590.2**	**3448.5**	**4222.7**	**260.6**	**788.4**	**4080.2**	**5129.2**

Note: N=255,668 services. Due to 13,511 services having missing information for remoteness, the total mean is based on the number of non-missing demographics. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

Table 4.24: Percentage of 'legal information only', 'legal advice and information only' and 'in-court advocacy' services by client demographics and change period, June 2011–November 2015

		Pre-change				Change				Post-change			
Demographics		Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total
Gender	Female	~	17.6	21.9	21.4	17.5	19.7	21.5	21.1	20.9	21.1	21.4	21.3
	Male	~	82.4	78.1	78.6	82.5	80.3	78.5	78.9	79.1	78.9	78.6	78.7
Age	18-24	~	27.0	29.2	29.0	26.9	32.3	28.0	28.6	25.6	26.6	25.7	25.8
	25-34	~	31.1	32.1	32.0	32.6	31.8	32.5	32.4	33.9	33.4	33.7	33.7
	35-44	~	21.8	22.8	22.7	22.1	20.3	24.1	23.5	22.0	23.5	24.7	24.4
	45-54	~	12.7	10.9	11.1	11.6	10.1	10.6	10.6	12.2	11.4	11.3	11.3
	55-64	~	5.4	3.6	3.8	4.8	4.0	3.4	3.6	4.4	3.7	3.3	3.4
	65+	~	2.0	1.4	1.5	2.0	1.5	1.4	1.4	1.9	1.5	1.3	1.4
Indigenous status	Indigenous	~	1.5	3.3	3.1	1.2	1.9	3.8	3.5	2.4	2.2	3.8	3.6
	Other	~	98.5	96.7	96.9	98.8	98.1	96.2	96.5	97.6	97.8	96.2	96.4
Disability status	Disability	~	13.1	23.7	22.6	13.3	16.6	28.2	25.9	17.9	21.1	31.7	29.4
	No disability	~	86.9	76.3	77.4	86.7	83.4	71.8	74.1	82.1	78.9	68.3	70.6
Homeless status	Homeless	~	1.7	3.3	3.2	1.7	2.0	4.6	4.1	2.9	3.1	5.8	5.3
	Not homeless	~	98.3	96.7	96.8	98.3	98.0	95.4	95.9	97.1	96.9	94.2	94.7
Speaks English	Not well/interpreter required	~	2.5	4.3	4.1	4.4	3.4	4.6	4.4	4.0	3.6	4.9	4.7
	Well/not required	~	97.5	95.7	95.9	95.6	96.6	95.4	95.6	96.0	96.4	95.1	95.3
Employment status	Full-time	~	30.2	14.3	16.0	36.0	24.8	9.5	12.8	27.6	18.0	7.7	10.3
	Casual/part time	~	15.5	11.9	12.3	14.6	17.7	11.1	12.2	15.8	15.0	9.8	10.9

	Self-employed	~	0.6	0.4	0.4	0.7	0.8	0.4	0.4	2.5	1.9	0.8	1.1
	Unemployed	~	40.7	61.9	59.6	37.3	46.4	70.3	65.5	44.5	57.5	75.3	71.0
	Not stated	~	13.0	11.6	11.7	11.5	10.3	8.7	9.1	9.7	7.6	6.5	6.8
Benefit status	In receipt of benefit	~	40.6	60.2	58.1	38.9	46.9	65.7	61.9	44.0	52.9	66.9	63.6
	No	~	59.4	39.8	41.9	61.1	53.1	34.3	38.1	56.0	47.1	33.1	36.4
Remoteness	Major city	~	89.2	76.6	78.0	85.9	80.2	74.8	76.0	79.5	79.0	76.6	77.3
	Inner regional	~	9.3	19.3	18.2	12.3	17.4	21.0	20.1	17.7	17.1	19.6	19.0
	Outer regional	~	1.5	4.0	3.8	1.8	2.3	4.1	3.8	2.8	3.0	3.8	3.6
	Remote	~	0.1	0.1	0.1	0.0	0.1	0.1	0.1	0.0	0.1	0.1	0.1
Total		~	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: N=255,668 services. Due to 13,511 services having missing information for remoteness, the total mean is based on the number of non-missing demographics. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

The proportion of DLS 'legal information only', 'legal advice and information only' and 'in-court advocacy' also changed by client demographic group across the guideline change periods (see Table 4.24). Broadly speaking, this change reflects the introduction of assessment and triage to tiered service levels. For example, compared to the pre-change period, and compared to their counterparts, there was an *increase* of at least 2.0 per cent in the proportion of 'in-court advocacy' in the post-change period to people in the following disadvantaged demographic groups:

- people with a disability (8.0%)
- homeless people (2.5%)
- unemployed people (13.4%)
- people in receipt of means-tested government benefits (6.7%).

In addition to the respective counterparts of these groups, other demographic groups where there was a *decrease* of at least 2.0 in the proportion of 'in-court advocacy' between the pre-change and post-change periods included:

- 18–24 year olds (-3.5%)
- people in full-time employment (6.6%)
- people in casual/part time employment (2.1%)
- people whose employment status was not stated (5.1%).

To further examine the impact of the introduction of the assessment and triage DLS model, a measure of DLS priority group status was developed. As outlined in the *Methodology*, this measure is based on a combination of whether or not DLS clients satisfy an income proxy measure and priority group criteria. The priority group variable is comprised of the following four mutually exclusive groups: 'None', 'Income proxy', 'Priority group' and 'Both'.

Tables 4.25 and 4.26 report the mean number per month and proportion of DLS services by client priority group status and level of disadvantage, by guideline change period.

Table 4.25: Mean number of 'legal information only', 'legal advice and information only' and 'in-court advocacy' services per month by client priority group status, level of disadvantage and change period, June 2011–November 2015

		Pre-change				Change				Post-change			
		Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total
Priority group status	None	~	201.2	884.0	1085.7	86.8	222.3	561.6	870.7	103.0	219.6	523.8	846.3
	Income proxy	~	194.3	1986.5	2181.4	72.5	271.3	1820.8	2164.5	108.4	397.5	2114.8	2620.7
	Priority client group	~	9.8	87.9	97.8	5.9	16.5	85.0	107.4	9.8	22.6	106.5	138.9
	Both	~	46.5	848.1	895.1	18.8	80.1	981.2	1080.1	39.4	148.7	1335.2	1523.3
Level of disadvantage	None	~	154.3	721.9	876.5	68.0	178.2	461.6	707.8	77.4	174.3	418.8	670.5
	One type	~	136.6	904.8	1042.0	52.5	159.7	721.2	933.3	74.9	202.5	818.7	1096.2
	Multiple	~	160.8	2179.8	2341.4	63.5	252.3	2265.8	2581.6	108.3	411.5	2842.7	3362.5
Total		**1.8**	**451.7**	**3806.5**	**4259.9**	**184.0**	**590.2**	**3448.5**	**4222.7**	**260.6**	**788.4**	**4080.2**	**5129.2**

Note: N=255,668 services. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

Table 4.26: Percentage of 'legal information only', 'legal advice and information only' and 'in-court advocacy' services per month by client priority group status, level of disadvantage and change period, June 2011–November 2015

		Pre-change				Change				Post-change			
		Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total
Priority group status	None	~	44.5	23.2	25.5	47.1	37.7	16.3	20.6	39.5	27.9	12.8	16.5
	Income proxy	~	43.0	52.2	51.2	39.4	46.0	52.8	51.3	41.6	50.4	51.8	51.1
	Priority client group	~	2.2	2.3	2.3	3.2	2.8	2.5	2.5	3.8	2.9	2.6	2.7
	Both	~	10.3	22.3	21.0	10.2	13.6	28.5	25.6	15.1	18.9	32.7	29.7
Total		~	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Level of disadvantage	None	~	34.2	19.0	20.6	37.0	30.2	13.4	16.8	29.7	22.1	10.3	13.1
	One type	~	30.2	23.8	24.5	28.5	27.1	20.9	22.1	28.7	25.7	20.1	21.4
	Multiple	~	35.6	57.3	55.0	34.5	42.8	65.7	61.1	41.6	52.2	69.7	65.5
Total		~	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: N=255,668 services. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

To better illustrate the impact of the guideline changes, Table 4.27 summarises the overall change in the number of 'legal advice and information only' and 'in-court advocacy' services between the pre-change and post-change periods. Put simply, Table 4.27 shows the impact of the DLS Guidelines changes and how DLS services increased to both priority and multiply disadvantaged client groups.

Table 4.27: Summary of percentage change between pre-change and post-change periods in the mean number of 'legal advice and information only' and 'in-court advocacy' DLS services per month by client priority group status and level of disadvantage

		% change pre to post	
		Legal advice & information only	In-court advocacy
Priority group status	None	9.1	-40.7
	Income proxy	104.6	6.5
	Priority client group	130.6	21.2
	Both	219.8	57.4
Level of disadvantage	None	13.0	-42.0
	One type	48.2	-9.5
	Multiple	155.9	30.4
Total		**74.5**	**7.2**

Provision of 'legal advice and information only' and 'in-court advocacy' increased between the pre-change and post-change periods by both client priority group status and level of disadvantage (see Table 4.27). For instance, there was a large *decrease* in provision of 'in-court advocacy' to clients who were not within a DLS priority group (-40.7%). By comparison, there were *increases* in provision of 'in-court advocacy' to clients within the priority group measures (6.5–57.4%) and to multiply disadvantaged clients (30.4%). This indicates that provision of 'in-court advocacy' has shifted by both client priority group status and level of disadvantage.

Clients in custody

Change in the number and proportion of DLS services to clients in custody was examined (see Table 4.28). Note that the DLS prioritises accused people in custody and that there is no income test. The number of 'in-court advocacy' services to clients in custody *increased* 63.3 per cent in the post-change period, compared to the pre-change period. As the number of in-custody DLS services increased, the proportion of in-custody services also increased, from 16.0 per cent in the pre-change period, to 24.4 per cent in the post-change period. This further demonstrates how DLS workload has been impacted by a rise in clients in custody.

Table 4.28: Mean number per month and percentage of 'legal information only', 'legal advice and information only' and 'in-court advocacy' services by client in-custody status and change period, June 2011–November 2015

		Pre-change				Change				Post-change			
		Info only	Advice & info	In-court advocacy	Total	Info only	Info & advice	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total
In-custody status	Yes	~	47.0	609.1	656.4	12.5	52.1	720.7	785.3	20.5	103.0	994.8	1118.3
	No	~	404.7	3197.4	3603.5	171.5	538.1	2727.8	3437.4	240.2	685.3	3085.4	4010.9
Total			451.7	3806.5	4259.9	184.0	590.2	3448.5	4222.7	260.7	788.4	4080.2	5129.2
		%	%	%	%	%	%	%	%	%	%	%	%
In-custody status	Yes	~	10.4	16.0	15.4	6.8	8.8	20.9	18.6	7.9	13.1	24.4	21.8
	No	~	89.6	84.0	84.6	93.2	91.2	79.1	81.4	92.1	86.9	75.6	78.2
Total (%)		~	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Note: N=255,668 services. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

Matter type

The mean number of DLS services per month increased across the guideline change period for nearly every criminal matter type and level of service (see Table 4.29). Again, these results suggest that, in addition to changing who receives what assistance from the DLS, the 2012–2013 DLS and Grant guidelines also altered the types of matters dealt with by the DLS.

While Table 4.18 showed a decrease in the number of grants for most matter types, Table 4.29 shows an increased number of DLS services per month for nearly every matter type. Again, 'Traffic and vehicle regulatory offences' are a notable exception, one of the matter types affected by the 2012 DLS Guidelines, which provided that in-court advocacy and legal advice services are no longer provided for minor charges, and this includes many 'Traffic and vehicle regulatory offences'.[41]

Overall, 'Traffic and vehicle regulatory offences' remained the highest frequency matter type that the DLS deals with across the guideline change periods. However, the number of 'in-court advocacy' services for this matter type dropped, while the number of 'legal information only' and 'legal advice and information only' services increased. Between the pre-change and post-change periods there was a decrease in in-court advocacy services of 42.7 per cent. The only other matter types where there was a decrease in the number of in-court advocacy services were 'Miscellaneous offences' (45.6%) and 'Other court orders and applications' (22.0%). At the same time there was an increase in the number of in-court advocacy services per month of more than 40.0 per cent for the following matter types:

- Acts intended to cause injury (45.2%)
- Sexual assault and related offences (56.7%)
- Abduction, harassment and other offences (114.4%)
- Robbery, extortion and related offences (45.8%)
- Unlawful entry with intent/burglary, break and enter (41.8%)
- Illicit drug offences (up 50.3%)
- Offences against government procedures, government security and government operations (42.7%).

This finding indicates that the DLS and Grant Guidelines changes successfully re-orientated DLS in-court advocacy towards more serious matter types.

[41] Note that some traffic and driving matters remain eligible for legal advice and information, and that serious driving offences, such as a third drive while disqualified and drive while suspended, are still eligible for in-court advocacy.

Table 4.29: Mean number of 'legal information only', 'legal advice and information only' and 'in-court advocacy' services per month by criminal matter type and change period, June 2011–November 2015

	Pre-change				Change				Post-change			
Matter type	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total
Acts intended to cause injury	~	30.5	470.8	501.5	12.4	45.3	523.4	581.2	23.4	62.3	683.7	769.4
Sexual assault & related offences	~	1.4	29.3	30.8	0.0	0.7	40.6	41.3	0.5	1.7	45.9	48.1
Dangerous or negligent acts endangering persons	~	27.6	211.2	238.9	11.2	49.2	145.7	206.0	17.8	58.8	149.3	225.9
Abduction, harassment & other offences against the person	~	5.5	67.3	72.8	1.6	6.3	99.1	107.0	3.3	11.6	144.3	159.2
Robbery, extortion & related offences	~	1.5	19.0	20.5	0.4	0.8	23.1	24.3	0.8	1.2	27.7	29.8
Unlawful entry with intent/burglary, break and enter	~	7.3	127.5	134.8	1.5	9.4	143.8	154.8	3.3	10.6	180.8	194.7
Theft and related offences	~	25.7	486.7	512.5	8.8	38.0	466.2	513.0	18.2	52.3	536.5	607.0
Fraud, deception & related offences	~	3.1	79.0	82.2	1.7	5.1	83.3	90.0	2.8	7.5	95.8	106.1
Illicit drug offences	~	16.5	238.6	255.2	6.4	29.3	253.9	289.7	13.8	46.1	358.5	418.4
Prohibited and regulated weapons & explosives offences	~	4.6	51.8	56.3	1.3	6.3	54.5	62.0	2.8	10.9	62.7	76.4
Property damage & environmental pollution	~	7.7	140.1	147.8	3.9	13.5	138.2	155.6	7.0	22.6	170.9	200.5
Public order offences	~	5.9	73.4	79.3	3.3	8.8	66.8	78.8	4.0	9.6	77.4	91.1
Traffic and vehicle regulatory offences	~	230.8	955.3	1186.5	100.7	271.3	616.3	988.3	112.7	290.9	556.3	959.9
Offences against government procedures, government security & government operations	~	43.1	543.1	586.2	16.3	63.8	547.7	627.8	25.5	83.6	775.0	884.1
Miscellaneous offences	~	25.7	243.6	269.6	11.6	28.3	169.9	209.8	20.9	30.9	95.0	146.7
Drug Court orders & applications	~	0.0	3.2	3.2	0.0	0.0	26.4	26.4	0.0	74.8	73.0	147.8
Other court orders & applications	~	15.0	66.8	82.1	2.9	14.3	49.8	67.0	3.8	12.9	47.3	64.0
Total	**1.8**	**451.7**	**3806.5**	**4259.9**	**184.0**	**590.2**	**3448.5**	**4222.7**	**260.6**	**788.4**	**4080.2**	**5129.2**

Note: N=255,668 services. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

Table 4.29 shows that there were also large *increases* in the number of legal advice and information only services in the post-change period, compared to the pre-change period, for nearly every matter type. Increases of more than 40.0 per cent occurred for the following matter types:

- Acts intended to cause injury (104.3%)
- Dangerous or negligent acts endangering persons (113.0%)
- Abduction, harassment and other offences against the person (110.9%)
- Unlawful entry with intent/burglary, break and enter (45.2%)
- Theft and related offences (103.5%)
- Fraud, deception and related offences (141.9%)
- Illicit drug offences (179.4%)
- Prohibited and regulated weapons and explosives offences (137.0%)
- Property damage and environmental pollution (193.5%)
- Public order offences (62.7%)
- Offences against government procedures, government security and government operations (94.0%).

The introduction of the 'legal information only' service level has had the largest impact on the 'Traffic and vehicle regulatory offences' matter type, which comprise the overwhelming majority of 'legal information only' services (see Table 4.29).

Table 4.30 shows how the overall increase in the number of DLS services across the guideline change periods was distributed by service level and matter type. In the pre-change period 'Traffic and vehicle regulatory offences' accounted for the largest percentage of DLS services (27.9%), 51.1 per cent of 'legal advice and information only', and 25.1 per cent of 'in-court advocacy services'. In the post-change period, however, this had declined to 36.9 per cent of 'legal advice and information only' and 13.6 per cent of 'in-court advocacy services'.

These findings indicate the nature of DLS work has shifted substantially, with the proportion of legal advice and in-court advocacy for traffic and driving matters being replaced by more serious offences.

Table 4.30: Percentage of 'legal information only', 'legal advice and information only' and 'in-court advocacy' services by criminal matter type and change period, June 2011–November 2015

	Pre-change				Change				Post-change			
Matter type	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total
Acts intended to cause injury	~	6.8	12.4	11.8	6.7	7.7	15.2	13.8	9.0	7.9	16.8	15.0
Sexual assault & related offences	~	0.3	0.8	0.7	0.0	0.1	1.2	1.0	0.2	0.2	1.1	0.9
Dangerous or negligent acts endangering persons	~	6.1	5.5	5.6	6.1	8.3	4.2	4.9	6.8	7.5	3.7	4.4
Abduction, harassment & other offences against the person	~	1.2	1.8	1.7	0.9	1.1	2.9	2.5	1.3	1.5	3.5	3.1
Robbery, extortion & related offences	~	0.3	0.5	0.5	0.2	0.1	0.7	0.6	0.3	0.2	0.7	0.6
Unlawful entry with intent/burglary, break and enter	~	1.6	3.3	3.2	0.8	1.6	4.2	3.7	1.3	1.3	4.4	3.8
Theft and related offences	~	5.7	12.8	12.0	4.8	6.4	13.5	12.1	7.0	6.6	13.1	11.8
Fraud, deception & related offences	~	0.7	2.1	1.9	0.9	0.9	2.4	2.1	1.1	0.9	2.3	2.1
Illicit drug offences	~	3.7	6.3	6.0	3.5	5.0	7.4	6.9	5.3	5.9	8.8	8.2
Prohibited and regulated weapons & explosives offences	~	1.0	1.4	1.3	0.7	1.1	1.6	1.5	1.1	1.4	1.5	1.5
Property damage & environmental pollution	~	1.7	3.7	3.5	2.1	2.3	4.0	3.7	2.7	2.9	4.2	3.9
Public order offences	~	1.3	1.9	1.9	1.8	1.5	1.9	1.9	1.5	1.2	1.9	1.8
Traffic and vehicle regulatory offences	~	51.1	25.1	27.9	54.7	46.0	17.9	23.4	43.3	36.9	13.6	18.7
Offences against government procedures, government security & government operations	~	9.5	14.3	13.8	8.9	10.8	15.9	14.9	9.8	10.6	19.0	17.2
Miscellaneous offences	~	5.7	6.4	6.3	6.3	4.8	4.9	5.0	8.0	3.9	2.3	2.9
Drug Court orders & applications	~	0.0	0.1	0.1	0.0	0.0	0.8	0.6	0.0	9.5	1.8	2.9
Other court orders & applications	~	3.3	1.8	1.8	1.6	2.4	1.4	1.4	1.4	1.6	1.2	1.2
Total	~	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: N=255,668 services. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

Matter severity

Tables 4.31 and 4.32 report the mean number of DLS services per month and proportion by level of service, criminal matter severity and guideline change period.

On the VLA Rank measure, the number of DLS 'in-court advocacy' per month for minor and straightforward matters *decreased* 30.9 per cent and 21.7 per cent, respectively, and *increased* 39.0 per cent for significant matters, between the pre-change and post-change period. Similarly, on the NOI 2009 Rank measure, in-court advocacy for the least severe group (i.e. 125–155) *decreased* 31.3 per cent, and *increased* for each of the three more severe groups, between the pre-change and post-change periods.

Table 4.31 also shows that on the VLA Rank measure, the mean number per month of 'legal advice and information only' increased 23.6 percent for minor matters, and increased 91.3 per cent for straightforward matters and 111.9 per cent for significant matters. The NOI 2009 Rank measure shows a similar pattern by severity.

The change in the overall proportion of DLS services by criminal matter severity is reported in Table 4.32. This table illustrates how the nature of the DLS work has been transformed by the 2012–2013 Guidelines changes. In the post-change period the DLS provides a larger proportion of in-court advocacy to more severe criminal matters.

Together, these findings indicate that the overall increase in provision of in-court advocacy has been for more severe matters, and has come at the expense of in-court advocacy for less severe matters. Given the overall increase in the number of DLS services across the change periods, it again appears that DLS would have been even higher without the change in DLS model implemented by the service eligibility changes.

While the DLS is providing more in-court advocacy for more severe matters in the post-change period, there has also been a large increase in the number of people facing less severe matters that will either have had to self-represent or seek private legal representation. The number of accused receiving a DLS service other than in-court advocacy in the post-change period was more than doubled to that in the pre-change period, to around 520–570 per month, notwithstanding an overall increase in the provision of in-court advocacy in the post-change period. This suggests that while the DLS is providing more in-court advocacy overall, the Magistrates' Court is likely to have been faced with more self-represented defendants for straightforward and minor matters.

Table 4.31: Mean number of 'legal information only', 'legal advice and information only' and 'in-court advocacy' services per month by criminal matter severity (VLA Rank and NOI 2009 Rank) and change period, June 2011–November 2015

Severity	Pre-change				Change				Post-change			
VLA Rank	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total	Info only	Advice & info	In-court advocacy	Total
Minor	~	100.9	219.8	321.0	40.5	64.4	135.8	240.7	43.3	124.7	151.9	319.9
Straight	~	184.5	1320.0	1504.9	84.0	297.0	995.1	1376.1	108.1	353.0	1034.0	1495.1
Significant	~	128.1	1986.7	2115.3	45.1	190.8	2115.3	2351.1	85.7	271.5	2762.5	3119.7
Total	**1.3**	**413.3**	**3526.4**	**3941.2**	**169.6**	**552.2**	**3246.1**	**3967.8**	**237.2**	**749.2**	**3948.4**	**4934.8**
NOI 2009 Rank												
124 to 155	~	250.1	1235.4	1486.3	109.5	293.1	890.4	1293.0	137.1	328.0	848.5	1313.5
76 to 123	~	75.4	909.0	985.4	32.0	118.0	827.7	977.7	44.4	148.2	1061.6	1254.1
39 to 75	~	45.3	783.2	828.7	14.3	62.3	831.1	907.6	28.6	87.4	986.8	1102.8
7 to 38	~	65.9	808.0	874.3	25.3	102.6	823.1	951.0	46.8	137.1	1063.1	1247.0
Total	**1.5**	**436.7**	**3736.5**	**4174.7**	**181.1**	**575.9**	**3372.3**	**4129.3**	**256.8**	**700.6**	**3959.9**	**4917.4**

Note: N=242,951 services for VLA Rank. Information on VLA Rank was missing for 12,717 services. N=247,169 services for NOI 2009 Rank. Information on NOI 2009 Rank was missing for 8,499 services. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

Table 4.32: Percentage of 'legal information only', 'legal advice and information only' and 'in-court advocacy' services by criminal matter severity (VLA Rank and NOI 2009 Rank) and change period, June 2011–November 2015

Severity	Pre-change				Change				Post-change			
VLA Rank	Info only	Info & advice	In-court advocacy	Total	Info only	Info & advice	In-court advocacy	Total	Info only	Info & advice	In-court advocacy	Total
Minor	~	24.4	6.2	8.1	23.9	11.7	4.2	6.1	18.3	16.6	3.8	6.5
Straight	~	44.6	37.4	38.2	49.5	53.8	30.7	34.7	45.6	47.1	26.2	30.3
Significant	~	31.0	56.3	53.7	26.6	34.5	65.2	59.2	36.1	36.2	70.0	63.2
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
NOI 2009 Rank												
124 to 155	~	57.3	33.1	35.6	60.5	50.9	26.4	31.3	53.4	46.8	21.4	26.7
76 to 123	~	17.3	24.3	23.6	17.7	20.5	24.5	23.7	17.3	21.2	26.8	25.5
39 to 75	~	10.4	21.0	19.9	7.9	10.8	24.6	22.0	11.1	12.5	24.9	22.4
7 to 38	~	15.1	21.6	20.9	14.0	17.8	24.4	23.0	18.2	19.6	26.8	25.4
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Note: N=242,951 services for VLA Rank. Information on VLA Rank was missing for 12,717 services. N=247,169 services for NOI 2009 Rank. Information on NOI 2009 Rank was missing for 8,499 services. ~Not calculated as 'legal information only' was not a service level in the pre-change period.

Relative impact of service eligibility changes

To determine the relative impact of VLA's eligibility changes on type of service, regression analyses were used. Regression allows the independent influence of multiple factors to be determined, controlling for the relative impacts of the factors in the model (e.g. Did disability status or the type of offence have a statistically significant independent bearing on the type of assistance received?). Analyses explored two questions:

- How did the 2012–2013 Guidelines changes affect provision of summary crime services to different clients and for different matters?
- What is the relationship over time between police initiations in the Magistrates' Court and demand for grants of legal assistance and DLS?

A series of binary multilevel logistic regression models were fitted to VLA's administrative data. Each model variously controls for client demographics, criminal matter characteristics (type and severity), and guidelines change period. There will be, however, other factors not included in the models that may also independently influenced type of service. For instance, a person's criminal record may affect likelihood of imprisonment, which affects service eligibility, and client criminal record is not available to inclusion in the model.

For ease of interpretation of the findings, we report the estimated probability of different types of summary crime services calculated from the results of the regression models.[42]

Who receives in-court advocacy and for what?

We first examined the likelihood of receiving 'in-court advocacy' compared to other DLS services, and specifically controlled for the independent effects of guideline change period and in-custody status, in addition to other demographic and criminal matter characteristics.

The regression model indicated that age, disability status, Indigenous status, homelessness status, in-custody status, speaking English status, employment status, benefit status, remoteness of residential area, guidelines change period, matter type and matter severity were all statistically significant, and independently predicted in-court advocacy. There was also a statistically significant effect at the person level, indicating someone who received in-court advocacy on one occasion was significantly more likely to also receive it on a subsequent occasion.

Tables 4.33 and 4.34 report the estimated probability of receiving in-court advocacy compared to the other levels of DLS service in the pre-change and post-change period for demographics, and matter type and severity, respectively.

[42] Note that a person may have received one or more services, and that, consequently, services are 'nested' within people. Multilevel modelling allows nesting to be taken into account, and 'person' was included in the regressions as a random effect.

Table 4.33: Estimated probability of in-court advocacy compared to other levels of DLS in pre-change and post-change periods, by demographics

		Pre-change		Post-change	
Demographics		In-court advocacy	Other*	In-court advocacy	Other*
		Probability		Probability	
Gender	Female	0.931	0.069	0.786	0.214
	Male	0.931	0.069	0.788	0.212
Age	18-24	0.937	0.063	0.803	0.197
	25-34	0.933	0.067	0.795	0.205
	35-44	0.934	0.066	0.797	0.203
	45-54	0.931	0.069	0.790	0.210
	55-64	0.923	0.077	0.770	0.230
	65+	0.919	0.081	0.761	0.239
Indigenous status	Indigenous	0.942	0.058	0.816	0.184
	Other	0.931	0.069	0.791	0.209
Disability status	Disability	0.949	0.051	0.834	0.166
	No disability	0.921	0.079	0.764	0.236
Homeless status	Homeless	0.938	0.062	0.799	0.201
	Not homeless	0.913	0.087	0.741	0.259
In-custody status	Yes	0.956	0.044	0.849	0.151
	No	0.925	0.075	0.773	0.227
Speaks English	Not well/interpreter required	0.963	0.037	0.869	0.131
	Well/not required	0.929	0.071	0.783	0.217
Employment status	Full-time	0.893	0.107	0.704	0.296
	Casual/part time	0.926	0.074	0.774	0.226
	Self-employed	0.889	0.111	0.698	0.302
	Not employed	0.945	0.055	0.822	0.178
	Not stated	0.940	0.060	0.808	0.192
Benefit status	In receipt of benefit	0.940	0.060	0.811	0.189
	No	0.916	0.084	0.757	0.243
Remoteness	Major city	0.926	0.074	0.776	0.224
	Inner regional	0.940	0.060	0.810	0.190
	Outer regional	0.947	0.053	0.827	0.173
	Remote	0.936	0.064	0.803	0.197

Note: N=230,265 services. Estimated probability calculated from the regression model.
* Refers to 'legal advice and information only' or 'legal information only'.

Table 4.34: Estimated probability of in-court advocacy compared to other levels of DLS in pre-change and post-change periods, by matter type and matter severity

	Pre-change		Post-change	
	In-court advocacy	Other*	In-court advocacy	Other*
	Probability		Probability	
Matter type				
Acts intended to cause injury	0.959	0.041	0.858	0.142
Sexual assault and related offences	0.980	0.020	0.922	0.078
Dangerous or negligent acts endangering persons	0.886	0.114	0.693	0.307
Abduction, harassment and other offences against the person	0.956	0.044	0.849	0.151
Robbery, extortion and related offences	0.959	0.041	0.858	0.142
Unlawful entry with intent/burglary, break and enter	0.958	0.042	0.856	0.144
Theft and related offences	0.949	0.051	0.832	0.168
Fraud, deception and related offences	0.963	0.037	0.869	0.131
Illicit drug offences	0.935	0.065	0.796	0.204
Prohibited and regulated weapons and explosives offences	0.923	0.077	0.768	0.232
Property damage and environmental pollution	0.942	0.058	0.812	0.188
Public order offences	0.952	0.048	0.840	0.160
Traffic and vehicle regulatory offences	0.867	0.133	0.657	0.343
Offences against government procedures, government security and government operations	0.938	0.062	0.804	0.196
Miscellaneous offences	0.904	0.096	0.728	0.272
Matter severity (VLA Rank)				
Minor	0.844	0.156	0.615	0.385
Straightforward	0.926	0.074	0.776	0.224
Significant	0.949	0.051	0.832	0.158

Note: N=230,265 services. Estimated probability calculated from the regression model.
* Refers to 'legal advice and information only' or 'legal information only'.

In the post-change period most demographic groups had a *reduced* estimated probability of receiving in-court advocacy (see Table 4.33). The relative size of the reduction, however, was larger for some demographic groups than others. While there was little variation in the estimated probability of in-court advocacy by age, gender and Indigenous status, in the post-change period people with a disability, experiencing homelessness, who do not speak English well or who need an interpreter, are unemployed and who are in receipt of means-tested government benefits, all had relatively higher estimated probabilities of receiving in-court advocacy compared to their counterparts. That is, in the post-change period compared to the pre-change period, these groups were significantly more likely to receive in-court advocacy than their counterparts.

There was also variation by remoteness of residential area, with those residents outside of major city areas, that is outside Greater Melbourne, having slightly higher estimated probabilities of receiving in-court advocacy. It is possible that this finding indicates relative higher DLS service capacity in the areas outside Greater Melbourne.

Similarly, Table 4.34 indicates that, after controlling for the independent effects of the other factors, the estimated probability of receiving in-court advocacy was *reduced* in the post-change period for most criminal matter types compared to the pre-change period. The largest reduction in the post-change period was observed for 'Dangerous or negligent acts endangering persons' and 'Traffic and vehicle regulatory offences'. In the post-change period, the estimated probability of in-court advocacy was relatively higher for more severe than less severe matters.

In-court advocacy by client priority group status

To examine the impact of the 2012–2013 DLS and Grant Guidelines changes, and in particular, the impact of assessment and triage on service provision, we explored the independent impact of client priority group status (a proxy measure) over the change period. Because the DLS prioritises services to in-custody clients and uses no income test, services to in-custody clients were excluded from this regression.

The regression revealed that age, priority group status, change period, matter type and matter severity were all statistically significant, and independently predicted in-court advocacy. The regression was also significant at the person level. Table 4.35 reports the estimated probability of provision of in-court advocacy service in the pre-change and post-change period by DLS client priority group status. It shows while the estimated probability of in-court advocacy reduced between the pre-change and post-change period for all of the groups by priority group status, the largest reduction was for those clients who did not fall within any priority group. In the post-change period, there was stronger differentiation in likelihood of in-court advocacy by priority group status.

Table 4.35: Estimated probability of in-court advocacy compared to other levels of DLS in pre-change and post-change periods by DLS priority group status

	Pre-change		Post-change	
Priority group status	In-court advocacy	Other*	In-court advocacy	Other*
	Probability		Probability	
None	0.873	0.127	0.620	0.380
Income proxy	0.922	0.078	0.777	0.223
Priority group	0.934	0.066	0.773	0.227
Both	0.957	0.043	0.863	0.137

Note: N=187,216 services. Estimated probability calculated from the regression model.
* Refers to legal advice and information, or legal information only.

We also used the regression results to model the impact of the introduction of the DLS service change to assessment and triage by priority group and matter severity (see Table 4.36). Compared to the pre-change period, in the post-change period there was greater variation in the estimated probability of in-court advocacy by priority group status and matter severity, with in-court advocacy relatively more likely to be provided to clients with more severe matters and who satisfy DLS priority group requirements.

Table 4.36: Estimated probability of in-court advocacy in pre-change and post-change periods by DLS priority group status and matter severity

	Pre-change				Post-change			
Matter severity	Both	Priority group	Income proxy	None	Both	Priority group	Income proxy	None
Significant	0.966	0.947	0.938	0.896	0.888	0.809	0.812	0.667
Straightforward	0.947	0.920	0.906	0.850	0.839	0.740	0.744	0.579
Minor	0.882	0.832	0.810	0.720	0.703	0.573	0.578	0.395

Note: N=187,216 services. Estimated probability calculated from the regression model.

The results reported in the previous section showed that the mean number of DLS services had increased in the post-change period (see e.g. Table 4.22). Table 4.37 reports the mean number of in-court advocacy services by DLS priority group status and matter severity in the same format as Table 4.36, and Table 4.38 sets out the overall percentage change in the mean number of in-court advocacy services per month.

Table 4.37: Mean number of in-court advocacy services per month in the pre-change and post-change periods by DLS priority group status and matter severity

	Pre-change				Post-change			
Matter severity	Both	Priority group	Income proxy	None	Both	Priority group	Income proxy	None
Significant	339.1	30.3	833.3	335.0	574.8	51.7	1007.9	284.9
Straightforward	187.6	37.0	559.9	390.7	247.8	34.8	428.2	164.9
Minor	27.2	7.9	80.2	86.4	17.8	2.9	31.4	15.5
Total (N)	6,646	903	17,681	9,745	25,211	2,684	44,028	13,958

Note: N=120,856 in-court advocacy services. Chi-square tests were conducted to examine the difference in mean number of in-court advocacy between pre-change and post-change period. For 'Both' group on significant matters, χ^2_1=60.28, p<0.001; For 'Priority group' on significant matters, χ^2_1=5.08, p=0.024; For 'Income proxy' group on significant matters, χ^2_1=16.36, p<0.001; For 'None' group on significant matters, χ^2_1=3.88, p=0.049; For 'Both' group on straight matters, χ^2_1=8.32, p=0.004; For 'Priority group' on straight matters, χ^2_1=0.02, p=0.888; For 'Income proxy' group on straight matters, χ^2_1=17.28, p<0.001; For 'None' group on straight matters, χ^2_1=90.96, p<0.001; For 'Both' group on minor matters, χ^2_1=1.56, p=0.212; For 'Priority group' on minor matters, χ^2_1=1.48, p=0.224; For 'Income proxy' group on minor matters, χ^2_1=20.48, p<0.001; For 'None' group on minor matters, χ^2_1=47.94, p<0.001.

Table 4.38: Percentage change in the mean number of in-court advocacy services per month in the post-change period compared to pre-change period by DLS priority group and matter severity

	% change in mean number of DLS in-court advocacy services per month			
VLA Rank	Both	Priority group	Income proxy	None
Significant	Increased 69.5%	Increased 70.6%	Increased 21.0%	Decreased 15.0%
Straightforward	Increased 32.1%	Decreased 5.9%	Decreased 23.5%	Decreased 57.8%
Minor	Decreased 34.6%	Decreased 63.3%	Decreased 60.8%	Decreased 82.1%
Total	Increased 51.8%	Increased 18.9%	Decreased 0.4%	Decreased 42.7%

Note: N=120,856 in-court advocacy services.

Tables 4.37 and 4.38 demonstrate a large and significant increase in the mean number of in-court advocacy services provided per month for 'significant matters' to clients satisfying the priority group measures, and also a large and significant decrease (82.1%) in the number of in-court advocacy services for 'minor matters' to non-priority clients.

Together, Tables 4.35–4.38 demonstrate that the assessment and triage model of tiered service introduced by the 2012 DLS Guidelines successfully prioritised DLS in-court advocacy to priority clients and more severe matters.

Who receives legal information only and for what?

Regression analysis was also used to examine how demographic and criminal matter characteristics were independently associated with provision of 'legal information only' compared to 'legal advice and information only'. Note that because the 'legal information only' service level was introduced by the 2012 DLS Guidelines, the regression only examined service provision in the post-change period.

Age, Indigenous status, in-custody status, employment status, government benefit status, matter type and matter severity were all significant predictors of provision of 'legal information only', and again the random effects at person level was significant.

Table 4.39 reports the estimated probability of receiving 'legal information only' compared to 'legal advice and information only' by demographics, and Table 4.40 reports the same information by matter type and severity.

After controlling for the factors in the regression, older people (aged 25 to 65 years or more), Indigenous Australians, people not in custody, people in full-time employment, and people not in the receipt of government benefits were all significantly more likely than their counterparts to receive 'legal information only'. It is unclear why Indigenous Australians were significantly more likely to than others. While the estimated probability of receiving 'legal information only' appeared to be lower for clients resident in remote areas, remoteness of residential area was not significant in the regression.

As anticipated by the DLS Guidelines changes, 'legal information only' was significantly more likely to be provided for minor matters compared to both straightforward and significant matters. Overall, matter severity tended to have a stronger influence on provision of 'legal information only' than matter type.

Table 4.39: Estimated probability of legal information only compared to legal advice and information only in the post-change period by demographics

		Post-change	
Demographics		Legal information only	Legal advice & information only
		Probability	
Gender	Female	0.226	0.774
	Male	0.221	0.779
Age	18-24	0.199	0.801
	25-34	0.231	0.769
	35-44	0.226	0.774
	45-54	0.234	0.766
	55-64	0.246	0.754
	65+	0.255	0.745
Indigenous status	Indigenous	0.264	0.736
	Other	0.226	0.774
Disability status	Disability	0.221	0.779
	No disability	0.223	0.777
Homeless status	Homeless	0.247	0.753
	Not homeless	0.223	0.777
In-custody status	Yes	0.188	0.812
	No	0.229	0.771
Speaks English	Not well/interpreter required	0.232	0.768
	Well/not required	0.225	0.775
Employment status	Full-time	0.285	0.715
	Casual/part time	0.216	0.784
	Self-employed	0.240	0.760
	Not employed	0.203	0.797
	Not stated	0.257	0.743
Benefit status	In receipt of benefit	0.211	0.789
	No	0.244	0.756
Remoteness	Major city	0.223	0.777
	Inner regional	0.228	0.772
	Outer regional	0.221	0.779
	Remote	0.139	0.861

Note: N=28,470 services. Estimated probability calculated from the regression model.

Table 4.40: Estimated probability of legal information only compared legal advice and information only in the post-change period by matter type and severity

	Post-change	
	Legal information only	Legal advice & information
	Probability	
Matter type		
Acts intended to cause injury	0.294	0.706
Sexual assault and related offences	0.283	0.717
Dangerous or negligent acts endangering persons	0.236	0.764
Abduction, harassment and other offences against the person	0.242	0.758
Robbery, extortion and related offences**	0.484	0.516
Unlawful entry with intent/burglary, break and enter	0.286	0.714
Theft and related offences	0.298	0.702
Fraud, deception and related offences	0.302	0.698
Illicit drug offences	0.251	0.749
Prohibited and regulated weapons and explosives offences	0.225	0.775
Property damage and environmental pollution	0.253	0.747
Public order offences	0.237	0.763
Traffic and vehicle regulatory offences	0.257	0.743
Offences against government procedures, government security and government operations	0.248	0.752
Miscellaneous offences***	0.030	0.970
Matter severity (VLA Rank)		
Minor	0.373	0.627
Straightforward	0.194	0.806
Significant	0.207	0.793

Note: N=28,470 services. Estimated probability calculated from the regression model.
**Note that due to relatively smaller numbers, the result for the 'Robbery, extortion and related offences' groups may be less reliable.
***Note that the 'Miscellaneous offences' category comprises mostly Drug Court matters as well as a smaller proportion of other court orders and applications.

Who receives a grant of legal assistance and for what?

Regression was used to examine the likelihood of receiving a grant of legal assistance compared to a DLS, controlling for the independent effects of change period, in-custody status and other demographic and criminal matter characteristics. This regression allows the relationship between grants and DLS services to be examined across the service eligibility change period.

The regression revealed that gender, age, disability status, Indigenous status, homeless status, in-custody status, speaks English status, employment status, government benefit status, remoteness of residential area, guidelines change period, matter type and matter severity were all statistically significant, and independently predicted grants of legal assistance compared to DLS services. The random effects were also significant at the person level, indicating that someone who received a grant for one service instance was significantly more likely to receive a grant for a subsequent service instance. Tables 4.41 and 4.42 report the estimated probabilities of receiving a grant of legal assistance compared to a DLS service by demographic and criminal matter characteristics, respectively.

Overall, the estimated probability of a grant tended to *decrease* for all demographic groups and matter types*,* while the estimated probability of a DLS tended to increase, between the pre-change and post-change periods (see Tables 4.41 and 4.42). This suggests a shift out of the grants service stream and into the DLS service stream across the pre-change and post-change periods.

Examining the size of the impact, after controlling for the factors in the regression, the estimated probability of receiving a grant of legal assistance compared to a DLS service was approximately halved for most demographic groups and matter types, although there was some variation in the magnitude of the reduction in estimated probability between the pre-change and post-change periods. Compared to their counterparts, there was a relatively *smaller* reduction in the estimated probability of a grant compared to a duty lawyer service for:

- males
- people aged 35–44 years, and those aged 45–54 years
- Indigenous Australians
- people in custody
- unemployed people
- people in receipt of government benefits
- people living in outer regional areas.

This suggests that after the 2012–2013 guideline changes, when compared to DLS services, grants are more likely to go to some demographic groups, including a number of disadvantaged population groups.

Examining criminal matter type and severity, there were relatively smaller reductions in the estimated probability of a grant compared to a DLS service for significant matters, and for all matter types other than the 'Traffic and vehicle regulatory offences' and 'Miscellaneous offences' categories.

Table 4.41: Estimated probability of grant of legal assistance compared to DLS in the pre-change and post-change periods, by demographics

		Pre-change		Post-change	
Demographics		GLA	DLS	GLA	DLS
		Probability		Probability	
Gender	Female	0.207	0.793	0.107	0.893
	Male	0.264	0.736	0.143	0.857
Age	18-24	0.218	0.782	0.111	0.889
	25-34	0.269	0.731	0.144	0.856
	35-44	0.290	0.710	0.158	0.842
	45-54	0.286	0.714	0.155	0.845
	55-64	0.228	0.772	0.118	0.882
	65+	0.145	0.855	0.069	0.931
Indigenous status	Indigenous	0.316	0.684	0.181	0.819
	Other	0.246	0.754	0.133	0.867
Disability status	Disability	0.232	0.768	0.121	0.879
	No disability	0.263	0.737	0.141	0.859
Homeless status	Homeless	0.164	0.836	0.081	0.919
	Not homeless	0.255	0.745	0.137	0.863
In-custody status	In-custody	0.451	0.549	0.281	0.719
	No	0.207	0.793	0.105	0.895
Speaks English	Not well/interpreter required	0.171	0.829	0.084	0.916
	Well/not required	0.250	0.750	0.132	0.868
Employment status	Full-time	0.092	0.908	0.041	0.959
	Casual/part time	0.148	0.852	0.071	0.929
	Self-employed	0.109	0.891	0.050	0.950
	Not employed	0.327	0.673	0.186	0.814
	Not stated	0.054	0.946	0.023	0.977
Benefit status	In receipt of benefit	0.274	0.726	0.148	0.852
	No	0.171	0.829	0.083	0.917
Remoteness	Major city	0.234	0.766	0.120	0.880
	Inner regional	0.287	0.713	0.154	0.846
	Outer regional	0.314	0.686	0.173	0.827
	Remote	0.214	0.786	0.109	0.891

Note: N=293,200 services. Estimated probability calculated from the regression model.

Table 4.42: Estimated probability of grant of legal assistance compared to DLS in the pre-change and post-change periods, by matter type and severity

	Pre-change		Post-change	
	GLA	DLS	GLA	DLS
	Probability		Probability	
Matter type				
Acts intended to cause injury	0.323	0.677	0.184	0.816
Sexual assault and related offences	0.356	0.644	0.208	0.792
Dangerous or negligent acts endangering persons	0.260	0.740	0.141	0.859
Abduction, harassment and other offences against the person	0.300	0.700	0.168	0.832
Robbery, extortion and related offences	0.400	0.600	0.243	0.757
Unlawful entry with intent/burglary, break and enter	0.372	0.628	0.221	0.779
Theft and related offences	0.289	0.711	0.160	0.840
Fraud, deception and related offences	0.306	0.694	0.172	0.828
Illicit drug offences	0.260	0.740	0.140	0.860
Prohibited and regulated weapons and explosives offences	0.256	0.744	0.138	0.862
Property damage and environmental pollution	0.185	0.815	0.093	0.907
Public order offences	0.257	0.743	0.138	0.862
Traffic and vehicle regulatory offences	0.172	0.828	0.085	0.915
Offences against government procedures, government security and government operations	0.240	0.760	0.127	0.873
Miscellaneous offences	0.104	0.896	0.048	0.952
Matter severity (VLA Rank)				
Minor	0.111	0.889	0.051	0.949
Straight	0.197	0.803	0.098	0.902
Significant	0.307	0.693	0.170	0.830

Note: N=293,200 services. Estimated probability calculated from the regression model.

How demand for SCP services may change in future

Time-series analysis was used to forecast demand for grants of legal assistance and DLS services under the current service eligibility settings, given the number of police initiations in the Magistrates' Court.[43]

Time-series analysis can be used to forecast out-of-sample events based on knowledge of how events have changed over time. Note however that the longer the period of forecast,

[43] Time-series analysis is generally used with observations over 50 or more time periods (Tabachnick & Fidell 2013).

the greater the impact of prior forecast error, and consequently the less accurate the forecast is likely to be (StataCorp 2011).

Vector autoregression[44] was used to model the relationship between the monthly number of police initiations in the Magistrates' Court for the period July 2011–August 2016, and grants and DLS for the period June 2011–October 2016.

Figure 4.10 illustrates the period of data used in the time-series analysis. This figure reports only the number of services provided on DLRs, that is, it does not include DLS court attendance records. Note that the number of police initiations appear to broadly track grant and DLS services up until approximately June 2013, after which the number of police initiations is markedly elevated, more sporadic and has trended upwards. This period of time coincides with deployment of additional frontline police, as noted in the *Background and context*.

The bivariate relationship between the number of police initiations in the Magistrates' Court and grants and DLS was examined by calculating the correlation. As police initiations increased, provision of DLS services also increased. There was a moderately strong positive relationship (based on a correlation between the number of police initiations and DLS per month of 0.5), where DLS services have risen broadly in line with police initiations, although at a lower rate.

The overall correlation between the number of police initiations and grants of legal assistance per month was -0.29, indicating a weak negative relationship. This is most readily explained by the decline in the number of grants of legal assistance consequent of the October 2012 and April 2013 Grant Guidelines changes, and the rise in police initiations observed after June 2013.

Examining only the post-change period, there was a weak positive relationship between the monthly number of police initiations in the Magistrates' Court and grants (0.31), indicative of grants of legal assistance going up as police initiations went up in this period.

The time-series model showed a significant positive relationship between the number of police initiations and the number of grants and DLS services. The model also showed that a one-month lag between the number of police initiations and grants was significant, while for DLS both a one-month and two-month lag were significant. This finding suggests that grants of legal assistance tend to follow one month after police initiation, while DLS tend to follow one month and again two months after police initiation. This is most readily explained by matters being adjourned on their first court date for a period of about a month. The model was used to forecast future demand of grants and DLS services.

Figure 4.11 reports the forecast number of grants of legal assistance through to August 2017, while Figure 4.12 reports the forecast number of DLS through to August 2017.

Table 4.43 reports the forecast number of grants of legal assistance and DLS through to August 2017 with a 95 per cent confidence interval.

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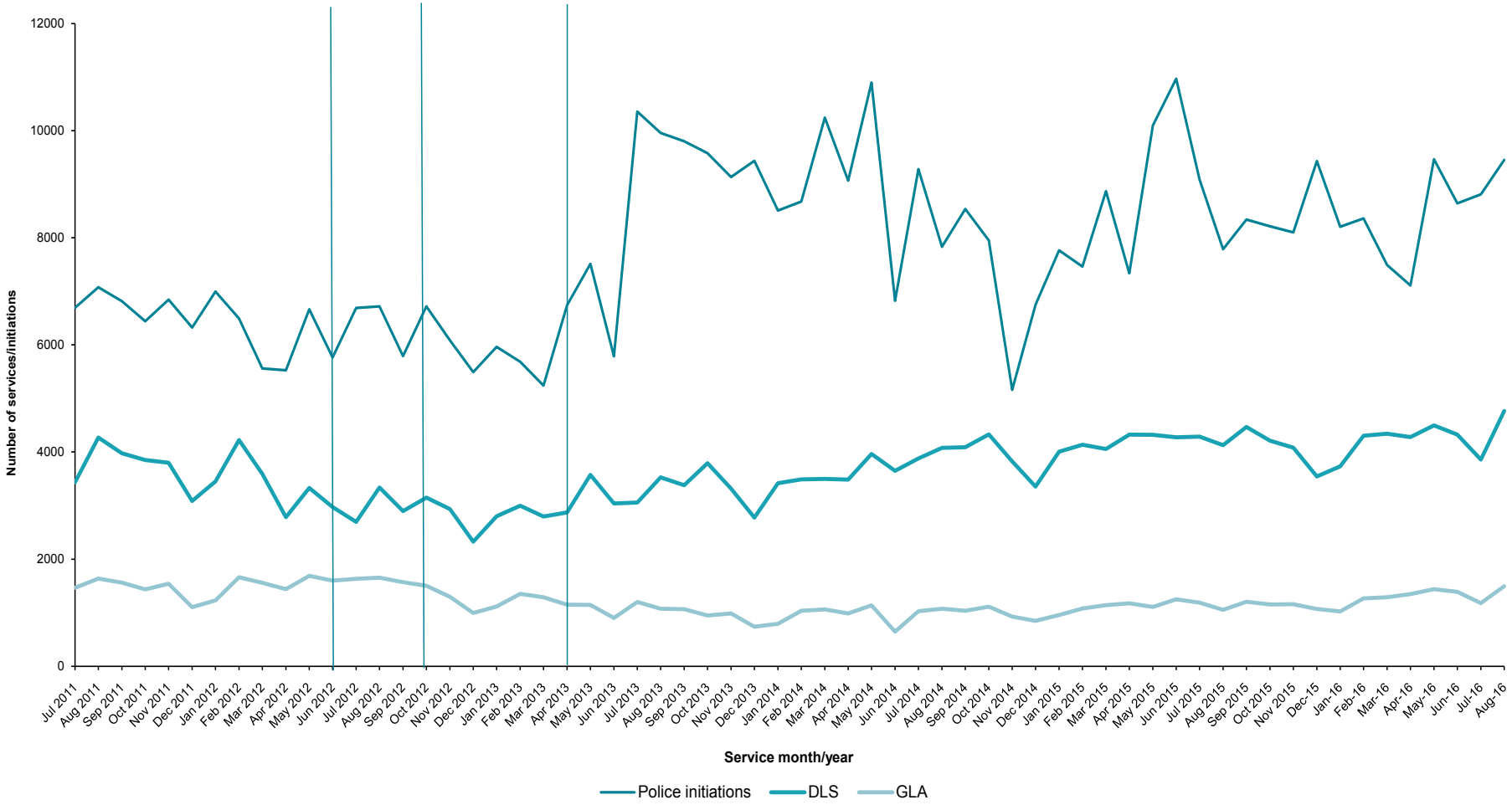
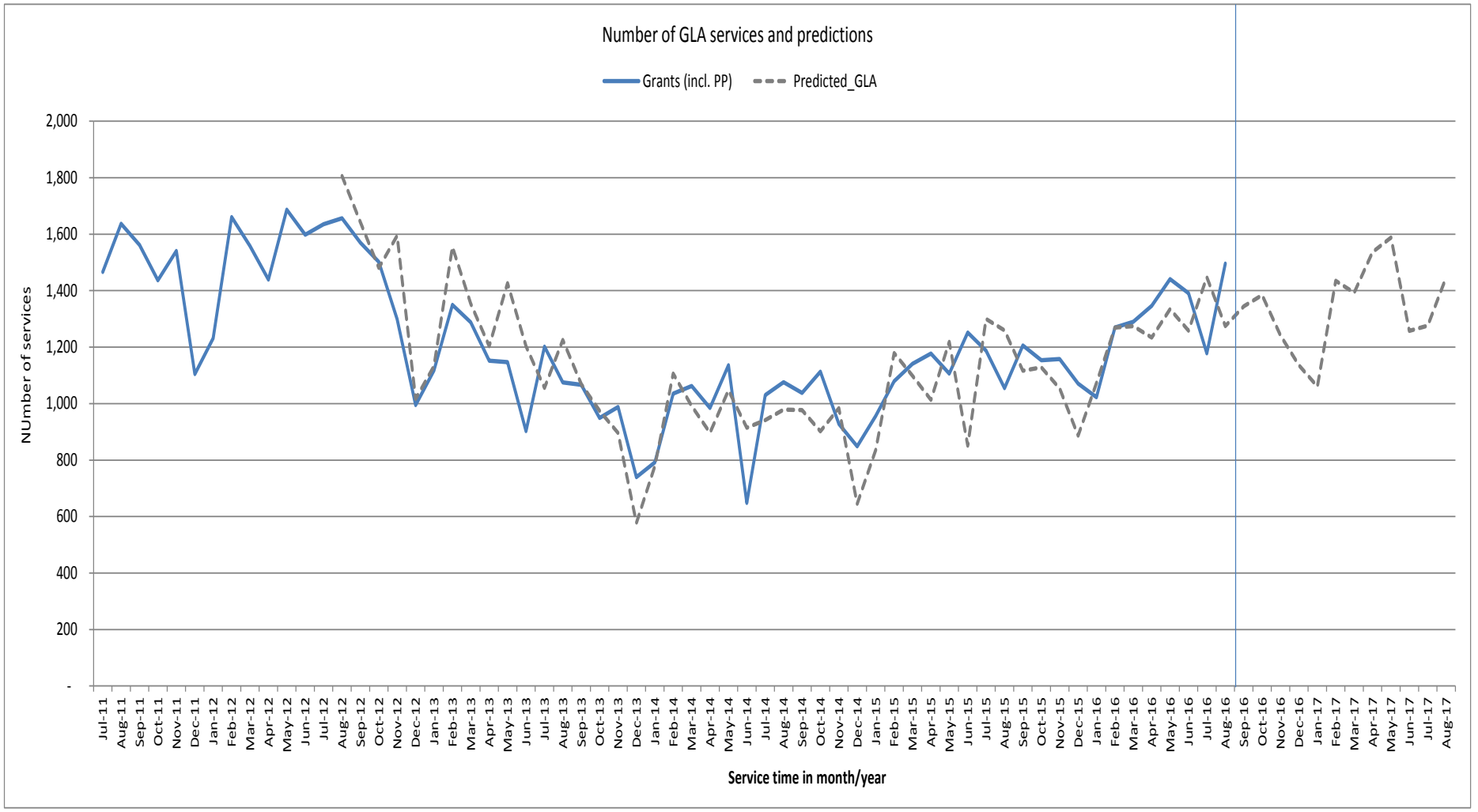
[44] Vector autoregression is a multivariate model to examine the relationship of several variables based on their own lags (i.e. time lags) as well as lags of the other variables in the model.

Figure 4.10: Police initiations, grants of legal assistance and DLS (i.e. DLRs) by month, July 2011–August 2016



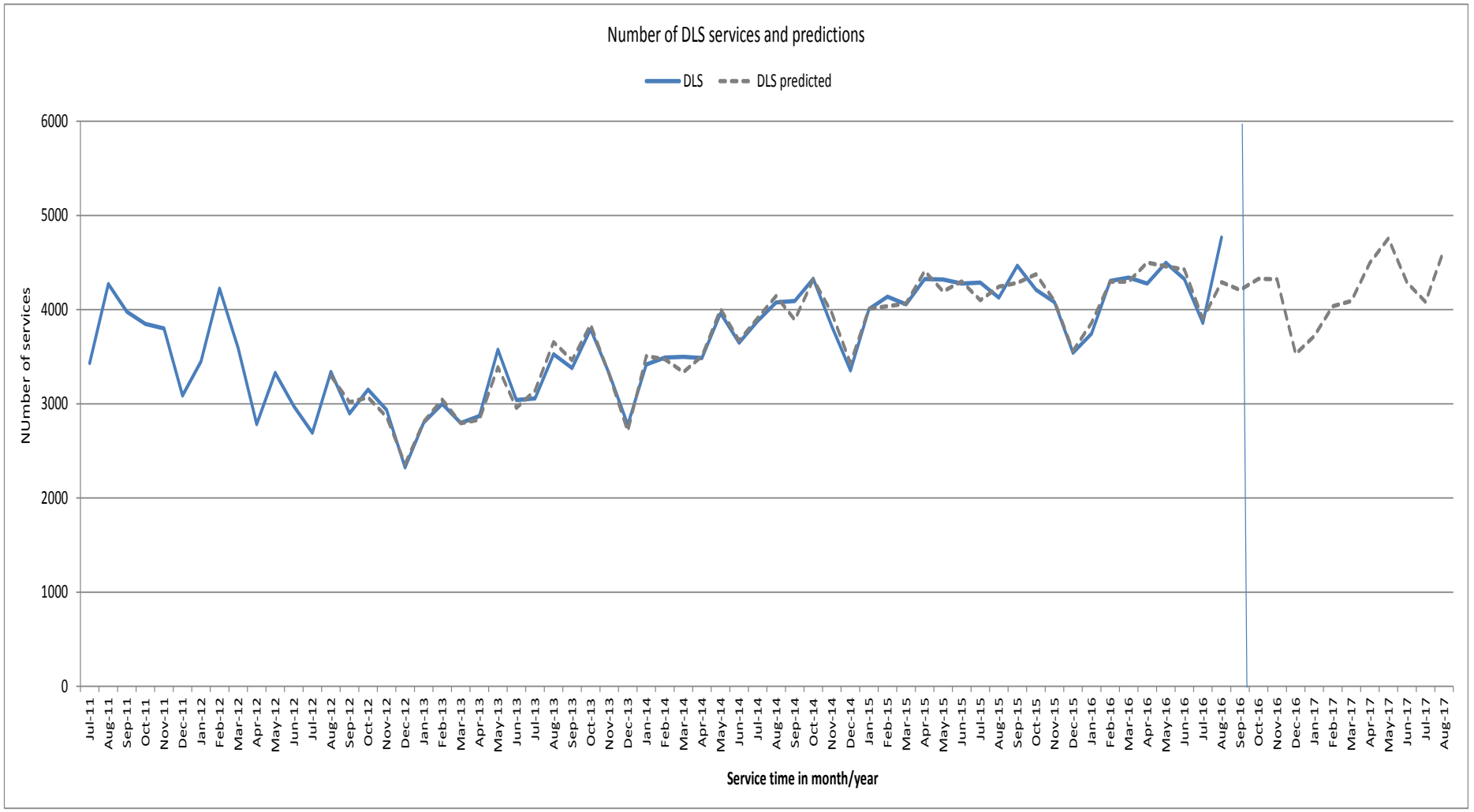
Note: N=480,618 police initiations, and N=227,044 DLS services and N=75,227 GLA services. Vertical lines on figure indicate the June 2012 DLS Guidelines, and October 2012 and April 2013 Summary Crime Grant Guidelines.

Figure 4.11: Forecast grants of legal assistance to August 2017 based on time-series analysis



Note: The forecast was based on grants of legal assistance and police initiations data services July 2011–August 2016. Vertical line indicates out-of-sample forecast.

Figure 4.12: Forecast DLS (i.e. DLRs) to August 2017 based on time-series analysis



Note: The forecast was based on grants of legal assistance and police initiations data services July 2011–August 2016. Vertical line indicates out-of-sample forecast.

Table 4.43: Forecast number of grants of legal assistance and DLS per month, September 2016–August 2017

	Sep 2016	Oct 2016	Nov 2016	Dec 2016	Jan 2017	Feb 2017	Mar 2017	Apr 2017	May 2017	Jun 2017	Jul 2017	Aug 2017
GLA												
Lower	1,128	1,162	1,041	954	883	1,195	1,158	1,276	1,320	1,047	1,064	1,207
Upper	1,602	1,650	1,479	1,353	1,274	1,724	1,676	1,850	1,910	1,511	1,531	1,734
DLS												
Lower	3,901	3,980	3,972	3,226	3,370	3,649	3,679	4,028	4,258	3,833	3,648	4,142
Upper	4,542	4,706	4,702	3,863	4,104	4,464	4,549	5,022	5,312	4,797	4,567	5,196

Note: The prediction bands were based on the VAR model with a 95% confidence interval.

Overall, the time-series analysis indicates that, given the current VLA summary crime service eligibility settings, and the continued trend of rising police initiations in the Magistrates' Court, escalating demand for grants and the DLS services can be expected to continue. This anticipated rising client demand is likely to exacerbate financial and workload pressures on VLA's summary crime services, and threaten the sustainability of the SCP within the current service settings and resources.

Thus, one important caveat on this projection is VLA's capacity for provision of grants and DLS services. For example, it may be that VLA is unable to keep pace with projected demand because SCP service capacity is exhausted.

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5. Client experiences of the Duty Lawyer Service

It was beyond the scope of this evaluation to canvas the experience of Summary Crime Program clients. In 2015 VLA commissioned Colmar Brunton, a market research company, to survey client satisfaction. The 2015 Client Satisfaction Survey was administered to a total sample of 1004 clients who had received services from one or more of VLA's civil, family and criminal programs.[45] This included clients who had a grant, assistance from a duty lawyer service, an in-*office* legal advice appointment and clients of the VLA's Legal Help telephone service.[46] As was noted above in the *Methodology*, nearly all of the surveyed clients who had used a criminal DLS had actually used the adult crime summary crime DLS. As such, the survey responses for the criminal DLS are highly representative of the adult summary crime DLS, and for ease of reference we refer to it as such in the following discussion.[47]

Here we report clients':

- experiences in accessing and using summary crime DLS services
- satisfaction with the services provided
- impact and outcomes of summary crime services
- suggestions for how to improve VLA services.

Accessing summary crime duty lawyer services

Surveyed summary crime DLS clients were asked about the ease or difficulty of locating the DLS at court. Most (75%) found it was easy or very easy, but a small but sizable minority (15%) indicated it had been difficult or very difficult. Clients who experienced difficulty accessing the DLS were asked why it was difficult. Although the available reasons are not specific to only the summary crime DLS, they speak to the client experience attending court and are consistent with the other observations about the workload and demand for summary crime services identified in both the administrative service data and qualitative materials. The main reasons cited included that the 'lawyers were busy / understaffed' (32%), they 'didn't know where to go' or there was 'no signage to help' (28%), 'there was nowhere to ask for directions' (14%), they 'had to wait for the service' (12%), the 'office was unattended' (11%), and 'they didn't have time / worried about missing call-up' (6%).

[45] The 2015 Client Satisfaction Survey had a total sample size of 1004 clients, and used a mixed methodology. Approximately 56 per cent (n=562) of respondents were surveyed via a computer assisted telephone interview, and the remaining 44 per cent (n=442) completing the survey online.

[46] The survey employed quotas for type of service and location, and responses were weighted to represent the overall population of VLA service users (see Colmar Brunton 2015). After survey weighting, there were 234 clients who had used one or more summary crime services.

[47] In total, 120 of the surveyed clients had used the summary crime DLS, of whom, 104 recalled using the service and answered a series of questions about accessing the DLS, whether they would use the DLS again, their opinion of the services provided, satisfaction with the DLS, impact and experience of the DLS, and their feelings about the outcome.

The following responses speak to client difficulties:

> *The Legal Aid office at the Melbourne Magistrates' Court is bedlam …*
>
> *It was difficult as we needed to stay in line with people who are signing in for the court appearance and then we needed to wait all day to be called and the case was called over to another day.*

The overwhelming majority (78%) of surveyed clients agreed or strongly agreed that if they had a similar situation they would like to use the DLS again. Again, a small but sizable minority (14%), however, disagreed or strongly disagreed that they would do so.

Opinions of Summary Crime Duty Lawyer Service

Surveyed clients were also asked to rate the degree to which they agreed or disagreed with a series of statements about the help the DLS provided. The percentage of clients agreeing or disagreeing with each statement is summarised in Table 5.1.

Table 5.1: Summary Crime DLS clients' opinions

Statement	Strongly agree %	Agree %	Neither agree nor disagree %	Disagree %	Strongly disagree %	N/A-Don't know %
Lawyer was polite and respectful	42	50	3	1	1	3
Lawyer clearly explained what client needed to do next, if anything	42	42	7	4	5	0
Lawyer listened to client	40	46	5	5	2	1
Lawyer didn't rush client	31	41	14	9	4	0
Lawyer helped to understand the legal situation you were in	44	41	8	3	4	1
Advice received from the lawyer was helpful	39	45	4	4	6	1
Didn't have to wait too long to see the lawyer	23	34	10	20	12	1
Service received was the same or better than expected	32	39	11	13	5	1
Felt confident in lawyer's ability	39	36	14	6	3	1
Kept informed throughout the process	39	41	9	10	1	0

Note: Percentages may not total 100 due to rounding. Adapted from Figure 42 in Colmar Brunton (2015, p.69). N=104

High proportions of clients either agreed or strongly agreed that the duty lawyer was polite and respectful (92%); clearly explained to them what they needed to do next (84%); listened to them (86%); and helped them to understand their legal situation (85%). These findings indicate overwhelmingly positive interactions between the DLS and most clients.

However, a sizable proportion of clients appear to have expected to be seen by a lawyer more quickly (i.e. 32% disagreed or strongly disagreed that they 'Didn't have to wait too long to see the lawyer'), and nearly one-fifth (18%) expected that the service would have

been better (i.e. disagreeing or strongly disagreeing that the 'Service received was the same or better than expected').

In addition, at least 10 per cent of clients *disagreed* or *strongly disagreed* that the lawyer didn't rush them; the advice received was helpful; and that they had been kept informed throughout the process. This suggests that some clients had higher expectations of the DLS than they received, that the DLS may not be well matched to the legal needs and capability of a minority of clients, or perhaps that some clients thought that they should have received a higher level of service than they were eligible for.

Sixty-two per cent of surveyed DLS clients made observations about the duty lawyer. These were most frequently positive (73%). Positive comments included that the duty lawyer was 'good' or doing 'a good job', 'very helpful' or 'helpful', 'friendly, nice or polite', 'understanding' of the client's situation, was 'comforting, reassuring, supportive', that they were 'knowledgeable or knew what they were doing', 'explained the options well or made me understand my options', and were 'non-judgemental or respectful'. Table 5.2 presents the frequency of the key themes identified in clients' comments.

Table 5.2: Frequency of key themes in clients' comments about the duty lawyer

Key theme	Frequency %
Good job / They were good	25
Very helpful / helpful	25
Overworked / Need more lawyers / Not enough help / Busy / Rushed	22
Friendly / Nice / Polite	13
Understanding of my situation	11
Comforting / Reassuring/ I felt relaxed/ Supportive	6
Knowledgeable / Knew what they were doing	5
Explained my options well / Made me understand my options	5
Non-judgemental / Respectful	5
Not a good service / useless	5
Other	13

Note: N=65 clients who responded to the question: 'Do you have any other comments about the duty lawyer?' Only key themes totalling five or more per cent of responses are reported in separate categories. Total does not sum to 100 due to some comments falling into multiple identified themes.

Once again, there were a small but sizable proportion of negative comments (27%). Negative comments fell into two main categories. More than one-fifth (22%) of comments reported that the duty lawyer service was insufficiently resourced or staffed, was under a lot of pressure, did not provide sufficient help or was overworked, busy or rushed. A smaller percentage (5%) said that the service was 'not good' or 'useless'.

Satisfaction with summary crime duty lawyer services

Surveyed clients were asked about their satisfaction with various aspects of the DLS. This included their satisfaction with the assessment, triage and intake process, the level of service received, and any written material received. We examine these aspects in turn.

Assessment and triage

The survey measured client satisfaction with the DLS assessment, triage and intake process, and asked those who were dissatisfied the reasons why. The most common reason related to having been assessed as ineligible for a service, as well as assumptions about whom the DLS should be assisting, and what it should do to assist. This speaks to DLS eligibility cutting across the expectations of some clients. Other sources of dissatisfaction included the client having received incorrect information and referral from other agencies, such as a referral from a CLC indicating that the DLS would assist them, as well as anxiety caused by having to self-represent in court. The following comments are illustrative of the experience of those who did not qualify for the level of service they wanted or expected:

> *… I was assessed as 'low risk to go to prison' and as such was assisted to a rudimentary degree. Jail time was possible based on the charges I was facing, and as judged by the community law centre I had a viable legitimate not guilty defence, which legal aid refused me.*
>
> *… I didn't get the service because I wasn't handicapped or disabled, didn't explain why and not fair.*

Surveyed clients also reported negative comments about the DLS associated with assessment of service eligibility when asked if they had any additional comments or suggestions to improve the service. Comments included:

> *[The lawyer] was rushing me she basically went through my brief, and went 'Nah, I can't help you'. When I asked for at least some advice, she said 'blah blah blah'. And when I went to see the prosecutors, I felt I was railroaded because I was on [my] own.*
>
> *I am a single mother and the legal aid threshold is low. A more detailed look at individual financial circumstances really would've been a great benefit.*
>
> *Make it available for everyone, not just people who are facing jail. Somethings are worse than jail.*
>
> *Represent traffic matters.*
>
> *If someone has a valid not guilty defence, hear them out, then run the defence …*

Level of service

Summary crime DLS clients were asked about their satisfaction with the information and advice and the representation services (i.e. in-court advocacy) they received. Overall, clients were satisfied with the level of service that they received. In total, 81 per cent of the clients who received information and advice were satisfied or extremely satisfied, while 78 per cent of the clients who received in-court advocacy were either satisfied or extremely satisfied, and 68 per cent of the clients who received both information and advice and in-court advocacy were either satisfied or extremely satisfied the services received (see Colmar Brunton 2015, p.72).[48]

While only four per cent of clients were dissatisfied or extremely dissatisfied with the information and advice received, some 14 per cent were dissatisfied or extremely

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[48] Note the Client Satisfaction Survey 2015 only asked about two level of DLS, and not the three service levels employed by the summary crime duty lawyer service: legal information only, legal advice and information, and in-court advocacy.

dissatisfied with the in-court advocacy they received, and 17 per cent were dissatisfied or extremely dissatisfied with both the information and advice, and the in-court advocacy they received. It is likely that the level of dissatisfaction, at least in part, stems from the nature and outcome of the legal matter, particularly given that eligibility for in-court advocacy depending on matter severity and demographic factors (see further Coumarelos et al. 2012a).

Legal factsheets

Nearly half (49%) of DLS clients reported that they had received written information. While the question gave the example of a letter, it is likely that surveyed DLS clients would have answered this question with reference to the legal information factsheets. The DLS has a suite of factsheets covering the legal process and various criminal charges.

Surveyed clients were asked to rate the ease or difficulty of understanding the written information that they received. In total, 84 per cent rated that material as being easy or very easy to understand, while a small minority (5%) found the written material very difficult to understand (see Colmar Brunton 2015, p.111–112). This finding is consistent with other research showing that the utility of legal information is likely to be affected by the legal need and capability of the user, and personal factors such as their literacy, education, skill, self-efficacy and confidence.[49] The findings here again suggest that for some clients, written legal information is ill-suited to their legal needs and capability.

Impact of the Summary Crime Duty Lawyer Service

In addition to asking for any comments about the DLS, the survey also asked questions about the impact of services. A number of the answers to these questions speak to the difference and beneficial client impact of the DLS:

> *My lawyer prepared me for the worst and we hoped for better, but the outcome … everything dismissed, was not something I believed possible. Still can't believe it.*
>
> *Spot-on service, very helpful, informing, listened, especially the insight on which magistrate we were getting to see.*
>
> *… they do an excellent job with the resources and funding that they already have. I was treated with respect and dignity and thankfully am now drug free and working full-time and making a good honest contribution to society and that is in part due to the help I got from Legal Aid.*
>
> *The lawyer who was assigned to take over my case has been outstanding in her gentle dealings with myself. She is compassionate and understanding when it comes to my mental health and her manner helps keep my level of anxiety to a minimum.*

By comparison, a number of other comments speak to resourcing of the DLS relative to the volume of clients. Illustrative examples include:

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[49] For example, those most likely to obtain benefits from legal information are most likely those with sufficient literacy, education and skill to make use of the materials (Smith & Paterson 2014). Legal information may be insufficient to help resolve some types of legal problems and certain client groups, particularly as capacity to tackle legal problems varies considerably with legal capability, including users' knowledge, skills, confidence and resources (see further Coumarelos et al. 2012a; Genn & Paterson 2001; Giddings & Robertson 2003a, 2003b; McDonald, Forell & People 2014; Pleasence et al. 2014).

> *Make sure the government leaves this service alone, [I] wish the government gave more help in aid to Legal Aid. I believe the Legal Aid lawyers and duty lawyers are over worked. We need more of them …*
>
> *The duty lawyer did her job satisfactorily. But the process felt very rushed and impersonal. I do not blame this on the duty lawyer personally as I could understand that she was dealing with volume …*
>
> *He rushed in and out of the court room … I had never been to court before so it was all new to me.*

Again, these comments are in keeping with the analysis of the VLA's administrative service data, and point to high client demand.

Outcomes of summary crime duty lawyer services

Surveyed clients were asked questions about the outcome of their matter. This included questions about their level of confidence in being able to sort out a similar problem in the future and their level of satisfaction with the outcome, and whether they would recommend the DLS to other people.

Level of confidence to resolve a similar matter on their own

Only 37 per cent of summary crime DLS clients were confident or very confident that if they were faced a similar matter again they would be able to sort it out without assistance from a duty lawyer (Colmar Brunton 2015, p.98). This finding speaks to the difficulty and complexity of resolving some criminal matters, as well as the range of the severity of summary crime matters. For example, it is likely that some clients accused of some types of criminal matters, particularly more minor matters, will have sufficient personal and legal capability to adequately self-represent and effectively deal with a similar matter in the future. Other less capable clients, and particularly those facing more complex and severe matters, can be expected to need legal assistance to effectively deal with future matters.

Satisfaction with outcome

Two-thirds (67%) of surveyed DLS clients were satisfied with the outcome of their matter, and 60 per cent reported the outcome reflected what they had been told by the duty lawyer (Colmar Brunton 2015, p. 97–98). More than half (58%) indicated that the DLS 'helped a lot' to sort the matter out, and a further 20 per cent that it 'helped a little'.

Recommend the DLS to others

The overwhelming majority (87%) of surveyed DLS clients reported they would recommend the DLS to other people. Only three per cent indicated that they would not.

Client perspective on improving Summary Crime Duty Lawyer Service

Surveyed DLS clients were asked how VLA could improve its services (Colmar Brunton 2015). Responses fell into three main categories – those suggesting various types of improvements (45%), those saying no improvement was needed (27%), and those who were 'not sure' or who otherwise offered no clear response (29%).[50] Table 5.3 summarises the frequency of the key themes in these suggestions.

Table 5.3: Frequency of key themes in clients' comments about how to improve the DLS

Type of improvement	%	No improvement needed	%	Not sure / don't know / no clear response	%
More funding / services / lawyers / time / less waiting	17	Don't need to / great /enough / works fine /	20		
Better lawyer communication / relationship	16	Couldn't do more / improve	7		
Wider service eligibility	9				
Improve court / justice system	3				
Total	**45**		**27**		**29**

Notes: N=119 responses from clients to the question 'How could Legal Aid improve their service?'. Due to rounding total percentage does not sum to 100.

The commonly cited areas for improvement speak to resourcing, and reflect the demand for summary crime services and the service environment. Suggested improvements included: provision of more resources, having more lawyers available, providing more services, as well as improving the nature of the services provided. The following client observed that the DLS was struggling to help clients because of a dysfunctional court system which need to be improved before the DLS could improve:

> *The court system is so disorganised and unfamiliar. Legal Aid is struggling to benefit people in a system that is happy to defer cases and re list for later dates and waste peoples' time. The court system needs improving before Legal Aid can improve.*

Other comments specifically pointed to the need for more resources:

> *Having more funds available to help a bigger scope of people, even if we have to pay it back over a period of time.*
>
> *By hiring more lawyers and solving legal matters without the long wait.*
>
> *They need more funding.*
>
> *Have more duty lawyers available as it seems they have a very heavy workload.*
>
> *More lawyers so they can attend and talk more to their clients.*
>
> *They need more representatives in country Victoria.*

[50] In total there were 119 responses from surveyed clients who had used a criminal duty lawyer service. Note that due to rounding, percentages do not sum to 100.

Improved client experience of services, such as the time for each client, also appears to be tied to having insufficient lawyers:

> *To give proper time and should not be in such a hurry. Listen to the client calmly.*
>
> *Spending more time finding out what the actual problem is instead of speeding it through court.*
>
> *They need to sit down and really communicate and listen to you.*
>
> *Just take a little more time in listening and being patient.*

Other suggested improvements concerned the way in which legal services were provided, such as getting to see the same lawyer each time, not having to tell the same story to each new lawyer, and the service having the necessary paperwork.

These observations point to what the client-centred design of an effective DLS may look like. While the overwhelming majority of clients were generally satisfied with the DLS service they received, and while there will always be dissatisfied clients where service eligibility criteria are at play, the suggested improvements, however, point to an improved client experience with additional duty lawyers, and the trade-off between the number of clients and the number of duty lawyers.

6. Impact of change: appropriate and sustainable services?

In this chapter we turn to the experience of those involved in the summary crime system to contextualise, expand upon and understand these results. We particularly focus on the appropriateness and sustainability of VLA's summary crime services, in the context of the broader summary crime system.

This chapter examines:

- the context to the changes in VLA summary crime services, including the relationship between the Victorian criminal justice system and VLA funded summary crime services. This includes factors affecting demand for summary services, stakeholder relationships and the operation of the summary crime system
- the appropriateness of VLA's summary crime services, including impacts of the 2012–2013 Grant and DLS guideline changes, the introduction of the assessment and triage model of duty service provision, and the mix of summary crime services provided by VLA. We focus on the appropriateness of services to meet client need and capability, and the factors that impact upon appropriate service delivery
- the sustainability of VLA's summary crime services, including the provision of grants of legal assistance by private practitioners, the duty lawyer service, and the wider summary crime system. Sustainability focuses on the capacity of the summary crime system to operate effectively as demand increases and factors affect the sustainability of the program
- suggested improvements to the Summary Crime Program by those involved.

This chapter presents qualitative analysis of the material collected in the case studies, interviews, focus groups, stakeholder consultations and VLA staff survey. Key themes in the material are presented, along with illustrative quotes from evaluation participants. To locate quotations and phrases they are attributed to a participant type.

Context of change: a stretched summary crime system

A dominant and recurrent theme identified by the cross-section of evaluation participants, and consistent with the analysis of VLA's administrative service data, was the increase in the volume and complexity of summary crime matters in the Magistrates' Court of Victoria, as supported by the data in Chapter 4, and the impact of this rise on both demand for summary crime services and overall system workload.

The rise in matters and system workload was identified as having a number of detrimental impacts and as causing a number of system pressure points. While the 2012–2013 changes to the Grants and DLS Guidelines were identified as having affected system

workload, other factors were also identified as having increased service demand and system workload above and beyond the anticipated impact of the eligibility guideline changes.

A number of participants with long experience of the Victorian summary crime system made the observation that if the system 'wasn't yet at crisis point' that it was 'approaching crisis' (Advisory Group Member; Magistrate; VLA Manager). The summary crime system was described as 'overloaded, under-resourced and overborne', and as 'running hot' and, consequently, 'fraying and eroding' the types of stakeholder relationships that underpin effective and efficient processes and practices. This in turn had further exacerbated inefficiency and workload pressures (Advisory Group Member; Magistrate; Police Prosecutor, Greater Melbourne; VLA Manager).

The data reported in Chapter 4 indicates that all geographic regions have been affected by heightened workload pressures, although the rise in the volume of summary crime matters appears to be straining some locations more than others. The pressures in Greater Melbourne and regional and rural areas of Victoria, while similar, manifest distinct service challenges and impacts. This reflects the particular demographic and infrastructure features from region to region.

The cross-section of evaluation participants also described how the Victorian summary crime system, and in particular its capacity to deal with the number of people remanded in custody, had outgrown the physical infrastructure of the system, and that this was further increasing workload pressures and inefficiencies.

Overall, summary crime was characterised as having become increasingly time-pressured due to more complex matters as well as more complex accused and a more complex working environment.

Participants indicated that certain reforms, such as Weekend Remand Court, increased use of VideoLink technology for court appearances by accused remanded in custody, as well as the move to electronic police briefs of evidence, may help to alleviate some of the key workload pressure points. Other pressure points, however, such as the unavailability of police prosecutors for summary case conferencing at most courts after one o'clock, were expected to continue without more widespread reforms.

The following observations about the 'stressed' and 'pressurised' nature of the Victorian summary crime system illustrate evaluation participants' observations:

> *… we've got a system, I think, that's creaking at the seams. We are really busting across the board. We're experiencing probably – from people who have been in courts longer than I – the most difficult environment there, perhaps ever. It's not scaremongering. (**Magistrate**)*
>
> *I think there's too much pressure on the whole system in general. (**VLA Clerk, Greater Melbourne**)*
>
> *So the whole system's imploding massively. (**Private Practitioner, regional area**)*
>
> *Our numbers are increasing … if we look at the law enforcement aspect of it, there's been a huge increase. More people are going to come in. (**Magistrate**)*
>
> *… the work keeps going up and up but the resources by way of secondary resources for VLA, Prosecutions, Registry, magistrates aren't provided. (**Police Prosecutor, Greater Melbourne**)*

> *I think across the state, the justice system has outgrown its physical infrastructure. (**VLA Manager**)*
>
> *… what we want to achieve is just, obviously, helping a lot more people. But in doing so it's putting a strain on lawyers, court systems, prosecutors … (**VLA Clerk, Greater Melbourne**)*
>
> *[It] has been a gradual process, I think. I'm not sure that the Government is necessarily conscious of the impacts. (**Magistrate**)*
>
> *Those [duty] services are so clogged up as well that people are waiting all day to see the duty lawyer, then the magistrates are dealing with the self-represented people and we're waiting to get on … (**Private Practitioner, Greater Melbourne**)*
>
> *[The] sheer numbers and the complexity of the matters that are falling onto the duty lawyer now are making it really difficult. (**VLA Lawyer, regional area**)*
>
> *… there's no doubt the pressure on duty lawyer services has increased exponentially. That's had an adverse effect on the number of adjournments and an adverse effect upon the time taken. (**Private Practitioner, Greater Melbourne**)*
>
> *… where we're seeing the huge volumes … the system is bumping into each other, instead of flowing smoothly. (**VLA Manager**)*
>
> *I'd like to see more duty lawyers … I think it would certainly be of benefit if there was more Legal Aid lawyers. (**Police Prosecutor, Greater Melbourne**)*
>
> *… with the benefit of hindsight and the ability to stand back and provide a bit of a helicopter view, everyone can find failings … but practically, that's the environment we're all in. (**Police Prosecutor, Greater Melbourne**)*
>
> *… Government thinks it's spending money on the criminal justice system, but its only spending it on the really expensive ends [frontline police and prisons]. (**Private Practitioner, Greater Melbourne**)*

While participants identified the volume of summary crime matters as the key strain on the criminal justice system, there was also a view that relationships and ways of working had deteriorated, and that this had decreased efficiency and increased workload:

> *[We need] more money thrown at the system, and a better relationship with key stakeholders. I think it just comes down to those two things. (**VLA Clerk, Greater Melbourne**)*
>
> *…it's not just about more resources, there are a lot of things that could be improved in terms of efficiency, but I don't think that Legal Aid can do it on its own … I think it needs to be done with the courts and the prosecutors and everyone else. (**VLA Managing Lawyer, Greater Melbourne**)*

Critically, system pressures affect and impact both the people trying to access services at court as well as the staff providing those services:

> *It's stressful for us because we want to make it as consistent as possible for, obviously the clients and members of the public who are using our service, and you know, we don't want to explain to them, 'Oh, you know … the system's all messed up' …you kind of just think, 'Is there a better way?' (**VLA Clerk, Greater Melbourne**)*

In the following section we examine the key factors driving increased demand and workload identified by participants.

Systemic drivers of rising summary crime system workload

Unsurprisingly, participants identified the volume of matters as they key factor affecting summary crime system workload. There was a wide consensus that the strongest driver of increased summary crime workload was increased police initiations due to an increase in the resources allocated to frontline policing:

- **Increased frontline policing and prosecutions** – Increase in frontline policing, including recruitment of additional Police and Protective Services Officers. Increased Magistrates' Court initiations with increased frontline policing and increased prosecutions of certain matters, including family violence and illicit drugs.

Participants variously ascribed this to Victorian Government community safety policies. The following Police Prosecutor explained how more frontline police inevitably affected Magistrates' Court workload:

> *The workload is something that none of us have the capacity to meet at this stage. And it's only going to get worse because, crime rates, every year, an 8% increase, and Vic Pol, we got 700 additional sworn police members two years ago which means they're all brand new, and they want to change the world so they're catching 50 or 60 offenders each. That's 4,500 more offenders – not offences, but offenders. We've got another 300 and something [additional police] in the last government budget, so that's another 10,000 briefs coming in two years' time by the time they're trained. (**Police Prosecutor, Greater Melbourne**)*

In addition to increased frontline policing, participants identified a number of other factors increasing workload:

- **Population growth** – Population growth, particularly in some locations and among some offender population groups.
- **VLA grant eligibility guidelines** – Tightening of VLA eligibility guidelines for grants of legal assistance increasing demand for legal assistance from the DLS.
- **Family violence reforms** – Family violence reforms, leading to a rise in criminal matters concerning family violence, prosecution of breaches of family violence intervention orders, and the number of people remanded in custody.
- **Crime legalisation** – New criminal offences legislated.
- **Crime/offender rate** – Increase in crime rate for some types of offences, and in certain areas. For example, increased use and detection of crystalline methamphetamine (ice), particularly in some locations.
- **Court jurisdiction and geographic boundaries** – Widening of the jurisdiction of the Magistrates' Court, and 'pushing matters down' from the County Court to the Magistrates' Court consequently increasing the number, severity and complexity of the matters in the Magistrates' Court. Widening of the geographic boundaries of particular Magistrates' Courts, increasing the volume of matters in those courts.
- **Sentencing and corrections** – Changes to sentencing and corrections practices leading to an increase in the number of prosecutions of breaches of community corrections orders.
- **Parole and bail** – changes to legislation and practice increasing the number of people in custody.

These drivers were described as variously combining to increase and 'compound' system workload and roadblocks. For example, evaluation participants identified and described heightened workload demands stemming from:

- **Pressurised system** – Number of matters creating a pressurised summary crime system and service environment operating 'at the limit', and vulnerable to compounding the time and effort required for individual matters when complications arise, and when systems break down. For example, 'a couple of complex clients' and 'a few things going wrong', and 'everything can quickly fall apart' (VLA Managing Lawyer, Greater Melbourne).
- **Complex and evolving system** – Continual change in legislation, procedure and practices within various parts of the summary crime system is a constant 'drag' that necessitates time and effort to keep up with. For example, substantial changes, such as the response to the Victorian *Royal Commission into Family Violence*, can have widespread impacts on system workload.
- **Stakeholder relationships** – The 'relentless grind' of the workload eroding system capacity, goodwill and stakeholder relationships at some locations, further exacerbating the time and effort required to manage and cope with the workload.
- **More complex and serious matters** – Widening Magistrates' Court jurisdiction consequently increasing the complexity and severity of the work of the court, the number of accused in the Magistrates' Court potentially facing imprisonment and community corrections orders, and the time and effort required to deal with such matters. In addition, a rise in certain types of matters that are more difficult to deal with, such as family violence offences, has increased the difficulty of the work.
- **More complex clients** – Increase in the number of accused with multiple and complex needs, requiring more time and effort by the DLS, Magistrates' Court and police prosecutors to deal with them, including people with mental illness, brain injury and cognitive impairment, drug and alcohol issues, as well as people requiring translator services.
- **Insufficient public legal assistance capacity** – VLA tightening of eligibility guidelines for grants of legal assistance, increased demand on the DLS from accused ineligible for grants, and the severity and complexity of matters handled through the DLS, and consequently impacting both Police Prosecutions and the Magistrates' Court.
- **Insufficient prosecutions resourcing** – Limited capacity and administrative support for Police Prosecutions affecting the availability of police briefs of evidence in some locations, and in turn affecting the service capacity the DLS, summary case conferencing and the Magistrates' Court.
- **More self-represented defendants** – Increase in number of low capability and high need accused who are ineligible for legal advice and in-court advocacy from the DLS, as reflected in the analysis of VLA's administrative data, due to the charges they face not being sufficiently serious, and who consequently have to self-represent in dealings with prosecutors, and in the Magistrates' Court, often requiring additional time and effort.
- **Lack of awareness of VLA eligibility guidelines** – Lack of understanding of VLA service eligibility guidelines contributing to inappropriate referral of clients expecting to be eligible for more intensive forms of legal assistance.
- **Outdated and outgrown infrastructure** – Outdated information technology, poor facilities and infrastructure and lack of services at some courts, creating service bottlenecks.

- **Increasing in-custody matters** – Rise in number of in-custody matters and also 'late custodies' (i.e. accused remanded in custody coming before the court towards the end of the court day) increasing overall workload and extending demands on duty lawyers, prosecutors and magistrates.
- **Culture and practices** – Culture, expectations and practices at some Magistrates' Court locations exacerbating workload pressures, or otherwise increasing the time and effort required to deal with matters.

We further illustrate how some of these factors affect demand for summary crime services and system workload as follows.

Changing offence types in the Magistrates' Court

A number of participants explained how expansion of the jurisdiction of the Magistrates' Court had not only increased the number of matters within the jurisdiction of the court, but also the severity and complexity of the matters:

> *We couldn't do, up till 2008, most common law offences. We now can do nearly all common law offences. There's a handful that we can't, if less. So our jurisdiction's increased for theft from $25,000 to $100,000 … the jurisdiction of the court has increased significantly... (**Magistrate**)*

Magistrates also said that matters had been 'pushed down' from the County Court:

> *So some matters have been taken almost out of the County Court and put through summary. (**Magistrate**)*

> *… they keep pushing more down to the Magistrates' Court and so, it's almost only if you definitely cannot have it heard within this jurisdiction is the only basis upon which it will go up … unless there's something fairly significant everything's otherwise kept in this court. (**Magistrate**)*

Types of matters and accused – increasing complexity and volume

One widespread participant observation concerning how the summary crime space had changed in recent years was the view that the work had become increasingly complex and difficult. For instance, one Magistrate observed that matters involving VLA were typically more complex matters in terms of either the severity of the charge or the characteristics of the defendant:

> *… I've noticed that when VLA appears in matters it's usually matters that are more complex, either by virtue of the types of charges or the personal characteristics of the defendant and that we do have a number of people who come through the court unrepresented. (**Magistrate**)*

A VLA Manager and Police Prosecutor similarly described how the complexity of summary crime work had increased:

> *… there's a whole lot of complexity in matters that wasn't there previously. So we might have a reckless cause injury charge which technically is indictable but it's in the summary stream but it could be in the family violence context. So they're more complex because they've got a whole lot of other things that have been thrown into the mix … certainly there's a push to have things heard and tried summarily a bit more. (**VLA Manager**)*

> *When I first started prosecuting 10 years ago the majority of the Legal Aid stuff was pretty low level, whereas now it's really a lot more complex than it's ever been, and it's only getting more and more complex every day as the court gets pressure and they're dealing with more and more, I suppose, significant and complex matters. (**Police Prosecutor, Greater Melbourne**)*

Reasons for increasingly complex work included more serious and complex matters, more in-custody matters, and more matters involving family violence, drug and mental health issues. These factors were consistently and widely identified by participants as contributing to key summary crime system pressure points, and affecting both Greater Melbourne and regional areas:

> *I think the other problem too is just the change in the nature of crime, there's so much drugs … and so many breaches of intervention orders … that's certainly increasing the workload not only for us but obviously it's a flow on – and that means a lot of those people, people subject to intervention orders and drugs and everything else, are people who would be eligible legal aid clients and so I think that's probably – the numbers would put them under a fair bit of pressure as well. (**Magistrate**)*

Increased minor matters

At the same time, one of the impacts of the rise in frontline policing, particularly with new police, was an increase in the detection and prosecution of minor matters:

> *I'm not saying it was a common place in the past, but perhaps minor indiscretions might have been overlooked. … You know, so that minor offending gets prosecuted a little bit more I guess. The public probably thinks it's a good thing … (**Police Prosecutor, regional area**)*

Similarly, the introduction and expansion of Protective Service Officers were also identified as potentially contributing to the volume of minor offences as well as increasing detection of people with outstanding warrants, increasing the volume of in-custody matters (Police Prosecutor, Greater Melbourne). A cross-section of participants reported that an increasing number of 'bottom end' matters had added to the overall volume of summary crime matters. VLA staff explained that this meant there were more people facing minor matters to triage to 'legal information only'. VLA lawyers explained that other than relatively minor driving and traffic matters, most other offences make it to the duty lawyer:

> *There's only a limited class of matters that never make it across the way to our office. That's your first time drink drivers or your first time drive whilst suspended or speeding fines or those sorts of things. (**VLA Lawyer, Greater Melbourne**)*

Increased in-custody matters

While the day-to-day number of in-custody matters was said to vary, the common identified trend was an overall increase, as confirmed by the analysis in Chapter 4, magistrates explained that this inevitably increased VLA workload as duty lawyers 'have to be involved', they handle the majority of in-custody matters, play a vital role in connecting accused with their private practitioners, and organise things necessary to support bail applications.

Consistent with the data in Chapter 4 (see e.g. Figure 4.9), participants observed how an increase in accused remanded in custody had increased workload and created bottlenecks:

> *… when I came up …and set up my own practice … during the first six years I was on my own, and I used to do the duty lawyer work on my own. So I'd do remands and the [mentions] list on my own, and I mean there were obviously days when it was difficult but I managed to do that. But I just can't*

> *conceive how you would do that in the last couple of years – doing the duty list and doing remands. Remands seem to have exploded. (**Private Practitioner, regional area**)*

> *The biggest blockage for us in our day-to-day business is custody matters and people in custody … we're trying to get more to the teleconference methodology, where conferences can be had whilst people are in custody off site. How that'll work I'm not quite sure … What we find historically is that if custody matters move quickly, the day moves a lot quicker. So the quicker we can get – and there are ordinarily, probably 70% would be Legal Aid matters in custody – the quicker we get them moving the better. (**VLA Managing Lawyer, Greater Melbourne**)*

The apparent rise in in-custody matters was identified as an acute challenge particularly in some regional areas:

> *I think the increase in remand is a really big pressure … we've seen a real increase in the number of remands particularly in relation to family violence related matters and they take up so much time and it means that either the duty lawyer, if it's a one duty lawyer list, they've got a massive workload for their mention list and the remands which might be three, might be five people in the cells, trying to deal with those, or you might have your one day in the office for the week and you get called down to the cells to see the three or five people … (**VLA Managing Lawyer, regional area**)*

Another identified issue related to an apparent increase in demand for VLA services from accused in custody stemmed from the unavailability of VALS to deal with Aboriginal clients:

> *… often in custody we'll find that a VALS client will be remanded, and you will contact VALS to say, if we can get hold of them, because sometimes we can't get a hold of them, to say "Can you come, your client's in custody" and they can't come … "We can't get anyone there, you'll need to look after them." (**VLA Managing Lawyer, regional area**)*

Increased complex family violence matters

There was a shared consensus among participants about a rise in family violence related matters as driving the increase of in-custody matters and wider summary crime workload. Participants cited a range of examples where family violence matters intertwined with culturally and linguistically diverse communities, and drug and mental health issues increased complexity and workload:

> *I think the nature of the matters that we're seeing in the duty lawyer list are far more complex [now] than certainly when I started eight years ago, probably even three years ago. I think that's occurred in context of – not only our guideline changes – but the real push around family violence, you know, we've come off the back of a really problematic time with a lot of ice users. Ice probably three years ago was the big-catch crime. Now it's family violence and all of that stuff is kind of compounding the types of matters we're dealing with. (**VLA Manager**)*

Participants attributed the rise in workload associated with family violence matters to changes leading up to and following the Victorian *Royal Commission into Family Violence*:

> *… with the greater focus from the police and the courts and everyone about family violence, and the fact that the courts are treating that – they're fast-tracking it and they're treating it more seriously … That means there's a lot of family violence matters in the list all the time, and so there's that complexity and plus the custody numbers have gone up. (**VLA Managing Lawyer, Greater Melbourne**)*

Participants indicated that someone breaching a family violence intervention order was now far more likely to be charged and remanded in custody than might have been the case previously:

> *… in the past if it was a mild breach, the police might have given him bail. Whereas now they're all going to court. (**VLA Managing Lawyer, Greater Melbourne**)*

> *I don't think in this day and age as many police officers want to bear that responsibility and make those calls, which is understandable. (**Advisory Group Member**)*

Compared to some other types of offences, family violence related offences were also repeatedly characterised as being more complex and difficult to deal with in the DLS context due to the nature of the matter and the evidence:

> *Probably the most difficult things we have are domestic violence of some description. If you had something like a burglary or something, then analysing the brief is breathtakingly simple. You've just got to work out whether they've made admissions, or there's concrete evidence. With stuff like domestic violence, usually you'll have multiple witness statements … That means that the difficulty of the work has tended to increase over time with the shift to domestic violence being what it is. (**VLA Managing Lawyer, Greater Melbourne**)*

A changed approach to policing and prosecuting family violence was said to have brought 'new' cohorts into the summary crime system:

> *… [with] the spike in family violence, caused by increased police attendances, increased making of intervention orders and then potentially the risk for increased breaches and criminal charges … there's a cohort of people who have serious family violence matters and then there's a cohort of people who we're now dragging into the system who don't actually have a history before the courts … what the magistrate wants to see happen [is] something concrete to address the actual cause of the offending behaviour … but men's behaviour change programs, there aren't very many of them and there's long waiting lists for them … That would have downstream effects for efficiencies within the court and on Legal Aid resources, police resources, court resources … (**Magistrate**)*

Family violence matters were identified as a key aspect of the increasing service challenge in regional and rural Victoria, as illustrated by the following:

> *I think the more difficult issue is the numbers of in-custodies … my anecdotal feeling is that the number of in-custodies has increased quite significantly … the question about the in-custody stuff is going to be more problematic into the future, and then roll into that the court's response to the family violence Royal Commission … I think the landscape will change quite dramatically … There's not going to be any less criminal stuff, but it's going to get squeezed … and it will just be mayhem. (**VLA Managing Lawyer, regional area**)*

Some participants also thought that the introduction of 'fast-tracking' of family violence matters had increased pressures on the summary crime system:

> *[Fast-tracking] I'm sure placed huge pressures on duty lawyers … That was driven by the Royal Commission … So a prioritisation of client's cases and the way in which they then had to both identify, segregate and prioritise those as opposed to other matters became a rolling decision for their day-to-day purposes. (**Magistrate**)*

> *… what ends up happening a lot is that [breaches] flow into summary crime because … they'll get charged with breaching an intervention order... That blows out the list of summary crime. Because it's an intervention order matter, it's family violence. That then has to be fast tracked. (**VLA Lawyer, Greater Melbourne**)*

As noted by VLA lawyers in Greater Melbourne and regional areas, family violence matters are often bound up with drug and other issues, and further complicate the service challenge, particularly where clients are in custody:

> *… they're often linked. So we've got more clients who are ice addicted and [higher] levels of violence, particularly directed towards family members. The seriousness of that violence is more significant and so we see them in that remand … (**VLA Managing Lawyer, Greater Melbourne**)*

> *… you waste 20 minutes before you even get in to see someone and then you get in to see them and they're coming off ice or they're psychotic. The complexity of the clientele, I think, in the time that I've been at Legal Aid has really increased … and then that's so time consuming, and the impact that that has on staff are dealing with that day in day out can be really quite a challenge. (**VLA Managing Lawyer, regional area**)*

The service pressure was further exacerbated by conflicting service priorities, such as fast-tracking of family violence matters in locations where a higher number of matters require interpreters, because matters involving interpreters are also a priority (VLA Lawyer, Greater Melbourne).

Increased driving offences

Participants also pointed to both minor and serious driving offences as a workload pressure in some court lists. Some people facing loss of licence due to accumulated points were said to come to court to try to challenge the offence that will 'tip them over'. Others were said to try to drag the process out as long as possible to keep their license as long as they could. A number of participants said that the volume of people facing drive while suspended or disqualified increased workload pressures:

> *When we have a look at our lists … it's hard to sort of give you an accurate figure, but I can tell you now overwhelmingly there'll be people driving while suspended and driving while disqualified, overwhelmingly, that'll be our list … and when they don't attend court there's a warrant issued, and so the whole process just goes round and round. (**Police Prosecutor, Greater Melbourne**)*

VLA staff similarly said that driving offences where people could be imprisoned was common among those seeking assistance from the DLS. The number of people facing drive while disqualified or suspended charges added to the number of people the DLS had to assess to determine their likelihood of imprisonment and service eligibility:

> *I know one thing I do frequently – drive while suspended. So after your third or fourth you're at risk of imprisonment. But before that, you're not. We send them in self-represented. So often they wait in our list just for us to check their brief to see how far along they are in the spectrum and what penalty they're at risk of … some of them get agitated and say, 'Well, why have I waited so long to hear that?' And you have to explain, 'Well, on your third or fourth you would be looking at potentially jail. So that's why we're doing this. You need to be warned that there is a spectrum and this is what you'll get now, but it's not what you'll get next time'. Most react quite well to that. So that's probably I think a pretty good and efficient service. We've got that spiel pretty down pat. (**VLA Lawyer, Greater Melbourne**)*

One Magistrate explained how the issue of drive while suspended had been affected by sentencing reforms:

> *The best and worst thing that ever happened was it used to be mandatory on a second and subsequent offence for driving whilst disqualified to get some form of jail sentence. So everyone that had their second drive while disqualified … they'd get a suspended sentence – [then Victoria]*

> *got rid of suspended sentences and we changed that law. So now everyone gets fined up until about their fifth or sixth drive whilst disqualified, depending on how they've been disqualified … there's a lot of those driving matters and that's again another indication where, if Vic Roads could improve some of their systems – because there are the two categories of the drive while disqualified. There's the one where it's disqualified on a court order, that's seen as more serious, but the vast majority of them are points, Vic Roads points on license, demerit points … [The accused says] 'I didn't know'. I mean you probably did, but I can kind of see why you might not have. I can see why you stuck your head in the sand, because Vic Roads stuff is difficult. If that could all be streamlined that would probably take a whole chunk of offending out of the system. (**Magistrate**)*

Participants said there were a lot of 'tradies' charged with driving while disqualified and driving while suspended who have continued to drive to maintain their employment. Repeat unlicensed driving, careless and dangerous driving and drink driving matters were identified as being problematic in terms of their impact on system workload. The majority of defendants facing these charges do not satisfy the eligibility criteria for grants, nor for legal advice and in-court advocacy from the DLS, and, consequently, they have to self-represent with police prosecutors and in court. Another driving-related factor increasing system workload was people trying to 'keep their driver's licence' for work or caring responsibilities:

> *… you hear that every day, 'I need my licence' and we say 'Well it's not up to us. We can tell you the mandatory penalties'. So all of a sudden that then turns into a contest and – it just goes round and round. So I guess the biggest question is, are we actually contributing to that ourselves by policies? It's a very vexed question. (**Police Prosecutor, Greater Melbourne**)*

> *Just people in general who, you know, have got kids to pick up or sick mum to drive to hospital and that kind of thing. (**VLA Clerk, Greater Melbourne**)*

Magistrates, prosecutors, private practitioners and VLA all questioned the utility of the existing justice system policies with respect to driving while disqualified and driving while suspended offences, and whether there was a better way to deal with these offences to alleviate pressure within the summary crime system. Some magistrates questioned whether or not a 'first time' drive while suspended needed to be a court event if there was no prospect of imprisonment:

> *… your first time drive suspended, should that just be an infringement notice? (**Magistrate**)*

Others questioned whether there were more effective ways to deal with driving offences that might reduce 'repeat offending'. For instance:

> *… you could have it that they have to do a road safety awareness course or something on their first drive suspended and if they do that they don't lose their license. You could have something like that if Vic Roads are concerned about the safety issue … some other way rather than having them come to court because it's just a waste of everyone's time... (**Magistrate**)*

Evolving, complex summary crime system

One characteristic of the summary crime system is that it is constantly evolving. As noted in Chapter 2, key legislation affecting the summary crime system is frequently amended. Practices within the Magistrates' Court also frequently change, such as the way in which matters are listed, and other government policy initiations can substantially affect the day-to-day operation:

> *… it's always a changing dynamic system … you've got to try and look at what's happening, and whether there's some solution to try and keep on top of things. (**VLA Managing Lawyer, Greater Melbourne**)*

One Magistrate expressed frustration with the variability in the summary crime space across the state, but questioned what could be done given the other competing concerns of the community:

> *I think we tend to accept differences between courts, so I might go from court to court and if the court doesn't have the service, you say, oh well, it hasn't got the service. Accept that. I'm not sure it's a very mature outlook but what else do you do? (**Magistrate**)*

The summary crime system was widely characterised as a complex system that is often difficult to understand for those summoned to court:

> *Let's just say you're the poor person interacting with that system … We're not a customer service driven system. The poor client, number one, they've got multiple entry points. Depending on where they enter, they'll be lost in a complex service matrix. Depending on where they live, depending on what their problem is or problems more accurately … that's an indictment on the system. (**VLA Manager**)*

The legal assistance service challenge is how to most appropriately respond to increasing demand within an evolving system, and how to most effectively use limited resources to provide appropriate and sustainable services that also support the efficient operation of the system. The cross-section of evaluation participants pointed to the system and access to justice benefits of legal assistance services, and how resourcing of different aspects of the system affected workloads.

Resourcing of summary crime

One striking and consistent finding from the interviews and focus groups was how each set of stakeholders described how they 'bore the brunt' of a summary crime resourcing deficit, and how their workload and capacity was detrimentally affected by a resourcing deficit in other parts of the system. Magistrates, police prosecutors, private practitioners and VLA staff all described how they had been affected, and how they had had to make up the shortfall and 'prop up' the system. The cross-section of evaluation participants explained how their effectiveness and efficiency was limited by the resourcing of other elements of the summary crime system, and how this created system roadblocks and inefficiencies.

Courts and public legal assistance services across Australia were said to face similar funding constraints and that there were little additional resources from state governments in the face of burgeoning summary crime workloads:

> *… it's a fiscally restrained environment. Governments are scrapping for money. The courts are being hampered because they're not being thrown extra money. It's really tight for them. No extra resources, no extra duty officers, and some [courts] are coming to the end of their life. (**Advisory Group Member**)*

> *… legal aid commissions are currently all groaning under the pressure of state-based law and order underfunding. (**VLA Manager**)*

The summary crime system was described as comprising 'three main players' – the court, prosecutors, and VLA – who each depend on and are affected by the capacity of the others:

> *This is very much a two way street with three main players in the system – with the courts and with Legal Aid and the prosecutors. (**Magistrate**)*

Resourcing of the SCP

Magistrates made a number of observations concerning changes to VLA's grants and DLS eligibility guidelines made in response to funding pressures, and the impact on the DLS, court and Police Prosecutions. For instance:

> *… with the change of guidelines, I'm aware that some of the duty lawyers are under enormous pressure and have to stretch. They have an enormous caseload to get through each day. I sense that they're not adequately resourced. I sense there aren't enough of them … (**Magistrate**)*

This situation was widely attributed to the level of funding VLA receives, and the increase in demand for legal assistance:

> *I've worked in a community legal centre and I've worked for Legal Aid for eight years and I've worked in private practice for 16 years. So I've seen all of those areas of practice. I mean, it appears to me that the most obvious problem is the one of funding, and that is that Legal Aid just doesn't have the funds to pay properly to provide a reasonable service, what we would consider to be a reasonable service. (**Private Practitioner, regional area**)*

Another Magistrate explained how the court and police prosecutors had had to 'absorb' part of VLA's resource deficit:

> *… there's be an absorption by other agencies within the sector, and that's the court, that is the police, and we've done that and we've had to shift the way that we think and the way we manage our workloads to accommodate that. Look it's equally incumbent on the court to manage Legal Aid as well in the sense of you don't overload lists. (**Magistrate**)*

Magistrates characterised VLA tightening service eligibility as a 'cost shift' because someone 'has to see what the person's issues are' – if not the duty lawyer, then the prosecutor, the magistrate and court staff. Consequently, 'the more that the Duty Lawyer Service could do, the better' for the summary crime system (Magistrate).

Police prosecutors also said that they had to do more to make up for a shortfall of legal assistance services. They similarly pointed to a need for more legal assistance resources 'earlier' in the system to progress matters quicker and avoid unnecessary delay and costs:

> *I fully encourage and support more resources provided by both us and Legal Aid at the front end to really narrow the issues quickly. (**Police Prosecutor, Greater Melbourne**)*

Magistrates also said it was vital that VLA was adequately funded for summary crime, and that more resources for legal assistance services could support the 'earlier' and 'cheaper' resolution of matters. One Magistrate said taxpayer funding would be better and more effective if it came 'earlier' in the system, at the 'duty stage' rather than later at the 'court stage'. Another Magistrate said that because 'court time' is the most expensive part of the system, the more that can be done to progress matters outside of court in a 'timely and appropriate fashion', the better. One VLA Managing Lawyer similarly observed how some self-represented defendants who went straight into court occupied a lot of court time:

> *… I was sitting in court the other day and I saw a couple of people talking to the [magistrate] … she knew them and they had big cases and she had long conversations with them about their cases that were, basically, 'You need a lawyer'. It was a long conversation and then she referred them back out to the duty lawyer and the duty lawyer wasn't going to be able to do anything at that point, with someone with seven briefs, and it was the afternoon … I mean that's the magistrate spending at least half an hour of her time, the magistrate, the prosecutor, the court clerk, everyone spending that time. (**VLA Managing Lawyer, Greater Melbourne**)*

A number of prosecutors noted how, compared to the number of prosecutors at court, that the duty lawyers had 'a tough gig', were 'worked hard', and would be able to do 'even more' with a few more staff (Police Prosecutor, Greater Melbourne).

This speaks to a need for 'balance' between the resourcing and operations of the DLS and police prosecutors (Police Prosecutor, Greater Melbourne). For example, depending on the size of the court and the mentions list, it is not uncommon to have one duty lawyer 'on cells', and one 'doing the mentions list', and up to seven or so police prosecutors. Police prosecutors have staff doing triage, summary case conferencing and prosecuting in court, and in addition to matters where VLA are involved, prosecute matters with defendants who are represented privately and who are self-represented.

Private and VLA practitioners said that they were 'propping up' the system, and made up for a 'deficit' in public legal assistance by working harder and longer, or for less:

> *… the system works on the social justice commitment of people. (**Private Practitioner, regional area**)*

> *… the system is operating on the fact that the lawyers care about their clients and will do a hard job for a long time. (**VLA Managing Lawyer, Greater Melbourne**)*

> *… we're absorbing the deficit and have been for not a few months but years. It's the staff wellbeing that's always taking the risk.... (**VLA Lawyer, Greater Melbourne**)*

Private practitioners also explained how they 'subsidise' the work that they undertake for VLA:

> *I don't tell my private paying clients, but they subsidise my Legal Aid clients. (**Private Practitioner, regional area**)*

> *We do it and we do it all the time and we do it because we want to do the right thing by the punter and it's the right thing to do within the system. (**Private Practitioner, Greater Melbourne**)*

A consensus view among private practitioners involved in VLA funded work was that government did not understand or appreciate their commitment to undertaking work for VLA, and that in addition to issues concerning the amount of fees they are paid, they directly bore the costs of system inefficiencies, in both their private and VLA funded work. Examples cited included insufficient police prosecutors to summary case conference matters in advance of a court date, courts being 'clogged up' with self-represented defendants and poor infrastructure substantially adding to time waiting at court.

Resourcing of the Magistrates' Court

Participants indicated that magistrates were also under substantial pressure coping with the summary crime workload at some locations. Magistrates were also under workload pressures:

> *… they pay them well, don't get me wrong. But geez, they work them hard. It can be sort of like banging your head against a wall … I think it takes a personality who's been able to cope with that and also not worry about the fact that you're going to have to cut corners or not spend as much time as you should on things and get flogged in the press when things aren't right, and flogged on appeal when things aren't right. (**Advisory Group Member**)*

The reality is that the Magistrates' Court is like an 'assembly line' where the weight of caseload numbers limit the time available to deal with each matter:

> *You've got four to seven minutes to deal with something. (**Advisory Group Member**)*

> *It's a pretty brutal process, it can be – because of the churn – to try to get through a list that might be lengthy. (**Magistrate**)*

Magistrates observed that while there was goodwill and commitment to problem-solving among stakeholders, capacity and efficiency could be improved by having systems and practices of the court, prosecutors and VLA 'working together'. While there were opportunities to identify 'little gains', larger benefits were likely to need some flexibility in terms of the use of resources:

> *For me, the main things are about the different components of the system being able to work better together, which needs to recognise that there needs to be some reallocation of resources. There's only so much that the courts and the duty lawyers can do if the police can't actually provide the prosecutor or the right informant. (**Magistrate**)*

In a pressurised environment, it is unsurprising that interpersonal relationships and local pressure points can have a substantial impact on the day-to-day operation of the summary crime system.

Resourcing of Police Prosecutions

Participants also pointed to under-resourcing of Police Prosecutions and the impact this had on system workload. Police Prosecutions were said to be 'swamped' and particularly stretched by the increased volume of initiations. Again, the cross-section of participants pointed to increased frontline policing as having increased the workload on police prosecutors. Participants reported unavailability of police briefs of evidence and police prosecutors to summary case conference in advance of court; as well, difficulty obtaining or otherwise insufficient briefs created service roadblocks at some locations. For instance:

> *… the impact of all the additional frontline police has actually had impacts on the prosecution's abilities. Because they haven't had a commensurate level of administrative support or whatever support to process briefs … I think the additional frontline police have had repercussions throughout prosecutions, throughout the whole system. (**Advisory Group Member**)*

VLA lawyers broadly characterised prosecutors as being under the same workload pressures that they are:

> *… what I've heard from some of the prosecutors I work with … is that they don't have enough prosecutors to cover courts at the moment. They've had a number of prosecutors go off on stress leave. So I feel like they're struggling with the same issues in terms of resourcing that we are here. They have a massive volume of briefs to look after. They often can't find them. (**VLA Lawyer, Greater Melbourne**)*

A Police Prosecutor explained that while there had been a small increase in the number of police prosecutors following the expansion in frontline police positions, there had been no increase in administrative staff to support the additional prosecutions work:

> *… we got 25 additional prosecutors four years ago as part of the 700 [additional police] … but we didn't get any more administration staff. (**Police Prosecutor, Greater Melbourne**)*

VLA clerks and lawyers described how DLS efficiency was negatively impacted by difficulty obtaining, or the unavailability of, police briefs, and by the unavailability of prosecutors to summary case conference after one o'clock at most court locations. This appeared to be an acute issue at the Melbourne Magistrates' Court, given the higher number of briefs that needed to be obtained to assess and triage DLS clients. For example, unavailability of briefs affects the ability of the DLS to see clients in an orderly fashion, and is a source of client frustration:

> *You may be the first one here, but you may be the last brief that we can get, and it's not us getting the brief, it's the prosecution chasing up the brief for us. (**VLA Clerk, Greater Melbourne**)*

VLA staff expressed frustration that the police prosecutors stop at one o'clock at most courts, while acknowledging that the reasons related to capacity issues. VLA lawyers also suggested that if the reasoning for preserving the workload capacity of police prosecutors was sound, then the issue of the workload capacity of the DLS should also be examined (VLA Lawyer, Greater Melbourne).

Dandenong was identified as one of the 'better prosecutions offices', at least in part because of the level of their resourcing, but also because of their relationship with VLA and the Magistrates' Court (Magistrate; Police Prosecutor, Greater Melbourne; VLA Manager). Although Dandenong faces particular pressures of its own, one of the reasons that the court is able to get though the volume of matters that it does is due to the police prosecutors being able to go beyond the agreed minimum summary case conferencing service charter, and offer the service until four o'clock:

> *We stay open … My thoughts are that we've got to provide a summary case conference service and it's got to be here till one o'clock, however you still have to have the phone service available and I figure if you're taking a phone call you may as well be here because the more you can speak to people the more you can actually resolve. (**Police Prosecutor, Greater Melbourne**)*

To cope with the increase in summary crime initiations without a commensurate increase in administrative capacity, prosecutions have had to prioritise matters as they are due in court. As such, police briefs tend to be available, and summary case conferences tend to occur, on a 'just in time' basis on the court date. While this may be 'just in time' for prosecutors, it necessarily constrains the ability of legal practitioners to assist clients in advance of court. This also means that the court day is busier than it might otherwise be if the prosecution and defence were able to summary case conference in advance of court. One Magistrate said that this was an 'easy fix', although it would necessarily require additional resources:

> *There's a couple of easy fixes, that need money, but they're easy fixes nonetheless. So police get their 1,700 extra police and there's all this talk and chest beating about there being frontline police, and doing frontline policing, which is fine. But it does cause a blip in the number of arrests and the number of charges. And they get here and we hit a screeching halt because we don't have enough*

> *prosecutors. We don't have enough prosecutors to summary case conference with lawyers offline, so they all come to court on the day of the mention. (**Magistrate**)*

Police prosecutors also explained how it was embarrassing and frustrating when their administrative systems broke down and briefs were unavailable:

> *.. it's professionally embarrassing. But it's realistic because … there's no money for unsworn and unsexy stuff, it's all about police members on the frontline … (**Police Prosecutor, Greater Melbourne**)*

One VLA Manager saw a substantial potential benefit in electronic briefs:

> *… if we had electronic briefs or briefs stored in a central repository by Victoria Police that they could access that would save so much time and improve the operation. (**VLA Manager**)*

While lack of administrative support was one of the factors limiting prosecutions capacity, one Magistrate explained how a lack of police prosecutors put a ceiling on court productivity:

> *One of the big frustrations for me coming into this job is I might be allocated a court, and for whatever reason my matters are done or finished by 11 o'clock. It might be that there was a contest set for that day so the day was set aside, [and] it resolves... I'm finished by 11 o'clock. 'What work can I do?' 'Well, nothing, because we don't have a prosecutor.' We've got courtrooms. We've got clerks. We've got magistrates. I can't give the mentions court a chop out and take half their work, which would get everybody who's waiting for their day in court through in half the time … The lawyers could go back to their offices earlier, use that time. And I wouldn't be just a wasted resource sitting around in chambers answering emails or doing some reading at my salary. All because we can't get a police prosecutor over to read me some summaries. (**Magistrate**)*

VLA managing lawyers noted variation in Police Prosecutions' capacity from region to region. For example, one VLA Managing Lawyer described how summary case conferencing in their area was 'just fantastic', while another said that in the areas they covered it was 'really frustrating':

> *Our summary case conferencing is just fantastic. We do most of our summary case conference work out of court because we've got all their direct phone numbers and they've got staffing numbers which mean there's always somebody in the office, email, we've got their direct emails rather than the summary case conference one, so that's something that works really well … (**VLA Managing Lawyer, regional area**)*

> *… you can have discussion with the prosecutors on the summary case conference days and then follow it up in writing and then not get a response … the matter gets adjourned at least once maybe twice because the prosecution still hasn't responded, and you can't ring them because they don't have anyone to answer their phones and they're flat out and things just keep rolling over, rolling over and you can't get anywhere, you can't progress matters. And it's really frustrating … (**VLA Managing Lawyer, regional area**)*

Stakeholder relationships: variation by court

Another factor identified by participants as affecting summary crime workload (and with that, VLA services) is the nature of the relationship between the key players within the system: magistrates, court staff, police prosecutors, private practitioners and VLA staff. Participants indicated that relationships and practices were better in some places than others.

Where the key players work together effectively, the system operates more efficiently:

> *If you don't get the cogs all turning together, like the well-oiled machine that it has to be, then you get problems. (**Advisory Group Member**)*

> … we know it's just part of our business that we all need to get on … with our three spokes in the wheel if one of those spokes is missing you can bring it to its knees, you can bring the whole system to its knees. Legal Aid can, the court can and we can. So if the parties can't see the benefit of that mutual cooperation then we're just kidding ourselves to be quite blunt … it's very much a combined sharing of, I guess, mutual respect and understanding and nothing happens without all the players being brought to the table. (**Police Prosecutor, Greater Melbourne**)

> *… we've developed over the years a very good relationship with the police, a very good relationship with the court, so that the relations are harmonious which makes the background sort of easier … it's a matter of trying to maintain a good working relationship … it's a system which is largely about putting people in slots, and effectively moving people into slots quickly and efficiently, and then if you do that you can deal with the sort of volume of work. There's an understanding among all parties … we've all got a common interest in processing the work. (**VLA Managing Lawyer, Greater Melbourne**)*

As one member from the Advisory Group stated: 'the reason we get inconsistent results is that there are some locations where the relationships are better, the leaders are better …' (Advisory Group Member).

However, a VLA Manager said that VLA was the 'smaller player' in comparison to the police and courts, and was affected by each of them:

> *… we're like the small connecting hose between these two massive fire hydrants … and without that component, the water doesn't flow. But we're much smaller and therefore we're buffeted by those two forces. (**VLA Manager**)*

Participants frequently pointed to 'personality', that is, the particular individual filling a role, as a key factor shaping professional and interpersonal relationships, as well as how the court day will go:

> *Like anything, it's about personalities. Good personalities, good systems, good people who know what they're doing, with sensible, common sense people, you get effective results. (**Advisory Group Member**)*

Participants variously identified particular 'problematic' magistrates, police prosecutors and duty lawyers that were a source of inefficiency. Similarly, even where professional relationships were said to be strong, they were described as being better and more effective with certain individuals than others.

Generally, the smaller the number of the key players that work in a particular location, the stronger the interpersonal and working relationships tend to be, yet the bigger the impact of any particular individuals. Participants described how a smaller number of individuals meant that there was more 'shared interest' in working effectively, as the same individuals were more likely to have to eventually dispose of the particular matter.

Even when good stakeholder relationships exist, such as where stakeholders routinely meet to identify and respond to identified problems, wider resource pressures may constrain or 'undo' local practices and established ways of working. Magistrates, VLA managing lawyers and police prosecutors cited various examples of problems that had

been identified, and solutions that have been implemented, but where those solutions had not been able to be sustained because of the competing resource pressures on one or more stakeholders. For example, a number of examples were cited of initiatives that had been implemented to try to improve summary case conferencing practices at some courts, and response to emails and follow-up by police prosecutors, only for improved practices to fall by the wayside in the face of further escalating demands and resource pressures (VLA Managing Lawyer, Greater Melbourne). This again highlights how resource pressures can affect and exacerbate workload pressures, even where relationships are sound and individuals are willing.

Analysis of the stakeholder relationships at the four case study sites yielded observations about how the operation of the summary crime system varies from location to location.

Relationships by location: Melbourne, suburban and regional courts

A number of the evaluation participants had extensive experience of operations across different courts. One Magistrate described how different courts had an 'inbound personality':

> *Most of the courts have an inbound personality … there are nuances between courts because of personality differences. When I say that I'm talking about the personalities of regional coordinating magistrates … the composition of magistrates, often the [VLA] Managing Lawyer within a catchment. (**Magistrate**)*

The 'inbound personality' of the court also appeared to be affected by its geographic location, relative size and facilities.

Melbourne

Melbourne Magistrates' Court is a large, busy court. It has thousands of people through the building each day, in some 800 to 900 criminal, civil and family violence matters. It deals with the highest number of summary crime matters in Victoria, and also has the highest number of people frequently rotating through the magistrate, prosecutor and duty lawyer positions. It also has a large number of private practitioners representing private clients.[51] This makes for a congested, noisy environment, with competing user and service priorities and interests.

A Police Prosecutor explained how expansion of the geographic boundary of the Melbourne Magistrates' Court had increased its workload:

> *… in November 2013 the Melbourne Magistrates' Court took on an additional 84 postcodes … Sunshine found when they got to – about the middle of 2013 they got to about 24,000 matters for the year and when you've got four courts, three magistrates that was unsustainable. So the court's reaction to that was to take 84 postcodes from Sunshine and send them to Melbourne. Now Sunshine is still increasing due to that rapid growth out there, without the change Sunshine would've fallen over years ago. So Melbourne … went from 65,000 to 130,000 [matters a year] in 18 months. (**Police Prosecutor, Greater Melbourne**)*

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[51] It should be noted that during the course of the observations, focus groups and interviews undertaken for the evaluation, Melbourne Magistrates' Court was also temporarily hosting the business of the Heidelberg Magistrates' Court.

Participants described the Melbourne court as being different to other locations, and due to its size, how it was 'a different beast' and that its size made it 'too unwieldly' to work optimally (Police Prosecutor, Greater Melbourne; VLA Manager). Those with experience of other court locations highlighted the lack of interpersonal rapport between magistrates, court staff, prosecutors and DLS staff. While we found strong interpersonal relationships among stakeholder leaders at Melbourne, and understanding of the key pressures, the size of the court and the workload appeared to contribute to practices breaking down at the 'coal face'. Generally, this was attributed to workload pressures and the constantly revolving people involved, which mean that professional relationships had less time and opportunity to develop. For instance:

> *… get there in the morning and there's probably 700 or 800 people lined up … it's a really busy place, throw in 70 registrars, 35 to 50 magistrates, 40 to 50 prosecutors, 30 VLA, it's just craziness … (**Police Prosecutor, Greater Melbourne**)*

The difficulty of the working environment is reflected in the observation that the court is just 'too big' to maintain efficiencies, and that while VLA has an additional duty lawyers rostered to the DLS at Melbourne compared to other locations, things were less efficient:

> *… we can't get through [the list] … it's such a large court, it's split over several floors, you're bouncing around running after things … I think once you get over a certain size the system doesn't operate as well. Briefs go missing, you're running around trying to find things all the time. (**VLA Manager**)*

VLA lawyers also contrasted the nature of relationships at Melbourne with suburban and regional courts, and how the size of Melbourne undermined relationships.

The magnitude of the workload also created additional issues to be managed. For example, to try to manage the issue of the number of people cuing to get through security screening, staggered listings were introduced. However, one prosecutor noted that this had consequently negatively impacted the operation of summary case conferencing which 'wasn't designed for staggered listings'.

VLA staff also reported that systems intended to support the effective operation of the DLS, by giving the DLS priority in obtaining briefs of evidence and summary case conferencing, often broke down, and that it was an ongoing 'battle' to obtain briefs and complete summary case conferencing before the prosecutors left for the day at one o'clock. VLA staff said that it appeared that with staff turnover, established practices often break down because new staff are not aware or do not implement the 'agreed policies'. As such, VLA clerks said that there was a large variation in practices from one day to the next:

> *… it does actually just depend on the day you're there and who's in charge (**VLA Clerk, Greater Melbourne**)*

VLA staff further explained why having priority to obtain police briefs and summary case conference was important, as the longer the time taken to obtain the brief, the less time to spend with the client and summary case conference the matter before the prosecutors shut down summary case conferencing for the day. The main issue was not that summary case conferencing 'doesn't work', but rather that:

> *… it's not working the way it was always intended to work because of various system issues. (**VLA Lawyer, Greater Melbourne**)*

VLA staff also said that their relationships with court staff had 'gone down' in recent years and attributed this to 'the volume of people they're dealing with' (VLA Clerk, Greater Melbourne).

Participants further suggested that because new police prosecutors were trained at Melbourne Magistrates' Court, this was another factor contributing to position turnover and undermining interpersonal rapport (Magistrate; Police Prosecutor, Greater Melbourne).

Suburban and larger regional courts

By comparison, stakeholders at Bendigo Magistrates' Court, Broadmeadows Magistrates' Court and Dandenong Magistrates' Court, described how they worked together to manage the operation and practices of the court. Notably, interpersonal relationships and practices at each court were described as positive, notwithstanding high workloads and particular service challenges to overcome. For example, the high caseload handled at Dandenong was a constant pressure for all stakeholders, and the impact of fast-tracking of family violence matters appeared to be exacerbating pressures on the DLS, and how the court was sometimes 'too quick', outpacing the availability of police briefs. The Dandenong Magistrates' Court was characterised as proactively managing matters to reduce the number of mentions and time taken to dispose of matters (Magistrate; Police Prosecutor, Greater Melbourne; VLA Clerk Lawyer; VLA Lawyer; VLA Manager).

At Broadmeadows the court, police prosecutors and VLA staff explained how they worked together to try to manage workload expectations and endeavoured to list a manageable number of matters each day. At both Bendigo and Broadmeadows, long-term relationships between key senior leaders appeared to provide a basis for quickly troubleshooting and responding to issues.

Compared to Melbourne, access to police briefs of evidence and summary case conferencing generally appeared to be far smoother at each of the other case study sites. Some participants with experience of Melbourne explained how relationships and practices tended to be better at smaller locations, and how obtaining briefs was quicker and easier:

> *… they're approachable, you just walk in and grab the briefs that you want and we know them by name and know us by name. That sort of makes it a lot easier. That's probably the main difference that I noticed. Whereas in Melbourne, you go in, and you'd be waiting ages – can't get the briefs yourself and that type of thing. So that's a big difference. (**VLA Clerk, Greater Melbourne**)*

Smaller regional and rural courts

There was also a view that at some smaller locations there was greater 'acknowledgement that Legal Aid is the grease to the wheels' and that supporting the duty lawyer helped everyone to get through the list quicker (VLA Manager).

Police prosecutors similarly pointed to the advantages of smaller courts and getting to know and understand the expectations of a smaller number of magistrates:

> *The problem that we have at Melbourne is there's 37 different magistrates all very different. Whereas if you're in a small court like Dandenong, they've got four or five magistrates. (**Police Prosecutor, Greater Melbourne**)*

However 'smaller' did not necessarily mean things were always better. VLA managing lawyers described variability in stakeholder relationships across smaller locations and that while having a smaller set of interpersonal relationships had advantages, they were sometimes tenuous and vulnerable to the personality and change of the key leaders. This is illustrated by the following:

> *[We] have such great relationships with the court and with the prosecuting team and with Corrections, so with the small size of the district means that [we] get on quite well … the prosecutors have been there for ten years, my lawyers stick around, I've been there for a long time, so you build up the relationships and they're positive. But it would just take a new broom and some difficult prosecutors for it all to become very difficult … (**VLA Managing Lawyer, regional area**).*

Other court-based variation

Approaches to case management

Melbourne was also described as being 'slow' compared to other courts, as with a greater number of magistrates there were different approaches to case management:

> *… that's the difference, it's that level of case management … (**Police Prosecutor, Greater Melbourne**)*

There was also an anecdotal view that the Melbourne Magistrates' Court tended to have more adjournments than other locations, and that this was a factor heightening the 'churn' of matters – that is, matters that are adjourned and re-listed – and caseload:

> *… at Melbourne they've got so much work they go, 'Yeah, no worries, it's adjourned, next?' (**Police Prosecutor, Greater Melbourne**)*

> *… that can be a pressure point, because you've got them [adjournments] coming back and some of the magistrates have them 'adjourn, adjourn, adjourn' – they come back in two months. That sort of figure doesn't assist them because all it does is add to the delay, delay, delay … (**Magistrate**)*

One consequence of the summary crime system operating under pressure is that stakeholders have to try to 'muddle through' and 'get by' as best they can, and that consequently practices evolve and vary from court to court:

> *... so what we do is we make the best with what we've got and we try and form practical solutions to far more complex problems. A lot of the stuff that we do is done by way of not shortcut but through an efficiency mindset rather than a best practice mindset. (**Police Prosecutor, Greater Melbourne**)*

For example, to cope with the rising number of cases, some courts have adapted procedures, such as staggering matter listing times. While this may help courts to manage the number of people in waiting areas, it is not necessarily beneficial to either the DLS or police prosecutors. It also potentially increases complexity and confusion within the court:

> *Yesterday I had someone on an 11 o'clock listing and a warrant was issued 11.15 … I think there's confusion too because I think the courts forget the listing's at 11 o'clock so by quarter past 11 they issue warrants and then you look at the charge sheets and the person had been there and just didn't hear their name called. (**VLA Managing Lawyer, regional area**)*

Legal practitioners also described how they had to spend much more time waiting around at some courts because self-represented defendants tended to be dealt with before those who were represented.

Sentencing indications

Participants described how magistrates varied in their attitude to sentencing indications, and that this was one of the factors that contributed to differences in court practices and workflow from court to court, and magistrate to magistrate:

> *Some magistrates there still refuse to give sentencing indications. It's in the legislation, but they just say 'I'm not doing it, if you want to find out when you're here, plead guilty'. (**Police Prosecutor, Greater Melbourne**)*

> *Sentence indications certainly help Legal Aid because you don't necessarily then have to go to a point where we are booking stuff in, because they'll say, 'look, once they settle the charges with the police, the client's unsure as to penalty, so seek a sentence indication'. No dramas. (**Magistrate**)*

Legal practitioners with experience of different courts contrasted the different views and use of sentencing indications. For instance, the following VLA Managing Lawyer contrasted the different expectations:

> *… it's almost the expectation that you will ask for a sentencing indication if it doesn't resolve whereas [here] … it's like, 'What do you mean you want a sentencing indication? That's cheating the system.' … I think it's because a number of them have been around for a long period of time and sentencing indications are still new for them and maybe they don't particularly like that … Some of the magistrates in here have come from various civil backgrounds as well so maybe don't understand why it's important to get a sentencing indication … (**VLA Managing Lawyer, Greater Melbourne**)*

Participants also explained that sentencing indications were useful for disposing of a matter and avoiding adjournments:

> *I do it every day and that's really – it's really assisted the flow of matters, absolutely assisted the flow, and I'd say it's a good common sense way of dealing with things too and it's really – it's turned a lot of contests into pleas and for the right reasons too. Not for expediency, for the right reasons … But the [public] wouldn't know about sentence indications and it's probably developing into one of the more important dispositions I think. (**Police Prosecutor, regional area**)*

Legal practitioners also highlighted what they thought were problematic 'offers' of sentencing indications and practices by some magistrates eager to dispose of matters, even where a client was represented under a grant of legal assistance:

> *… we're getting a lot of stories that people are being pressured by magistrates to resolve matters on the day … by getting an offer that you can't refuse or being told to go and see the duty lawyers. It's like, 'What's going on? This person is represented'. … So you know, I for one, and I'm sure everybody else does it as well, when you know that there's a very complicated matter you will go to court and you will undertake the case conferencing … (**Private Practitioner, Greater Melbourne**)*

Court support services

VLA lawyers in both Greater Melbourne and across regional Victoria explained that their performance was variously hampered by a lack of corrections staff, lack of forensic care nurses and lack of CREDIT staff:

> *Our CREDIT wait list is over a month most of the time. That's huge. (**VLA Lawyer, Greater Melbourne**)*

> *I think the service issue generally is a significant issue and where there are services in place, they're getting overrun by (a) a lack of resources, but (b) significant backlogs and time waiting and things of that nature.(**VLA Lawyer, regional area**)*

Similarly, magistrates also pointed to the variability in court support programs and the ancillary human service environment across the state as affecting summary crime practices:

> *I think it's better [now] there's less inconsistency, there's more consistency between regions I reckon. I mean, the fact that all regions aren't equal is perhaps relevant because some have CISP, some don't have CISP. So CREDIT fills the gaps, as it were. The number of local organisations that provide service, might be drugs and alcohol, might be mental health. That sort of stuff, I think it is variable because of the demographics. It might be that the rural community doesn't have access at all. Yeah, that's a reality, there's no question about that. (**Magistrate**)*

Court facilities

Participants also pointed to outdated court infrastructure and facilities, and some buildings that were no longer fit to cope with the number of accused summonsed to court or remanded in custody. In particular, Melbourne Magistrates' Court facilities were described as problematic for the DLS due to 'the way it is set up', and that 'they should just knock it down and start again' (**VLA Clerk, Greater Melbourne**).

At the case study sites, magistrates, police prosecutors and VLA staff also cited the need for more cells, interview rooms or improved signage. Legal practitioners explained how difficulty seeing in-custody clients, associated with insufficient cells, increased the time required to deal with them and was an increasing problem as the number of in-custody clients increased. For example, at some courts, one more space to see in-custody clients could 'make a huge difference' (VLA Lawyer, Greater Melbourne). VLA lawyers also pointed out that a lack of facilities to talk to clients in private at some locations made giving advice and taking instructions problematic, given that some clients were understandably reluctant to discuss their matter openly with insufficient privacy.

Benefit of legal assistance services to summary crime system

Increasing efficiency

Participants identified a range of differences that VLA funded summary crime services made to the effective and efficient operation of the criminal justice system. Magistrates and prosecutors explained how the number of people represented under a grant of legal assistance, and those assisted by the DLS, supported the capacity and efficiency of their work, and the system as a whole. For example, in-court advocacy by duty lawyers on behalf of eligible defendants reduces the time required to dispose of matters, and negotiations between police prosecutors and legal representatives in summary case conferencing helps to narrow the scope of legal issues and progress the disposal of matters.

Connecting accused with support and diversion

The cross-section of participants described how legal practitioners, and particularly duty lawyers, played a critical role in connecting clients with Magistrates' Court support services, Drug Court and other 'special lists', as well as diversion out of the criminal justice system (Court Support Service; Police Prosecutor, Greater Melbourne; VLA Lawyer, Greater Melbourne; VLA Manager). The DLS was also variously characterised as the 'grease for the wheels of the justice system', and as vital to 'keep the courts ticking over at a relatively good pace' (Police Prosecutor, regional area; VLA Manager).

In particular, the DLS was said to 'do a lot more' than advising people and making guilty pleas in court, which was only the 'tip of the iceberg':

> *… There's a whole range of things that they do that is often unseen … we're connecting people on the day, it's about completion of CISP and CREDIT/bail referrals. All of that joining people into the services they need, it's about making the referrals and ensuring that people are getting the support in relation to their mental health treatment, with their GPs and so on … there's a whole range of these things that have to be done and I'm not the first person to use the iceberg analogy ever, but really, what happens in court is that tip of the iceberg. So much has happened either away from court on the day or out of the courtroom that is not measured, it's not captured anywhere. But without that work being done the system would grind to a halt, there's no doubt about that absolutely. (**VLA Manager**)*

Magistrates also highlighted the difference the DLS made, particularly with respect to more therapeutic approaches and court support programs:

> *… really the duty lawyers and Legal Aid has a big role in identifying some of the more systemic stuff that is going on for people, so your therapeutic stuff. I mean that's been a shift because the court's taken more of that on with our programs – CREDIT Bail and CISP and stuff. (**Magistrate**)*

This was especially important in regional areas:

> *In regional communities, in particular, it happens because those lawyers, often, are on the phone, they're always … organising this, organising that. They do a great job … That's because they believe in what they're doing, they're committed … (**Magistrate**)*

Participants from Court Support Service also observed how duty lawyers were a key source of client referral and did a substantial amount of work to support the operation of bail and other court support programs:

> *… the strongest bail applications are when the lawyers have done – have made phone calls to family and friends and have found one person who is willing to offer their accommodation as a bail address. The strongest bail applications are when the lawyer is able to get that person into court and have them actually be in the witness box for the magistrate to see that they are willing to offer accommodation as a bail address and for the magistrate to feel comfortable that that person is actually willing to come to court and be present in court all day to support that client and that if a person is willing to offer their day and to sit in the witness box and to answer questions and if the lawyer is able to do that then that's a pretty good thing to see. (**Court Support Service, Greater Melbourne**)*

In particular, where the Magistrates' Court adopts more therapeutic approaches thorough specialist courts, lists and support programs, the DLS potentially makes a big difference to more complex and high need clients as well as the success of those court programs:

> *… there are all these programs in place and unless the duty lawyer jumps through the hoops to get people to qualify on to various programs, those programs aren't going to run. So in fact that therapeutic model of service does require a lot more running around. It's a lot more intensive, [and] particularly complex … particularly where you've got certain matter types with certain people, complex legal and non-legal needs, they all butt up together. So you'll have a crime butting up to a family violence butting up to a child protection butting up against housing issues… (**VLA Manager**)*

Supporting summary case conferencing

Prosecutors similarly described how one of the key pressure points they face is having accused who would benefit from representation by a legal practitioner in summary case conferencing, particularly with respect to 'valid' defences and the strength of evidence (Police Prosecutor, Greater Melbourne). Prosecutors explained that self-represented defendants typically took more time and were less productive to summary case conference. Investment in legal assistance services was said to have cost and time benefits for the system. Represented accused were said to have less adjournments, and consequently have their matters disposed of more quickly. This had wider benefits beyond court caseloads, and could reduce the worry and stress on victims and witnesses:

> *… if you look at the amount of time that we may spend with [unrepresented accused] and … if we stop the adjournments, and we finalise things, we don't have delays … I think that investment in [legal assistance] early can stop a lot of them being adjourned off. (**Police Prosecutor, Greater Melbourne**)*

This was further quantified anecdotally in terms of the average number of appearances required to resolve matters, which was said to be about half when the accused was represented, and that half of these were typically VLA funded practitioners (Police Prosecutor, Greater Melbourne).

The summary case conferencing process works much better and is more effective and efficient for prosecutors when the accused is represented:

> *We would much prefer to deal with a person who's represented. It takes the emotion out of it, you get an ability to narrow the issues that come with a level of understanding … what [legal representation] does do for us is it provides an opportunity to discuss the matter forensically and not be involved in principle or the reason [for the offence]. [Legal representatives] understand the defences that are available, and when they're there, then clearly we have [those] conversations … So we would certainly prefer more matters rather than less matters be represented, particularly by Legal Aid, because it makes everyone's job so much easier … (**Police Prosecutor, Greater Melbourne**)*

One Advisory Group Member explained that the cost-benefits of public legal assistance services to the efficient operation of the justice system needed to be considered holistically:

> *… the cost benefit of legal aid or the cost benefit of services. Spend one dollar on a legal aid lawyer being somewhere, whether it's private or in-house, what's the saving? The net saving of resolution, quickly dealing with matters, effectively sorting and triaging issues, not taking up valuable court time … Whether it's family, civil or crime, spending money on legal representation and assistance saves money to the system as a whole. If you don't look at [the system] holistically, you don't get that. (**Advisory Group Member**)*

Of course, VLA is necessarily constrained in the summary crime services it can provide by competing resource demands from other legal practice areas.

Reducing the impact of self-represented defendants

Evaluation participants highlighted the relationship between provision of public legal assistance services and the number of self-represented defendants, and how some vulnerable people were falling through the 'gaps' of a pressurised summary crime system. Legal practitioners expressed widespread concern that, in a 'pressurised system' where public legal assistance has to be rationed, some people plead guilty to charges for want of access to justice:

> *… can we get fewer people unrepresented? Because they're the ones that are most vulnerable to the system … They go to the bench clerk and the bench clerk, the first question is, 'Are you pleading guilty?'. Then they go into the police prosecutors and again the police prosecutors are again saying, 'Look, the evidence is against you for this, this and this reason' – that's their job. Then they go into the court and the court says, 'Well, I can finish it today'. Then in three weeks' time they ring up and say 'I've got a conviction and I've lost my job'. So you know, there are impacts wider than just imprisonment, and that every day, Victorians on an ongoing basis [are affected] and it is a system problem. (**Advisory Group Member**)*

Critically, VLA's capacity to assist was also said to have a direct linear relationship with system efficiency:

> *… the less we have the duty lawyers able to see people and appear [for them], the more inefficient it is for us. (**Magistrate**)*

For instance, magistrates explained how provision of more intensive forms of legal assistance, such as in-court advocacy and grants of legal assistance, had wider system benefits, as well as benefits in terms of identifying what the particular issues are in particular matters:

> *… people being picked up and given more intense help early on in their matters would avoid the court [having to do it]. (**Magistrate**)*

A number of participants questioned what the appropriate level of self-represented defendants was, and what level was tolerable from an overall system point of view.

One VLA Manager noted that there has always been an issue of unrepresented defendants in the Magistrates' Court, and that before VLA's 2012–2013 DLS and Grant Guidelines changes there were accused who were ineligible for grants of legal assistance, and for whom the DLS had insufficient capacity to provide in-court advocacy. VLA staff widely highlighted that there will never be enough resources to provide full representation services to everyone who cannot afford the services of a private practitioner, and that VLA summary crime services will always have to be targeted and prioritised through eligibility requirements. However, the system's tolerance for self-represented defendants was questioned, as was the appropriate level of self-represented defendants before the justice system 'tipped' into injustice.

The main areas of concern identified by legal practitioners involved matters where the defendant had a 'viable defence' but was not eligible for a grant of legal assistance and could not afford private representation, and 'more complex matters' where there may be substantive issues concerning the nature of specific charges or evidence.

Some legal practitioners explained that one of the consequences of the 2012–2013 Guideline changes was that because 'legal aid clients' are no longer eligible for in-court

advocacy for minor matters, some do not seek any legal advice or information before coming to court (VLA Managing Lawyer, regional area; Private Practitioner, Greater Melbourne).

Participants, however, also pointed to a range of offences where they thought there was less need for legal practitioners to be involved as self-represented defendants 'get exactly the same outcome' they would have got if they had been represented (Magistrate; Police Prosecutor, Greater Melbourne; VLA Managing Lawyer, Greater Melbourne). These were typically the type of relatively minor and straightforward matters, including many driving-related matters, where legal representatives are unlikely to make a difference to the outcome, and where the DLS no longer provides in-court advocacy. Driving and traffic matters typically fall into the category of 'minor' matters for which the DLS provides 'legal information only', meaning that accused have to self-represent in summary case conferences with police prosecutors and in court unless they obtain services from a private practitioner.

While magistrates reported having various concerns when VLA's DLS Guidelines were changed, and the impact in terms of the number of self-represented defendants, they said that many unrepresented accused were able to effectively deal with low level driving-related offences:

> *I must say when I heard – we heard that [Victoria] Legal Aid weren't going to do any driving offences, and this and that, I think we all sort of went into a bit of panic … It slows it down a bit because you have to read the charge to them and everything else but at the same time they generally are fairly straightforward matters and if there's any complexity to them we refer it onto the duty lawyer anyway and have them adjourn it if it looks like they're going to go to jail. (**Magistrate**)*

> *… usually if they are unrepresented it's for … low level, driving matters or matters where you know pretty much what the outcome is going to be and representation is not going to have made a huge difference to them. (**Magistrate**)*

Another Magistrate said that some magistrates had differing views about how VLA's service eligibility changes had required the court to work with self-represented defendants:

> *I know what the expectations are and I'm also quite happy in my role as a magistrate to take on a certain role as well. Other magistrates might feel much less comfortable about that and might get more pushback from Legal Aid because they haven't understood or accepted the nature of the changes. (**Magistrate**)*

Magistrates explained that in their experience, when needed, the duty lawyers typically helped the court to deal with self-represented defendants, for example:

> *Legal Aid in my experience here is very generous in that if you do ask for them to come into court for some particular reason, someone who hasn't been seen or you think there might be an issue but you're not quite sure, they're very generous in terms of coming into court and saying, 'Yes of course, we'll have a quick chat to them and make sure it's all okay.' I know that I can rely on them then to take the matter out, triage it, check it all over and make sure that it's okay and once that's done I'm confident then to keep proceeding with the matter. They never refuse to do that. They still offer a service to a magistrate if a magistrate requires it, but within the parameters of what they want to do. (**Magistrate**)*

The general approach of the magistrates interviewed was that when a self-represented defendant comes through to the court with something 'more complex' they ask the accused

whether they have had any legal advice, and if not, will typically refer them to the DLS or adjourn the matter and encourage them to seek private legal advice:

> *Often they're the people who haven't even thought to put their name down for the duty lawyer so that they – it's not a case of the duty lawyer looked at it and said 'No, you're on your own', they're frequently the people we say, 'Well, did you ask to see the duty lawyer?' 'No'. And then we say "Well, I think you should." (**Magistrate**)*

In this respect magistrates act as a 'safety net' and call on the DLS to help resolve concerns and progress matters. The broad view among VLA lawyers, illustrated by the following observation, was that magistrates were generally aware of VLA service eligibility guidelines and the types of matters and people prioritised:

> *Obviously when the guidelines first changed there was a lot of toing and froing with the magistrates but they generally I think, nowadays are pretty up on the matters we can see, the matters we can't see and they're fairly accepting if we say that we've assessed that they're not suitable for us to see them. Then they'll just accept that. Again occasionally you'll get a magistrate who doesn't quite get it and they'll refer them back out but I think they're generally pretty good (**VLA Lawyer, Greater Melbourne**)*

Private practitioners pointed to traffic and driving matters, including serious driving matters where a grant of legal assistance is no longer available, as accounting for 'the bulk of the in-persons …clogging up the system' in a number of court locations (Private Practitioner, Greater Melbourne). There was also a view that 'the courts are just not equipped' to deal with the volume of self-represented defendants charged with driving and traffic offences and were experiencing difficulty 'managing' the issue (Private Practitioner, Greater Melbourne; Police Prosecutor, Greater Melbourne).

Serious driving offences where the accused is at risk of jail were frequently identified by a cross-section of evaluation participants as a key area of concern as an, and we return to the issue below in the sections discussing the appropriateness of VLA's summary crime services.

Prosecutors reported that the changes to VLA's service eligibility guidelines had increased the number of self-represented defendants they had to deal with. They particularly noted the impact in terms of lack of defendants' understanding of 'the court process' and the role of summary case conferencing:

> *Prosecutions was really heavily impacted when the test changed for Legal Aid. What we found before that was the large majority of the in-persons … would come to Legal Aid first and would be effectively briefed around the court processes. So now they come to us – 'I want to plead not guilty' … then we've got to speak to them about the evidentiary issues, how to address the court, where to go, where to stand … if you plead guilty the matter will be finalised today. If you plead not guilty your matter will be finalised at a date to be fixed. They expect to be able to run the contest there and then. (**Police Prosecutor, Greater Melbourne**)*

> *… some first time offenders … They're the ones that cause, I suppose, the biggest issues because generally there's not really a defence for them and you've got the Legal Aid information sheet … and you can talk about that a bit, but ultimately, I suppose, to say, 'Well, you don't have a defence', is something that you can't say [as a prosecutor]… sometimes you just need that legal intervention, 'You don't have a defence' which stops it from being adjourned off … (**Police Prosecutor, Greater Melbourne**)*

Summary case conferencing with self-represented defendants is liable to break down when they do not understand its function:

> *… they're too scared to really show their hand either because they think what they say is going to be used against them. So you've got all these – I mean we've had people come to the triage office self-represented and as soon as you start talking to them they'll say 'No comment' and we say, 'What are we doing here? I mean this is where we talk' … and they say 'Well no … if I say something it's going to be used against me' which is obviously not right, so therefore we get bogged down in that whole scenario again. (**Police Prosecutor, regional area**)*

These observations speak to a distinction between the impact and benefit of legal advice on the substantive outcome of the matter, and on the procedural aspects that affect the processing of the matter. This is consistent with access to justice research noting the distinction between legal capability concerning the substantive and procedural aspects of legal matters (Pleasence et al. 2014). Thus, while legal advice may not beneficially affect the outcome of some matters where there is little or no scope, it may beneficially impact the processing and disposal of the matter.

Other views about self-represented defendants are examined further in the next section, in the context of the appropriateness of VLA's summary crime services.

Are VLA summary crime services appropriate to legal need and capability?

One of the key questions examined in the case studies, interviews and consultations was views about the appropriateness of VLA's summary crime services. Because eligibility for legal assistance varies by intensity of service, one way to examine service appropriateness is in terms of how well services are matched to clients' legal needs and capability (Pleasence et al. 2014). As noted in Chapter 2, diverse legal need and capability across the community suggest that some forms of service will be more appropriate and better matched to certain types of people and legal matters. Optimal service settings appropriately meet legal need with the least intensive (and expensive) form of service. Resources may be wasted, however, if they are either insufficient or in excess relative to need (see also Pleasence et al. 2014).

Evaluation participants were asked questions exploring the appropriateness of VLA's summary crime services, including whether or not they thought that the right people got the right types of help. In this section we examine:

- the allocation and mix of summary crime services
- the 2012–2013 eligibility guideline changes
- the impacts of these changes on:
  - grants of legal assistance and
  - the DLS, including the assessment and triage model.

Allocation of VLA's summary crime services

There was a broad consensus that VLA resources were being expended on more serious and more complicated matters, and that the mix of summary crime services was appropriate given the available resources. While there was recognition that VLA's 2012–2013 guideline changes had prioritised assistance to those 'most in need', there were particular concerns about service eligibility for particular types of people and matters. Tightening service eligibility was characterised as one of the few policy levers available to VLA, but a relatively 'blunt' instrument (VLA Manager). As such, VLA faced an 'invidious choice about how to prioritise the Legal Aid Fund' with a necessarily 'imperfect solution to a wicked problem' because 'options for solutions are quite constrained and limited by the funding envelope' (VLA Manager).

Private practitioners challenged the conception that the 2012–2013 Guideline changes were about targeting legal assistance to those most in need, and contended that the changes were intended to 'reduce the amount of money' that VLA paid for grants of legal assistance.

A cross-section of participants identified what they thought were inevitable questions of 'balance' and 'tension' between the legal assistance services provided and the resources available:

> *… I don't know what the right balance is, but my observation is that Legal Aid are trying hard to reach it. (**Police Prosecutor, Greater Melbourne**)*

> *I understand Legal Aid doesn't have the money and overall I think Legal Aid does a pretty good job of trying to balance the budget to try and make the dollars go as far as possible. (**Private Practitioner, regional area**)*

Participants noted that resources for public legal services have always been scarce and that it is essential that they are used in the best way possible:

> *… you could have a whole lot more funding for Legal Aid, but you know that it's a bottomless pit really. The more money you pour in you're never going to reach a point where you could stop because the expectations become bigger and really these guideline changes really, I think were appropriate in terms of getting people to stop and pull back … What actually leads to a fair outcome? What's the best use of scarce resources? … if there's more money available that's a great thing, can fund more matters. But you're still going to have to go through this process of sifting out what are the most important matters to fund, what has the biggest impacts on people's lives, what has the most consequences, and at some point sort of get into this idea of who are the most 'worthy' recipients of Legal Aid. (**Magistrate**)*

Views differed as to the extent to which grant and DLS Guidelines could or should be amended, given the trade-offs between service eligibility and financial and workload impacts. The tighter the service eligibility, the lower the workload, yet the lower the level of services provided to the community. The wider the eligibility, the bigger the drain of the summary crime services on the Legal Aid Fund.

VLA staff expressed concerns about the appropriateness of the mix of summary crime services available for particular types of matters, people and circumstances, and the most appropriate service level and environment for dealing with them. Put simply, a pressurised DLS environment was seen as being ill-suited and inappropriate for some more

complicated clients and matters. However alternatives, such as undertaking some work on a minor work file basis was also problematic within the current service settings.

VLA staff views expressed at a broad level fell mainly into the following areas:

- Having a mix of services is essential.
- Services are generally appropriate to the matters.
- Generally the mix is appropriate, but some people falls through cracks.
- Services are appropriate, but not enough staff / insufficient capacity / need to expand to meet growing demand.
- Guidelines and policies support consist service.
- Those who need it can at least get basic advice.

VLA staff more specifically suggested the following:

- More people and matters should be eligible for grants of legal assistance.
- Should do more for people without priors / not facing imprisonment / young people / to support diversion.
- DLS service environment problematic for some difficult matters and clients.
- Minor work files are too restrictive.
- Need to value the work being done to help people better.
- DLS under pressure in regional areas where no one else is available to do VLA funded work.
- Duplication / double-handling between Legal Help, in-office appointments and DLS.
- Too many clients don't keep in-office appointments / not as useful as seeing them at court in the DLS.
- Need better referral capacity (i.e. support, options).

In the following sections we report the analysis of participant views concerning the mix of VLA's services for summary crime matters, and the appropriateness of VLA's grants of legal assistance and DLS, including the impact of the 2012–2013 grants and DLS Guideline changes on the mix of summary crime services in more detail. Note that this analysis is predominately based on the views of VLA staff and private practitioners.

Mix of VLA's summary crime services

The interviews, focus groups and VLA staff survey canvassed whether or not the mix of services provided by VLA for summary crime services was appropriate.

VLA staff were asked what they thought about the mix of summary crime services VLA provide. While VLA staff tended to characterise the mix of services as appropriate, there were divergent views as to the appropriateness of particular elements of the guidelines, VLA policies and practices. The main themes concerning the mix of services from the VLA staff survey are set out in Table 6.1.

Table 6.1: Main themes concerning the mix of VLA services for summary crime matters, Online VLA Staff Survey

VLA service	Main themes
Overall mix	• Mix generally appropriate • Mix is essential given current funding, but insufficient capacity to give more than a basic service to many • Clients receive good service from Summary Crime Program • Given budgetary limitations, yes mix is appropriate • Good range of services and matters covered • Overall, yes, but some cracks / service gaps • Main gap is inability to assist on a contest if don't satisfy grant guidelines, but client can afford private representation • Mix is appropriate, but not the way they operate in practice • Good mix, but the parts could work together better • Need to expand to meet growing demand • Too many people miss out on services they need • Don't have sufficient resources to adequately meet demand
Grant of legal assistance	• Eligibility for grants could be widened • Special circumstances too restrictive • Young people miss out • People should be able to get a grant for serious driving matters
Duty Lawyer Service / Court attendance	• DLS too busy and likely to get even busier • DLS deals with the bulk of summary crime matters, so other services to ease pressure are beneficial • Having to deal with clients on a Duty Lawyer Record basis can be inefficient and affects continuity of service • Useful to see some clients in-office in advance of return court date • Some really serious and complex matters are hard to deal with adequately in the duty service environment • Way in which serious driving matters are assisted through duty should be changed
Minor Work File	• Important to fill service gaps • Beneficial, but too restrictive and undervalued • Some matters and court return dates exceed MWF time limits • Need better ability to do minor work for some types of matters
Legal Advice appointments	• Lack utility unless can relieve stress on DLS • Shouldn't do unless have access to police brief
Legal Help telephone service	• Fills a vital role / great service • Need to improve waiting time / line is very busy • Could have access to appointments calendar • Clients in regional areas give up when they have to wait too long
Referral	• Lack of accessible services e.g. crisis accommodation, rehabilitation

Note: N=89 survey respondents.

Some VLA lawyers thought the inter-relationship between different summary crime services was less effective or efficient than they otherwise might be. The following responses illustrate these views:

> *… my experience is the bulk of the service happens in the DLS and this can feel inefficient. For example, someone might ring Legal Help and get some information about court, but they won't get advice on their specific matters. Or they might have an advice appointment, but not have their paperwork, so again will get legal information. Then they turn up at court to see the duty lawyer in the same position as someone who hasn't done that prior preparation. (**VLA Lawyer, Greater Melbourne**)*

> *From the perspective of my work we end up helping the vast majority of summary crime clients across the district simply because fewer and fewer private lawyers are doing work in this space. The work happens regardless of whether it's a MWF, DLS or LIT file because we do it all ourselves. Few barristers are ever briefed by me or my summary crime colleagues so a lot of what was once LIT file work is now done on MWFs, and what was once done on MWF's [are] now done on multiple DLRs. (**VLA Lawyer, regional area**)*

> *It's a bit less clearer who is eligible for a minor work file, and then there's this unknown category of work that we do as duty lawyers when we have to do it on the next [mention], when the prosecution needs to get material and needs to come back to you with that, and what type of work are you able to do, if any, in the meantime. That might be a minor assault where they're not going to get a CCO, but we need the CCTV footage, and they don't have the capacity to represent themselves. They obviously can't pay for a lawyer. (**VLA Lawyer, Greater Melbourne**)*

One of the main areas of concern for duty lawyers was matters that had been adjourned multiple times were 're-subbed' back to the duty lawyer mentions list. Lawyers explained how matters were adjourned for a variety of reasons, such as unavailability or incompleteness of police briefs of evidence, or to obtain supporting statements and the like. While the 'normal' procedure is to adjourn matters to a day when the lawyer is scheduled to duty, things happen and rosters change which means that another duty lawyer may have to pick up previously adjourned matters. This was described as one part of duty lawyer work that can 'slow things down' because 'the client needs to tell their story' again, and the lawyer may need to 'start from the start' (VLA Lawyer, Greater Melbourne). Some lawyers expressed concerns about the quality and consistency of client service the DLS was able to provide, and how this potentially impacted some high need and more complex clients.

VLA lawyers suggested that changing minor work file policies might be one way to improve services for those clients at risk of falling through cracks. VLA lawyers also suggested reviewing the mix of services to try to take certain types of matters out of the DLS context, particularly complex and time consuming matters potentially handled more efficiently and effectively in another service environment. For example, VLA lawyers suggested reviewing the minor work file guidelines to provide more scope for more intensive forms of service for particular identified matter types would be another way to get some of the more complex and time-consuming matters out of the duty lawyer list.

There was also a general view that VLA's summary crime services were not fully valued because VLA's administrative systems did not adequately capture the level of work required for some matters and clients. A mechanism to 'extend duty' and improve clarity concerning the matters and clients where more intensive DLS services are appropriate was suggested as a way to reduce the number of matters that have to be 'kept on duty lawyer

records' and to improve the appropriateness and quality of DLS service (VLA Lawyer, Greater Melbourne).

Appropriateness of grants of legal assistance

Legal practitioners cited a number of concerns with the appropriateness of the 2012–2013 Grant Guidelines, and how particular types of matters and accused had been impacted. When asked whether the grant eligibility guidelines were right or should be amended, private practitioners and VLA staff reported broadly similar concerns concerning ineligibility for particular types of matters, people and circumstances, and consequently matters 'slipping to the duty lawyer' where the type of assistance available is in turn limited by the DLS Guidelines. For example, one benefit of expanding eligibility for grants of legal assistance would be to relieve pressure on the DLS, particularly the 'crush of numbers' and complexity of some matters:

> *… the matters that kind of add to the pressure of duty lawyering are the ones that slip through the gaps. So if we had more funding, also if we could get more grants, we could widen the guidelines a bit. It's obvious. (**VLA Lawyer, Greater Melbourne**)*

> *The more stringent the guideline, the more that gets dumped on the duty lawyer without the capacity to properly present that, because there's the crush of numbers. If we're having all of this emphasis on extra police, extra prosecution and family violence matters, a pro-prosecution approach by the police, that needs to be matched in terms of funding of Legal Aid services … (**VLA Lawyer, Greater Melbourne**)*

Private practitioners and VLA staff also questioned the operation of the 2012–2013 Grant Guidelines and the conception of those 'most in need' as those at greater 'risk of imprisonment'. Analyses of the key areas of concern with the operation of the grant eligibility guidelines centred on the following five issues:

- lost opportunity for diversion and early intervention – first offenders and young people
- adverse outcomes beyond risk of imprisonment
- a defendable case – a 'good' not guilty
- imprisonment for traffic and driving offences
- special circumstances for complex clients.

Evaluation participants provided a number of examples of how they thought that the Grant Guidelines worked against clients' access to justice. For example, Box 6.1 provides one example illustrating concerns about how some clients potentially fall through 'gaps' in the eligibility requirements for summary crime legal assistance services, and how those unable to afford private legal services may face the 'referral run-around' trying to obtain public legal assistance.

Box 6.1

> [To] give an example of how the system works, I saw a lady as duty lawyer last week. Her car was involved in a car accident in which an independent witness said there was a 20 year old … male driving the car. Not long after, she was observed by a neighbour asleep in her car in her driveway, drunk as a skunk. The ambulance was called. The police were called. She's been charged with drink driving and failing to nominate who the driver of her car was … She has no recollection, because she was drunk, as to who was driving her car and she doesn't remember how she came to be sitting in her car … She potentially should get off both those charges: a) because she was so drunk she doesn't know, b) there's no proof that she was driving, and in fact there's evidence that someone else was driving the car. She is on a pension. She has a disabled child. If she loses her license any time at all it's a disaster for her … if she goes down on either of [the charges] she faces 12 months or two years off the road. She doesn't qualify for a grant of legal aid. I think she's got a defence to both charges. I've actually seen a memo that … one of the prosecutors put onto the prosecution going 'We've got some problems here guys'. So I know that the police know that they've got problems. But now Legal Aid used to do what they call minor work files. I told her to contact Legal Aid and get some assistance to do a contest mention, to try and put some pressure on the cops and she was told 'Go away, go to a community legal centre', where she saw, at their … night advice service, [someone] … who didn't do crime and had no idea, and [who] told her to go and see the duty lawyer. (**Private Practitioner, regional area**)

While Box 6.1 also indicates that the above listed key areas of concern will, in practice, often overlap, in the following section we report on them separately.

Lost opportunity for diversion and early intervention: first offenders and young people

One concern with the operation of the Grant Guidelines is that some people who might particularly benefit from the more intensive forms of legal assistance afforded by a grant of legal assistance miss out due to their being unlikely to be imprisoned, such as where they have no prior offences. Legal practitioners cited various circumstances where they thought that the relative impact of a criminal conviction on an individual was as important as the likelihood of imprisonment.

Private practitioners and VLA staff identified people facing a first criminal conviction for some types of 'serious' offences – such as deception, drug and violent offences – as potentially having a substantial impact in terms of how a criminal conviction would affect their employment and future prospects, particularly given that Victoria does not have spent convictions.

In particular, 'young people', variously identified as those aged 18 to 25, were identified as one group who were less likely to qualify for grants of legal assistance due to an absence of prior offences, yet who potentially had the most to benefit from avoiding a criminal conviction. This speaks to how the relative 'impact' and the 'societal consequences' of a

criminal conviction affect views about who is 'most in need' of VLA's summary crime services. For instance, evaluation participants frequently pointed to the relative impact of a first conviction vis-à-vis the impact of another conviction on someone who already had an extensive number of convictions, and why someone with multiple priors should be eligible for a grant to try to obtain a third or fourth Community Corrections Order instead of prison, when a young person may be ineligible to receive a grant because they are only looking at a Community Corrections Order.

Legal practitioners also identified potential 'justice' benefits of targeting more resources for 'early intervention' with young people, and how legal advocates held more sway with police prosecutors and magistrates in terms of seeking various forms of 'therapeutic', 'diversion', and 'no conviction recorded' outcomes. In particular, 'early advocacy' was said to be beneficial for negotiating both 'diversion' and 'paths to rehabilitation' that might save the justice system, and the community, expenditure in the longer term (VLA Lawyer, Greater Melbourne). A common view was that because diversion had to be agreed by the police informant, a young person with a realistic chance of diversion may miss out:

> *It might be a young person, who might be in the space of a diversion, but they wouldn't even know what a diversion means … Well, they might see a duty lawyer who might give them that advice, but there will be circumstances where they're not availing themselves of a better outcome. (**Advisory Group Member**)*

> *There are life-changing consequences that are short of imprisonment before an accused every single day, whether it's missing out on diversion or whether it's being put on the sex offender's register … convictions. All that sort of stuff. (**Private Practitioner, Greater Melbourne**)*

Legal practitioners suggested that young people should be considered as an 'exceptional' or 'special circumstance' category, and that it should be possible to come up with a set of eligibility requirements to target those who may suffer the biggest detriment and are 'most in need'.

These views are illustrated by the following:

> *Sometimes it is important for first time offenders to be represented to ensure they keep a clean record if at all possible (**VLA Lawyer, Greater Melbourne**)*

> *But just in terms of vulnerable people, I'm just wanting to mention young people who are 18 and over who might be charged with assault matters, they're serious matters, but because it's their first time in adult court they're not likely to go to jail, but it's a serious intent to cause injury or reckless to cause serious injury and they've got no prior history in the adult court and they're not aidable. How are they going to negotiate their charges from an intentional to a reckless to cause injury? (**Private Practitioner, Greater Melbourne**)*

> *We need to be targeting services to young people. It doesn't just stop because you turn 18. Whether or not there needs to be some different type of service available to people under 21 or under 25 to reflect: one, how people mature, but also, two, the impact. If you're a 40 year old with 10 priors for dishonesty, really one more prior for dishonesty is not going to have that much impact on your life, but if you're an 18, 19 year old job seeker who's all of a sudden got a conviction for deception or drugs and you've got a good defence to it, then consequences for them and for society is so huge that maybe there needs to be some explicit recognition of that, both in terms of who's eligible for granting assistance, but also in terms of providing assistance for people looking at diversion … (**VLA Lawyer, Greater Melbourne**)*

One VLA Lawyer drew parallels between VLA services targeted to children to support diversion and community orders, and young people falling into the adult summary crime stream:

> *… we, as an organisation, acknowledge that that's a priority by making it an aidable part of Children's Court procedures, saying we'll aid someone if they're looking for a supervision order or a diversion. So you're saying, well, they're either going to go to jail or we can get you a diversionary outcome, then we should be representing you. I think the rationale, it's good for children. It's still good for a 21 year old whose life's going to be stuffed up. (**VLA Lawyer, Greater Melbourne**)*

As illustrated by Box 6.2, another VLA Lawyer described how the presiding magistrate was sometimes seeking assistance from a duty lawyer to avoid imposing a criminal conviction, but that because the person is ineligible for a grant of legal assistance, the duty lawyer was limited in terms of the type of legal assistance that can be provided on a duty lawyer basis.

Box 6.2

> … the issue, as well, is that sometimes there's an inconsistency between the matters that we can become invested in and [what] the court becomes invested in. So you'll have matters where magistrates will know someone's young, haven't been before the court before, the court wants to do all they can to keep this person from getting a conviction on their records, they'll adjourn it off, do this and do that. So the court and the magistrates themselves actually take that view that it's of a benefit to society, it's really important that this person isn't incorrectly dealt with and doesn't get a conviction on their record. But then, as an organisation and as lawyers, we can't become as invested because they don't qualify for a grant of aid because they're not going to go to jail. (**VLA Lawyer, Greater Melbourne**)

Adverse outcomes beyond risk of imprisonment

Another common identified concern with the Grant Guidelines was the impact of the targeting of grants of legal assistance to those people assessed as being at risk of imprisonment. Private practitioners said that, in addition to young people, raising the severity of the offences meant that people satisfying the means test, who are on low incomes and who cannot afford a private practitioner, but not at risk of imprisonment, have to rely on the duty lawyer service.

Some VLA lawyers observed that, in terms of consequences and impact on the individual, 'significant' community corrections orders could be as bad or worse than a short prison sentence (VLA Lawyer, Greater Melbourne).

A private practitioner who provides duty lawyer services in a regional area cited the situation where a person might have spent some time on remand and received a contested bail application, but were ineligible for a grant of legal assistance because they were likely to receive a Community Corrections Order:

> *I've had a number in the last few years where I've made a contested bail application and then told the person 'Well, I'm sorry I can't, you've got to see the duty lawyer from now on, because you're not facing jail.' … that's happened a number of times and people go 'What?' They got locked up.*

> *They spent a weekend or a week in jail. They had a contested bail application done. That's how serious the matter is. But because they're facing a Community [Corrections] Order, they're not eligible … (**Private Practitioner, regional area**)*

Private practitioners that we spoke with were also concerned that the likelihood of imprisonment test was sometimes difficult to apply in practice, and that VLA had issued restitution notices when they had made a different assessment as to the likelihood of imprisonment:

> *… we were given restitution notices all over the shop for doing a good job and taking someone at risk of imprisonment and giving them some other outcome and Legal Aid said, 'Well that bloke's never going to go to jail so give us the money back' … You just become trigger shy. You're not willing to take a punt on a client … it brings into play decisions that you wouldn't ordinarily make … (**Private Practitioner, Greater Melbourne**)*

Private practitioners also reported that VLA had issued a practice note to clarify how the likelihood of imprisonment should be assessed, and had changed compliance practices.

A defendable case: a 'good' not guilty

Another common issue raised by private practitioners and VLA staff was how people with a 'good' not guilty plea, who would satisfy the merits test for a grant for a not guilty plea, were unable to avail themselves of that due to failing either the grant means test or the likelihood of imprisonment guideline, yet could not afford the services of a private practitioner.

'Plenty of people who would otherwise qualify on merit' were said to be missing out on grants of legal assistance that could make a difference to them (Private Practitioner, Greater Melbourne). Some VLA lawyers suggested expanding the guidelines for those not facing imprisonment where justified by the merits of the defence or other exceptional circumstances. Others suggested that the not guilty guideline was too stringent and that clients who 'have a viable defence' should not be encouraged by the guidelines to plead guilty.

Some legal practitioners thought that there should be more scope for a client to obtain assistance through to a contest mention, as this would assist in negotiations with prosecutors, however, others thought that if the client then had to be 'left hanging' at a contested hearing, because no further assistance could be provided, then that would not be beneficial.

These observations concern the 'justice gap' or 'representation gap' discussed in Chapter 2. Private practitioners and VLA lawyers explained how the consequence of ineligibility for a grant of legal assistance was, again, 'slipping' into the duty lawyer service stream, where the service options were limited and the DLS is unable to provide in-court advocacy to plead not guilty. One VLA Lawyer described how the DLS commonly assists people with 'good' defences to get an adjournment and advises them to seek assistance from a private practitioner, who then return and seek further help from the DLS because they were unable to pay for private assistance:

> *There are people who can't afford a private lawyer and who are not eligible [for a grant]. We would often adjourn and send them off to see a private lawyer, and when they can't afford it, they just rock up back to see the duty lawyer on the day. Those kind of matters put a lot of stress on you. (**VLA Lawyer**)*

Another VLA Lawyer described her biggest concern with VLA's guidelines as those clients likely to be found not guilty at a hearing who are ineligible for a grant of legal assistance:

> *What actually bothers me are people who can qualify for the duty lawyer service but don't qualify for a grant of aid, that I can only help up to the contest mention stage … I've had a couple, maybe three or four matters, that I've actually thought at a hearing they would not be found guilty, but they had to take the [sentencing] indication because they'd either be self-represented or have to pay to go any further. I think of all the concerns I have about Legal Aid funding that's the biggest … some people have something on their criminal record that they shouldn't have just because we couldn't help them. (**VLA Lawyer, Greater Melbourne**)*

During the interviews VLA managing lawyers also indicated that greater scope to act on some 'not guilty' matters would be beneficial for a number of reasons. First, it would support the interests of justice, and clients, as well as professional development and fulfilment. Second, while 'genuine' not guilty clients sought assistance from the DLS, they were infrequent. Third, having a greater scope to pursue not guilty pleas would increase negotiation power with prosecutors and benefit VLA's wider summary crime work:

> *… the major funding issues is that, we and the private profession can't run pleas of not guilty very easily in deserving matters. Now, having said that, the numbers of pleas of not guilty aren't astronomical … So, some sort of funding for pleas of not guilty would probably not cost the organisation a huge amount, but potentially it gives more bargaining power to the defence. (**VLA Managing Lawyer, Greater Melbourne**)*

Imprisonment for traffic and driving offences

The most frequently raised issue concerning the operation of the grant eligibility guidelines was the general exclusion of *Road Safety Act 1986* (Vic) offences from grants of legal assistance and the application of the requirements for the exception with respect to people with a psychiatric or intellectual disability or an acquired brain injury.

Legal practitioners commonly said that there was no difference between the legal need of someone likely to be imprisoned for non-driving offences and that those likely to be imprisoned for driving offences. The widespread view of legal practitioners appeared to turn on the idea that if the principle for determining eligibility for a grant of legal assistance is likelihood of an immediate term of imprisonment, then it should apply equally to all types of offences.

This view is illustrated by the following:

> *… it's difficult to see how someone who's going to go to jail for driving their car's need is different to someone who's going to go to jail for something else … (**Private Practitioner, regional area**)*

Legal practitioners pointed to the issue of people on suspended sentences for driving offences, and those with a number of priors as needing access to the 'more intensive' legal assistance afforded by a grant of legal assistance.

Legal practitioners also explained that when people are sentenced to jail for driving offences they may then be eligible for a grant of legal assistance to appeal the sentence. A Private Practitioner who provides duty lawyer services questioned whether expending resources later at the appeal stage would, in fact, be more beneficial coming earlier in the process:

> *… the change to the guideline around traffic prosecutions... [they] all slipped to duty … And you have clients who are clearly going to jail and have five or six briefs and turn up to the duty lawyer … it just seems strange that they're not eligible for a grant in the Magistrates' Court but if they are sentenced to imprisonment and appeal, then they are. And you would think that getting it right the first time and spending two-thirds or a half of what the appeal fee is, would be the more appropriate way of dealing with it. But that's probably the biggest issue that I've seen. (**Private Practitioner, regional area**)*

There were, however, other participant views based on the way in which driving offences tend to be dealt with by the Magistrates' Court. For example, the following VLA Managing Lawyer explained that there were benefits to excluding driving matters, and of filtering them through the DLS:

> *… one of the weird things is, in the past you'd go and represent people who had drive while suspended, and you'd stand up and prattle on, and they'd always get pissed with you, because they were unhappy with the result, but nowadays if somebody comes in with a drive while suspended, you sort of say, look mate, first offence you get x, y, and z, we can't represent you. The reason why we're seeing you, is because it's sort of a filtering thing to try and work out whether you are in danger of jail … and people when you speak to them, they're eight times more appreciative and say, 'Thank you, that's great, it was very helpful'. (**VLA Managing Lawyer, Greater Melbourne**)*

Evaluation participants identified driving while disqualified or suspended, and driving in breach of orders, as an acute issue in regional and rural areas because lack of public transport increased the risk re-offending and, consequently, imprisonment (Private Practitioner, regional area; VLA Lawyer, regional area).

When the issue of imprisonment for driving offences was canvassed with magistrates, there was wide frustration, again, stemming from change in the way in which drive while suspended and disqualified charges are dealt with:

> *… the changes that occurred in 2010. It was, second offence; jail is the starting point. That changed. You've got to be pretty bad to go to jail [now], and when you do lock them up, for a 6-month sentence, you're going to get an appeal ordinarily. I predict to you in those cases the County Court will not uphold the decision, they'll actually grant the appeal. It's a pretty soft environment. We're not taking that sort of stuff seriously … That's the question that needs to be asked. (**Magistrate**)*

Magistrates also pointed to potential benefits of diversionary or additional sentencing options to better deal with those on the cusp of imprisonment for driving offences, and contrasted diversionary approaches that had been successfully developed and implemented for other acute issues. For example:

> *… we have a pretty strong diversion program now. I think the next big thing has got to be around driving matters, particularly around drink driving and driving while suspended. (**Magistrate**)*

The other main issue raised by private practitioners and VLA staff concerning eligibility for grants of legal assistance for driving offences concerned difficulty applying the exception for people suffering a psychiatric or intellectual disability or an acquired brain injury. The primary concern was people who do not satisfy the exception because they are not receiving services under the *Mental Health Act 1986* (Vic) or *Disability Act 2006* (Vic):

> *… someone that earns say a couple of grand a week can more than likely go and afford a private lawyer. But when you've got someone who maybe has a really low IQ and you're turning around*

> *and telling them they have to go into court themselves because we can't assist them with a drive whilst suspended matter, that's when issues arise. (**VLA Clerk, Greater Melbourne**)*

Lack of provision and access to mental health and disability services, particularly in regional and rural areas, mean that people who are not receiving services from authorised providers, yet are 'not well', are ineligible (Private Practitioner, regional area; VLA Lawyer, regional area). This issue was also raised more generally by participants who said that the Special Circumstances grant guideline was problematic, and we discuss this further in the next section.

Special circumstances for complex clients

Some participants reported that the special circumstances requirements for a grant of legal assistance were too restrictive. Various examples where clients had not qualified for a grant because they did not fit the definition of 'intellectual or psychiatric disability' because they were not an 'eligible person' under the *Disability Act 2006* (Vic) or receiving services from an approved mental health service under the *Mental Health Act 1986* (Vic) were cited.

Some VLA lawyers said that the special circumstances requirement should be relaxed to provide that a diagnosis is sufficient for eligibility. For instance, participants from regional areas again pointed to the lack of available local services, and further explained how in regional towns some people with mental health issues receive care from a local general practitioner rather than 'an authorised mental health organisation'.

Another VLA Lawyer in a regional area provided an example of a client who was previously ineligible for a grant of legal assistance, but after being placed on a justice plan which included attending services from a registered service provider, would now be eligible if faced with the same charges.

Other VLA lawyers thought that the special circumstances grant requirements should be wider and include different combinations of circumstances and factors that make it harder to work with clients in a duty lawyer context, and also where complex and high need people are at risk of a Community Corrections Order with onerous conditions, especially given the consequences of breaching those orders.

The interplay of the relationship between VLA's Summary Crime DLS Guidelines and the Grant Guidelines is examined further in the following section.

Appropriateness of the Duty Lawyer Service

While the 2012–2013 DLS and Grant Guidelines changes were expected to result in certain matters moving from the grants service stream to the DLS service stream, the assessment and triage DLS model was intended to provide increased duty lawyer service capacity to provide in-court advocacy for priority clients and significant matters. However, an increase in the volume of matters above and beyond the guideline changes 'soaked up' the anticipated additional service capacity and extended DLS workload pressures (VLA Manager).

The general view of a cross-section of participants was that the DLS generally targeted legal advice and in-court advocacy to 'the right people and right matters'. VLA staff generally thought that the assessment and triage model was vital for coping with heightened demand for DLS assistance by providing a framework for prioritising those seeking duty lawyer assistance. Nonetheless, there were concerns over the appropriateness of the DLS services, principally how the DLS Guidelines operated for some particular types of people and matters, and what it was realistic and appropriate to expect the DLS to do in a pressurised and time-constrained service context.

While the DLS was overwhelmingly characterised by a cross-section of participants as an effective service, there was widespread concern over the volume of matters duty lawyers faced at some courts, in turn affecting the time available for each client and exacerbating workload pressures. Both matter and client characteristics were said to affect day-to-day DLS workload, with an inescapable trade-off between the number of clients and the complexity of their matters, and the time constraints of the duty lawyer service environment.

Duty services were described as being 'pound for pound, the best way to deal with most of the stuff in the Magistrates' Court' and as the 'easiest way to resolve matters as quickly and effectively as possible' (Advisory Group Member). Providing legal assistance services at court on a duty basis was identified to be an effective and efficient way to meet need, and complemented and was supported by other pathways into VLA services. For instance:

> *… the court is obviously the place where you will get the highest volume of people with criminal charges seeking help because even if they're not going to do anything else, the majority of them will go to court. So it's a good place to capture them as opposed to trying to get them in here earlier. We do an appointment service and previously in different offices we've offered drop in clinics … I think it's probably good to have a few different pathways to get into Legal Aid. (**VLA Managing Lawyer, Greater Melbourne**)*

The DLS was similarly described by various participants as 'highly effective', notwithstanding that it faced 'a massive stream of criminal matters' and people in custody and was constantly 'under the pump':

> *I actually think duty lawyers are highly effective … it's a really good system that should stay. I think we're just under the pump at the moment because of the increase in work. But it is a system, I think, that's a very efficient one … We understand the client base. We understand the needs. We understand how the court works. We all get to know our magistrates. We get to know how the court operates. They know us. (**VLA Lawyer, Greater Melbourne**)*

> *… there's a massive stream of criminal matters … and then there's people in custody, and people that just turn up because they're not quite sure what they're doing … and they're pretty much funnelled into VLA and the work they do is tremendous, it's really good. (**Police Prosecutor, Greater Melbourne**)*

Consistent with the analysis of the administrative data in Chapter 4, VLA managers thought that the 2012 DLS Guidelines change had resulted in the DLS doing a higher volume of work, at a more intensive and complex level (VLA Manager; VLA Managing Lawyer, Greater Melbourne).

Magistrates noted how duty lawyers often faced with complex matters and had to 'pick up the brief very quickly' and with 'minimal time' provide advice and a position as best they can; 'it's not easy' and they are under pressure on a day-to-day basis (Magistrate).

Magistrates further observed that while it was 'not perfect', the DLS was certainly beneficial to the court:

> *I'd always say that they have a difficult job because they do end up with the most difficult clients, the duty lawyers, frequently. I think they have for a long time done that really quite well. It's not perfect but it's done pretty well. (**Magistrate**)*

> *… it's rare for people in this court and in our region I think to fall through the duty lawyer crack. It's a really good service, the duty lawyer system … (**Magistrate**)*

Some of the magistrates interviewed said that they had been duty lawyers earlier in their career, and noted how the DLS now operated differently by triaging clients:

> *… we didn't really triage or effectively prioritise people who were most in need of assistance. (**Magistrate**)*

Overall, the DLS was said to 'work best' for clients who are more capable of helping themselves, who will be pleading guilty and who are looking at a fine or Community Corrections Order. Those are the types of matters that the DLS can deal with appropriately and efficiently on the day of their first mention (VLA Managing Lawyer, Greater Melbourne; VLA Manager).

The DLS, however, worked less well where there were complicating factors associated with:

- unavailability or insufficient police brief of evidence
- high needs and less capable clients facing all types of matters
- adjournments being required
- those who might be able to get a diversion.

The analysis of the appropriateness of the DLS examines the following:

- service challenges facing the DLS
- specific impact of 2012 DLS Guidelines change
- appropriateness of different service levels for particular client groups
- appropriateness of the assessment and triage service model.

Service challenges facing the DLS

In the VLA staff focus groups and survey we canvassed the main challenges affecting the appropriateness of the services the DLS provides. VLA staff reported a range of challenges. Overall, the most commonly identified DLS challenges concerned the duty lawyer service environment and heightened complexity associated with certain types of matters and clients. Note that the pressures on the wider summary crime system directly impact and manifest in the DLS. The main DLS service challenges centred on the following:

- high numbers of matters on duty lawyer lists / crushing demand / not enough duty lawyers / time pressures / long wait times for clients / complex clients
- increasing number of in-custody remands / remandees with complex personal issues
- lack of understanding of pressure DLS is under / lack of understanding of reasonable DLS capacity limits

- duty lawyers at some locations having to spend significant time waiting / conducting summary case conference / speaking with court staff / seeing people in custody / moving between different courts
- anyone with miscellaneous questions being referred to the DLS
- overstretched court / prosecutors / duty lawyers
- DLS not receiving priority from prosecutors or court staff at some locations
- absence / variation in diversion practices
- police briefs not available at court / can't assist client before court because police brief not available / lack of evidence in preliminary brief
- long wait times / no provision of therapeutic services / CREDIT/Bail Support / CISP in some locations
- inconsistent summary case conference practices / prosecutors don't respond to emails / unwilling to negotiate until contest mention / some prosecutors don't have authority to withdraw charges / lack of follow-thru with police enquiries / unavailable to case conference at court in afternoon
- additional challenges in rural and regional areas, such as 'mixed lists' (adult summary crime, children's crime, family violence, child protection) at some regional courts / lack of court support services / few legal and social service referral options
- lack of support services and referral options, such as accommodation, mental health, drug and alcohol, homeless
- inconsistent sentencing practices
- poor court infrastructure / layout / overcrowded / no private duty lawyer rooms / lack of cells / have to see in-custody clients at police station in some locations.

Matter and client characteristics said to heighten the service challenge included:

- more complex and serious matters
- higher rates of DLS priority clients requiring additional time and effort in some areas, including clients with mental health issues / ABI / intellectual disability / CALD clients needing interpreters
- higher incidence of drug and alcohol problem, particularly ICE / lack of rehabilitation services / drug affected clients
- clients presenting with multiple charge briefs
- higher level of socio-economic disadvantage / intergenerational poverty who cannot afford services from private practitioners.

The combination of these challenges varied from location to location.

Specific impacts of 2012 DLS Guidelines changes

The widespread view among VLA staff was that the 2012 DLS Guidelines changes had supported the DLS coping with the rising demand for services, particularly at busy Greater Melbourne courts, where duty lawyers would have been unable to provide universal service to all people seeking assistance from the DLS.

Generally, while the DLS Guidelines were thought to target legal advice and in-court advocacy to the right people and matters, again there were concerns about some people missing out on the type of assistance that they needed. Notwithstanding the recurrent theme concerning the rise in the volume and complexity of DLS workload following the

2012 DLS Guidelines, there was also a widespread view that the DLS should be doing even more with respect to certain types of people and matters. This tension appeared to be a primary source of the sustainability threats discussed in more detail below.

Overall, almost half (49%) of the 89 VLA staff who participated in the online survey had experience of the DLS before the 2012 guidelines change and the introduction of the assessment and triage model of service. Staff with experience of the DLS before the 2012 DLS Guidelines were implemented were asked a series of questions about how duty lawyer work had been affected. Table 6.2 reports these findings.

Table 6.2: VLA staff views of change in DLS work following the 2012 DLS Guidelines

Statement	Increased %	Decreased %	No difference %	Don't know %
Complexity and severity of matters	86	0	12	2
Volume of minor work files	19	49	14	19
Volume of in-custody	74	0	12	14
Demand for the DLS	72	7	16	5

Note: N=43 respondents. Data was missing for 1 respondent. Percentages may not total 100 due to rounding.

Notably, high percentages of staff reported that: the complexity and severity of the matters the DLS deals with had increased (86%), the volume of in-custody work had increased (74%), and demand for the DLS had increased (72%). Almost half (49%) reported that the volume of minor work files they did had decreased. These findings are consistent with both the analysis of the administrative service data reported above, and the other qualitative information collected. One VLA Lawyer explained that it should not be surprising that DLS work had become more complex because they no longer did 'low level' matters, and police initiations had increased in family violence matters (VLA Lawyer, Greater Melbourne).

The 2012 DLS Guidelines change was described as having had the effect of recasting the DLS as a 'more targeted and relevant service' (VLA Managing Lawyer, Greater Melbourne). VLA staff said that it was important to be aware that before the 2012 DLS Guideline change the DLS faced service capacity issues, and some people had to self-represent at court because the duty lawyer did not have capacity to assist everyone. Different VLA offices and duty lawyers used informal or ad hoc guidelines to prioritise services (VLA Managing Lawyer, Greater Melbourne; VLA Manager).

VLA staff also explained how the 2012 DLS Guidelines substantially changed the culture and the operation of the DLS. Prior to the 2012–2013 Grant Guidelines changes, duty lawyer also frequently encountered people in in the duty context with matters that satisfied the grant eligibility requirements. Duty lawyers tended to organise their work to try to dispose of the most matters they could, which meant that they tended to focus on more minor and easier matters that could be dealt with quickly, leaving the more complex and serious matters to be adjourned and frequently 'flicked out' to private practitioners under a grant of legal assistance (see Box 6.3).

Box 6.3

> … before the Duty Lawyer Guidelines, what a duty lawyer would do, is they weren't given any criteria to turn back work, which meant that if you had a duty lawyer, they would do probably 12 drive suspended and minor traffic matters per day. Because they were doing all that … effectively it had two effects. Firstly, they didn't have time to do more serious matters. Secondly, it led to a sort of a de-skilling process. What tended to happen is that if something more complex came in, they'd usually brief it to a barrister because of time pressure … and that also slowed down the movement of things through the court … Since we've moved to the new Duty Lawyer Guidelines, it effectively means that the court's always got a steady stream of work, so the magistrates aren't idle. They love the system, because effectively their main KPIs are around adjournment rates and moving things through the system. (VLA Managing Lawyer, Greater Melbourne)

One VLA Manager explained that the 2012 DLS Guideline changes were intended to achieve a 'cultural shift' away from the idea that the DLS could help everyone, and that as such, services had to be prioritised to particular types of clients and matters (VLA Manager). The 2012 DLS Guidelines were said to have improved clarity concerning who and what should be assisted by the DLS, and provided a basis for explaining to those ineligible why the duty lawyer would not be providing them legal advice or in-court advocacy. These views are illustrated by the following:

> *… previously there was nothing formal and every office would have been doing it differently and there was no real guidelines even in terms of [income level] about who we would help, and we'd just help people, and you'd come up with your own guidelines … but it was very ad hoc and there wasn't really any guidance about any of that. (**VLA Managing Lawyer, Greater Melbourne**)*

Participants expressed mixed views about whether or not the 2012 DLS Guidelines had struck the 'right balance'. Some thought they had 'swung too far' and too many people were missing out on assistance they would benefit from. For instance, a number of participants thought the type of help the DLS provided to people for minor matters was insufficient for some disadvantaged people, who cannot afford private legal assistance and who 'struggle with the process' of self-representing.

Some VLA staff also suggested that those who are familiar with the assessment and triage system can 'work it' so that they meet the eligibility requirements of the means test, while others indicated that a more sophisticated approach to means testing would be difficult in the duty lawyer service context, and would almost certainly lead to more delay and adjournments in the Magistrates' Court.

Other participants observed change in the type of people who received more intensive DLS services:

> *… nowadays, the ones who are definitely getting the representation are the ones that need it the most. (**Police Prosecutor, regional area**)*

> *… there were times in the past where I would have looked at someone thinking, he's on Legal Aid and he's dressed in a $400.00 suit, clearly working and just too tight to part with a dollar for representation. But you don't see it very much anymore, if ever. (**Police Prosecutor, Greater Melbourne**)*

> *It used to be everybody who came. It was like, yeah, fill out your form, and obviously it could be for a parking fine or a red light or something. Whereas now, we can say, here's a fact sheet about all the processes as well as the offence. (**VLA Clerk, Greater Melbourne**)*

VLA managing lawyers also expressed a consensus view that there needed to be some flexibility and discretion applied to the application of the DLS Guidelines in order to adequately deal with the day-to-day practical demands at court, and varying service capacity. This view is illustrated by the following:

> *I understand all the reasons why the Duty Lawyer Guidelines came in and – as they did and I think it's terrific that it's given lawyers an ability to say no to people in terms of representation, but I think slavish adherence to the guidelines it's a bit misplaced. (**VLA Managing Lawyer, Greater Melbourne**)*

VLA staff with experience of different offices and courts also pointed to variation in DLS practices. For example, VLA administrative staff do not attend and perform the clerking role at every court where the DLS operates, while private practitioners provide the DLS at other regional courts.

The overwhelming view of VLA lawyers was that one of the main impacts of the guideline change was how duty lawyer work had become more complex and demanding. This was seen as dual-edged. On the one hand, duty lawyer work was described as being more professionally rewarding, and that by handling more complex matters duty lawyers had developed greater skill and competency:

> *I think it is good that they are getting a chance to develop these greater skills. I also think they're doing it under so much pressure that they're not actually being able to reflect on their practice at all. (**VLA Managing Lawyer, Greater Melbourne**)*

On the other hand, the work was challenging in the current service environment, which, as noted above, often faces particular service challenges across different court locations.

As to the complexity of duty lawyer work, one Magistrate noted how an appearance by the duty lawyer signalled a more complex matter or defendant:

> *What it does help me with is that when I do see Legal Aid turning up for a matter, which on the face of it I think might not look very complex, I immediately tune in because I'm more alert to the fact that Legal Aid's in here, there must be something a bit complex or something that's going to come up as a part of this matter and that's usually a pretty spot-on indicator as well that there does turn out to be some reason why Legal Aid needs to be involved. (**Magistrate**)*

Similarly, magistrates observed that the DLS generally prioritised more severe matters:

> *I would very confidently say that has been my experience and Legal Aid doesn't get caught up in minor matters. (**Magistrate**)*

In contrast, private practitioners said that it was 'infuriating' to sit in court and watch a duty lawyer advocate in a matter that appeared to be outside the DLS Guidelines.

When participants were asked whether or not they thought the DLS Guidelines were appropriate, and whether or not people received the level of legal assistance needed, the main areas of contention fell into two categories. First, there were concerns about people ineligible for legal advice and/or in-court advocacy having to self-represent with prosecutors and in court. Second, there were concerns about more complex matters that were challenging to deal with in the DLS context.

As noted above with respect to concerns about self-represented defendants more generally, views about the appropriateness of the assistance provided for more minor matters, and to those ineligible for in-court advocacy, diverged. Some participants thought there were many people who, with legal information and/or advice, were capable of representing themselves:

> *I think the minor matters that people can represent themselves - we're not really going to make much of a difference. Your first time drink driver, or your speeder, that sort of stuff. That's fine. (**VLA Lawyer, regional area**)*

> *… the in-person people, there's basic things there that they can probably do themselves. It might not be as easy or straightforward, but they could actually do it. (**Magistrate**)*

Others cited concerns about how the DLS worked for particular groups of people, particularly those who lacked the skills and confidence to self-represent, and those less able to make effective use the legal information provided. A number of VLA staff noted how some VLA and DLS priority clients do not qualify for in-court advocacy due to the lack of severity of the charges. There was also a view that certain types of people should receive more intensive legal assistance at 'earlier' stages, even for less serious matters, to get better outcomes and to try and reduce the prospect of further offending. These concerns are illustrated by the following:

> *… those lower level offences … if we can catch them in the early stages where they are lower level offences and assist them there, they may not turn into these other offences. So I think that's another important reason why the guidelines should be – the scope should be broadened or there should be more discretion in respect of those minor offences. (**VLA Clerk, Greater Melbourne**)*

As indicated by the following prosecutor, there was also a view that the way that the DLS Guidelines worked meant that some people were 'falling through the cracks', although VLA would necessarily need more duty lawyers available to extend services to more people:

> *… it's pretty sort of black and white with their eligibility. Mind you if they did open it up to see all affected people, I mean you'd need obviously more duty lawyers … (**Police Prosecutor, Greater Melbourne**)*

Others indicated that as community understanding of the DLS Guidelines has spread, particularly in some locations, some people had learnt that the DLS would not help them with traffic and driving matters and that consequently they did not seek *any* assistance from the DLS, so their matter was not assessed and they did not receive any legal information or advice before going into court (Court Support Service, regional area; VLA Clerk, Greater Melbourne; VLA Lawyer, regional area). As the following VLA Clerk noted, some people may mistakenly believe that they are ineligible, and need to contact VLA to know for sure:

> *… They used to just come to court. We used to see everyone, whereas if they've actually contacted [Victoria] Legal Aid they probably know whether or not we can help them on the day. (**VLA Clerk, Greater Melbourne**)*

We examine the concerns raised about the appropriateness of the DLS for certain people and matters further in the next section.

Appropriateness of different service levels for particular client groups

One recurrent theme in the interviews, focus groups and VLA staff survey was concerns about the appropriateness of the different DLS levels of service for particular clients, matters and circumstances. For each of the three DLS service levels, various concerns about the match between the legal need and capability of the client and the service level provided were identified. While a number of concerns about self-represented defendants have already been discussed in the broader context of the criminal justice system, here we outline key concerns about the appropriateness of each service level. We also set out the perceived 'justice gap' between the legal needs of some people who have a 'good defence to run' or a 'good prospect of a diversion or non-conviction' and their ability to meet their needs through the DLS, privately or through self-representation. While this issue was also raised in the context of grants of legal assistance, the issue re-occurs in the DLS context because the DLS does not provide more intensive forms of assistance in defended hearings.

Legal information only

The DLS provides 'legal information only' to those accused assessed as ineligible for legal advice and in-court advocacy due to failing the means test or facing only a minor charge. The main VLA staff concern was that for those facing a minor charge there is no scope to provide other more intensive forms of services to clients who would otherwise be a DLS priority client (i.e. people with an intellectual disability, ABI or mental health issue; those experiencing homelessness; people who cannot effectively communicate in English; Indigenous Australians).

Those assessed as eligible for 'legal information only' are provided with written legal information in the form of factsheets, and sometimes oral legal information about the legal process. As noted in Chapter 2, there are 38 VLA factsheets covering various procedural aspects, common summary crime offences, as well as information about driving demerit points and criminal records. In general, people are given the *Pleading guilty*, *Pleading not guilty* and any relevant factsheet concerning the offences that they have been charged with (VLA Clerk, Greater Melbourne). VLA clerks are not lawyers, so must only provide legal information, and are not able to advise a client what they 'should be doing' or whether or not they have any legal defences as this is legal advice (VLA Clerk, Greater Melbourne).

A cross-section of participants reported that the DLS legal information resources were generally good and useful for most people, and 'mostly covered' the main things that the people receiving legal information only required. For example, one participant from a court support service with extensive experience of the DLS reported that the VLA factsheets were much better than what used to be available, and gave many people confidence to handle their matter themselves:

> *I love the factsheets, don't you worry. I don't know that you could make them smaller and I was a bit sick of VLA booklets … for people that don't read very well booklets can be quite a daunting thing. A factsheet's a really easy thing that you can go through it with them while you're sitting there. 'Can you understand that? We'll read it through for you, see how you go'. So I like the idea of factsheets. (**Court Support Service, regional area**)*

It should be noted, however, that court support services with the capacity to read and work through VLA's summary crime factsheets with defendants are not widely available.

VLA clerks and lawyers reported a number of positive features of the factsheets, and cited examples where they worked well:

> *I find the fact sheets, they're good – especially with the speeding and stuff. The penalties are set out really, straightforward … so it's good having that just set out clearly. (**VLA Clerk, Greater Melbourne**)*

> *… they cover pretty much everything that they would need to know so I think they serve their purpose. Definitely. (**VLA Lawyer, Greater Melbourne**)*

> *I had a lady yesterday who was very unsure … and she initially looked horrified, and then I gave her all the paperwork and what she could say in court, and when she came back she was very accepting and was like, 'Thank you for your help' and she seemed quite confident to go off. (**VLA Clerk, Greater Melbourne**)*

While the consensus view was that the factsheets worked pretty well for most people, they did not work well for everyone, working best for those more able to help themselves:

> *They're good for the clients who effectively know how to help themselves. (**VLA Lawyer, Greater Melbourne**)*

The utility of factsheets was variously said to depend upon clients' literacy and comprehension, communication skills, level of disability, and confidence to use the information. Where a person came to court with a caseworker, then the factsheets were said to work better because the caseworker could go through the material with them (VLA Lawyer, Greater Melbourne). VLA staff, however, highlighted the small proportion of clients who 'don't read', 'aren't helped by a factsheet', 'throw them away' and 'don't even take them':

> *If you think about our clientele, low socio-economic background, may not have even finished school. A fact sheet is not going to do it. (**VLA Clerk, Greater Melbourne**)*

Others said that it was hard to assess and know just how useful the factsheets were. For instance:

> *I think we see quite a lot of people that would be able to process that information and use it in a plea to a magistrate or use it in front of a magistrate. But it's very difficult to assess … I think that's the case with a lot of printed information that it kind of goes out there, but we don't actually know most of the time what they do with that information. (**VLA Lawyer, Greater Melbourne**)*

VLA clerks also described how it came as a 'shock' to some people who were only eligible for 'legal information only', and when they then realised that they will have to self-represent in court to either deal with the matter or seek an adjournment to obtain legal advice. VLA clerks explained that some people do not understand why they have to self-represent, and that often they received questions about why, and a series of questions about what the person should do:

> *… we still have to take them into a room and tell them that we can't assist them, and that can be very hard sometimes because they still think that it's a free service and everyone can use it. They don't understand that. (**VLA Clerk, Greater Melbourne**)*

> *… if they ask me a barrage of questions … I have to say, look, I'm not a lawyer, I'm sorry. (**VLA Clerk, Greater Melbourne**)*

Clerks further explained that although they are not allowed to give legal advice, some clients expect them to tell them what to do, and that some people 'just want to be told, like straight up' what they should do (VLA Clerk, Greater Melbourne). As illustrated by the following, VLA clerks had a common view that some people needed access to information verbally, particularly when factsheets were ill-suited:

> *I think they need someone to sit in a room with them that gives them a clear idea of what they need to go and do, like with that process. If they have to go represent themselves, they should be put in a position where they feel much more confident. (**VLA Clerk, Greater Melbourne**)*

However, this would, of course take time, and may not be practical in the context of a busy duty list (VLA Clerk, Greater Melbourne).

One aspect where clerks said that they would benefit from further training and service strategies concerned how best to provide the factsheets to clients, what to say to them, and how to respond to the typical questions that they asked about the process and what they should do next (VLA Clerk, Greater Melbourne). Examples of the questions clerks were often asked by clients included:

> *What do I say to the magistrate? What am I meant to say? (**VLA Clerk, Greater Melbourne**)*
>
> *What's the likely penalty? (**VLA Clerk, Greater Melbourne**)*
>
> *What do you think I should do? (**VLA Clerk, Greater Melbourne**)*

DLS clients assessed as eligible for 'legal advice and information only' may similarly be provided with written legal information in the form of factsheets, as well as verbal legal advice and information from the duty lawyer. The same set of concerns also applies in that context.

Legal advice and information only

The DLS provides 'legal advice and information only' to those accused who satisfy the income test, do not fall within one of the DLS priority client groups, and who are facing a straightforward charge. While these clients are not eligible for in-court advocacy, the duty lawyer has discretion to negotiate on their behalf with the prosecution at summary case conferencing, and they should also be referred to appropriate legal and non-legal services.

VLA lawyers indicated that the DLS tended to work well and was more appropriate, for those people who were eligible to receive 'legal advice and information only' when their police briefs were available, the charges were appropriate, and they were confident and capable of self-representing. These were the types of matters that were often disposed of on the day, and where the DLS was well equipped to meet clients' legal advice and information needs. This view is illustrated by the following:

> *… the people who fall into the 'advice only' category are people who don't have particularly serious charges … and people who don't have sort of indicators of priority … obviously they've all got a low income … but they're not looking at a really serious penalty on the face of it, and they can speak English or they have that capacity to do a bit of self-help. (**VLA Managing Lawyer, regional area**)*

VLA lawyers, however, reported two main areas of concern with the appropriateness of the 'legal advice and information only' level of DLS service. First, there were concerns about the ability of some groups of people to effectively self-represent, and to successfully act on the legal advice and information provided by the DLS. VLA lawyers pointed out a number of groups of people who did not fall within the DLS priority groups, but nevertheless experienced difficulty self-representing and making a 'good guilty plea' and 'saying the things they should say' (VLA Lawyer, Greater Melbourne; VLA Lawyer, regional area). These groups included: 'young and silly' people, very elderly people, people in poor health, people 'not comprehending', victims of family violence, people with drug and alcohol problems, people with self-control/behavioural issues, those in highly agitated states, and some recently arrived migrants. VLA lawyers also said that for some types of people it can take much more time to advise a client how to self-represent 'than to just appear for them as duty lawyer' (VLA Lawyer, regional area).

Some VLA lawyers said that they found it difficult not doing in-court advocacy for some of them people falling on the wrong side of the eligibility guidelines. For example:

> *I do find it hard to say no to people that you can see who might not meet the Legal Aid guidelines but usually there will still be some layer of disadvantage or some difficulty in understanding... (**VLA Lawyer, Greater Melbourne**)*

VLA lawyers also reported that it was often difficult sitting in court and watching someone who was ineligible for in-court advocacy make a 'hash' of their plea when self-representing (VLA Lawyer, regional area). The following VLA Lawyer illustrates this experience:

> *Particularly when you've spoken to them and they've told you things and then you've said, 'Well, I can't appear for you' and then you're sitting in court when they appear and they're not saying half of the things they should be saying … (**VLA Lawyer, Greater Melbourne**)*

Clearly, clients who receive 'legal advice and information only' vary in their ability to follow and use the advice and information provided.

Second, there was also concern expressed with respect to those assessed as eligible for 'legal advice and information only' who duty lawyers thought should plead not guilty, and who might have a viable defence or prospect of diversion or non-conviction, but who 'clearly cannot afford' the services of a private practitioner, and who appeared likely to struggle negotiating a diversion with the police informant. We pick up this 'justice gap' issue again below.

In-court advocacy

Those assessed as eligible for in-court advocacy comprise those satisfying the income test who are priority clients facing a straightforward or significant charge, and non-priority clients facing a significant charge. As outlined in Chapter 2, significant charges are defined in the 2012 DLS Guidelines as those where the accused is at a real risk of imprisonment, a Community Corrections Order or a substantial fine – that is, a total fine of more than $1500. Clients eligible for in-court advocacy receive legal advice and information from the duty lawyer, who will also negotiate with the police prosecutors in a summary case conference, and represent them in court to either make a plea of guilty or to seek an adjournment to seek assistance from a private practitioner. DLS in-court advocacy does not extend to pleading not guilty at a contested hearing.

One VLA Lawyer explained that the 'working rule of thumb' was that they should be providing in-court advocacy where a Community Corrections Order is a likely sentence outcome:

> *… basically, we're meant to appear where people are going to get corrections orders or not. (**VLA Managing Lawyer, Greater Melbourne**)*

There were three main concerns about the appropriateness of the in-court advocacy service level. First, certain types of matters, such as serious driving offences where the accused is at risk of imprisonment and large multiple brief consolidations were often problematic to deal with in a duty lawyer context. For instance:

> *The concern is the large, and it doesn't happen every day, but the multiple brief, complex matters that fall on the duty lawyer. (**VLA Lawyer, regional area**)*

People presenting with multiple briefs were sometimes very time consuming, and necessarily take time away from other matters on the list. For example, a person with multiple briefs could effectively take the duty lawyer and a police prosecutor 'out of action' for an extended period of time, and this was often not feasible given other demands at court:

> *I can't have any expectation that someone who turns up with five briefs on a mention day is going to get their matter resolved that day by the duty lawyer. It's just not feasible … (**VLA Managing Lawyer, regional area**)*

> *… one that really impacts on both [of us] is a major consolidation of matters, and you could have anything up to nine to 10 or 11 to 12 … just with a rubber band around them, that have all got to be case conferenced. So you take a prosecutor offline and you take a, often the duty lawyer, offline, to try and negotiate your way through that. (**Police Prosecutor, Greater Melbourne**)*

Some of the types of significant matters that were previously eligible for grant of legal assistance but had slipped into the DLS service stream with the 2012–2013 guideline changes, were identified as often being problematic to deal with effectively in the DLS service context:

> *You're dealing with clients often in a really high state of anxiety with really complex issues in a way that you wouldn't do when you get them in for an appointment to discuss an indictable file, and you've got time and space. They've been waiting there a long time and they're really angry, and so there's that complexity to it as well … (**VLA Lawyer, Greater Melbourne**)*

Second, because it may not be possible to resolve the matter on the day, due to issues such as the preliminary police brief being insufficient to substantiate the charges, police prosecutors wanting to follow up with the informant, and the accused needing supporting documents and the like, the matter may be adjourned for another mention. Often the duty lawyer will adjourn the matter to a date when they are rostered to be at court, or they will attend court on a Court Attendance Record. If rosters change or they are unavailable, the matter will fall to the duty lawyer on the return date.

Depending on the nature of the work that may need to be done to progress the matter, such as obtaining medical or doctors' reports, the lawyer may also seek approval to do work on a minor work file basis. A number of duty lawyers said that 'doing things on a Duty Lawyer Record basis' could be inefficient and sometimes offered poor 'continuity of service' to clients, some of whom 'fell though cracks', where their matter may not have progressed

between court mentions, such as where police prosecutors had not been able to complete follow-up enquiries to obtain further evidence to fill out a brief or liaise with the informant. VLA lawyers also reported that this situation was often problematic as they are not the 'lawyer of record' on the matter, and that clients may have little contact with VLA outside of court dates. Again, this was something that appeared to vary across VLA offices and was affected by both the demands on the duty lawyer service and police prosecutors, and the nature of the stakeholder relationships.

Third, duty lawyers also said that because the DLS does not provide in-court advocacy in contested hearings, that is, where the client is pleading not guilty to one or more charges, clients may 'give up on' their legal rights because the DLS cannot help them, and they cannot afford private services. This was widely identified by participants as a key access to justice barrier. For less serious matters where a grant of legal assistance is not available after the 2012–2013 Grant Guidelines changes, such as matters where the accused is only likely to get a Community Corrections Order, the DLS is unable to provide in-court advocacy in a contested hearing irrespective of the merits of the defence.

Although duty lawyers 'push prosecutors' in negotiations during summary case conferencing, a number of duty lawyers said that they were constrained in summary case conferences because prosecutors know that the matter is ineligible for a grant of assistance and that they will not be able to 'push the matter through to a contest hearing' (VLA Lawyer, regional area; VLA Managing Lawyer, Greater Melbourne).

Clients wanting to pursue a 'not guilty' plea will either have to obtain representation from a private practitioner, or self-represent. Duty lawyers characterised this as an invidious decision that 'could produce guilty pleas' as many of their clients could not afford the services of a private practitioner, and did not feel capable of representing themselves at a contested hearing. This view is illustrated by the following:

> *… the system is encouraging people to plead guilty by virtue of us having to say to people, 'Well, we won't be able to assist you to contest this matter. You'll have to either engage a private lawyer (which they generally don't have the resources to do), or you'll have to represent yourself (which they're generally not wanting to do). We can assist you to plead guilty today'. And that's in circumstances where someone does have a viable defence. (**VLA Lawyer, regional area**)*

VLA lawyers said that they often 'had to have the sentence indication conversation' with clients:

> *I literally have to have the sentence indication conversation which goes something like, 'Today we'll seek an indication … Beyond that point you'll have to get a private practitioner for the hearing'. They read from that, 'Oh, I can't afford that, so I have to take this indication'. (**VLA Lawyer, Greater Melbourne**)*

This is the summary crime 'justice gap' that sits between the eligibility requirements for public legal assistance services and the cost of private representation.

Justice gaps – a defendable case or opportunity for diversion or non-conviction

The broad view of VLA and private practitioners was that VLA's summary crime services would be more appropriate if there was some scope to extend services to fill gaps. Two main gaps in the appropriateness of the legal services provided by the DLS were identified. These gaps stem from the way in which the DLS and Grant guidelines operate, and mirror

concerns with the operation of the Grant Guidelines. The first was the 'gap' between the services available for those with 'good defences', the second, those potentially able to receive a diversion or non-conviction. Duty lawyers explained that the DLS is not there to help people run 'unmeritorious defences':

> *We're always going to be telling people, 'Well, you've got no defence and if you want to run it you can do it on your own'. That's going to be a feature regardless of the guidelines. (**VLA Lawyer, Greater Melbourne**)*

There was, however, concerns that some clients 'will have a conviction that follows them for the rest of their life' because they decide not pursue a 'meritorious defence' when 'we've told them that's where our assistance ends' (VLA Lawyer, Greater Melbourne). VLA staff pointed to a gap between those who are eligible for legal advice and in-court advocacy services from the DLS who have a defendable matter but cannot afford to pay for private representation or effectively self-represent:

> *… there's a clear gap between those who don't qualify for us and those who can afford to pay for someone. (**VLA Lawyer, Greater Melbourne**)*

> *They can't afford it and they're not going to adequately be able to represent themselves to be able to run that defence. (**VLA Lawyer, regional area**)*

Police prosecutors also identified that a 'gap' exists:

> *… people that have some very good defences too as well, but they don't get the opportunity to properly present that defence. (**Police Prosecutor, regional area**)*

Duty lawyers pointed to clients who had prospects of diversion or non-conviction, particularly for minor and less serious matters where in-court advocacy is not available, and where negotiation with police prosecutors is at the discretion of the duty lawyer, as faced with an access to justice gap. While people satisfying the DLS means test are able to obtain 'legal advice and information only' for matters already listed for diversion, VLA lawyers said that the DLS Guidelines overlooked 'matters with diversion opportunities' and those who could be assisted to get matters listed for diversion (VLA Lawyer, Greater Melbourne). For example, VLA managers reported that:

> *If the guidelines are followed to the letter, we don't get to assist those clients eligible for diversion. These are often the clients we actually want to help and derive job satisfaction from being able to assist. (**VLA Managing Lawyer, regional area**)*

> *… if we want to try and divert people away from the criminal justice system, surely we should be putting our resources in at that first point of contact with the law. (**VLA Managing Lawyer, Greater Melbourne**)*

> *… you might have a matter that comes into a duty lawyer list and you look at it – first shop theft – and you're thinking 'Oh come on, this should really have been going to diversion…' (**VLA Manager**)*

There were, however, substantial barriers to clients obtaining a diversion, including awareness and understanding that it may be an option in the first place, or how to go about trying to get it:

> *… when you try and explain what diversion actually is, it's like trying to explain Chinese algebra. Conceptually it's difficult for them to understand, because you're still in a courtroom, they've still got a copper breathing down your neck, you've still got a magistrate looking at them … the difference*

> *between a reportable court outcome and a diversion is really difficult for them, conceptually. (**Private Practitioner, Greater Melbourne**)*

> *They don't know how to go about getting diversion. (**VLA Lawyer, Greater Melbourne**)*

One Magistrate said that diversion was something that the duty lawyer should 'be switched on to' as an option, while a prosecutor described duty lawyers as ideally fulfilling a 'sweeper role' in terms of picking up accused that should be diverted (Police Prosecutor, Greater Melbourne). Duty lawyers, however, face difficulties pursuing diversion:

> *… if we can't get diversion sorted on the day for them, we say, 'Here's an information sheet. Go and ring the informant' and they're like, 'Who's the informant?' 'Go and ring the police officer that charged you'. 'Well, I don't know who that was' or 'How do I get in touch with them?' I mean, having to get in touch with the police is not easy. (**VLA Managing lawyer, Greater Melbourne**)*

VLA and private practitioners identified someone potentially able to be diverted as a category of client that should be a priority for the DLS, and that there should be provision to negotiate with the police informant:

> *Personally I think that they should be someone who Legal Aid should be helping potentially under a minor work or something. Because if you're eligible for a diversion then you can have an advocate say to the police, 'Well hang on a minute, we think you should agree to diversion for all these reasons' and quite a lot of people aren't in a position to put that forward themselves … surely they're someone that Legal Aid should prioritise because it means they're going to avoid a criminal record and potentially with respect to the conditions that could be imposed as part of a diversion, you're looking at stopping people from coming back before the court again. So surely in terms of the system itself there should be a focus on that. (**Private Practitioner, regional area**)*

The level of service that clients receive from the DLS depends on how they are assessed and triaged, and we report findings concerning the operation of the assessment and triage model of service next.

Appropriateness of the assessment and triage service model

In this section we focus on the experience of VLA staff in implementing the assessment and triage model which was central to the reform of the DLS, and their views about the appropriateness of the criteria used. The views of other stakeholders are included as relevant.

How assessment and triage changed practice

The general view of VLA staff was that the benefits of assessing and triaging DLS clients outweighed the difficulty of doing so, although, again, there were divergent views about the practical benefits for some types of clients, matters and circumstances.

There was strong support for the view that the assessment and triage service model supported more consistent summary crime services across the state:

> *I think the triaging is very good. So previously there was nothing formal and every office would have been doing it differently and there were no real guidelines … but it was very ad hoc and there wasn't really any guidance about any of that. So I think that is very good and I think there are positive aspects. (**VLA Managing Lawyer, Greater Melbourne**)*

Views about the benefits of the assessment and triage tended to depend upon whether or not VLA administrative staff were involved, and the way in which particular Magistrates'

Courts operate. VLA staff explained that there was a 'two-stage' approach to assessment and triage when VLA clerks were involved. First, VLA clerks 'filtered out' clients ineligible to see the duty lawyer, that is, those assessed under the service guidelines as eligible for 'legal information only', applying the DLS assessment and triage worksheet or matrix. Second, VLA lawyers review the service worksheet in determining whether or not the matter was one where the client was eligible for in-court advocacy, or only legal advice and information.

Some variation in approach to assessment and triage across VLA offices was reported. In at least one VLA office, the Regional Managing Lawyer attended court to 'filter out' and deal with all the 'advice only' clients, passing on all the 'in-court advocacy' clients to the duty lawyer. This practice was characterised as 'next level triaging', and was suggested to be something that might work well at particular locations, depending upon the nature and volume of the matters that tend to be dealt with (VLA Lawyer, Greater Melbourne).

VLA clerks observed that when the assessment and triage model was first rolled out, there were a number of disgruntled clients, but as expectations had changed over time, assessment and triage had become easier:

> *I think now that they've been in for a while – it was difficult at the start – but like I said, people now don't have that expectation that they can get help for every single thing, you know, advocacy for every single thing. As people have become more aware of it, and we've obviously become more confident and familiar with the guidelines as well. It's not really an issue any more. (**VLA Clerk, Greater Melbourne**)*

Some VLA clerks thought it would be advantageous to have more people assessed and triaged 'earlier' by the Legal Help telephone service, as this might mean that those who were ineligible for legal advice and in-court advocacy could receive that information and referral earlier, and consequently would not come to court expecting to see the duty lawyer or add to the number of people that had to be assessed and triaged.

At locations where VLA clerks are not involved in assessing and triaging clients, views about the benefits of assessing and triaging clients were more mixed. Some VLA lawyers said the assessment and triage operated well, others said that given they had to talk to every client, sometimes it took longer to give legal information and explain the court process than it would take to do a quick plea. As such, this could actually *increase* time pressures on busy days. VLA lawyers in regional locations also made the point that because most of the people seeking DLS assistance in their area satisfied the DLS means test, the benefits of assessment and triage were not as large as they may be in some other locations:

> *Given the low socio-economic demographic in our rural region, very few people are knocked out by means, and few can afford private representation. This means that most of the weekly lists in each court see the DLS, [so we] see the bulk of the clients in the court list and assist them in one way or another. (**VLA Lawyer, regional area**)*

At those locations where the assessment and triage function falls on the duty lawyer, there was also a view that assessment and triage was not necessarily any more efficient, and that clients ineligible for legal advice or in-court advocacy can be frustrated and angry at having to wait so long to be assessed and triaged by the duty lawyer. This view is illustrated by the following:

> *… where [no one else is] available to do triage (country areas) duty lawyer needs to see client, obtain briefs etc. before can advise client as to options and even whether within the Duty Lawyer Guidelines. (**VLA Lawyer, regional area**)*
>
> *By the time you have seen the client to assess them and then provide fact sheets, the client gets very angry that you can't help. (**VLA Lawyer, regional area**)*

We report further findings concerning assessment and triage from the VLA staff survey in the next section.

Benefits and disadvantages of assessment and triage

Analysis of VLA staff views indicated that the main identified benefits of assessment and triage were:

- Help duty lawyer list management / reduce legal advice and in-court advocacy workload
- Target resources where most needed and/or where can most influence the outcome (e.g. priority client groups, more severe and complex matters)
- Clarity of priorities / targets and tailors services
- Help consistency of service
- Reserve services for those priority client groups who cannot afford private services (cf. remove those who can afford or don't need representation from duty list)
- Empower those with simple matters to handle them themselves.

The main disadvantages were:

- Turn away some clients who lack capacity to self-represent
- Some clients miss out on benefit of duty lawyer negotiating with police
- Detrimental impact on some clients is disproportionate to the work involved to help them
- Worry about some clients who miss out on a service / some high needs clients fall through cracks
- Limits discretion / too restrictive / too inflexible / don't consider enough factors / not nuanced enough
- Client denied the service they want can become angry and aggressive
- Takes time to explain why the DLS cannot assist
- Self-represented defendants slowing down the court process
- Conflicting Magistrates' Court priorities and demands
- Lack of private practitioners to refer people to in some regional areas
- Lack of strategies to manage client expectations
- Administrative staff clerking at court reduced office administrative support.

VLA staff also noted how the benefits of assessment and triage could also be 'undone' by practices adopted by courts. For example, a number of VLA lawyers said that the practice of their court was to first process all the self-represented defendants before then dealing with the matters in which the duty lawyer was appearing. One VLA Lawyer from a regional area even suggested that because of the way the court operated it might be quicker to appear in every matter:

> *For me to appear in every matter might, oddly, have the result of concluding our court day earlier than me sitting in the rear of the court watching the magistrate process a large number of unrepresented people before the final matters of the day which I'm in are dealt with. (**VLA Lawyer, regional area**)*

Ease of assessment and triage

We canvassed with VLA staff how straightforward they found the assessment and triage process. Overall, assessment and triage was characterised as being mostly easy or straightforward, but not always. VLA's supporting assessment and triage documentation, variously described as the 'service worksheet', 'service matrix', or 'cheat sheet', was generally seen as being 'helpful', 'adequate' and 'decent enough', although there were also views that it could be more comprehensive. For example:

> *I think the matrix that we've got about what's a minor charge and what's a significant charge … the three sets of charges … gives a decent enough idea about what type of matters we should be going into court for and what we should be sending in themselves and what we should just be giving information to. There's always going to be matters that it feels wrong to send in by themselves or it feels wrong to be representing that person in court. (**VLA Lawyer, Greater Melbourne**)*

Complicating factors included 'grey areas' for some charges and the sentence likely to be imposed, and difficulty classifying matters as being 'minor', 'straightforward' and 'significant' when they were not listed on the service worksheet. Another identified complicating factor was said to be the different sentencing approaches of different magistrates, for example:

> *… variations in sentencing mean that a different magistrate sitting will mean a different possible sentencing range applies, and you would triage differently. (**VLA Lawyer**)*

Some VLA lawyers said they were sometimes unsure whether or not they had assessed and triaged a matter correctly, particularly where the sentence ended up being a fine or good behaviour bond, and whether this was 'incorrect assessment', 'good advocacy' or variation in sentencing practice. Other VLA lawyers reported variation in practice due to 'local rules' or approaches to applying the DLS Guidelines being developed to match the particular service environment they operated in and the day-to-day challenges they faced.

Identification of DLS priority clients

The 2012 DLS Guidelines provide that duty lawyers are to use their training and experience to assess whether or not a client falls within a priority group, and that benefit of the doubt should be given to concluding that they are a priority client.

The staff survey canvassed how the DLS priority clients were assessed, and staff confidence in doing so. VLA staff explained that DLS priority clients were principally identified on the self-completed information clients provide in their section of the Duty Lawyer Record. VLA clerks reported that they used the service worksheet in conjunction with assessing the client's demeanour, including how they presented and engaged.

Overall, nearly all VLA staff who participated in the staff survey reported that they were 'very confident' (60%) or 'confident' (38%) of assessing whether someone was a priority client, with only two percent 'not confident', although it is should be noted that the overwhelming majority (92%) of respondents were VLA lawyers, rather than clerks.

In the focus groups VLA clerks reported that while 'many of our clients are pretty forthcoming' one of the challenges they faced was not being able to rely on the information clients provide, as some do not accurately disclose certain personal circumstances, and some struggle with literacy and comprehension tasks in completing forms:

> *It's not just on whether they tick the disability box. Many of our clients cannot read the form and don't tell us they're dyslexic/illiterate. It's only when you probe they'll disclose these issues, especially mental illness. (**VLA Clerk, Greater Melbourne**)*

> *… some of them actually tick no and you always have to kind of double ask the question as to whether or not they're seeing a doctor for anything, and a lot of the time I find they're actually seeing them for anxiety and depression, but they don't consider that as a disability. So we kind of have to ask a few more questions when it comes to that. They probably don't consider it as a mental health issue because they think of it as maybe something else … (**VLA Clerk, Greater Melbourne**)*

Clerks explained that they got better at identifying priority clients with experience, and became more adept at picking up on additional 'indicators':

> *… some are more obvious that fall into the priority groups. Some of them it can take a little while. You can be talking to them for a little while and then you realise there's an issue … [it's] just experience isn't it? You kind of know the triggers and sometimes you'll ask a question, 'Do you have any health issues?' 'Oh yes, I'm seeing a psychiatrist.' … 'The trustees manage my money.' (**VLA Clerk, Greater Melbourne**)*

> *It's very much learning on your feet. You can be trained the basics, like the skeleton of what you're required to do, but the things that you're presented with as a clerk, they're very independent, very unique experiences, especially with the mentally unwell clients. (**VLA Clerk, Greater Melbourne**)*

Some VLA staff, however, questioned inconsistencies between the overall VLA Priority Client Framework and the narrower set of DLS priority clients. We return to the issue of alignment between the VLA Priority Client Framework and DLS priority client groups in the discussion and recommendation in Chapter 8.

Appropriateness of assessment and triage criteria

The overwhelming majority (82%) of staff survey respondents indicated that they thought the assessment and triage criteria were appropriate. Those who answered that the criteria were not appropriate were asked to explain why and how the criteria should be changed. The main themes included:

- Generally, appropriate, but need greater clarity around use of discretion
- Generally work well, but time they were reviewed given increased demand on DLS
- Guidelines should cater better for serious matters excluded from grants
- Unavailability of grants of legal assistance for driving matters where person is likely to get imprisoned exacerbates pressure in the duty service context / unfair to clients
- One-sized guidelines don't fit all across the state
- Only appropriate given the resources available
- Young people (18–25 years old) should be a priority client group / receive improved access to assistance
- Disability should be expanded to include those who are drug and alcohol dependent
- Victims of family violence should be a priority group

- Should prioritise those potentially eligible for diversion
- Means test for duty should be reduced and the means test for grants increased
- Criteria only works appropriately if clients are willing to disclose and are truthful about personal circumstances
- Guidelines do not take not account ability to negotiate with those more powerful / understand written material / moderate behaviour
- Impact of so-called minor and straightforward charges on some people not taken into account.

Capacity to prioritise the 'right' clients

Nearly three-quarters (74%) of VLA staff survey respondents thought that the assessment and triage process successfully prioritised the right clients. Again, those respondents who thought that the process did not successfully prioritise the right clients were asked to explain why. The main themes, which mirror the concerns about the appropriateness of the triage criteria, included:

- Broader discretion required for extremely anxious clients with minor charges
- Young people with no priors should be a priority for in-court advocacy
- Should try to prioritise those with mental health issues and deal with them before they get too agitated
- Need improved clarity around mental illness / drug and alcohol dependency and how it may affect capacity to self-represent
- In regional areas should take into account those who have had to travel long distances to get to court
- Should prioritise those potentially eligible for diversion / avoid criminal convictions where appropriate
- Victims of family violence should be a priority
- Impact of loss of license can be life-changing in regional and rural areas
- Some agency prosecutions are serious and carry real risk of imprisonment or loss of livelihood
- Offenders whose behaviour may adversely influence the court should not have to self-represent
- Should have strategies to deal with those misrepresenting their income.

Does triage get clients to the service they need?

When asked if they thought the assessment and triage process enabled clients to get the help they needed, almost two-thirds (63%) of survey respondents said that they did. When asked to explain their answer, VLA staff again identified particular types of clients, matters and the service environment as affecting whether or not people were able to get the help they need. The main areas of concern were:

- Some people can't make use of factsheets
- Should have services targeted to young people
- Some priority clients with minor matters need in-court advocacy to have a just hearing
- Quality of defence not considered
- Should assess capacity to self-represent notwithstanding provision of legal information / legal information is too daunting and difficult for some people to understand and use

- Need greater clarity and permission to use experience, judgement and discretion
- Need improved referral capacity in duty context
- Adequacy of service depends on demand / availability of the duty lawyer / nature of the matters that present on the day
- Legal advice may better assist some people who have to self-represent
- Some clients require more assistance than is available in a busy DLS context.

Managing uncertainty and exercising discretion

In the VLA staff survey VLA clerks were asked what they did when they were not sure what level of service a person should receive. Every clerk answered that they discussed it with the lawyer on duty. This is consistent with what VLA clerks and lawyers said in the focus groups:

> *I feel pretty confident … our lawyers are really approachable and you can say, excuse me … can I just ask you a quick question. You know, it may be something they can deal with in 30 seconds. (**VLA Clerk, Greater Melbourne**)*

As noted in the *Introduction*, the 2012 DLS Guidelines provide the duty lawyer some discretion to provide services beyond the guidelines to clients satisfying the DLS income test, including negotiate with the prosecution for someone assessed as eligible for 'legal advice and information only'. Duty lawyers can also provide in-court advocacy to people who are not facing a significant charge and who are not in a priority client group if there are compelling reasons why the accused person cannot represent themselves, although this needs to be exercised in light of competing demands and priorities in the duty list that day. The staff survey asked VLA lawyers how often they used their discretion, and then the circumstances in which they did so.

In total (n=56), only four per cent of VLA lawyers said that they 'never' used discretion to provide in-court advocacy, 61 per cent said they did 'sometimes', 29 per cent reported they did 'frequently', and seven per cent that they did 'very frequently'.[52]

The main circumstances where VLA duty lawyers reported exercising discretion were:

- where a magistrate requests it (e.g. people who have not sought any legal advice but are facing jail; people have failed income test but magistrate has asked duty lawyer to intervene)
- where there is a good defence / potential for diversion
- where diversion was refused / unfairly refused / may be refused
- where client will get a bond / non-conviction if situation adequately explained to magistrate
- straightforward matter where an inappropriate charge and client cannot afford private lawyer – negotiate with prosecutions
- where an 'advice only' client has a good defence they are unlikely to be able to articulate persuasively in summary case conferencing
- where summary case conference needs to occur and it will avoid wasting prosecutor's time

[52] Note, percentage does not sum to 100 due to rounding. N=56 VLA lawyers who completed the online staff survey. Data were missing for 26 respondents.

- where particular facts add legal complexity
- when the client has gone to substantial effort to seek assistance from DLS
- at locations where a lack of private practitioners to refer client to and matter can be finalised on the day / magistrate is likely to want duty lawyer to help to dispose of a matter that has dragged on
- to avoid loss of driving license in country areas where magistrate has discretion
- dishonesty offences where no priors and may be able to negotiate the charge down
- where have excess capacity on the day / easier or quicker to do so.

The main types of people where VLA lawyers reported exercising discretion to provide in-court advocacy were:

- people assessed as incapable of / unlikely to adequately self-represent because a victim of family violence / very poor health / poor communication skills / too overawed / too nervous / too anxious / too vulnerable / too volatile
- people who appear to misrepresent their literacy / mental health
- young people
- elderly people
- people with significant physical disability
- recently arrived migrants / unable to navigate court or criminal process
- people in dire financial circumstances who cannot afford a private lawyer.

The use of discretion by VLA lawyers was also canvassed in the focus groups. Again, the dual-edged nature of the discretion, and the tensions created in a pressurised DLS environment were raised. On the one hand, VLA lawyers explained that they sometimes needed to use the discretion provided by the DLS Guidelines to help overcome the 'service gaps' and to provide a better service to clients and support the effective operations of the prosecutors and court. On the other, using discretion to provide a heightened level of service necessarily increased workload and reduced time for others. VLA lawyers also explained that 'going above and beyond' for some people was often professionally rewarding, made a substantial difference to the client, and was appreciated (or would be expected) by the court.

The following illustrate VLA lawyers' views concerning their use of discretion:

> *There's no point having a wasted capacity just sitting there doing nothing … I'm not saying it's a common occurrence, but there might be little things that people have that you can sort out that are actually going to make their life better … (**VLA Managing lawyer, regional area**)*

> *I think we're always conscious of the fact that, because of the volume, us exercising that discretion will almost inevitably be [that] someone else down the track that gets less of our time, someone who might meet the guidelines … So that's just a factor that plays into it. (**VLA Lawyer, Greater Melbourne**)*

Some participants thought that further guidance about the use of discretion would be beneficial, and how this would support good practice and improve client service. For instance:

> *… one of the things whenever you have formal rules, you have the informal workarounds, so on some level it's better just to recognise them and put in place tolerances around those informal workarounds. It's also about valuing that work … and saying, 'This is actually important, good work that we're doing and it's making a difference to our clients'. (**VLA Manager**)*

Another identified DLS service challenge was managing client expectations.

Appropriately managing client expectations

A number of VLA staff thought that appropriately managing client expectations about the DLS was something that VLA could improve, as this was likely to help with client anxiety and frustrations, particularly concerning the time they have to wait at court to see the duty lawyer and have their matter dealt with by the court.

VLA staff also pointed to the benefits and need for consistent service provision to help manage client expectations, as inconsistency in the application of the DLS Guidelines could contribute to expectations of service.

A cross-section of participants pinpointed the challenge of managing defendants' expectations concerning what will happen on the day they are summonsed to court, and particularly, who is best placed to provide them with information about how the court operates. There was a widespread view that this had become more of an issue as the DLS had moved from a universal to an assessment and triage service model.

Court support services, police prosecutors and VLA staff variously pointed to a need for improved information and communication to better manage client expectations about what the DLS does and does not do, and what people could expect to happen at court, including that they would be assessed for service eligibility and will have to self-represent if they are ineligible for in-court advocacy.

One participant from a court support service suggested that there was a need for material similar to that produced by the Victorian Civil and Administrative Tribunal explaining the tribunal process, and what people can expect to happen on the day, for people that had to self-represent in the Magistrates' Court:

> *It's really simple but it's quite direct … like 'Take your hat and your earphones out' or whatever … it basically just says little things like 'Be prepared, have your full paperwork with you' … 'Where to sit'. So just little one paragraph, but very direct and it leaves people in no doubt as to what they're doing. (**Court Support Service, regional area**)*

Because DLS and court practices vary from court to court, participants also pointed to a need for information about how processes operate at each court. This was one area where it was unclear who should, or who was the appropriate producer and provider of such 'local' information – the Magistrates' Court, Victoria Police or VLA.

In the case studies, each set of stakeholders reported that their respective workload capacity was negatively affected by people who did not understand the process, what was happening, and what they should be doing. This uncertainty frequently manifests as a series of repetitive questions to court staff, court support services, police prosecutors and VLA clerks and lawyers.

Given the high caseload demands on the court, prosecutors and DLS, a cross-section of participants pointed to improved capacity to head off 'repetitive' and 'frequently asked' questions, as being one strategy to try to alleviate workload pressures.

VLA staff identified inappropriate referral as a common source of unrealistic client expectations about what DLS would or should do. For example, VLA clerks and lawyers cited examples of referral to the DLS by CLCs and other services where clients had turned up expecting that the duty lawyer would help them, including that the duty lawyer would 'defend them in court'. Other examples included being told how the DLS would help with particular types of matters, for instance:

> *I've had this guy coming [with a] family violence [matter] and the CLC told him, 'You can get a diversion' or something … now I have to undo that damage. (**VLA Lawyer, Greater Melbourne**)*

VLA clerks also said that the way in which court staff referred people to the DLS at some courts created expectations of service. For example, when 'signing in', court staff typically ask people whether they are represented by a lawyer, and if not, refer them to the DLS. For people under stress who do not understand the process, this exchange may be interpreted as 'the duty lawyer will represent you', and contribute to increased anger and frustration when the DLS has to give them a 'reality check' (VLA Clerk, Greater Melbourne).

VLA staff further explained that clients get fed 'all sorts of wrong information about the DLS from different places'. 'Word of mouth' spreads among the community, particularly in regional communities, and consequently affects use of the DLS. This works 'both ways' as there are people who think they should receive higher levels of service from the DLS than they are eligible for, as well as people who assume that the DLS will not help them when it will:

> *Occasionally some will slip through that perhaps we should have seen and we don't, but when that happens when they go into court the magistrates will often then refer them back to us. (**VLA Lawyer, Greater Melbourne**)*

VLA managing lawyers also pointed to a need for improved strategies to better manage client expectations; this was something to implement at all points of contact with people summonsed to court, as illustrated by the following:

> *I think there's scope for us improving the way we manage the clients' expectations, so letting them know the wait they're in for and those types of things, because I don't think that we always do that very well and there's often people waiting until after lunch even to talk to a lawyer and clients at court are routinely so anxious and their anxiety levels are much higher after they've been waiting … (**VLA Managing Lawyer, Greater Melbourne**)*

> *… if you can get that expectation right the first time around, then as that client journeys through the day, through the court process, then they don't have an expectation that's wildly diverse from what is actually going to happen. (**VLA Managing Lawyer, regional area**)*

Similarly, VLA clerks reported having to deal with repeated questions from multiple clients, such as 'When will I see the duty lawyer?' got in the way of other tasks they were trying to do quickly. For example:

> *… having to communicate that to 15 people who are also all waiting … it takes a lot out of you and sometimes you don't have time to say things to each and every one, even though you want to. (**VLA Clerk, Greater Melbourne**)*

Clerks also said that they often faced angry and frustrated clients, particularly when they see other people being called to see the duty lawyer before them:

> *… they sort of question, like how come that guy, he was here after me, and he was seen, because obviously they can see each other … Then we just have to say, 'Look, sometimes the matter's more complex', just sort of say that sort of general thing, but sometimes they just don't buy it. They're just like, 'I've got this [number]. I came here at nine o'clock'. (**VLA Clerk, Greater Melbourne**)*

While there were signs at some courts saying that there might be a long wait for the duty lawyer, they did not appear to reduce the number of questions about 'how long it will take' (VLA Clerk, Greater Melbourne).

VLA staff said that it was unsurprising that clients did not understand how the DLS and court operated, and that as such, greater capacity to communicate this information was likely to be beneficial to clients and the DLS.

Impact of the court in each DLS location

One consistent view of VLA staff was, unsurprisingly, that DLS service capacity depended on the volume and complexity of the clients and matters on any particular day. VLA staff said that the appropriateness and quality of services duty lawyers were able to provide depended on the time available for any particular client, and the nature of the competing demands, at particular court locations. VLA clerks similarly observed that the capacity of duty lawyers to use their discretion to negotiate with police prosecutors and provide in-court advocacy varied depending on the nature of the matters and clients.

In addition to the number of people seeking DLS assistance, other key factors affecting duty lawyer capacity identified included:

- level of staffing (e.g. VLA clerks, number of duty lawyers at court)
- staggered listings and availability of police prosecutors
- availability and sufficiency of police briefs of evidence
- proportion of DLS priority clients with complex needs, and who may take additional time to assist
- complexity of the matters on the list (e.g. volume of family violence, multi-brief consolidations, third or more drive while disqualified / drive while suspended charge, dishonesty offences)
- whether or not the duty lawyer gets priority with police prosecutors, and court co-ordinators
- whether or not the duty lawyer has to staff both the mentions and custody lists
- how the Magistrates' Court organises the mentions list
- how often the duty lawyer is called into court
- Magistrate attitudes and practices with respect to sentencing indications / adjournments / bail applications / consolidating briefs / sentences.

VLA staff provided examples of how DLS capacity was affected by the day-to-day circumstances at court. At those courts where duty lawyers are rostered to the mentions and custody lists, the lawyer on the custody list may be able to help out on the mentions

list. For instance, the duty lawyers at Broadmeadows explained how the setup of the court helped them to collaborate and work to get through the mentions list:

> *Comparing this office to other offices, it's a pretty collaborative approach. So, for example, if I'm on cells and the person on mentions has a pretty heavy list and I'm waiting on a brief from the prosecutors, I'll flip through the [mentions] list and find an 'advice only' and I'll just do that quickly to help them. We do that quite a lot. So if you're on something else and you have a spare minute to do an 'advice only' you do it. I don't think that's the case in other offices. But here it works really well. (**VLA Lawyer, Greater Melbourne**)*

The particular court architecture and facilities, such as where and the nature of the DLS space, and whether or not lawyers had to frequently move between court rooms located on different levels of the building, or even different buildings, was also reported to be a factor affecting DLS service capacity and how staff were able to work.

VLA clerks at the Melbourne Magistrates' Court said that the architecture of the building, and the configuration of the DLS waiting area contributed to client frustration spreading and the atmosphere turning 'poisonous' among clients who had been waiting a long time.

For those courts where the DLS typically has higher caseloads, VLA staff said that what it was reasonable to expect the DLS to achieve needed to be determined, as there had to be a 'limit'. VLA lawyers raised the issue of capping DLS client numbers, or otherwise instituting strategies to better manage DLS workload pressures, and to maintain the appropriateness and quality of services. VLA lawyers also said that while the 2012 DLS Guidelines were intended to 'free up' the duty lawyer to focus on more serious matters and priority clients, this had not played out as expected at those locations with consistently high volumes of clients satisfying the eligibility requirements for legal advice and in-court advocacy. For instance:

> *Even for the very needy clients, if you're still seeing 35 people, there's not a lot of time to sit there with them. I think that was the idea behind the guidelines but I don't really think, particularly here, it sort of translated into that. (**VLA Lawyer, Greater Melbourne**)*

Views on capping DLS client numbers were divided. Some participants thought that capping numbers would be impractical, particularly given that DLS workload varied so much from client to client, and day-to-day:

> *… I think it's difficult because I don't know how you marry that up with giving the right people the service. So, if we've seen 20 people, but ten of them have been relatively easy, do we say to number 21 … 'Sorry, you're not coming in today'. (**VLA Managing Lawyer, Greater Melbourne**)*

Others thought that the issue of consistently high client numbers would be best managed by stakeholders determining realistic workload expectations. Magistrates, for instance, said that it was vital that court registrars worked with VLA to appropriately manage workload. Participants also suggested that the workload pressures faced by Police Prosecutions were better recognised, and that this was one of the reasons that police prosecutors were only available to summary case conference at most courts until one o'clock, and that similar considerations should apply equally to the DLS.

Coping with the day-to-day pressures of the DLS environment raises issues of staff wellbeing and burnout, and these issues are explored in the following section in the context of the sustainability of VLA summary crime services.

Are VLA SCP services sustainable?

In this section, we explore issues concerning the sustainability of the SCP.

Participants characterised the key sustainability challenge faced by the SCP as how eligibility for services could be maintained, rather than further tightened, in the face of rising demand. There was a wide consensus that VLA's summary crime services had been tightened enough, or too much with respect to some types of matters, accused and circumstances, and that any further tightening would have detrimental impacts on both access to justice and the wider summary crime system.

For example, magistrates said that it was vital that VLA's summary crime services were adequately funded. Further tightening service eligibility criteria, and any reduction of VLA summary crime services, was likely to negatively affect the operation of the court. There was also a widespread view that further tightening of the eligibility for VLA's summary crime services would be a 'false economy' and ultimately 'self-defeating' and that it was vital that there was a balance between the demonstrated demand and resourcing of summary crime services (Magistrate). Further tightening of eligibility for VLA's SCP services was predicted to:

> *…necessarily reduce the capacity to service courts, it's going to put more pressure on those lawyers that remain, and probably lead to burnout and disenfranchisement … That's how it's going to play out. I think it's a real concern … [a] balance has to be struck … the government needs to understand that it's a question of maintaining service, rather than a reduction of service, I think. (**Magistrate**)*

One VLA Managing Lawyer similarly described how there had been a lot of discussion at court users meetings about the future, and considering what could be done to cope with an anticipated increase in the summary crime workload:

> *… we're doing a lot of thinking I guess, in terms of where do we go from here, not just now but sort of five years' time. Because the client listing is not going to go backwards, it's actually going to get more. (**VLA Managing Lawyer, Greater Melbourne**)*

Interviews with magistrates and VLA managers suggested that demands on VLA's SCP were at a 'tipping point' and that escalating demand meant that savings on legal assistance was a 'false economy' for the overall summary crime system.

As the following VLA Manager noted, stakeholders also have a shared interest in working together to maintain the strengths of the summary crime system:

> *... we've got to not lose sight of the strength of the system when we're trying to figure out how we improve it and we've got to be very careful that through operating from vested interest points or from just a territorial position … that we don't actually undermine the very strengths or the underlying pillars of the system which are actually quite strong. (**VLA Manager**)*

We first examine issues affecting the sustainability of the DLS, and then the sustainability of private practitioners undertaking legal aid work.

Duty Lawyer Service

As previously noted, while the impact of the 2012 DLS Guidelines initially redirected DLS service capacity to more complex/more serious matters, the DLS was now responding to

more clients in custody, more serious/complex matters, and more clients with multiple and complex needs that are eligible for more intensive duty lawyer services, but not grants of legal assistance. As noted above, a number of factors have contributed to the changing nature of workload which, necessarily, have had implications for the workload and sustainability of the DLS.

Increased volume and complexity of matters coming into the DLS

The sustainability of the DLS is threatened by the overall increase in the volume and complexity of the workload. The effects are twofold: more clients are eligible for resource-intensive levels of service, which, in turn, has generated a greater volume of intensive work, but in a context of static DLS resources.

While the assessment and triage model has reduced the number of people the duty lawyer sees for low level (minor) driving or traffic matters, the overall nature of DLS work has changed:

> *… they're not just straightforward cases anymore. We used to get a lot of your straightforward driving matters and stuff like that coming through. A lot of the clients now that are coming through have mental health issues, don't just have one matter, they've got quite a few matters coming with it. So they're not just something that you can go here you go, quick advice and send them on their way. There's a lot more time spent with each person coming through the doors. (**VLA Clerk, Greater Melbourne**)*

Areas with diverse multicultural demographics often require a higher use of interpreters, which brings its own set of challenges:

> *We deal with…quite a lot of interpreters…It takes longer for us to deal with clients because you have to deal with the interpreter and a lot of the time they don't turn up to court with interpreters. So sort of chasing them down or if not, assisting them with an adjournment to make sure that there's an interpreter there on the next occasion. (**VLA Lawyer, Greater Melbourne**)*

Staff noted that working with an increased number of priority clients also impacted their ability to manage high workloads. For example, one VLA Lawyer discussed the impact of working with a client with mental health issues and another client who needed an interpreter, stating:

> *I couldn't really see many other clients for the day…it easily took about two hours just with these two clients. But then there are many other people on the list who I could be seeing. Either we don't see them or the quality of service we provide to them is going to be affected. (**VLA Lawyer, Greater Melbourne**)*

Some areas have sought to implement strategies to make court lists more manageable, with key stakeholders working to maintain a manageable number of matters listed for each day. Such measures, however, are only effective as long as there were no additional changes to the volume and nature of DLS work:

> *… we're sort of going okay at the moment. But, if one or two things sort of happen, say, there's going to be an increase in the amount of work or something of that nature, then things can become unstuck fairly quickly. (**VLA Managing lawyer, Greater Melbourne**)*

Overall, the volume and complexity of DLS work, both in terms of more complex clients and matters, was said to have reached a flashpoint; if the current pressures facing the DLS do not ease, the DLS is:

> *… going to blow the engine because I've got duty lawyers who are doing more complex work plus more volume of it. No longer do they have the kind of old day of duty lawyer list where 70 per cent of it was traffic matters which were kind of quick and easy, even though there was volume with 30 per cent being the sort of harder stuff. Now it's all hard stuff, it's family violence complicated by complex legislation with the demand where you've got tiny parcels of time…. (**VLA Manager**)*

Increased volume of in-custody matters

The DLS prioritises clients in custody, providing them with in-court advocacy services unless they have an existing lawyer. Increased in-custody work further threatens the sustainability of the DLS. Not only are the numbers of remands increasing, but they are often more resource-intensive. Managing Lawyers identified a number of inefficiencies that exacerbate the time and resources in-custody work takes, including an insufficient number of cells, being called to the cells but finding that the defendant is not there or in no fit state to be seen, transportation issues, and missing or incorrect paperwork. VLA staff also highlighted the impact of 'late remands', where accused are brought to court in the late afternoon, as meaning remand matters can run into the evening. Consequently, staffing the remand list can make for a long day:

> *The expectation of everyone is that the duty lawyer would start at eight o'clock at the latest if they're doing remands … It's just the court, the police, everyone expects that you be there at eight o'clock so that you're in a position to move things along. (**VLA Lawyer, regional area**)*

> *… we stay there until it's done. If you're on cells and it's a Friday, I've been at court past 6.00[pm] on a Friday and that happens quite a bit, particularly on Fridays … (**VLA Lawyer, Greater Melbourne**)*

> *… lodging it at 3:30 means that we're not going to see the client until 4:15 or 4:30[pm] … you're back at the office at 5:30. You've got to whip up something to the lawyer the next day as well. (**VLA Lawyer, Greater Melbourne**)*

This affects the time duty lawyers have to do their other work.

If the rate of remands continues to increase then this will affect the levels of service able to be offered by the DLS at court. As one VLA Lawyer articulated:

> *… if you were spending all your time prioritising the remands if you've got that many remands to deal with, then inevitably who will be able to assist at court will be affected and the level of service you'll be able to give at court will also be affected. So then among people at court you'd have to prioritise most serious as well. So that flow on will continue I suppose. (**VLA Lawyer, Greater Melbourne**)*

The increased volume of in-custody clients also appears to have increased the number of complex clients the DLS serves:

> *… so you might have someone who is really unwell or you just can't reason with the person because of the state that they're arrested in [or] the state you find them in and then that's so time consuming and the impact that that has on staff who are dealing with that day in day out can be really quite a challenge. (**VLA Managing Lawyer, regional area**)*

The in-custody work was also viewed as being particularly taxing on staff. For instance, VLA managing lawyers raised the issue of difficult interactions with clients as a pastoral care issue:

> *I always…spend that little bit extra time with my team because they're coming back almost shell shocked sometimes the people that they're meeting in cells. (**VLA Managing Lawyer, regional area**)*

VLA staff wellbeing and fatigue

Of the 89 respondents who completed the VLA staff survey, 54 identified aspects of DLS work they found enjoyable or satisfying.[53] A number of staff found the challenges of duty lawyer work rewarding. For instance, they reported that they enjoyed the 'rough and tumble,' the fast-pace nature and variety of the work, including the 'adrenaline' rush that came with having to think quickly and getting things done 'on the fly.' For these duty lawyers, the pressurised context of the DLS, though challenging, also contributed to job satisfaction.

Moreover, many duty lawyers reported that being able to help clients 'on the spot' and 'make a practical difference to their interaction with the criminal justice system' was 'extremely gratifying', especially when matters are able to be finalised on the day. In particular, staff reported that being able to assist clients in need, especially those who are 'vulnerable' and/or 'marginalised' and help them get a 'good outcome' was integral to their engagement – that is, the extent to which they felt passionate about, motivated and committed to their work (VLA Lawyer, Greater Melbourne; VLA Lawyer, regional area).

A similar number of respondents who completed the VLA staff survey also identified aspects of DLS work they did not enjoy or found dissatisfying (n=56).[54] The three main themes arising out of the survey responses were: time and workload pressures, unreasonable demands and unrealistic expectations, and not being able to assist vulnerable clients because they do not meet the guidelines.

The demanding nature of duty lawyer work coupled with a lack of additional resources to help manage escalating demands, was identified as a threat to staff wellbeing. Staff expressed this as the 'churn and burn' phenomenon. The increasing volume of matters that duty lawyers have to respond to, in the face of the complexity of clients' lives, was said to be 'overwhelming' at times. As one VLA Lawyer stated:

> *I worry about compassion fatigue and feeling like I am only a quick fix solution to a legal problem which is underpinned by extensive social/drug/mental health issues. (**VLA Lawyer, Greater Melbourne**)*

Duty lawyers reported feeling uneasy about pressures to work through matters quickly, especially when dealing with complex matters and clients:

> *You don't want to rush, to actually properly do … what we need to do as duty lawyers. (**VLA Lawyer, Greater Melbourne**)*

> *You're dealing with clients often in a really high state of anxiety with really complex issues in a way that you wouldn't do when you get them in for an appointment to discuss an indictable file, and you've got time and space. (**VLA Lawyer, Greater Melbourne**)*

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[53] This question was not answered by n=35 respondents.

[54] This question was not answered by n=33 respondents.

> *… it's immensely frustrating…that you've had to adjourn 17 matters because you didn't have time to reach them, or the police didn't have the brief, or there's no time to case conference matters because they only do it up till one o'clock. (**VLA Lawyer, Greater Melbourne**)*

Subsequently, some felt that the DLS context had an adverse impact on their job satisfaction because they were constrained by what they could provide under time pressures. Similarly, a VLA Managing Lawyer noted that it was a 'very negative environment to constantly be under pressure to reject people' seeking assistance (VLA Managing Lawyer, Greater Melbourne).

Participants also reported relatively high staff turnover in the duty lawyer space, and identified the workload pressures as the key contributing factor. A small minority of VLA lawyers reported that they were so frustrated that they had decided to seek employment elsewhere due to an excessive workload that they said was unsustainable. For example, a VLA Lawyer who had been with VLA for over 10 years stated: 'I've made up my mind. My health is more important than this career. I'm looking for employment options elsewhere'. Another, who had also worked for VLA for more than 10 years said that: '…we don't have staff to do it all adequately. I'm looking for another job. Sick of being overworked'.

One VLA Lawyer also explained:

> *I don't think they realise that people doing those kind of hours burn out over time, and that's a shame because it's a loss. We were just talking before about it takes three or four years. I think that's probably true to become a decent duty lawyer and then if you're able to pick up indictable work, yeah, all of that. So you want to keep your personnel. You don't want to have them leaving because they get burnt out. (**VLA Lawyer, Greater Melbourne**)*

In terms of what contributes to burnout, VLA staff raised concerns that lack of resources meant that covering the duty lawyer list when people were sick exacerbated pressures, and that taking flex or annual leave was difficult:

> *… the reality is unless you get relief from your roster you don't have capacity to take a flex day, and at the moment there's not enough lawyers to give you relief from your roster. (**VLA Lawyer, Melbourne**)*

> *We get to the point that we're often at that there's nobody rostered on as a backup lawyer, there's no one rostered on as a floating lawyer…there might be no one rostered on as the half day lawyer and then God forbid if someone's sick. (**VLA Lawyer, Melbourne**)*

> *I've found taking holidays is hard. I find that quite stressful. The pre-work you have to do on files before you go is crazy. Effectively you work the hours you're on leave for just to be able to go on leave. (**VLA Lawyer, Greater Melbourne**).*

Duty lawyer work was described as 'demanding' and staff thought that to become proficient required both experience and a distinctive skill base. As it often takes some time to 'get up to speed', staff turnover exacerbates workload pressures, particularly as new starting lawyers require supervision and assistance. This can further add to the workload of more senior duty lawyers.

Other duty lawyers thought that the ratio of court days to office days was a threat to the sustainability of the SCP, as DLS work eroded capacity to do other work:

> *… if certain things happen late in the day, you will be out there till about maybe five o'clock/5:30. The next day we may not be in this office but a number of things have got to be done when you come back from court, because some matters have been adjourned to the next day and then that means staying back and getting documents out. Because it's a really exhausting day being in court mentally and physically and then to come back to do that that's... (**VLA Lawyer, Greater Melbourne**)*

Again, the issue of increasing in-custody duty was raised as affecting the amount of time duty lawyers have for other work (VLA Managing Lawyer, regional area).

One lawyer, who had been with VLA for five to 10 years thought that the SCP only survived on 'the professionalism and goodwill of its staff' and that addressing the issue of DLS and other workloads was an 'OHS issue' (VLA Lawyer, Greater Melbourne). Other staff also provided examples of workload pressures and time demands:

> *We never have lunch breaks. I think it's something almost the court expects of us to be honest. No one else works through lunch but we always do. (**VLA Lawyer, Greater Melbourne**).*

> *I think we've got to be practical about the kind of hours that we're putting in. It's not sustainable. People, particularly on my floor, will come in regularly at 8:00 and stay till 8:00. (**VLA Lawyer, Greater Melbourne**)*

> *… the reality is – I'm preparing overnight in my own time, six/seven/eight o'clock at night. But then that's not captured because that's outside of the working hours. (**VLA Lawyer, Greater Melbourne**)*

Observing others burn out negatively affected staff wellbeing:

> *It's very unrelaxing as an observer. Is that what I'm going to become? But it is such a worry though, to see your colleagues deteriorate. It's really very, very bad…It's very stressful. It's very bad for morale and yeah, it is very concerning when you see other people following along that path as well. That is the biggest worry. (**VLA Lawyer, Greater Melbourne**)*

> *… you can notice that people are very tired if they've done a weekend court. There is not that space to rest, and then that then hangs over to your colleagues who are really conscious and rightly so, that you were working very hard and keen to sort of assist you. (**VLA Lawyer, Greater Melbourne**)*

VLA clerks reported concerns with the pressure on duty lawyers, how this affected wider staff wellbeing:

> *They trudge in and they're just so sad...they have their big tray full of stuff and they're like, 'Oh I've just got three new matters I picked up at duty' … At the same time, the lawyers are being told that they should be doing a lot of their own work and they should be starting to do letters themselves and stuff and they just don't have the capacity to do anything, other than duty. (**VLA Clerk, Greater Melbourne**)*

Duty lawyers also expressed frustration that some of the work they did was not adequately recognised and valued, especially some work undertaken on a duty lawyer basis:

> *… you've got to treat them as seriously, for the most part, as the matters that do have grants. But you don't get recognised having these grants so it impacts, one, the workload you're assigned, secondly what you contribute to the organisation in terms of your actual recognised workload. (**VLA Lawyer, Greater Melbourne**)*

Some clerks also found duty lawyer work stressful, particularly abuse by frustrated clients with unrealistic expectations about service eligibility and waiting times. In particular, VLA

clerks at the Melbourne office mentioned the 'corridor' of clients waiting outside the duty lawyer rooms at the Melbourne Magistrates' Court as exacerbating client unrest:

> *They get this mob mentality where it just takes one person to arc up and then it's just…it's poisonous. It just trickles down to everyone and then everyone's arcing up and then you've got everyone at the door and it just spreads. (**VLA Clerk, Greater Melbourne**)*

Insufficient resourcing in the face of rising workload was widely identified as having taken a toll on the wellbeing of staff doing DLS work.

Level of organisational support

VLA staff had divergent views on the level of support VLA provided the DLS. Some staff thought VLA had not done enough to respond to concerns about the health and wellbeing of those undertaking DLS work, others that VLA not been proactive enough in responding to escalating workload. For example, a Regional Managing Lawyer pointed to the 'organisational focus on increased service provision, just read the executive summary of the annual report, more this, more that…' and the tensions this created for staff (VLA Managing Lawyer, regional area). Another stated that the organisation could better recognise and support 'the core service they [duty lawyers] provide to the organisation' (VLA Lawyer, Greater Melbourne).

Some VLA clerks similarly thought there was scope for more training and support to better support their role in assessment and triage:

> *I strongly believe that more training is required, in many cases I have found that people have been 'thrown into the deep end' I do not believe this is effective as a person's understanding of certain processes may not be thorough as it should be – which can lead to more mistakes that could be avoided. (**VLA Clerk, Greater Melbourne**)*

Other staff drew a distinction between Victoria Police and VLA in terms of how each sought to ensure reasonable working conditions:

> *I mean the police have very much set standards and [where] … volumes and limitations end, and they're very staunch on that whereas Legal Aid it's just never been as protective of its staff. (**VLA Lawyer, Greater Melbourne**)*

> *… the police are far better than Legal Aid about putting in a limitation. The police will say we are not case conferencing or having legal discussions about an ongoing summary matter after a certain time. (**VLA Lawyer, Greater Melbourne**)*

It is important to note that not all VLA staff felt this way and that others were 'very satisfied' with the level of support they received from 'management…in day-to-day work' (VLA Lawyer, Greater Melbourne). Overall, the level of frustration among staff appeared to be higher at some offices than others, and was affected by a number of factors associated with the service environment at the courts where they provided DLS services.

Service environment challenges – court infrastructure

Poor and outdated infrastructure at many courts was identified by staff as negatively affecting DLS service capacity and made for a more stressful working environment. For instance, at some courts, there were no private interview rooms, which meant that interviews had to be conducted in the presence of other clients. Some VLA staff observed

that the courts that they worked at, especially in some regional areas, were ill-equipped to conform to recommendations of the *Royal Commission into Family Violence*. Concerns were also raised over the safety of duty lawyers and clerks as a result of the physical layout of some courts: 'Physical layout of court facilities mean that if there is an incident with a client threating a duty lawyer the environment is unsafe' (VLA Lawyer, regional area). Some clerks reported that staff did not know where the panic/duress button was and that others didn't know how to use it. Poor signage and facilities was also deemed a problem in many courts. Staff raised examples of clients being lost, and not knowing where to go and what to do as increasing the demands on them. As previously noted, a key service roadblock in terms of progressing matters was an inadequate number of cells, especially in some suburban and regional areas: 'If there is a person in the cells then it is very difficult to progress the list' (VLA Lawyer, regional area).

Managing competing demands at court

Duty lawyers often have to negotiate multiple and competing demands, which adds to the pressure of the DLS service environment:

> *The volume and the stresses and the pressures that are put on you by everyone, by the magistrates, by the court staff, by the clients, by the prosecutors. It's just coming at you from every direction. And the clients. (**VLA Lawyer, Greater Melbourne**)*

Successfully negotiating competing demands was said to be easier with clarity of service expectations and limits:

> *… the key to – how should I say it, happy staff is, some sort of knowledge of the limitations of what they can do … some people are going to get jail, some people are going to get this, and all that sort of stuff, and there's no such thing as a perfect case. So basically, people have got reasonable expectations, then they can do cases and they won't have a nervous breakdown if something goes wrong, and they know the amount of effort to put into it. So, the basic thing is to have a reasonable turnaround, of where, you're provided a certain number of matters, and get through them, so the amount of files you've got, don't get astronomical, and you don't sort of have a breakdown. (**VLA Managing Lawyer, Greater Melbourne**)*

> *Legal Aid is expected to be there all hours of the court day for as late as the court day will sit. Now that depends on magistrates. Some of them want out at 3:30. Other magistrates, for example the current Coordinating Magistrate, is quite happy to sit until a list is finished at six o'clock. That's personal preference. Unfortunately we can't do anything though. It's their right as a member of the judiciary. (**VLA Lawyer, Greater Melbourne**)*

The case management approaches of particular magistrates affected the demands made on the DLS. For example, some magistrates actively minimise adjournments and progress the progress of matters at each appearance. While this served the goals of the court by dispensing matters in a timely manner, it can increase pressure on the duty lawyers to provide a higher level of assistance so that matters could be finalised either on the day or with a fewer number of adjournments.

In contrast, one VLA Managing Lawyer noted that at their court, the productivity of the DLS was limited by the magistrate:

> *[He] wants to send a message to the court that he shouldn't have to sit past four o'clock and at four o'clock he finishes up. Anything that's left on the list gets adjourned to the next week which then makes the next week really busy which means that when we turn up we've got everything ready to*

> *go and at four o'clock he says I'm not sitting past four o'clock and then he adjourns all the rest… (**VLA Managing Lawyer, Greater Melbourne**)*

As such, both the efficacy and the productivity of the DLS at each court was said to rest heavily on the Magistracy, as well as how duty lawyers were managed by their regional managing lawyers (Advisory Group Member).

Another theme arising from the qualitative data was the relationship between the sustainability of the DLS and the quality of service provision.

Sustaining quality in the face of volume

A recurrent concern of VLA lawyers was the tension between the volume of the matters the DLS had to deal with and the quality of the services that it was practicable to provide, as at some point, the weight of numbers inevitably impacts the appropriateness and quality of service:

> *You can't tinker excessively on the 'expediency' side of the equation without impacting on the 'quality' side of the equation. We are dealing with people's complex lives, futures and liberty and, of course, the law. Quality is most important. (**VLA Lawyer, Greater Melbourne**)*

The 'crush of numbers' was the key factor constraining quality of DLS service. For instance, the high volume of clients that duty lawyers have to get through at some courts was said to be:

> *… not okay from the client's point of view and it's not okay from the lawyer's point of view. So no one is getting quality of service when you're seeing 25 people in a day. I mean, if you physically work out the maths of that, it's just ridiculous. (**VLA Manager**)*

The implication of under-resourcing relative to rising service demands was set out by one VLA Managing Lawyer:

> *Being under-resourced as a DLS means you have to cut corners when trying to get through the lists. Clients deserve more than 10 minutes of time with a duty lawyer (I'd be happy with 20 minutes per client). All my team need is resources to have two duty lawyers at every list we service. Remembering that the duty lawyer will also have LIT and MWF's listed the same day. (**VLA Managing Lawyer, regional area**)*

This again speaks to the impact of DLS workload on the quality of service, particularly where the DLS is operating at or above an appropriate service 'limit':

> *… I think that these things are just being managed, there's not a lot of give in that at all and I think that it's going to affect the quality of the service that clients are getting, and ultimately that is going to flow through. So whether it's seeing people more often because they're coming back to court, people not picking up on legal issues or just feeling under immense pressure to resolve … I also think if they're doing it under so much pressure, that they're not actually being able to reflect on their practice at all. (**VLA Managing Lawyer, Greater Melbourne**)*

For instance, magistrates characterised duty lawyering as 'a tough gig', and that since the change in guidelines duty lawyers were said to be:

> *… under enormous pressure … They have an enormous caseload to get through each day. I sense that they're not adequately resourced. I sense there aren't enough of them, and I think that flows into the level of care and time they can devote into each particular client. Each one is important but I think that's something that is a corollary of the changed guidelines and feeds into the performance*

> *of the duty lawyers themselves. That's my abiding observation of the duty lawyers as a whole – under pressure, under stress, probably under-resourced, probably need more people, more bodies on the ground. (**Magistrate**)*

Another lawyer set out that he often felt caught between wanting to give good professional service and trying to manage his workload, and that to cope he often worked long hours, probably 'to our own detriment', working harder and harder was a 'band aid' solution that covered over the cracks (VLA Lawyer, Greater Melbourne). A VLA Managing Lawyer noted the constant challenge of 'undertaking good advocacy with little to no time to prepare' (VLA Managing Lawyer, regional area), while a duty lawyer said that 'it's impossible to negotiate, prepare pleas, take full instructions and advise clients when under the time pressures of the DLS' (VLA Lawyer, Greater Melbourne).

The trade-off between sustainability versus quality is the inherent service challenge the DLS faces. If service eligibility settings remain as they currently are, in a context of increased listings, then something will have to 'give'. If the number of people seeking DLS assistance increases and the number of duty lawyers does not, then the increasing client volume has to affect quality.

Private practitioners undertaking summary work

As noted, VLA uses the 'mixed model' to provide legal assistance services. Within this model, private practitioners undertake work funded by VLA in a range of capacities, including but not limited to providing legal assistance services under a grant of legal aid as well as providing duty lawyer services in some regional and rural areas. The ratio of work undertaken by private practitioners varies by location. In some rural areas, the DLS is provided exclusively by private practitioners while in others, VLA and private practitioners share the DLS roster, or the DLS is provided exclusively by VLA. Some 71.3 per cent of all grants of legal assistance for the period June 2011–November 2015 were provided by private practitioners. The sustainability of the Summary Crime Program is, therefore, contingent on private practitioners continuing to undertake grants of legal aid. It is thus important to examine the relationship between VLA and private practitioners, and the sustainability of private practitioners taking on summary crime work.

Private practitioner–VLA relationship

Many of the issues canvassed in this section are consistent with those reported in the DJR (2016) *Access to Justice Review*. VLA managers and private practitioners both described the relationship between VLA and the private profession as having been strained following the 2012–2013 Grant Guidelines changes, which reduced the number of grants of legal assistance for summary crime matters:

> *… in the early days [there was a relationship] where they would come to Law Institute meetings and they'd be updates with Legal Aid and we'd find out what's going on. Then we even had a system where we'd go and meet with their practice manager… but it broke down when they started to gazump us on summary crime and a change in guidelines, and I think everything went belly up. (**Private Practitioner**)*

Among evaluation participants from the profession, there was a degree of mistrust towards VLA as to motivations for the guideline changes, which had generated animosity. For instance, one Private Practitioner commented that there was a view among the private

profession that VLA should have provided stronger leadership to protect access to justice for Victorians. While the relationship was said to have improved somewhat recently, there was a view that VLA was trying to 'push out' the private profession from summary crime work:

> *… we're of the view, still, that they want less private practitioners to do the work and they want to make it harder for us to make a quid out of it … (**Private Practitioner**)*

Some private practitioners viewed VLA as 'competing' with the private profession. Because private practitioners are not able to be at every court and VLA is able, they run the risk of 'losing' out on clients to VLA:

> *… if I get a phone call that [one of my client's] in court 30 kilometres away I have to go in. I have to pay out of my own money someone to go and see them because Legal Aid have got an unfair trading position, because they have solicitors in every court whereas we are disadvantaged by that. (**Private Practitioner**)*

Private practitioners also reported that they thought VLA was now more likely to retain matters than refer them to private practitioners.

Another feature of the relationship between VLA and private practitioners was examples of poor communication. VLA staff and private practitioners both indicated that this was a periodic, but perennial issue. Private practitioners cited examples of how poor communication had caused hardship to some practitioners when VLA extended the period of time they had to wait before being paid for grants with little advance notice:

> *… these changes came in on 1 December so I didn't get a payment until I think sometime in February. I actually had to get a bank loan to bridge that period because I was living so hand to mouth, particularly towards the end of the year. (**Private Practitioner**)*

> *The thing of it is, they just went 'bam,' they didn't say this is going to happen in six months' time, get ready. (**Private Practitioner**)*

> *We were supposed to have read it in the Legal Aid News…that was managed really badly. (**Private Practitioner**).*

Private practitioners also explained that inconsistent communication and lack of clarity created uncertainly about how they were expected to apply the eligibility criteria for grants of legal assistance. Uncertainly, and experience of VLA issuing restitution notices, had made some private practitioners more risk-adverse in undertaking VLA funded work:

> *You just become trigger shy. You're not willing to take a punt on a client in case … you'll be required to repay Legal Aid the cost of the grant. But it brings into play decisions you wouldn't ordinarily make … (**Private Practitioner**)*

> *… you're second guessing a little bit and it's not clear. (**Private Practitioner**)*

> *…you're reluctant to incur a disbursement which means you're less effective in the management of your files. (**Private Practitioner**)*

Private practitioners also noted that while VLA had issued guidance notes to clarify the interpretation of the Grant Guidelines, they also felt that the reasons for this clarification had not been clear. For instance, one practitioner thought that, for the time being, VLA had

relaxed the interpretation of the guidelines, but that 'they can change it back to a more strict approach when it suits them, and that creates confusion in the profession'.

Another example of change creating confusion and affecting the relationship, cited by private practitioners, was the decision to cease VLA Assist. Private practitioners explained that they had used VLA Assist to clarify questions of grant eligibility with VLA, particularly for the 'hard ones' where there had been a difference of opinion within their office concerning whether or not a client was eligible for a grant of aid:

> *… because there were so many arguments in the office about what should be aid and what shouldn't, sometimes we'd send it in to Legal Aid and say you make the decision. But I've just heard … they won't give the opinion [anymore], so that means it's all on our necks … (**Private Practitioner**)*

Overall, these findings point to breakdowns in the relationship and communication between VLA and the private profession, and consequent feelings of mistrust which affect the willingness of private practitioners to undertake VLA funded work.

Administrative burdens undertaking grants of aid

Private practitioners said that administrative burdens and bureaucratic processes threatened the viability and sustainability of their VLA funded work:

> *The administrative burdens that are on us now are – it's just ridiculous. If you were charging them at the private rate, you would use up all of the funding in the administrative portion of it. (**Private Practitioner**)*

> *There are lawyers who are willing to do it but who aren't on the panel because it's too hard…It's just totally ridiculous that those people can't be on the panel…if anyone's willing to do Legal Aid work why should Legal Aid require them to jump through all these hoops? (**Private Practitioner**).*

Private practitioners on the Summary Crime Panel are able to self-assess client eligibility for grants. This wasn't always the case: '…historically…we'd write a letter to [VLA], send all the stuff and they'd assess it and tell us yes or no. We'd be able to say to the client "mate, I don't know if we can act for you or not."' Private practitioners said that with the shift to self-assessed grants under the panel system, there was expectation that this was going to result in increase in fees 'because we were taking the burden of decisions as to whether a person qualified for assistance'. Some private practitioners felt this had not transpired and that self-assessment had shifted rather than saved costs, and that a range of compliance mechanisms had increased administrative burdens and were a source of ongoing tension that made VLA funded work less attractive:

> *… VLA has to accept that it's dealing with people who are designated officers of the court for whom telling lies and doing crook deals can result in far worse things than compliance officers saying I'll cut $150 off. There are serious consequences and until VLA gets its head around that we're going to have this consistent tension and increased expense that is an unnecessary overhead to a private practice. (**Private Practitioner**)*

Regarding the panels and compliance procedures, VLA Managers acknowledged the impacts and explained there had been a change in VLA's approach to its compliance responsibilities:

> *… you don't want to paralyse the whole profession through bureaucracy … So we try and take a light touch risk-based approach … So we see it as a capacity-building exercise and skill-building exercise as much as it is a tool of compliance and risk and quality management. (**VLA Manager**)*

Additionally, private practitioners thought VLA in-house practitioners were not scrutinised to the same extent that they were, and that it was particularly frustrating when they observed VLA lawyers doing work that appeared to be outside the eligibility guidelines.

Practitioner goodwill and financial viability

Private practitioners stated that to ensure the best outcome for their clients they often undertake work that goes well beyond the level of funding they receive from VLA:

> *… there may be a number of forensic decisions and time taken and patience with the punter who's in a very vulnerable position, behind the perspex… [it] creates a lot of lawyer work and we just don't get funded for that … We do it because we're suckers… (**Private Practitioner**)*

Notwithstanding the issues undertaking VLA funded work, the wide view of the private practitioners we consulted was that one of the reasons they were prepared to do work for VLA was to provide 'access to justice for vulnerable Victorians'. Private practitioners explained that money was not the determinative factor affecting the decision to continue to undertake VLA funded work:

> *If Legal Aid paid a lot of money for their cases you could justify saying you're having a limited panel, because we're going to pay top dollar for top lawyers, but they don't. I mean seriously, I would never run any private file for the money Legal Aid pays. It's just – I mean you do it for love, not for money. I mean seriously any suggestion that you're making money out of it is just a crock … (**Private Practitioner**)*

There was a view that while one of the impacts of the 2012–2013 Grant Guidelines changes was that there were some additional clients for private firms, as more accused had become ineligible for grants for summary crime matters, practitioners reported that many of these people do not have the means to pay private practitioners' fees. In the three years since the guideline changes, one Private Practitioner reported that, in his firm, the number of clients carried on 'on periodic payments has increased by 12 per cent' and that 'the pro bono time that we're spending has increased by 17 per cent'. Another Private Practitioner said that, in terms of remuneration, in real terms it works out to be about 'fifty per cent less that we're getting paid for what we're doing in comparison to 10 years ago'.

Notwithstanding changes in 2012 in the way that VLA paid private practitioners, which introduced differential fees depending on the stage at which matters were resolved, increasing the fees for some work by 20 per cent, the private practitioners who participated in the evaluation were of the view that VLA funded work was becoming increasingly less financially viable. As the gap between what private practitioners are paid by private clients and what they are paid by VLA increased, the opportunity costs of undertaking VLA increased. Private practitioners also voiced frustration with VLA for failing to acknowledge how, in practice, summary case conferencing had often become an 'in-court event' that required a practitioner to attend court, because police prosecutors were not otherwise available. One Private Practitioner remarked:

> *We say to them, 'look, we're not funded for this summary case conferencing and we need to address that and put in the necessary appearance fee' … they say 'no, no, no, summary case conferencing is an out of court event'… (**Private Practitioner**)*

Private practitioners involved in duty lawyer work described how it was sometimes a 'loss of income in business terms'. One regional Private Practitioner explained that '[m]y firm is rostered on every four weeks so we often adjourn things, do stuff in the meantime you know, pro bono, and then appear again as the duty lawyer the next time to make sure that these people get the just result'. This was not really financially sensible, but 'these people need the assistance as well'. VLA managing lawyers working in offices where private practitioners shared the duty roster said that there was a lot of goodwill involved in undertaking duty work, particularly with the rise in in-custody matters, and noted that, from a financial point of view, 'it's probably not viable for us to take over all the duty lawyer work' (VLA Managing Lawyer, regional area).

Sustainability of private practitioners doing VLA funded work

Private practitioners are critical to the operation of the SCP. However, some private practitioners have formed the view that VLA funded work may not be sustainable in the long-term without some action on fees, and the way in which VLA and the profession work together.

In some regional and rural areas VLA managing lawyers and magistrates said that there were few or no private practitioners sitting on panels, or willing to help with duty lawyer work:

> *… nobody who is prepared to do Legal Aid work. Nobody is on the panel. So I think that can be limiting. I don't know why it's unattractive or why people don't want to be – I don't know whether it's because you have to self-assess … whether it's that [which] causes problems. I'm not too sure. But it means it makes it very difficult to properly have client service in [those] places … (**Magistrate**)*

One Private Practitioner in a regional area said he could envisage withdrawing from doing grants of legal aid because 'it's not, it sounds terrible, but it's not commercial'. A number of VLA managing lawyers in regional areas said that they had experienced growing resistance from the private profession in their local areas to undertaking VLA funded work, because it was not seen as being financially viable, and because of the time and difficulty VLA sometimes involved:

> *… that's why the private profession won't help, plus the difficult kind of clients that are in the cells … they're just hard work, so the private profession have been taking a step back, dodging those phone calls, saying 'Well, that's what Legal Aid's for'. (**VLA Managing Lawyer**)*

The key issues affecting sustainability raised by private practitioners further point to pressures within the summary crime system negatively impacting the attractiveness of undertaking VLA funded work. Where the summary crime system is breaking down, and consequently making it less attractive and financially viable to undertake VLA funded work, the 'gap' between the cost of doing VLA funded work and fees paid in remuneration is likely to rise.

Key factors affecting the sustainability of VLA's summary crime services

As noted previously, policing practices and legislative reforms were identified as two key drivers of demand for summary crime services. When it comes to responding to this demand, a number of other factors potentially limit the sustainability of the SCP. The

service challenge is further compounded by inefficiencies in the summary crime system. In the absence of any change in the resources available for summary crime services, these factors appear to have generated instability, including negatively impacting staff wellbeing of VLA staff, and the attractiveness to private practitioners of doing VLA funded work.

Overall, the findings on sustainability suggest that if nothing changes, the SCP may be at 'flashpoint'. Suggestions for improving VLA's summary crime services are explored in the next section, and in the *Discussion and recommendations*.

Suggested improvements to summary crime services and system

In interviews, focus groups, and the online staff survey, evaluation participants suggested a number of improvements that could be made to improve the efficiency, effectiveness, expediency and/or quality of summary crime services. Some of these were internal improvements – that is, those that could be enacted from within VLA – while others were external, requiring the coordination, cooperation and endeavours of other key criminal justice system stakeholders.

Changes within VLA

Turning first to internal improvements, these fell under three key themes: resource allocation; policy/procedure reform; and responsive service provision.

Summary crime resource allocation

The widespread view of the cross-section of evaluation participants was that VLA summary crime services needed more resources, particularly the DLS. VLA staff suggest that rostering on more duty lawyers would bring a number of benefits including but not limited to: reducing individual duty lawyers' workloads; reduced waiting times for clients, especially beneficial for anxious clients or clients with mental illness whose illness is exacerbated by waiting; enabling duty lawyers to spend more time with clients; and, linked to the last point, enabling duty lawyers to provide better quality services. Other stakeholders also thought that more resources would be beneficial. For instance, a Police Prosecutor remarked:

> *… just from a purely prosecution point of view [resources] would be the biggest improvement because it removes the workload from us, removes that potential conflict from us and it then should go smoother. (**Police Prosecutor, Greater Melbourne**)*

Several VLA managing lawyers thought that VLA should review how resources are allocated across the state. Some staff suggested that more administrative assistance could be provided to help VLA lawyers manage file loads. Some VLA clerks and duty lawyers thought that more training resources should be allocated to clerks/administrative staff. It was also suggested that a senior lawyer should undertake assessment and triage at Court:

> *… perhaps the coordinating lawyer can do the triaging and then the other duty lawyers don't have to consider it at all, they just go along with the coordinator's decision. (**VLA Lawyer, Greater Melbourne**)*

Some VLA and private practitioners thought that the mixed model of service provision could be better utilised/utilised more to help address the growing demand for legal services and

that the private practitioners might be harnessed to take some of the pressures of the DLS. VLA practitioners also thought that duty lawyers should have greater capacity to brief matters to private practitioners beyond grants of legal assistance to better cope with service demand.

Service eligibility changes

One of the most cited suggestions for improving the VLA's summary crime services was to review and expand the Grant Guidelines, and to allow grants of aid for anyone facing imprisonment, irrespective of their matter type. Many staff and private practitioners also thought that the guidelines should have some capacity to assist some defendants to plead not guilty who have viable defences, defendants who may be eligible for diversion, or defendants who might be able to secure a non-conviction. This was deemed especially important considering that there are no spent convictions in Victoria.

To combat issues of staff fatigue, burnout and high workloads, several VLA staff thought that realistic case load expectations of the DLS should be established. Another suggestion from both VLA staff and magistrates was to reform the policy on minor work files. Some VLA staff and magistrates thought that the minor work file policy should be 'relaxed' to expand the ability of duty lawyers to take on minor work files as this might help expand DLS capacity, and support continuity and quality of service. Some VLA staff also thought that there should be greater flexibility and discretion in applying the DLS Guidelines to try to avoid vulnerable clients 'falling through the cracks'.

In relation to the DLS priority clients, almost universally, VLA staff thought that first time offenders and young persons (18–24 years) should be priority clients, as this was potentially where the DLS had scope to make a difference. Other internal policy/procedure-related suggestions for reform included: keeping centralised data on clients with their consent to avoid doubling up on reports etc., following up on clients who miss legal appointments, utilising strategic litigation and/or systemic strategic advocacy to engender system reform, and streamlining paperwork requirements.

Changing approach to service delivery

VLA staff placed significant emphasis on the need to provide responsive legal services – that is, services that are responsive to the differential needs and capability of clients. Accordingly, a number of suggested improvements to summary crime services centred on ways of working differently with different clients. For instance, implementing a 'dual-track' process was one suggestion, to support duty lawyers to work 'fast' with some clients and 'slowly' with others so that:

> *… those matters that should be in and out and have minimal involvement with the criminal justice system can get it. [And] those other matters where the clients have complex needs and issues [can] get the supports that they require…so it's about being able to go fast and to go slow when you need to. (**VLA Manager**)*

For those not suited or appropriate for more intensive legal services (i.e. those on the 'fast' track), it was suggested that other service options could be trialled, such as group information sessions or group advice sessions in some areas of low severity 'mass' prosecution matters, such as some traffic and driving offences, with the aim to provide people the information they need to represent themselves:

> *… [if] you can somehow separate out a group of clients who may only qualify in terms of our current duty lawyer guideline support advice and give them a general legal information session in the morning and just say to them 'look, you can wait and get individual advice if you want but [here is] some general information, this is generally how the court works, these are your general options'…there would be a group of those people who then [might] feel more confident to go and deal with their matter themselves. (**VLA Managing Lawyer, Greater Melbourne**)*

While there are logistic hurdles to overcome to implement such an innovation, a number of participants reported that magistrates and police prosecutors were interested in exploring options.

It was further suggested that this would help to manage client expectations. Similarly, a Magistrate also suggested that VLA duty lawyers could give presentations to particular groups of clients at court who do not meet the DLS Guidelines for legal advice and in-court advocacy:

> *… so your drive while suspendeds, your disqualifieds, unlicensed, your driving offences essentially. We siphon those matters off into a court; we'll give Legal Aid a court at say 9:30/quarter to 10:00 where they do a presentation, a 10 to 15 minute presentation saying these are the issues that the court will be looking at – so basically an information session… (**Magistrate**)*

Other VLA staff suggested that community clinics could be utilised for legal advice, instead of individual advice appointments, as there would be less 'wasted' time if a particular individual missed their appointment.

It was also proposed that VLA adopt a more holistic, multidisciplinary approach to the Summary Crime Program, and develop a longer term vision of what it wanted to achieve. For instance, it was suggested that by having social workers work alongside duty lawyers and provide non-legal support to clients and/or assist duty lawyers by contacting various services and supports this would not only benefit clients but also improve the efficiency and effectiveness of the DLS:

> *How great would it be if you were on cells for the day and you actually have a social work team that's also on cells for the day and they help doing all the case management? So you go in, you assess the legal issue and you say, 'I think there's an application for bail that needs to be made today or tomorrow' and we come out and we say to the social worker, 'Here's the top five issues. Can you help us case manage that stuff? … Can you go in and also see that client and say they might want to come and see you next week to help?' (**VLA Manager**)*

Some also thought that being able to address multiple legal problems concurrently might be more effective for some 'high need' clients presenting for criminal duty lawyer services, and that this might have wider benefits in terms of reducing offending and meeting needs:

> *If you look at the family violence matters, the guys come in, they've got an intervention order so they see a duty lawyer…They've got a criminal matter later on, they see a duty lawyer…In the background there's a family law issues that's driving the breaches of the intervention order because he just wants to see his kids. Of course he's not doing the right thing in going round in the middle of the night and banging on the door and abusing them all and that's not going to work…But there's the family issue that if he could be given a pathway for that, at least to advice, [but] no one's actually thinking about that because everyone's just chasing their tail on the other stuff. So those bigger issues that need to be solved are not being [solved]… (**Magistrate**)*

> *… why is it that we wouldn't do our own case management service, even with what we've got now? So we have civil lawyers, family lawyers, child protection lawyers, crime lawyers. A person coming*

> *with criminal law matters generally has some family issues but they'll quite often also have maybe some infringement civil issues. But what we do is we just refer and they get lost in the system … Why couldn't we team people almost, and look at that person in a holistic way, just within our own services? (**VLA Manager**)*

Similarly, some staff also placed emphasis on the need for timely intervention and thought that earlier contact and better case management would be beneficial:

> *… so much of this stuff is about intervention in people's families and it's about legal intervention but really a lot of it is about non-legal intervention…ultimately, if you picked the client up early and you case manage them a little bit better then you could be ready for – even if they did have the criminal charges – you could be ready for it or a bit more prepared for it rather than picking them up once they've gotten into the court. I think that is the strategy for managing [it], but that's sort of a big and long-term strategy. (**VLA Managing Lawyer, Greater Melbourne**)*

Other VLA managers also thought that VLA could be more assertive and creative with its summary crime services:

> *… we know what the research is telling us about holistic lawyering, about therapeutic jurisprudence and restorative justice principles [but] we've not held our own in terms of saying, 'You guys can keep pushing the tougher on crime bit, it does not work. Here's all the reasons why and let's have a look. We've decided to be really creative in this space and show the positive outcomes from that'. So I think we've kind of been pulled in [our current] direction because we've had to be, because we've been reactive … But we never set out own agenda … I get that it's hard because of the political space we're in [but]…I don't think we're bold enough in that space. (**VLA Manager**)*

> *… why wouldn't we say, 'Well, family violence. You want specialist courts rolled out within two years. We say the definition of specialist courts should be even broader than what you're saying it is?' So we're going to say, 'In two trial sites we're going to have lawyers and social workers working hand-in-hand and this is what we're going to be able to offer you and we want to evaluate that' or we're going to say, 'We want to work with a financial counsellor or our own drug and alcohol worker'…there's so many things. (**VLA Manager**)*

Changes external to VLA

In this section, we examine suggested improvements that require the cooperation and coordination of other stakeholders. These fall into two main themes: working relationships and system improvements.

Improved working relationships

Many of the external improvements – that is, ways in which the SCP could be improved that require the involvement of other actors – are centred on improving working relationships among key stakeholders. For instance, evaluation participants suggested that if all of the players got on board with the message that 'we're all in this together', then improvements in the way in which the summary crime system operated could be realised, which would have benefits for the key players. This included shared understandings about what it is realistic to expect each player to be able to do with available resources, as well as improved understanding of the wider ramifications of change:

> *It's more like getting the process, getting a consistent process and having everyone actually adhere to it. (**Advisory Group Member**)*

> *Getting more of an understanding of what everybody's process is within the system. (**Advisory Group Member**)*

In particular, the operation of summary case conferencing practices in some areas was identified as having broken down and being in need of repair.

Some VLA staff also observed that competing goals and practices of various agencies sometimes 'undercut' each other:

> *… everyone's attempt at efficiency is undercutting each other, so the courts' attempts at efficiency involve a lot of pressure on the lawyers which I don't actually think is necessarily increasing efficiency... (**VLA Managing Lawyer, Greater Melbourne**)*

Subsequently, it was suggested that further 'system' work needed to be done to increase the awareness and understanding of how the summary crime system was operating. Also linked to improved working relationships was the suggestion that the courts could list 'smarter' or more appropriately – that is, that they could either cap the number of listings and/or group certain types of matters and have dedicated days for those matters.

Summary crime system improvements

A number of evaluation participants thought that there was a need for strategic system-wide improvement. This is likely to require higher level collaborative leadership:

> *I do think that as the leaders in the system … we have got to figure out what combination of solutions, through training, mentoring, leadership [is needed] … (**VLA Manager**)*

> *My view is we're all focused on trying to do the best we can with what we've got to address the need. The problem is the volume is ridiculous and what we should be trying to do is we've got to be reactive to what's going on, but we also have to be proactive to say, What's going on here? (**Advisory Group Member**)*

The key strategic challenge identified was how the summary crime system could best cope with rising workloads. One Advisory Group Member suggested that there were a couple of ways to dealing with rising system workloads – further cuts to service levels, or working to get rid of matters that do not need to be a court event. For instance, it was suggested that:

> *… if we can move a lot of stuff that doesn't, that won't see someone go to jail or that won't see somebody at risk of societal impacts which create problems for the future, get them out of the system. (**Advisory Group Member**)*

Similarly, magistrates also thought that there was room to review the nature of the matters coming before the court:

> *… the bottom end stuff that could otherwise be dealt with by infringement notices. There would be a fair bit of that. (**Magistrate**)*

Prosecutors, in particular, thought that some of the 'bottom end' driving-related offences that they dealt with, such as toll-related offences, should not require a court event and might be dealt with by way of proscribed penalty:

> *Why do people have the ability to come in and argue about their $100 toll? From experience they're going to get exactly the same penalty anyway … All your low level speeding matters where there's not automatic suspensions, get rid of all that … license restorations … why does it have to be done in person? Why can't you submit your materials to a magistrate who does it in chambers? (**Police Prosecutor, Greater Melbourne**)*

Other 'bottom end' offences adding to workload strain and taking valuable court time and effort included:

> *… steal a $2 Mars Bar and that's a brief of evidence, because it's a theft. Like, the waste in relation to time and effort in relation to that is ridiculous. Why can't I give you a ticket for shop theft? If it's a theft for less than $100, give you a ticket. If you're drunk in a public place, give you a ticket. Why do you have to come to court for that? (**Police Prosecutor, Greater Melbourne**)*

> *… there's so much stuff that we can get out and I know the court are really looking at that because the demand isn't going to change and they're not going to get another 25–30 magistrates at another building. So [the system] needs to be a bit more practical. (**Police Prosecutor, Greater Melbourne**)*

Some thought that duty services had become the default or 'go to' method for processing cases expeditiously; there was opportunity for broader system reforms:

> *Duty law seems to be the go to for the easiest way to resolve matters as quickly and as effectively as possible. It's a clinic based model obviously. You see them once, provide them representation and advice at that time … That seems to be the go to model for everybody these days. (**Advisory Group Member**)*

> *Why are we costing money by going to court? Why can't we use diversion options? Why can't we expand cautioning to adults? … Get them out of the system but maintain a safety net. How do we do that? That's [the challenge]. (**Advisory Group Member**)*

Increasing the availability and number of coordinated services was also deemed important, especially in regional areas where there is limited or no access to these services.

7. How do Victorian summary crime services compare to other Australian jurisdictions?

This section examines how VLA's summary crime services compare with those in other Australian jurisdictions. We set out to compare jurisdictions using publicly available information on the following: the type of services that are provided, the number and type of clients served, how services are provided, service eligibility and Summary Crime Program cost.

However, comparative analysis of the performance of public legal services across Australia is hampered by the lack of comparable information about service inputs and outputs. VLA is the only legal aid commission that publicly reports summary and indictable crime services separately, and it was beyond the scope of this evaluation to seek such information from each legal aid commission. This therefore limits the extent to which the above indicators can be comparatively examined. For instance, due to the way in which other legal aid commissions report their service data, it was not possible to compare the number of summary crime specific services and the type of clients served by those services. Nor was it possible to compare the cost of summary crime services with those in other jurisdictions.

In their annual reports, most legal aid commissions reported overall criminal legal service statistics. In some cases, but not all, these were broken down by the type of service (e.g. duty services, legal representation, information, advice, or minor assistance). However, counting and reporting practices appeared inconsistent. For example, in some jurisdictions, representation by a duty lawyer may be conditional on a grant of legal assistance. Moreover, the type of legal service was often not broken down by type of matter or court, so it is not possible to determine the number and type of services for summary and indictable matters separately to the court, so it remained unknown whether legal representation was for summary or indictable crime. Some legal aid commissions report the total number of services by type of service, but do not break this down by law type (e.g. criminal, civil or family).

For these reasons, we elected to examine the following key indicators which were broadly comparable across each jurisdiction:

- overall magistrates' or local courts workflow for criminal matters in 2014–2015 (i.e. lodgements, finalisations, clearance rate and backlog of criminal matters)
- number of defendants finalised in magistrates' or local courts in 2014–2015
- National Legal Aid collated criminal service statistics for each legal aid commission
- service eligibility guidelines of each legal aid commission.

While this information cannot measure the performance of each legal aid commission, it provides further contextual information about Victorian summary crime matters and services and those in other Australian jurisdictions.

Court and service statistics

Magistrates court statistics – workflow

It is informative to consider the overall flow of matters coming through courts of summary jurisdiction. Table 7.1 collates information from the Justice volume of the Steering Committee for the Review of Government Service Provision's (2016) annual *Report on Government Services*. This provides an indicative measure of overall court workload across different jurisdictions. Note that the counting units of Table 7.2 are different to Table 7.1, and includes unpaid infringement notices resulting in enforcement proceedings.

Table 7.1: Flow of criminal matters in magistrates or local courts in Australia 2014–2015

	Jurisdiction							
	VIC	**NSW**	**QLD**	**SA**	**WA**	**TAS**	**NT**	**ACT**
Lodgements ('000)	247.03	168.98	205.91	49.48	91.00	17.02	15.65	6.22
Finalisations ('000)	275.55	170.89	200.59	50.83	94.08	15.65	16.26	5.95
Clearance rate (%)	111.5	101.1	97.4	102.7	103.4	91.9	103.9	95.7
Backlog of criminal matters	45,762	39,331	41,033	15,883	12,201	7,312	2,718	1,915

Source: Steering Committee for the Review of Government Service Provision (2016).

In 2014–2015 the Victorian Magistrates' Court had the highest number of lodgements of all Australian courts of summary jurisdiction. This indicates that the volume of criminal matters being processed through the summary jurisdiction in Victoria was greater than that of any other jurisdiction. Victoria also had the highest number of finalisations, and clearance rate, but also the largest backlog of criminal matters. Combined, these figures suggest Victorian Magistrates' Courts face a comparatively higher overall workload than those in other jurisdictions. This is a higher workload than New South Wales, notwithstanding that Victoria has a smaller total population. As noted in Chapter 2, one factor explaining differences between Victoria and New South Wales may be differences in the level of police court and non-court actions.

Magistrates court statistics – defendants finalised

Court statistics also provide insight into possible differences in the way summary crime matters are finalised by jurisdiction. Table 7.2 summarises ABS data on the number of defendants finalised in magistrates or local courts across Australia in 2014–2015. Note that the counting units of Table 7.2 are different to Table 7.1. Table 7.2 is a count of defendants, not total matters or charges, and that further information about any legal representation the defendant may have had is not available.

Table 7.2: Defendants finalised in magistrates or local courts in Australia 2014–2015

	Jurisdiction							
Summary Outcomes	**VIC**	**NSW**	**QLD**	**SA**	**WA**	**TAS**	**NT**	**ACT**
Method of Finalisation								
Adjudicated outcomes	89 225	120 438	146 992	29 225	76 257	11 821	10 692	3 398
Acquitted	844	5 902	1 011	159	513	1 816	327	108
Proven guilty	88 378	114 535	145 984	29 065	75 744	10 004	10 367	3 291
Guilty plea by defendant	79 196	78 924	121 147	25 662		8 725	9 079	2 601
Guilty finding by court	2 041	11 734	5 371	220		471	156	181
Guilty ex-parte	7 148	23 751	19 465	3 179		813	923	297
Transfer to other court levels	424	4 494	3 475	1 984	1 884	320	363	249
Withdrawn by prosecution	11 458	8 423	10 471	8 147	2 422	192	865	1 386
Total finalised	101 106	133 528	161 023	39 398	80 683	12 347	11 921	5 090
% Finalised by adjudication	88.2	90.2	91.3	74.2	94.5	95.7	89.7	66.8
% Adjudicated matters finalised by guilty plea	88.8	65.5	82.4	87.8		73.8	84.9	76.5
% Adjudicated matters finalised by guilty finding by court	2.3	9.7	3.7	0.8		4.0	1.5	5.3
% Adjudicated matters finalised ex-parte	8.0	19.7	13.2	10.9		6.9	8.6	8.7
% Withdrawn by prosecution	11.3	6.3	6.5	20.7	3.0	1.6	7.3	27.2

Source: ABS (2016a).
Note: due to recording system constraints, guilty outcome data for WA is not recorded by the ABS.

Overall, Victoria had the third highest number of defendants with matters finalised in the Magistrates' Court, after both Queensland and New South Wales (see Table 7.1). On average, some 86.3 per cent of the defendants in magistrates' or local courts across Australian jurisdictions had an adjudicated outcome in 2014–2015. Victoria had a comparatively higher than average rate, 88.2 per cent, although it was actually the third lowest rate after the Australian Capital Territory (66.8%) and South Australia (72.7%).

Of those outcomes that were adjudicated, on average, 70.0 per cent were finalised by way of guilty plea by the defendant. Notably, Victoria stood out as the jurisdiction with the highest proportion of adjudicated outcomes finalised by guilty plea (88.8%), followed by South Australia (87.8%), Northern Territory (84.9%) and Queensland (82.4%). New South Wales was the lowest, at 65.5 per cent. This difference is partially explained by a comparatively higher rate of adjudicated outcomes finalised ex-parte in New South Wales compared to Victoria (19.7% vs 8.0%), and a higher rate finalised by a guilty finding by the court (9.7 % vs 2.3%). It should be noted, however, that Victoria had the third lowest rate of criminal defendants finalised by a guilty finding by the court, higher only than the Northern Territory (1.5%) and South Australia (0.8%).

The proportion of withdrawn by the prosecution outcomes vary greatly by jurisdictions, ranging from 27.2 per cent in the Australian Capital Territory to 1.6 per cent in Tasmania. The national average was 10.5 per cent. In Victoria, 11.3 per cent were withdrawn by the prosecution, which was the third highest rate after the Australian Capital Territory and South Australia.

These findings point to possible differences in approaches to prosecution and criminal defence from jurisdiction to jurisdiction. Compared to New South Wales and Queensland, Victorian summary crime defendants tend to have a higher rate of finalisations by way of guilty plea, a higher rate of finalisations by prosecution withdrawal, and a lower rate of finalisation by way of contested hearing. As they sit, these findings are open to interpretation. Further information about the defendant's access to legal advice and representation, and the basis on which they pled guilty is needed to determine whether or not this reflects a summary crime system operating effectively, or one where defendants have unmet legal needs.

Criminal legal assistance service statistics

National Legal Aid reports data on the number of criminal legal assistance services provided by legal aid commissions in each state and territory. Note, however, that criminal services are not broken down by summary or indictable matter type. Table 7.3 reports the overall distribution of criminal legal assistance for each jurisdiction by service type.

Table 7.3: National criminal legal assistance services by service type 2014–2015

	Jurisdiction							
	VIC	**NSW**	**QLD**	**SA**	**WA**	**TAS**	**NT**	**ACT**
Proportion of criminal grants (%)	20.1%	10.5%	15.9%	28.8%	7.6%	31.2%	27.6%	25.5%
Proportion of criminal duty lawyer appearances (%)	62.3%	75.4%	71.1%	34.4%	74.2%	27.0%	50.0%	47.0%
Proportion of criminal legal advice (%)	14.5%	13.6%	13.1%	34.5%	10.5%	40.3%	22.1%	27.5%
Proportion of criminal minor assistance (%)[55]	3.1%	0.5%	0.0%	2.2%	7.7%	1.5%	0.3%	0.0%
Total	100%	100%	100%	100%	100%	100%	100%	100%

Source: National Legal Aid (2016).

[55] National Legal Aid (NLA) were contacted and asked what might account for the smaller numbers of minor assistance services for Queensland, the Northern Territory (NT) and the Australian Capital Territory (ACT). We were informed that each legal aid commission reports their data according to the same counting rules so the reason behind this discrepancy remains unclear. Due to unresolved questions concerning the possible underreporting of minor assistance in Qld, NT and the ACT, these statistics should be interpreted with caution.

Table 7.3 indicates that, compared to the other jurisdictions, Victoria had:

- the fifth highest proportion of grants of criminal legal assistance, higher than Queensland, New South Wales and Western Australia, but less than the Australian Capital Territory, the Northern Territory, South Australia and Tasmania
- the fourth highest proportion of criminal duty lawyer appearances, higher than South Australia, Tasmania, the Northern Territory and the Australia Capital Territory, but less than New South Wales, Western Australia and Queensland
- the fifth highest proportion of criminal legal advices, higher than New South Wales, Queensland and Western Australia, but less than South Australia, Tasmania, the Northern Territory and the Australia Capital Territory
- the second highest proportion of criminal minor assistance, higher than Queensland, Australian Capital Territory, Northern Territory, New South Wales, Tasmania and South Australia, but less than Western Australia.

These findings indicate that VLA ranks midfield in terms of the mix of criminal legal assistance service provision.

Differences in the distribution of criminal legal assistance services among the Australian legal aid commissions is likely to be explained by differences in their respective service models and eligibility guidelines employed for criminal legal services. We examine eligibility criteria in the following section.

Service models and guidelines

The eligibility criteria or guidelines for criminal legal services in each Australian jurisdiction were reviewed. The two main types of services examined below are grants of legal assistance and duty lawyer services, although it should be noted that jurisdictions also vary in the terms by which other services, such as legal advice appointments and minor assistance, are available. In reviewing and comparing the service eligibility, it is important to bear in mind the wider context and the inter-relationship of different service offerings and approaches taken in different jurisdictions. For instance several factors affect the wider access to justice and criminal justice policies and shape both the 'demand side' and 'supply side' of public legal assistance services – that is, the number of people seeking legal assistance, and the resources available to provide public legal assistance. Other relevant factors include shifting population demographics and the appropriateness of infrastructure to meet demand.

Critically, each jurisdiction faces particular service challenges that are unique to that jurisdiction and, therefore, the way something operates in one area may not be appropriate or sustainable in another due to a wide range of other factors. Bearing these limitations in mind, Table 7.4 compares each jurisdiction's eligibility for state/territory grants of legal assistance for adults (18 years or older) across a range of variables including: the assessable income threshold for a single person with no children (as a means indicator), merits tests, any other tests, specified state/territory eligibility guidelines and any special circumstances/exceptions to those guidelines.

Table 7.4: State/Territory Grants of Legal Assistance, Summary and Indictable Crime

	Vic	NSW	Qld	SA	WA	Tas	NT	ACT
Means test	$360 p/wk	$400 p/wk	$370 p/wk	Not specified	Not specified	$180 p/wk or Centrelink as sole income	$377 p/wk	$411.49 p/wk
Merits test								
Reasonable prospect of success	In guidelines	Not specified	✓	✓	In guidelines	✓	Not specified	Not specified
Prudent self-funding litigant test	Not specified	Not specified	✓	✓	Not specified	✓	Not specified	✓
Appropriateness of spending limited public legal grants of legal assistance funds test	Not specified	Not specified	✓	✓	Not specified	✓	Not specified	✓
Availability of funds test	x	✓	x	x	x	x	✓	✓
Other test	✓ State reasonableness test ✓ State interests of justice test	✓ Unpaid contributions test for range of matters[56]	x	x	x	✓ Nature and extent of any benefit if approved or any detriment if denied	x	x
Special circumstances/exemptions								
Description	'State special circumstances'	'special disadvantage'	Not specified	'special/exceptional circumstances'	'special circumstances'	Not specified	'exceptional circumstances'	Not specified
Language/literacy	✓	✓	x	Not specified	✓	x	✓	x
Intellectual/psychiatric disability	✓	✓	x	Not specified	✓	x	✓	x

[56] The unpaid contributions test is applicable for: any non-police/non-Centrelink proceedings; bail applications; driving and traffic offences; defended hearings in the local court; annulments; contesting an application or summons made under the *Crimes (Forensic Procedures) Act*; Forum Conferencing.

	Vic	NSW	Qld	SA	WA	Tas	NT	ACT
Other client characteristic	x	✓ Physical disability	x	x	✓ Physical disability ✓ Remote location	x	x	✓ ATSI (subject to there being a reasonable defence)
Other situation (e.g. undue hardship or risk to applicant or their dependents etc.)	x	✓ Civil liberties ✓ Exceptional circumstances[57]	x	✓ Undue hardship ✓ Emergency situations (e.g. liberty, livelihood, possessions or physical and mental wellbeing of applicant and dependents threatened)	x	x	x	x
Under 18	*Excluded from this analysis as focusing on adult crime only*							
Grants of legal assistance: specific matter type eligibility (selected matters – not exhaustive)								
Traffic matters	x Unless intellectual/psychiatric disability *AND* real possibility of imprisonment	x Unless real possibility of imprisonment *OR* matter involves death of a person (even if no possibility of imprisonment)	x If guilty plea for minor traffic prosecution or regulatory offence	x Unless real possibility of imprisonment *OR* applicant has special circumstances that justify assistance	Not specified	x Unless applicant is charged with dangerous or negligent driving resulting in death or serious injury	x Unless there are more serious charges pending on same file *AND/OR* particular circumstance relating to the applicant and/or matter	✓ If in relation to grant/ restoration of licence to drive where applicant likely to lose employment or suffer exceptional hardship

[57] For example, if person is a defendant in Education Act proceedings or person is a defendant and a protected person in domestic violence order proceedings.

	Vic	NSW	Qld	SA	WA	Tas	NT	ACT
Not guilty pleas/defended hearings/trials	✓ In Magistrates' Court if reasonable prospect of acquittal on most serious charge(s) *AND* conviction likely to result in imprisonment ✓ In County Court if charges cannot be heard in Magistrates' Court (unless compelling reasons not to) *AND* desirable in the interests of justice	✓ If aidable under local court criminal law policy *AND* either real possibility of imprisonment *OR* exceptional circumstances ✓ In Supreme/District court available for bail applications, mentions and adjournments, sentence matters including breaches of recognisance, and criminal trails	✓ In Magistrates' Court if conviction likely to result in imprisonment *OR* conviction likely to have detrimental effect on livelihood or employment *OR* defendant suffers from disability or disadvantage that precludes self-representation	✓ If likelihood of gaol sentence	✓ If there is legal merit; *AND* complexity; *AND* either a special circumstance precluding self-representation *OR* likelihood of imprisonment and applicant on specified orders ✓ superior court trials where matter should be defended (excl. where matter can be dealt with summarily)	✓ If genuine defence to charge on merits *OR* strong possibility of no case submission being successful	✓ If reasonable prospect of acquittal *AND* conviction would likely result in imprisonment (incl. suspended imprisonment) *OR* defendant suffers from disability or disadvantage that precludes self-representation x if trial and plea in Supreme Court unless conviction likely to result in imprisonment (incl. suspended imprisonment) and reasonable prospect of acquittal *OR* conviction likely to result in term of imprisonment (incl. suspended) and reasonable prospect of being convicted of less serious offence	✓ If conviction likely to result in imprisonment *OR* dismissal from employment *OR* loss of livelihood or vocation, provided (if defendable matter) reasonable to defend in all the circumstances

	Vic	NSW	Qld	SA	WA	Tas	NT	ACT
Guilty pleas/criminal proceedings	✓ In Magistrates' Court if no reasonable prospect of acquittal *AND* conviction likely to result in imprisonment ✓ County Court breaches of suspended sentence orders, community correction orders and probation orders	✓ In local court if offence carries term of imprisonment as available penalty *OR* exceptional circumstances ✓ In Supreme/District court (see above)	✓ In Magistrates' Court if unreasonable for duty lawyer to enter plea[58] ✓ If District and Supreme Court criminal proceedings ✓ If Mental Health Court (if indictable criminal proceedings) ✓ District and Supreme Court breaches of probation, community service and suspended sentences	✓ If likelihood of gaol sentence	✓ If outside scope of DLS[59] *AND* either special circumstance precludes self-representation *OR* likelihood of imprisonment and applicant on specified orders ✓ Superior court pleas in mitigation (excl. where matter can be dealt with summarily)	✓ If conviction is likely to result in imprisonment *OR* applicant suffers from a disability or disadvantage which precludes self-representation	✓ If outside scope of DLS due to complexity or other aggravating circumstances *AND* likely penalty is imprisonment x If guilty plea in Supreme Court	Not specified

[58] This would include: if the defendant faces a real likelihood of immediate imprisonment or imprisonment for the first time; *OR* the defendant faces a real likelihood of a lengthy term of immediate imprisonment (6 months or more); *OR* if the representing solicitor is required to gather additional information/evidence; *OR* the defendant has limited ability to give instructions because of a disability or disadvantage.

[59] At least one of the following criteria must be met: there are two or more prior convictions of a similar nature (excluding traffic convictions); *OR* the facts or charges are too complex; *OR* there are five or more changes (excluding traffic charges).

	Vic	NSW	Qld	SA	WA	Tas	NT	ACT
Committal proceedings	✓ If matter involves homicide (incl. culpable driving and attempt murder), consent or identification ✓ Other matters if strong likelihood of benefit from representation (e.g. will be dealt with summarily, will result in early plea, will reduce length of trial, will be discharged at committal)	✓ In local court if for case conferencing, *Criminal Procedure Act 1986 (NSW)* applications, and committal hearings (caps apply)	✓ If maximum penalty for charges exceeds 14 years ✓ If penalty less than 14 years but defendant likely to be discharged, have matter dealt with summarily, committal hearing likely to identify early plea, committal will reduce length of trial or defendant be discharged, or the defendant has a disability or disadvantage which would preclude self-representation	Not specified	Not specified	Not specified	✓ If charges cannot be determined summarily *OR* compelling reasons for jury trial and substantial benefit will result from representation (e.g. if likely that case may be dealt with summarily; *OR* committal hearing likely to identify early plea; *OR* committal will reduce length of trial defendant will be discharged; *AND* specific issues can be clarified/resolved at committal)	Not specified
Minor matters where no penalty of imprisonment in legislation (e.g. facing small monetary penalty)	Not specified	Not specified	Not specified	x	Not specified	x If drug charges triable summarily	x Unless compelling reasons based on public interest or other general priorities for providing representation	Not specified (though note traffic matters provisions above)

	Vic	NSW	Qld	SA	WA	Tas	NT	ACT
Domestic violence related matters	Not specified	✓ If defending application for apprehended domestic violence order (ADVO) or apprehended personal violence order (APVO) ✓ Cross-applications if the applicant is associated in ADVO proceedings ✓ Applications for ADVO if defendant in associated ADVO proceedings x If application is frivolous or vexatious *OR* no reasonable prospects of success *OR* if application made by police officer	Not specified	x If applying for intervention order ✓ May be available if charged with breach of intervention order	Not specified	Not specified	Not specified	✓ Initiating or responding to applications for domestic violence orders ✓ Initiating or responding to personal protection orders where there are substantial issues of personal safety or personal detriment if assistance not granted

	Vic	NSW	Qld	SA	WA	Tas	NT	ACT
Appeals	✓ If appealing decision (conviction and/or sentence) from Magistrates' Court (to County) and the matter would be eligible for assistance under criminal law guidelines *OR* in traffic matter if person received a term of immediate imprisonment (state reasonableness test applies incl. reasonable grounds)	✓ Decision in local court (appeal to Supreme) if appropriate expenditure of public funds *AND* matter is eligible for legal aid in local court proceedings	✓ For leave to appeal against a conviction or sentence ✓ If to the Court of Appeal or HC	Not specified	✓ If likely to be granted leave from Court of Appeal or to respond to Crown appeal against sentence x If to appeal decision of Magistrate to a single Judge	✓ If reasonable prospect of success *OR* substantial advantage to applicant (e.g. liberty, livelihood or employment; or substantial reduction in sentence)	✓ If for conviction/ sentence and reasonable prospect of success (acquittal or substantial reduction in sentence) provided the costs of conducting appeal are justified	Not specified
Bail applications	Not specified	✓ In Local Court if first appearance then no means or unpaid contribution test applies ✓ Supreme Court if means, unpaid contributions, availability of funds and merit test A met	✓ If strong likelihood of bail being granted *AND* bail is opposed ✓ If Supreme Court bail	Not specified	✓ Supreme Court if bail is opposed and there is a strong likelihood of bail being granted; *OR* responding to application for revocation of bail	✓ If bail opposed *AND* strong likelihood of bail being granted	✓ If bail opposed *AND* strong likelihood of bail being granted	Not specified
Dietrich applications/cases	Not specified. Covered by *Criminal Procedure Act*.	Not specified	x	Not specified	✓ If elected to deal with matter in superior court and court determines it is a serious charge	✓ If charged with serious offence and not being represented would be unfair to the accused	✓ If ordered by court but not if there is no defence at all	Not specified

	Vic	NSW	Qld	SA	WA	Tas	NT	ACT
Other	✓ Social security prosecutions (but see Table B1 for caveats) ✓ Hearings under the *Crimes (Mental Impairment and Unfitness to be Tried) Act* if state reasonableness test met ✓ Applications under *Serious Sex Offenders (Detention and Supervision) Act 2009* (if detention order application from DPP or supervision order application from DOJ)	✓ Annulment of conviction/sentence if real prospect of success *AND* legal aid available under criminal law policy ✓ Forum Conferencing/circuit court if appropriate that applicant has legal representation ✓ Contesting applications under *Crimes (Forensic Procedures) Act* on unreasonable grounds *OR* nor justified *OR* exceptional circumstances ✓ Drug Court matters	✓ Any other proceedings (excl. civil) that LA Qld determines	x	✓ Inquests if real risk that serious criminal charges may arise; *OR* where outcome likely to have impact on civil proceedings *AND* there is likely benefit to the applicant if represented	x	✓ Commissions of inquiry if based on public interest for providing representation	Not specified

Criminal grants of legal assistance

While there was some consistency in approach with regards to means, merits and other tests, the state/territory eligibility criteria and guidelines for grants of legal aid vary across jurisdictions. Like VLA, most legal aid commissions detailed what is and is not aidable in Magistrates' Court matters, though some were more specific than others.

Some jurisdictions also set out special circumstances exceptions for particular guidelines, while others detailed special circumstances that provide overarching exceptions to guidelines, and some did both. For instance in South Australia, guidelines can be waived if not providing legal assistance might result in undue hardship or critical situations where the liberty, livelihood, possessions or physical and mental wellbeing of the applicant and any dependants are threatened. Similarly, in New South Wales, there were provisions within the guidelines in relation to exceptional circumstances that gave lawyers flexibility to exercise their discretion to ensure that already disadvantaged persons are not further marginalised by the system.

While the eligibility criteria/guidelines differed between each jurisdiction, many made references to grants of aid being available in circumstances where it would not be appropriate or reasonable for the duty lawyer to deal with the matter. For instance, Queensland, Western Australia and the Northern Territory all stated in their grant guidelines that grants of aid are provided for matters beyond the scope of what is reasonable for the duty lawyer service to deal with at court due to issues such as complexity, severity and so forth. While the remaining jurisdictions may not have explicitly referred to the interplay between the duty lawyer service and grants of aid, it does not follow that in these jurisdictions the scope of the duty lawyer service is completely independent of grants of legal aid and vice versa. For example, special circumstances exceptions for grants of legal assistance in a jurisdiction may allow representation services in defended hearings in a summary crime matter, and duty lawyers can identify such matters and escalate the service provided to the appropriate level. In all jurisdictions, these two service levels must be viewed together. Therefore, benchmarking grant guidelines in isolation is of limited utility because grant guidelines are shaped by the scope of the duty lawyer service which, in turn, is governed by contextual criminal justice policy factors.

Criminal duty lawyer services

The same limitations noted earlier with respect to comparing the grant guidelines also apply to comparing the scope of each commission's duty lawyer services. All jurisdictions have a unique summary crime service context, and the Magistrates' Court may have a varied role and practices concerning sentencing dispositions, diversion and other restorative/ therapeutic justice alternatives (specialist courts, lists, programs and so forth). These and other criminal justice policy influences will necessarily affect the nature and extent of legal service provision required in each jurisdiction and thus the scope of the duty lawyer service. With these limitations in mind, Table 7.5 compares the publicly available information from each legal aid commission on its respective criminal duty lawyer services.

As Table 7.5 shows, not all jurisdictions had structured guidelines outlining the level of service provided through duty services for particular matter types/clients. Where this information was provided, there was some consistency with respect to when representation would be provided. For instance duty lawyer representation was provided in most

jurisdictions for adjournments, bail applications, people who are in custody for their first appearance and straightforward guilty pleas. Duty lawyer representation was generally not provided for complex guilty pleas or defended cases/hearings. Note, however, that in circumstances where representation was outside of the scope of the duty lawyer representation it may be within the scope of grants of legal aid (provided it met the associated eligibility criteria). In most jurisdictions, legal advice was provided to all people seeking the assistance from the duty lawyer, although the terms and particular types of matters varied (e.g. Western Australia charges a $20 fee for the duty lawyer, reduced to $5 or waived for some people).

Table 7.5: Jurisdictional comparison – eligibility for criminal duty lawyer services

Scope: duty lawyer services and eligibility	Priorities/special circumstances
Vic[60]	
People in custody if brought to court for the first time on that charge: • DLS will provide advice and, where appropriate, make an application for bail; • no income test applies. Information only: • fact sheets available to anyone **BUT** information only is provided to all adults facing minor charges (where a fine is the most severe penalty). Advice only: • for adults facing a straightforward charge (where the legal issues are narrow and penalty is likely to be a low level fine and/or loss of licence) who do not meet the priority criteria and satisfy an income test; • accused given a guide to assist them in preparing what they need to say in court (to self-represent). In-court advocacy (representation) will be provided if the accused: • satisfies an income test; **AND** • meets one of the priority client criteria; **OR** • is facing a significant charge (where the accused is at a real risk of imprisonment, a Community Corrections Order, or a substantial fine (i.e. more than $1 500). This will require an assessment of prior convictions.)	Priority criteria: • people with an intellectual disability, acquired brain injury or other mental health issue; **OR** • people experiencing homelessness; **OR** • people who cannot effectively communicate in English; **OR** • people who identify as Indigenous Australians. Where the accused person is not facing a significant charge and is not in a priority group, a duty lawyer may exercise their discretion to provide in-court advocacy where there are compelling reasons why the accused person cannot represent themselves. This will only apply in exceptional circumstances **AND** such a decision needs to be considered in light of the competing priorities in the court list on the day **AND** can only be exercised where the accused meets the income test.
NSW[61]	
Assistance at court is available to anyone, however the duty lawyer can only give limited help on the day of the person's matter: • if matter more complicated, may be able to help the defendant get an adjournment so they can get further legal advice or secure representation. Representation: • provided if person's first appearance and in custody; • cannot represent person who has pleaded not guilty and their matter is listed for hearing that day; • if duty lawyer is representing a person in court, they generally need to be eligible for legal aid.	

[60] This information has been compiled and directly quoted from the following source: VLA (2016b).

[61] This information has been compiled and directly quoted from the following source: Legal Aid New South Wales (2011a).

Qld[62]

The duty lawyer will only act for a person on their court date. Legal advice and representation provided in court for:

- pleading guilty for less complex matters;
- adjournments (e.g. if matter complicated or facing a serious penalty in order to get more legal advice);
- bail;
- changing bail conditions;
- bail breaches;
- probation breaches; and
- extradition proceedings.

Can also assist with:

- obtaining a copy of the police brief (QP9);
- holding a case conference with the prosecutor on defendant's court date.

Will not assist if:

- first or second drink or drunk driving offence and nothing else (unless likelihood of gaol);
- traffic offences (e.g. speeding or careless driving);
- domestic and family violence information (however, some courts have a domestic violence duty lawyer);
- committal hearing or trial;
- complex sentence hearings.

SA[63]

Duty lawyers provide a limited advice or representation service for people who have been arrested overnight or unable to obtain legal help beforehand. This usually covers:

- applications for bail for persons in custody;
- obtaining adjournments/remands; and
- conducting simple guilty pleas where there is usually no prospect of imprisonment (e.g. traffic offences and minor criminal offending).

Will generally not provide representation:

- at trial, or in the call over list to set a date for trial (where it is assumed the lawyer appearing has responsibility for the conduct of the trial);
- at special reasons applications (made before committal but after declarations are provided), committal or no case to answer submissions for indictable matters (where more senior legal representation is required);
- on complex pleas of guilty, or where there is a possibility of a sentence of imprisonment or other severe penalty (where more senior legal representation is required);
- where the defendant's best interest would be served by adjourning/remanding the matter to prepare detailed submissions or conduct negotiations with prosecution (defendants can request this themselves);
- on pleas of guilty to simple cannabis possession charges or simple traffic matters (where there is no risk of imprisonment). Having

Priories for representation:

- persons in custody;
- persons not in custody but who need help to apply for a remand/adjournment **OR** to enter a plea of guilty in a simple matter **BUT** this:
  - should only be in circumstances where the person would be at a serious disadvantage without representation. Where more detailed preparation is required for submissions on a plea of guilty, the defendant should be advised to remand/adjourn the matter themselves and instruct a solicitor or apply for legal aid promptly
  - advising people who are not in custody and are to appear in court that day (i.e. unrepresented defendants)

A duty solicitor's discretion to act for unrepresented people should generally be exercised in favour of representation

[62] This information has been compiled and directly quoted from the following source: Legal Aid Queensland (2015b).

[63] This information has been compiled and directly quoted from the following sources: Legal Services Commission of South Australia (2016a, 2016b).

ascertained that there is no possible defence, the duty solicitor can assist the defendant to represent him or herself by advising of penalties, material to put to the Court, and court procedure; • on contested and uncontested intervention or restraint order matters (defendants can represent themselves in these matters). However, if a matter involves a breach of an intervention or restraint order, then there is a risk of imprisonment, and a defendant should be advised to apply for legal aid; • on drink driving charges, except where the person charged is so compellingly disadvantaged there would be a risk of justice miscarrying should that person be left to their own devices before the Court (normally representation at a level more senior than the duty solicitor is required here); • where a defendant could readily afford to instruct a private solicitor but chooses to attend court unrepresented in the expectation the duty solicitor will provide representation free of charge; • where a defendant has sought numerous remands/adjournments in the past for the purpose of obtaining legal advice but, for no good reason, has neglected to do so and has now been refused any further adjournment by the Magistrate; • where a defendant that a duty solicitor is representing persists in hostile or aggressive behaviour. There can be no solicitor/client relationship unless he or she can be persuaded to calm down.	where there is any dimension of disadvantage to the defendant. Many defendants are terrified of appearing alone in court. Duty solicitor refusal of assistance may simply increase their fear, make the Magistrate's task more difficult, and possibly prejudice a satisfactory outcome.
WA[64]	
The duty lawyer can provide advice and representation at court. It costs $20 to see the duty lawyer in the Magistrates' Court or $5 if in receipt of social security benefits. Advice is able to be provided about: • whether you should plead guilty or not guilty; • the seriousness of the charge/s; • any defence you may have; • what penalties you could receive; • what is likely to happen in court; • any issues you may have in relation to bail. Representation is available for: • bail applications; • adjournments (for purposes of seeking legal advice or obtaining more information); • indicating that the defendant will plead not guilty; • speaking on the behalf of the defendant if they are pleading guilty. Representation is not provided for: • headings in the Magistrates Court where evidence is to be presented and considered by the court (e.g. hearings to determine facts for sentencing or set aside bail); • applications that may require evidence to be presented and considered by the court (e.g. applications for an extraordinary drivers licence, a restraining order, a prohibited behaviour order, an impounding or confiscation order for vehicles, a forfeiture of surety, an order to set aside a person's licence suspension for non-payment of a fine or infringement); • responding to an application for a violence restraining order;	Fee to see the duty lawyer may be waited completely in cases of financial hardship. No charge if in custody.

[64] This information has been compiled and directly quoted from the following source: Legal Aid Western Australia (2015).

- taxation prosecutions;
- shire prosecutions (other than prosecutions under the Dog Act 1976 (WA));
- prosecutions brought by government agencies or regulatory or incorporated bodies (other than prosecutions under the Animal Welfare Act 2002 (WA));
- traffic offences where imprisonment is not an option.

Tas[65]

Advice is available to anyone at court.

Representation is available for bail applications.

NT[66]

Duty lawyers provide advice and information at court in criminal matters and operate every day at Darwin and Alice Springs and regularly attend other sittings at the Magistrates Courts in Katherine and Tennant Creek. They can:

- assess the seriousness of a person's case;
- provide legal advice;
- help with a simple guilty plea or adjournment;
- negotiate with the prosecutor;
- help a person access legal aid;
- apply for bail;
- vary bail conditions.

Duty lawyers do not appear in defended cases unless the circumstances are exceptional.

Legal advice:

- legal advice is available to anyone on any matter by making an appointment to see a lawyer;
- there are two free confidential legal advice clinics in Darwin per week.

Where a conflict exists, the duty lawyer will refer the matter to private lawyers who accept legal aid referrals.

There is a separate duty lawyer service for prisoners and a toll free legal information line.

ACT[67]

Duty lawyer services are free and not means-tested. A duty lawyer may be able to:

- give advice about a person's matter;
- explain what might happen at the hearing;
- help a person obtain an adjournment in order to get legal advice;
- talk to the court/tribunal or other parties on the person's behalf;
- speak for a person in court to help them get bail;
- speak for a person in court if they intend to plead guilty to their charges.

Representation is not available for:

- person's intending to plead not guilty in a criminal matter.

Priority is given to:

- serious cases, including people in custody or people at risk of going to custody;
- people who cannot afford legal help;

people who could not get legal advice before the hearing date.

[65] Of all the jurisdictions, Tasmania had the least amount of publicly accessible documentation on the scope of its criminal duty lawyer services. The very limited information that was located has been compiled and directly quoted from the following source: Legal Aid Commission of Tasmania (2016a).

[66] This information has been compiled and directly quoted from the following sources: Northern Territory Legal Aid Commission (2005, 2006).

[67] This information has been compiled and directly quoted from the following source: Legal Aid ACT (2016a).

Benchmarking – a way forward?

As yet, there are limitations to the utility of benchmarking criminal legal services, particularly given that services and eligibility vary, and there is little consistent information about service inputs. In particular the service context should be considered. There may be substantial opportunity to learn from the service initiatives across jurisdictions with further and better information about what, how and why services are provided in the summary crime space, especially given that the particular day-to-day challenges concerning particular types of clients and criminal matters are similar.

As a starting point for benchmarking public summary crime services there is also a need for standardised national assessment of criminal justice system performance, and factors affecting demand for and provision of public legal assistance for criminal matters.

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8. Discussion and recommendations

Data in the preceding chapters has:

- outlined the changes made to the SCP, describing the level of services provided to different clients, and how this has also varied by location across Victoria
- described the impact of these changes in terms of the appropriateness of services provided and the sustainability of the SCP
- contextualised VLA's summary crime services in the broader summary crime system and noted how broader factors influenced the appropriateness and sustainability of VLA summary crime services.

Here we start with this broader context and the overall issue of sustainability.

We then turn back to VLA and discuss the impact of the changes made to VLA's summary crime services (grants and duty lawyer services) against key access to justice service principles, including accessibility, equity and consistency, targeted, timeliness, efficiency, effectiveness, durability and responsiveness.

Finally, we set out recommendations for enhancing the appropriateness and sustainability of VLA's summary crime services.

The specific findings are summarised in the *Executive summary* and we do not repeat them in full here.

Summary Crime Program and findings in context

The SCP was refined in a series of changes between June 2012 and April 2013 that sought to provide services which were appropriate to differing need and capability of people charged with summary offences, but sustainable within the constraints of the VLA budget. In broad terms, the changes involved tightening the eligibility criteria for grants and offering a duty lawyer service in which the assistance provided was triaged by the severity of the matter and the income and priority need of the client.

In the short term, the changes made improved the sustainability of the SCP and reshaped service provision to target client need and capability. However, as an integral (but relatively modest) cog in the broader criminal justice system, these changes have since been overwhelmed by factors largely beyond VLA control that were driving service demand. In particular, allocation of increased resources to frontline policing were observed to have had downstream impacts resulting in more Magistrates' Court prosecutions. Arising key challenges affecting the appropriateness and sustainability of the SCP include:

- increased numbers of accused eligible for grants and DLS advice and advocacy services
- a constrained resource environment.

With a forecast further rise in demand under the existing SCP service settings and without *additional resourcing* into the SCP, it is likely that the appropriateness and sustainability of services will be compromised.

Just as the SCP has been subject to external influences, changes made by VLA to this program have also had broader ramifications. Changes have affected services available to clients, the progress of matters through the courts and the work and workload of VLA staff, private practitioners, police prosecutors and the Magistrates' Court.

Given this interconnectedness, the impact of change to VLA's SCP must be understood in the context in which it operates.

Indeed it is not just the SCP that is compromised by escalating demand relative to resources. Increased demand is affecting the whole summary crime system and a system-wide, integrated response is required. Issues of appropriate resourcing are central, and inevitably underpin reform and redesign.

The value of this cannot be understated. As the largest component of the justice system, and the point at which members of the community have the most frequent contact, there are community-wide interests in having an effective and efficient summary crime system which provides fair and equal access to justice. Where the summary crime system is outdated and overburdened, and where people cannot meet their legal needs, the costs may extend to community trust, confidence and respect for the wider justice system.

Increased SCP and system workload

As detailed in the analysis, the Victorian summary crime system is stressed and faces workload pressures associated with:

- government community safety policies, including increased frontline policing and family violence reforms
- other key reforms to the criminal justice system including sentencing, corrections, parole and bail reforms
- an increase in the complexity of summary crime work
- an increase in the number of in-custody clients
- the number of self-represented defendants
- resourcing for VLA, Police Prosecutions and the Magistrates' Court that has not kept pace with escalating demands
- deteriorating stakeholder relationships in some locations.

When the fieldwork for this evaluation was undertaken, over the period May–August 2016, magistrates, police prosecutors, private practitioners and VLA staff similarly characterised the Victorian summary crime system as approaching 'crisis', if not already in crisis. Our data analysis evidenced increasing workload and suggested this would continue. While one obvious impact is VLA's financial stability, there have also been impacts on stakeholder relationships, the effective and efficient functioning at various locations, and VLA staff wellbeing.

As detailed in the findings, it is particularly notable that the fieldwork revealed that magistrates, police prosecutors, private practitioners and VLA staff all described how they

each made up for a perceived under-resourcing of the summary crime system, as well as the apparent 'deficit' in resourcing of other key system players. This typically manifests as having to take on additional work above on beyond what they were resourced to do. This suggests that any relative increase (or relative decrease) in funding for one part of the summary crime system should carefully consider likely impacts on the service pressures and capacity of other constituent parts.

Critically, continued upward demand pressures associated with Victorian Government community safety policies, and further expansion of frontline policing and enhanced responses to family violence, is likely to further increase the volume of summary crime prosecutions, will extend pressure on VLA's SCP, and undermine the sustainability of its services. Continued escalating prosecutions and a rising number of accused in custody are also likely to further impact upon the effective and efficient operation of the summary crime system more broadly.

Risks to sustainability

There are at least three key risks to the sustainability of VLA's SCP.

Impact on those working within the system

First, while DLS workload pressures and service challenges vary across the state, we found widespread examples of the demands of the service environment detrimentally impacting staff wellbeing, manifesting dissatisfaction, fatigue and burnout. Second, private practitioners need to derive 'value' from the VLA funded work they do, which is affected by both fees paid for the work that they do, and the cost benefit of taking on the work, associated with both the burdens of taking on the work and the satisfaction derived.

Where the summary crime system is inefficient, and doing VLA funded work is more difficult and time consuming, the work becomes less attractive. VLA staff and private practitioners are adversely impacted by a pressurised criminal justice system where key practices intended to drive and support effective and efficient resolution of matters, such as early disclosure of police briefs of evidence and summary case conferencing, break down.

It may be necessary to first 'repair' the summary crime system before more innovative actions and reforms are possible. While there may be some technology-based solutions to 'repair' key aspects of the system, such as electronic police briefs and appearances of accused remanded in custody by VideoLink, other repairs are likely to require both resources and stakeholder collaboration and leadership. A contemporary, fit for purpose and sustainable summary crime system must consider and meet the user needs. As such, there may be access to justice and wider benefits stemming from a client or user focused approach to how the summary crime system as a whole may better meet diverse legal need and capability (see also Pleasence et al. 2014).

Impact on other parts of the system

Second, some evaluation participants described VLA's 2012–2013 tightening of eligibility for its summary crime services as a 'false economy' that 'shifted costs' onto other agencies. While the immediate impact was to improve VLA's financial stability, more recently the SCP has been overtaken by increased volumes of people eligible for services, which again

threatens financial stability. Further tightening of service eligibility, however, is likely to either displace legal need onto other, more expensive, parts of the justice system, or onto other legal services already faced with funding constraints and little or no service capacity.

Impact on clients and services

Third, further tightening of service eligibility is not only likely to increase the number of self-represented defendants, but increase the number of self-represented defendants who are facing more serious charges, given that VLA has little scope to further restrict eligibility for 'minor' matters.

In the interviews, focus groups and online staff survey, when the appropriateness of VLA's summary crime services was canvassed, the cross-section of participants generally thought that VLA's service settings were either generally appropriate relative to available resourcing, or had gone too far, and had undermined access to justice for Victorians. An increased number of self-represented defendants was attributed to VLA's tightening of service eligibility. A cross-section of evaluation participants had concerns about the appropriateness of the current SCP eligibility settings for particular types of people, matters and circumstances. While there may be some scope to re-adjust service settings within existing resources, additional resources are almost certainly required to *enhance* services.

Options to improve sustainability

Other than restricting eligibility for services, VLA has little control over the factors that drive demand for those services. It cannot turn off the tap, it can only shut the door. Given that adult summary crime services comprise VLA's largest service stream, and faces the largest client demand, which is escalating, they exert the largest pressure on the Legal Aid Fund. If VLA resourcing remains constrained, options to improve the SCP sustainability are limited, and will incur other costs.

Change SCP funding allocation

First, VLA can reallocate resources between its service programs. In such a scenario, any additional resources for summary crime services would therefore come at the expense of the Victorian funding VLA uses for other services, noting that Commonwealth funding is principally tied to Commonwealth areas of law, and also that VLA has limited ability to remove or restrict funding for indictable crime services, where grants are essential to support requirements for a fair trial and sound conviction. This means meeting rising legal need within one service program by reducing services to meet need in another – robbing Peta to pay Paul. This is a zero-sum game in access to justice of Victorians.

Tighten eligibility for summary crime services

Second, VLA could determine to further tighten eligibility for summary crime services to improve the sustainability of its services, and the Legal Aid Fund. Such a scenario is likely to detrimentally impact access to justice by widening the 'justice gap' for Victorians unable to afford private legal assistance. Further tightening service eligibility is also likely to detrimentally impact the operation of the Magistrates' Court, Police Prosecutions, and the efficient and effective processing of summary crime matters, and operation of the Court's various support programs. Other than tightening means and merits tests, there appears

little scope to further tighten the grants eligibility guidelines given that the bar is already set at 'likelihood of imprisonment', and that, again, a grant may be required to support a fair trial.

While there is more scope to tighten DLS eligibility guidelines, for example by imposing stricter income requirements, excluding additional types of matters from legal advice and in-court advocacy, or perhaps further limiting eligibility for in-court advocacy, such changes are likely to increase the number of self-represented defendants, and also, the number of self-represented defendants who may not have had the benefit of legal advice.

It appears likely that the introduction of the income test in 2012 DLS Guidelines has already shifted the majority of clients able to afford private services out of the DLS service stream and into private legal assistance. Lowering the income test is likely to increase the number of self-represented defendants. Again, while we have not undertaken financial modelling, it can be anticipated that stricter income eligibility requirements will have diminishing returns in terms of 'pushing' clients out of the DLS and onto private practitioners given that the income test for the DLS is already set below average weekly earnings. Of course, the other part of this equation is how attractive private legal assistance services are, and community understanding of what private legal assistance services cost and the benefits they may have.

Replace more intensive services with less intensive services

Third, if VLA has to further restrict service eligibility then more intensive forms of legal assistance might be replaced with less intensive services. This means further tightening grant eligibility, and more accused slipping into the DLS service stream. Further tightening eligibility for DLS legal advice and advocacy services means more clients receiving legal information only.

However, legal information is likely to have more limited utility for those people with lower personal and legal capability, and who are likely to struggle to obtain, interpret and apply legal information to their particular circumstances (Pleasence et al. 2014). Further tightening eligibility is also likely to mean increased self-represented defendants for more severe problems. Legal information can be expected to have less utility with respect to those matters that require more sophisticated legal analysis and where, such as whether a police brief supports the particular charges the accused faces, whether or not the accused has a defence, whether or not they 'should' plead guilty or not guilty, and what the likely sentence might be in their particular circumstances.

While this scenario may well assist VLA to manage sustainability, again, it may be a 'false economy' for the Victorian criminal justice system as a whole. For instance, timely access to legal advice is likely to have system benefits in terms of progressing and resolving matters (see Forell 2015; Pleasence et al. 2014). While it was beyond the scope of this evaluation to undertake system-wide financial analysis, the collected evidence pinpointed VLA's summary crime services as a 'vital cog' supporting the day-to-day operation of the summary crime system, particularly at those locations where the DLS deals with a large proportion of the matters on the mentions and in-custody lists. With this in mind it is worth noting that around one-quarter of the in-court advocacy services provided by the DLS are to in-custody clients.

Consider service caps

Fourth, VLA could determine to make no change to its current summary crime service settings, and consider other alternative ways to manage sustainability. For instance, duty lawyer service clients at those locations with excessive demand could consider implementing service 'caps'.

This might take a number of forms. For example, VLA might determine its reasonable service capacity for the resources allocated to particular locations by reference to the number of clients able to be seen, the complexity of the matters and type of clients that can be seen, or by a service time cut-off. This might be applied to one or both the mentions and in-custody lists. Note that such a service change would almost certainly increase delay and case backlog in the Magistrates' Court, and, if applied to the in-custody list, such as determining that there is no capacity to deal with in-custody matters after a certain cut-off time in the afternoon, would contribute to people being remanded in custody for a longer period of time. Of course, this would also detrimentally impact accused, and incur costs associated with remand. Service caps that extend delay and case backlog are likely to also impact on accused, victims and the timely prosecution of matters.

Each of these first four options is likely to have both access to justice and wider system costs.

No change

Finally, VLA could determine to make no immediate change and wait to see if there are wider policy and criminal justice system changes that relieve the demand for summary crime services. However, in light of the Victorian Government's December 2016 Community Safety Statement, announcing further investment in community safety initiatives and frontline policing, and other ongoing reforms to increase the accountability of family violence perpetrators, demand for summary crime services should be expected to increase, at least in the short term.

Summary Crime Program against key access to justice principles

While appropriateness and sustainability are two key access to justice service principles, in this section we briefly consider VLA's summary crime services against other key principles and service objectives, and note alignment with VLA polices and strategies.

Accessibility

VLA's summary crime services are widely accessible through multiple entry points. The DLS provided at Magistrates' Courts across Victoria was widely identified as an effective service entry point. Mapping of the administrative service data revealed residents in LGAs across Victoria accessed summary crime services, although there tended to be variation in the rate at which clients in different areas accessed services. This in part will reflect the relative need for such services by area. The in-custody DLS provides an important first point of contact for many accused, and the DLS plays a key role in connecting accused in custody with private practitioners, obtaining bail as well as access to court support programs. Accused also have access through private practitioners on the Summary Crime

Panel able to self-assess for grants of legal assistance. Other points of entry including the Legal Help telephone service also offer information, advice and referral. Some participants saw benefit in seeking to harness the Legal Help telephone service to assess and triage clients in advance of courts, while others thought that the utility of any legal advice coming before the availability of the police brief of evidence was limited, particularly for those matters where VLA provides legal advice and in-court advocacy. While we found some evidence of ill-informed referral to the DLS, such as where people had been told that the DLS would able to provide them with in-court advocacy, or should be able to help them on a minor work file basis, we did not canvass the extent of this issue.

Equitable and consistent

There was strong indication that application of the DLS and Grant guidelines supported more equitable service provision across the state. In particular, the 2012 DLS Guidelines had provided for and supported more consistent provision of duty lawyer services, and had provided clarity concerning the type of criminal matters and clients the DLS should prioritise. The assessment and triage process provides the basis for standardised client intake, referral and service. While there were some concerns about how the DLS assessment and triage process operated with respect to particular types of clients, criminal matters and circumstances, the overwhelming majority of VLA staff saw merit in targeting and prioritising more intensive forms of legal assistance to particular types of matters and clients.

However, there was also evidence that as the nature of the infrastructure and workload varied from location to location, so did the way in which the DLS operated, the court services it was connected to. In other respects, scope for duty lawyer discretion appeared to vary, and in large part was driven by the number of clients the duty lawyer had to see from day-to-day, and at location to location. For example, at courts with high caseloads the duty lawyer appeared to have relatively less capacity to use discretion provided for in the DLS Guidelines and provide a higher level of service than a client would otherwise be eligible to receive. As such, the nature of what might be done to assist a client varied from location to location, manifesting what is otherwise known as 'postcode justice' (or 'injustice'). In particular, lack of access to human support services was repeatedly identified as being a constraint in regional and rural areas of Victoria, while legal practitioners also highlighted how police and magistrate attitudes to diversion varied by location, and over time. In many respects, the greater the constraints on legal and non-legal assistance services the greater the scope for postcode injustice.

Targeted

One of the ways in which public legal assistance services target services is through service eligibility requirements. VLA's grants of legal assistance and DLS are targeted to particular types of criminal matters and clients through eligibility guidelines. While targeting was largely appropriate within the constraints of the system set up there was some indication of mismatch between how services are targeted and the legal need and capability of the client.

First, by definition, targeting services to specific population groups will miss others. The main source of evaluation participant concerns with the appropriateness of the grant and DLS eligibility criteria stemmed from some people, matters and circumstances falling

between the service eligibility criteria. For instance, young people who are prioritised for early intervention in VLA's *Strategy 2015–18* fall between the cracks of the SCP service eligibility guidelines, particularly young people who are facing a first criminal conviction, but are not at risk of prison. VLA staff also noted lack of alignment between the VLA Priority Client Framework and DLS priority group eligibility, particularly victims of family violence.

Second, VLA staff cited examples where they thought that the provision of 'legal information only' was insufficient for some clients, particularly those who lacked the personal and legal capability to make effective use of that information. As legal needs research has suggested, the utility of increasingly unbundled forms of legal assistance services increasingly depends upon the personal and legal capability of the user (McDonald & Wei 2016; Pleasence et al. 2014). Legal information in and of itself may be insufficient to support effective action. What people try to do in response to legal need is affected by a range of factors that go beyond legal knowledge, and as such, provision of legal information may be insufficient to meet those other needs (McDonald & People 2014; McDonald, Forell & People 2014; Pleasence et al. 2014).

Third, there is a key distinction between substantive and procedural legal understanding, and the higher level decision-making capacity that supports resolution. Legal information may increase understanding of the nature of a criminal charge, and the process by which the matter will be disposed, and perhaps what a person will have to do, but not necessarily what a person *should* do or the potential consequences of different courses of action (see Pleasence et al. 2014). Typically such questions turn on particular circumstances, and are legal analysis questions.

The qualitative material found various instances where clients receiving 'legal information only' asked VLA clerks what they should do, and where police prosecutors were frustrated by having to summary case conference with self-represented defendants who had 'no defence'. As such, there may be opportunity to improve service offerings concerning the way in which 'legal information only' is provided, particularly for those disadvantaged clients who satisfy the DLS income test, as well as those defendants self-representing in the Magistrates' Court more broadly.

Timely

The DLS was described as providing services to clients at the 'right time and place', and particularly so given the constraints on accessing police briefs and summary case conferencing in advance of court dates. Note that these constraints were seen as consequently limiting the utility of other types of summary crimes services such as in-office legal advice appointments and information and advice thorough VLA's Legal Help telephone service. This situation has at least two consequences.

First, there may be limited opportunity to relieve DLS pressure given that the police brief will typically be needed to complete client assessment and triage. This means that the only people who can be assessed and triaged *out* of the DLS service stream in advance through the Legal Help telephone services are people with incomes in excess of the DLS threshold, or who are clearly facing a 'minor' charge where the DLS does not provide legal advice or in-court advocacy.

Second, if police briefs and summary case conferencing were available in advance of court dates, then other types of services would have more utility, and may help to alleviate service pressures on the DLS. For instance, if electronic police briefs were available earlier, then there would potentially be increased utility in also seeking to provide summary crime services earlier. For instance, if those clients who are only going to be eligible for legal advice and information could be advised in advance of court, then this could save clients time waiting at court, reduce the number of people the duty lawyer has to see, and could potentially reduce the number of court adjournments, particularly in situations where the accused determines to seek private legal assistance. And where summary case conferencing was available in advance of court, it would potentially benefit both clients who are eligible for legal advice and information only, and in-court advocacy. In such a scenario, other ways of working are potentially 'unlocked' and might be more timely and efficient. For example, it might be beneficial to seek to screen every client through an expanded Legal Help telephone service and to provide legal assistance services to substantially narrow the scope of dealing with the matter on the day of court in the duty lawyer context. Of course, any potential benefits of working in such ways depend upon the wider criminal justice system capacity, and particularly Police Prosecutions' capacity.

Expedient and efficient

Legal assistance services provided 'just in time' at locations where people have or express needs have both client and service efficiencies (see Pleasence et al. 2014). With this in mind, duty lawyer services can be more expedient and efficient forms of service in comparison to in-office legal advice. For example, there was some evidence that legal advice appointments for summary crime matters were inefficient due to clients not turning up, or turning up when there was insufficient material about the charge they were facing.

Accused are typically assessed and triaged quickly through the DLS. In particular, in-custody accused are offered assistance through the DLS. Eligible accused can be quickly connected with grants of legal assistance through the DLS, private practitioners on the Summary Crime Panel, and by directly approaching VLA.

The capacity of the DLS to deal with matters expeditiously, however, depends on a number of other factors, many that are beyond the direct control of the DLS, or VLA more broadly. Clients accessing DLS services may have to wait many hours at court, and there is no guarantee that the duty lawyer will be able to assist with finalising the matter on the day. For example, where briefs of evidence are either unavailable or are too insufficient to determine whether or not the evidence supports the charges, and where police prosecutors want to liaise with the informant before negotiating the charge, or where supporting documentation needs to be obtained to support a guilty plea by the defendant, there may be adjournments. Lack of follow-up on additional required information may translate into multiple adjournments.

At some locations examples of summary case conferencing practices having broken down were cited, with Police Prosecutions unable to respond to enquiries. Both VLA and private practitioners experienced difficulty attempting to summary case conference in advance of or between court dates. This potentially increases the number of court dates required to progress matters, increasing the overall workload due to matter 'churn' and the time and expense incurred by both VLA and private practitioners in performing VLA funded work.

There was also strong indication that the capacity of the DLS to dispose of matters in the duty service context depended on the number of matters on the list from day-to-day, as well as the severity and complexity of those matters. VLA lawyers described how a couple of problematic matters or clients could potentially have a big impact in a highly pressurised duty lawyer context, and how competing priorities could exacerbate service pressures.

Analysis of the administrative service data was consistent with the qualitative information provided by a cross-section of participants concerning higher DLS workloads following the 2012–2013 DLS and Grant Guidelines changes. Both indicate increases in the overall number of in-custody and mentions lists matters, as well as the severity of the matters and the heightened disadvantage of clients. In addition to matters which would have previously been within the scope of grants of legal assistance slipping into the DLS service stream, the DLS appears to have been overwhelmed by a higher number of police initiations, resulting in a higher number of matters being prosecuted, and a higher number of people seeking assistance. Changed policing and prosecution practices also appear to have exacerbated DLS workload pressures.

In the wake of the Victorian *Royal Commission into Family Violence*, VLA and private practitioners described how the mix of summary crime work had become increasingly complex, particularly where family violence intersects with drug and alcohol issues or co-occurs with other compounding factors such as mental illness, acquired brain injury etc.

The regression analysis showed that in the post-change period the estimated probability of receiving more intensive levels of legal assistance was comparatively higher for both more severe criminal matters and more disadvantaged priority client groups. There was also qualitative evidence describing how the change in the nature of the DLS work had meant that there were some matters being 'too difficult' to deal with in a highly pressurised DLS context, such as clients presenting with multi-brief consolidations, where duty lawyers reported that it was *more* efficient to adjourn those matters to be reviewed later in the office so as to allow the duty lawyer to get on with other matters in the mentions list. This points to the value of reviewing the mix of VLA's summary crime services, and in particular what role minor work files might play in the context of providing more appropriate, expedient and efficient forms of services for some types of people and matters.

Effective

The other side of the efficiency coin, especially in a pressurised DLS context, is effectiveness and quality of service. There were strong indications in the qualitative material that VLA's summary crime services were effective. Although we did not review VLA's compliance procedures, private practitioners described how VLA had implemented compliance and quality control procedures. If anything, there were suggestions that VLA's compliance procedures had been 'too tough', had made doing VLA funded work less attractive to private practitioners, and that practices had subsequently been changed. Analysis of the qualitative material indicated that the DLS was doing a 'good job' given the service and resource demands. The DLS was described as generally providing appropriate and effective services, although magistrates and police prosecutors observed that it would be even more effective with additional resources.

However, the cross-section of participants reported that the effectiveness of the DLS had been compromised by the volume of work it faced, and that effectiveness needed to be

considered relative to the workload. There were widespread concerns that the DLS had become overly stretched, and that this had impacted effectiveness and quality, notwithstanding the efforts of duty lawyers, who have responded by working harder and longer in frustrating circumstances at a number of locations. Consequently, evaluation participants indicated that there had to be limits as to what could realistically be expected within the current service environment and resources. This points to the need to consider the minimum acceptable service standards or expectations.

It should be noted that the key pressures on the DLS, particularly as they stem from increased family violence matters and in-custody clients, appear to have impacted both Greater Melbourne and regional and rural areas. While Greater Melbourne offices tend to have higher number of matters, they also tend to have higher numbers of staff, whereas in regional and rural locations there tend to be less staff available to cope with demands of the in-custody and mentions lists. One important factor affecting both effectiveness and efficiency that appeared to vary by location was the nature of the stakeholder relationships, and the ability of police prosecutors to summary case conference outside of the court date. Participants reported that at those locations where police prosecutors were available for longer hours and had greater capacity to respond and undertake follow-up enquiries, clients could be more effectively and efficiently assisted. Given the widespread workload pressures in the summary crime system, there appeared to be few locations not experiencing challenges in one form or another.

Durable and responsive

While VLA has little capacity to respond to increased pressure on grants of legal assistance other than changing means, merits and eligibility guidelines, there were strong indications that the DLS was durable and responsive to legal need, and that the way in which the DLS operated from location to location was responsive to local demand and needs. However, there was also a view that within existing resources the capacity of the DLS to respond to increased demands was not sustainable at some locations.

In addition to concerns about staff wellbeing, fatigue and burnout, there was also evidence to indicate that the DLS was constrained in what and how it could operate, by the resource constraints on police prosecutors and the Magistrates' Court. More broadly, we found strong indications that provision of DLS resources was tailored to relative workload at different locations.

Although moving VLA staff between offices and around the state is difficult, the durability of the DLS may potentially be improved by greater capacity to *anticipate* and respond to any fluctuating client demand more quickly. Of course, this would require that VLA would have the ability to model and predict future anticipated demand at a local level, and would have the capacity to move staff resources around the state to respond to that anticipated need.

While we have attempted to model and predict demand for grants of legal aid and summary crime services into the future, we have only done so at a state-wide level, and only using the number of police initiations. More sophisticated predicative modelling, as well as modelling at a more localised level, might provide more advance notice of service pressure points, and open up the possibility of working with other key stakeholders to take remedial action to manage periodic service demand 'spikes' above and beyond anticipated trends.

Recommendations

The key findings of this report suggest there are looming sustainability challenges, as well as concerns with the appropriateness of VLA's summary crime services for certain people, matters and circumstances. The 2012–2013 DLS and Grant Guidelines changes appear to have supported the sustainability of VLA's summary crime service for a period of time. However, as noted above, there appears to be limited scope for further remedial action without incurring either resource or access to justice costs.

The findings suggest that both system-level and VLA responses are required to improve the appropriateness and sustainability of VLA's summary crime services, with potential benefits also for the summary crime system more broadly.

The recommendations which follow concern:

- a coordinated system-wide response to manage the impact of demand
- repair to innovate
- specific changes within the summary crime system
- appropriate and sustainable funding
- reshaping VLA summary crime services.

Collaboration and coordination

The evaluation findings demonstrated the shared nature of challenges stemming from the increased summary crime system workload. The Magistrates' Court, Victoria Police, VLA and others are instrumental cogs in the summary crime system, and actions of one reverberate and affect the others.

Given this interconnectedness and the challenges associated with escalating system-wide pressure, all stakeholders have a shared interest in any action to manage summary crime system pressure points. In short, a system-wide, integrated response is required to a system-wide challenge. And key to this is collaboration and a coordinated response by key system stakeholders and leaders.

This is supported by substantial goodwill towards trying to improve the operation of the summary crime system, which exists above some of the strained stakeholder relationships described in this report.

Recommendation 1: VLA together with other stakeholders should collaborate and co-ordinate actions taken in response to a growing summary crime workload. This could take the form of a high-level group (e.g. Summary Crime Working Group) comprising key stakeholders who are in a position to effect change.

Repair to innovate

There are a range of tasks that go to addressing the challenges identified, that require a coordinated approach. First, there is the immediate challenge of examining and addressing the impact of the increased workload 'downstream' of police initiations. Second, there is work required to repair parts of the system that have broken down (specific examples follow in subsequent recommendations) and to consider new ways of working.

Equally important is consideration of resource needs relative to workload and the achievement of a minimum accepted standard of service provided. And finally, with a future focus there also may be scope to identify indicators of impending change, such that the system can better anticipate and respond to changing demand.

Recommendation 2: The Summary Crime Working Group should be tasked to undertake the following:

- **Examine and address the impact of increased workload on the efficient and effective operation of the summary crime system and its constituent parts, including VLA.**
- **Co-ordinate action taken to try to 'repair' those parts of the system breaking down, and/or to develop and implement new ways of working to manage system and workload pressures.**
- **Collect and share information, to better anticipate and respond to changing circumstances.**
- **Develop key lead indicators and other data to improve timely response to changing demand.**
- **Investigate resource needs relative to workload and the achievement of a minimum expected practices, and with a view to improving and maintaining overall system efficiency and effectiveness.**

Specific changes in the summary crime system

The following recommendations concern more specific issues raised in this report which are broader than, but affect the VLA's SCP, and require action from a range of stakeholders.

Reconsideration of flow into the system

In a service environment where the summary crime system appears to be struggling to cope with increasing police initiations, there may be merit in systemic review and analysis of how 'bottom end' matters might be handled without the need for an in-person appearance. A cross-section of evaluation participants pointed to various 'minor' matters 'clogging' up busy Magistrates' Court lists, taking time and resources away from more serious matters.

Recommendation 3: The Summary Crime Working Group should review whether or not there are some types of minor matters that might be appropriate to dispose of without a court appearance.

Repair to innovate – effective summary case conferencing

As discussed in the qualitative analysis, key elements of the summary crime system are not operating as intended. Systemic work to 'repair' the operation of the system is likely to increase opportunities to innovate and modernise. For example, earlier availability of police briefs of evidence potentially make summary case conferences a more viable option for the early disposition of matters, and potentially reduces demand on the DLS by increasing the utility and viability of other service options.

There is also work to repair and reinvest in practices and stakeholder relationships as and where they break down. While stakeholder relationships are not necessarily a matter of resourcing, repairing summary crime system practices appear to require additional resourcing and deliberative leadership.

In the case of the VLA's summary crime services, this includes the operation of the DLS as well as the environment in which private practitioners undertaking VLA funded work, notably at below market cost, have to work. Two aspects of the summary crime system features in need of repair are provision of police briefs of evidence and capacity to summary case conference.

Recommendation 4: The Summary Crime Working Group Key stakeholders should recognise that the implementation of effective reforms to VLA's SCP will only be effective if key elements of the summary crime system are functioning as intended, and that some action and resources may be required to achieve this. In particular:

- **the timely disclosure and sufficiency of police briefs should be reviewed**
- **the conduct of summary case conferencing should be reviewed, and where necessary improved**
- **VLA funded summary crime matters (undertaken by VLA or private practitioners) should be given appropriate priority by Police Prosecutions and the court.**

Magistrates' Court environment

Outdated and overgrown infrastructure and facilities such as lack of cells, and poor physical environments have costs in terms of constrained practice and innovation; this was an issue across a number of courts.

The quantitative and qualitative analysis both indicated that the workload of VLA's Melbourne Office, and the circumstances of the Melbourne Magistrates' Court, were an outlier compared to both smaller VLA offices and courts in Greater Melbourne and those in regional areas. The volume of matters, stakeholder relationships and physical infrastructure of Melbourne Magistrates' Court pointed to a service environment that has grown 'too big' to be efficient. The geographic jurisdiction of the Melbourne Magistrates' Court has been expanded, and with that the workload. Given the size and number of people periodically filling the key roles, it is unsurprising that participants said that Melbourne lacked the interpersonal relationships that helped to sustain operations at other locations.

Recommendation 5: The Summary Crime Working Group should review the optimal 'size' of the summary crime jurisdiction of the Melbourne Magistrates' Court, with a view to decentralising or shifting some of its summary crime work to enhance overall efficiency.

Support for self-represented defendants

One issue raised by a number of evaluation participants concerned what role VLA should have in supporting and/or reducing the number of self-represented defendants faced with summary crime charges. Although some people can effectively self-represent for some offence types, there will be a point at which the number and type of self-represented defendants negatively impacts the efficient operation of the Magistrates' Court, and becomes disproportionate relative to the level of resources required to extend access to

public legal advice, in-court advocacy and grants of legal assistance. In particular, self-represented defendants need to be assisted by the magistrate in open court, with its associated expenses, rather than receiving advice prior to court. Thus, there is a question about what the summary crime system's tolerance for self-represented defendants is, noting that court time is the most expensive part of the system. The cross-section of evaluation participants widely recognised the benefits of 'early' access to legal advice in advance of appearances before a magistrate in court. If the economic case for the provision of public legal assistance appropriately needs to be established, then comprehensive economic cost benefit modelling to establish any 'downstream' system benefits of 'upstream' public legal assistance, over and above access to justice, rights-based and rule of law justifications, should be undertaken.

Recommendation 6: The Summary Crime Working Group should consider commissioning a trial to determine the cost effectiveness of providing increased legal assistance at the duty stage for low capability clients (with the potential savings to the court of reducing the number of self-represented defendants) versus the current system. The aim should be to determine the types of accused and summary crime matters where the benefits to the operation of the system outweigh the cost of providing legal assistance services to those accused that do not satisfy the current DLS service eligibility settings.

Managing serious driving matters

One particularly problematic issue identified by the cross-section of evaluation participants was serious driving matters, including drive while suspended and drive while disqualified where defendants are at risk of imprisonment, but ineligible for grants of legal assistance, and ineligible for DLS in-court advocacy before they are facing their third conviction. VLA and private practitioners, police prosecutors and magistrates all expressed widespread frustration with the way in which these matters were currently dealt with in the Magistrates' Court. The interviews and focus groups suggested that serial drive while disqualified and suspended offending may have escalated and was becoming a more serious issue. Magistrates also identified the issue as one where there was a need for systemic policy review and the development of targeted programs.

On a related issue, participants in regional areas with poor access to public transport highlighted the potential impact of loss of driving license in terms of exacerbating and entrenching social and economic disadvantage.

Recommendation 7: The Department of Justice and Regulation should consult relevant stakeholders and review the operation of the relevant law and sentencing options for drive while suspended and drive while disqualified offences, and their impact on Magistrates' Court caseload, and consider law, court program and service reforms.

We now turn to recommendations specifically concerning VLA and its SCP.

Appropriate and sustainable funding

While we examined the appropriateness and sustainability of VLA's summary crime services, we did not undertake financial or economic analyses to try to quantify the extent

of mismatch between demand and resourcing for VLA's summary crime services, or the wider summary crime system. Such an exercise is bedevilled by lack of information about the inputs required to produce particular types of outcomes. Rather, we have drawn upon and triangulated: the analysis of the police initiation data and VLA administrative service data; and the observations of magistrates, police prosecutors, court support services staff, private practitioners, VLA managers, VLA regional managing lawyers, and VLA administrative staff and lawyers. Findings are also consistent with the findings of the DJR (2016) *Access to Justice Review*.

VLA and private practitioners both pointed to a lack of VLA resources in summary crime as contributing to a system in which disadvantaged people plead guilty to charges, where grants of legal assistance for defended hearings were unavailable.

Increased funding could support increased fees paid to private practitioners for work under grants of legal aid, and make performing VLA funded work more attractive. Increased investment in summary crime could also support change to the scope of grants of legal assistance, and consider ways to extend access to legal assistance services to 'those in most need', acknowledging that this is not necessarily those most likely to be imprisoned. More funding would also support the provision of more duty lawyers, and could be used to reshape VLA's summary crime service offerings to redress participant concerns over the appropriateness of the legal assistance services available within a highly pressured DLS environment.

The most obvious way to avoid tensions between the appropriateness and sustainability of summary crime services is funding linked to anticipated or demonstrated client demand and legal need. For example, where there are increasing numbers of people at risk of imprisonment who meet the grant eligibility requirements, VLA has limited scope *not* to provide grants.

However, funding for VLA summary crime services must again be considered in the broader context, recognising that constraints in one part of the summary crime system may have impacts elsewhere.

Recommendation 8: Funding of the SCP should be linked to demonstrated demand for summary crime services by those eligible for grants and DLS advice and advocacy services. Appropriate funding models should be developed, based on key lead indicators, to align SCP resourcing with demand. This will require the Department of Justice and Regulation and VLA to determine a minimum accepted level of service, and identify how upstream drivers affect SCP service demand. At a minimum this should cover grants of legal assistance and duty lawyer services, and needs to be robust enough to model anticipated demand across the state. So long as SCP funding remains dislocated from demand from eligible clients, it is likely that there will be ongoing challenges to the appropriateness and sustainability of the SCP given the demand drivers that are beyond VLA's control.

Reshaped summary crime services

Following changes to summary crime service eligibility in 2012–2013, the findings demonstrate record numbers of clients using the DLS eligible for legal advice and advocacy

services, and after a period of decline, the number of clients eligible for grants is also increasing.

Given the nature of the sustainability challenges, there is opportunity to review and reorientate the objectives and purposes of VLA's summary crime services. There is also opportunity to consider whether and how its services meet evolving service demands, and the spectrum of client need and capability.

The SCP has a portfolio of summary crime services, complemented by the Legal Help telephone service. As such, there is opportunity to consider how the mix of services might be reshaped to more appropriately match services to client legal need and capability, and service environment.

The findings manifest concerns about the appropriateness of the DLS and Grant guidelines and how they operate for particular types of people, matters and circumstances.

For example, the underlying principles of the DLS Guidelines point to the need to carefully target VLA's limited resources to those most in need and to resolve cases on the first day that a person comes into contact with the services unless impractical or unreasonable. The principles also note that the DLS is important to the effective functioning of the Magistrates' Court, because priorities and demands are different across the state there needs to be flexibility in how the DLS is arranged, and that benefit of the doubt about whether or not an accused person qualifies is exercised in favour of providing the service. There is no statement about the purpose of the DLS or what difference it seeks to make for clients or priority clients.

As its largest service program, the SCP provides extensive opportunity for pursuing VLA's *Strategy 2015–18* strategic directions to improve Victorians' access to justice, especially timely intervention and matching services to the needs and abilities of clients, and to reconsider what and how it helps its priority clients. There is also opportunity to seek to continuously improve summary crime services by reforming practices to provide services that better meet identified needs. At least in part this might be achieved from adopting a more client-focused approach to service provision.

While the introduction of the DLS assessment and triage service model has successfully targeted and tailored services, evaluation participants identified specific types of clients, matters and circumstances where pools of legal need had formed in the 'justice gaps' between grant and DLS service eligibility criteria. By re-examining its summary crime services, there is opportunity for VLA to determine what it is able to do, within the limits of its financial circumstances, to further reshape SCP services to match the legal needs and capability for those vulnerable accused for whom it seeks to make a difference.

Recommendation 9: Given the changing environment and VLA's Strategy 2015–18 strategic directions focused on timely intervention and matching services to the needs and abilities of clients, VLA should revisit the purpose of the SCP, its priority clients, the role of different summary crime services, and the difference they are intended to make. VLA should then consider further reshaping SCP services to better meet the needs and abilities of those priority clients for whom it seeks to make a difference. In particular, SCP services may be more appropriate and better

matched to client legal need and capability through enhanced, client-focused services for defined priority areas.

Minimum standard of service

DLS workload, in particular, has increased in terms of both the number and complexity of clients, and the severity and complexity of the workload. High numbers of clients are a threat not only to the appropriateness and quality of the services that the DLS is able to provide, but a threat to quality client services and staff wellbeing.

Improved clarity concerning the 'minimum accepted standard of service' VLA expects in the DLS context is one way to manage duty lawyer workloads that are regularly excessive. Of course, DLS workloads vary from day-to-day depending on the nature and complexity of the clients and matters. One approach would be to determine the minimum time that duty lawyers are expected to spend with each client and build in discounts or supplements for particular types of clients and matters. Such a framework could then be applied to VLA's administrative data to be used as an indicative tool to flag locations that warrant further investigation to determine whether or not there is a need to take some remedial action.

Such an approach is likely to have a number of advantages. First, it will provide a basis for monitoring and identifying those courts where due to the numbers of matters it is unreasonable to expect duty lawyers to be able to provide the expected standard and quality of service. Second, it would support decision-making about the allocation and reallocation of resources. Third it would support timely response to relieve excessive workload pressure, and maintain staff wellbeing. Fourth, it would provide an objective and nuanced basis for engaging the relevant Magistrates' Court with respect to listing practices.

The issue of the minimum accepted standard of service is explored further below in the context of capping, whether or not DLS services should be capped.

Recommendation 10: To support appropriate and sustainable services VLA should articulate a definition of 'minimum accepted standard of service' that it expects the DLS to provide clients. This should take into account client and matter type.

We found VLA duty lawyers routinely working hard and diligently, but unsure whether or not what they were doing was valued by VLA, notwithstanding benefits obtained by clients. VLA lawyers also questioned whether or not the DLS was just intended to support the Magistrates' Court and to dispose of as many matters as quickly as possible, or whether there should be more scope to safeguard the quality and effectiveness of service.

At least in part this is also related to the pressurised DLS environment, and competing demands of clients and the system. For example, we found that the DLS is 'two-speeded', and works best where it is able to quickly and efficiently dispose of matters, typically those straightforward matters where the brief is available and sufficient to support the charge. However, where the brief is not available, or where the evidence is insufficient to support the charge, and where the matter or client are more complicated to deal with, the DLS works less effectively, and pressure on the DLS is heightened.

One way to alleviate some of this pressure may be to more clearly articulate the types of people, matters and circumstances where the DLS *can* or *should* work more slowly and

intensively, and to what end. This might be some form of 'enhanced duty service', perhaps tied to particular types of client groups, criminal matters and/or circumstances.

The DLS Guidelines, however, are also one-size-fits all, and provide little guidance concerning the magnitude of service expected within any particular level of service, nor the extent of effort that should be expend trying to obtain better client outcomes, particularly when faced with the more severe matters and more complex clients. As such, the operation of guidelines appeared to have two main 'risks' in terms of inappropriate service. These risks appear to lie at both the 'bottom' and 'top' end of the impact and consequences on clients, due to services not matching client legal need and capability.

The intent of reshaping any summary crime services would be to mediate the risk of inappropriate services that fail to meet the legal need and capability of clients across the different summary crime service levels. The challenge is to increase service flexibility and clarity.

Grant Guidelines

At the 'top end' of matter severity, VLA and private practitioners had shared criticisms of the appropriateness of the grants of legal assistance, and the way in which they had been targeted to those 'most in need'. There were widespread concerns about young people, particularly those facing a first conviction, and in particular those that would satisfy the merits tests for a plea of not guilty, but who fail the likelihood of imprisonment test. There were also concerns about the exclusion of traffic and driving offences from eligibility for grants, and the way in which the special circumstances exceptions operated with respect to traffic and driving matters, as well as more generally.

Recommendation 11: VLA should review the operation of the Grant Guidelines, and investigate defining additional 'special circumstances' to meet the needs of people who may be at risk of significant detriment and/or where VLA funded services may be of substantial benefit. For instance, young people facing a first conviction who satisfy merits for a plea of not guilty and/or particular exceptional circumstances should be considered.

Enhanced legal information

At the 'bottom end' of matter severity, VLA staff reported concerns about DLS 'legal information only' and 'legal advice and information only' and the ability of some people to effectively self-represent. In particular, a minority of clients with poor literacy and comprehension were identified as a class of client that was not suited to written legal information. Magistrates and police prosecutors also raised the issue of the number of people who had to self-represent, and the additional time they often take.

While VLA does not 'own' the issue of self-represented defendants, it may be that it is best placed to play a key role in the provision of enhanced legal information. In the interviews, we encountered examples where the Magistrates' Court and/or police prosecutors were interested in working with VLA to improve provision of legal information and better meet the needs of self-represented defendants, particularly for high volume matters such as traffic and driving offences which 'clog up' the mentions list and can be problematic to summary case conference. Examples included 'legal information' clinics at court, and scrolling legal

information on television screens. VLA was identified as being the most appropriate provider of such information.

One way to enhance the provision of legal information would be to use information communication technology to provide enhanced service combinations and options. For example, in the current service context some people receive 'legal information only' from the DLS and then self-represent with police prosecutors in summary case conferences and subsequently in court. There is opportunity to develop *additional* and enhanced legal information resources to cater to wider needs. For example, video and interactive information could be employed to develop materials that take defendants through the self-representation journey step-by-step, cater for different types of matters, and anticipates and answers frequently asked questions. At the least, this would help demystify the summary crime system. This could include what the DLS does (and doesn't do), what your day at court may be like, summary case conferencing, diversion, sentencing indications, the benefits of seeking legal advice from VLA and private practitioners, and what things may be relevant to say in pleading guilty, and what the process will be if you plead guilty and how to prepare.

Such resources may also help to appropriately manage expectations. There are a number of examples of how video, 'talking factsheets' and interactive websites have been used in other Australian and overseas jurisdictions.

There are also opportunities to consider about how legal information might be better employed in *combination* with other types of services (see Forell & McDonald 2015a, 2015b). For example, there may be benefits in targeting particular vulnerable client groups, or particular types of criminal matters, with particular types of legal information and other forms of service. For example, a legal information clinic at court for self-represented defendants in minor traffic matters, with opportunity to ask questions.

Enhanced legal information might also be coupled with worksheets or workbooks intended to assist self-represented defendants to marshal and organise relevant information in preparation for completing the procedural requirements associated with dealing with their matter.

One advantage of harnessing information communication technology is that it can be accessed and used at any time, including in advance of or while waiting at court. Teamed with wi-fi access at Magistrates' Courts, such information may be beneficial for the DLS service, Magistrates' Court staff and police prosecutors by providing a referral destination. A starting point to design such a service would be to collate the questions that VLA clerks, Magistrates' Court staff, and police prosecutors are frequently asked, and consult self-represented defendants about their needs and what would make a difference to them.

There may also be benefits in having dedicated resources to *complement* enhanced legal information offerings, such as the ability to be connected with interactive legal advice. The nature and potential volume of summary crime legal information needs also provides sufficient scale to seek to learn more about what does and does not work in the provision of legal information, for particular types of people and matters. Such learning would also potentially have substantial benefit for wider understanding of the utility and effectiveness of the provision of legal information, and provide valuable insights that could benefit public legal assistance services more broadly.

Note, however, that legal information should be expected to have limits in terms of utility, by client and matter type, and should not be expected to be either *cheaper* or *replacement* services for more intensive forms of legal assistance (see Coumarelos et al. 2012a; Pleasence et al. 2014). In fact, enhanced legal information should be expected to be most beneficial for those people with greater capacity to help themselves. As such, enhanced legal information might be expected to be of benefit to only a proportion of clients. To the extent that such information can provide a *better* experience to defendants, and alleviate *some* workload pressures from the DLS, Magistrates' Court staff and police prosecutors, it may be worth the necessary investment in producing, monitoring and maintaining such information.

Recommendation 12: VLA should determine what, if any, its role is in providing enhanced legal information for summary crime, especially for accused likely to have greater ability to self-represent with access to improved legal information offerings.

Enhanced and extended duty service

Conception of an 'enhanced' or 'extended' duty service could also be developed to more accurately capture and value the heightened level of DLS work provided to some clients, and for some more complex matters. This might include the types of clients, matters and circumstances where assisting clients on a DLR-basis may be inefficient, which often exacerbate pressures in the DLS environment. By 'enhanced duty service' we mean offering *more of the existing* SCP services to better meet the needs and capability of priority clients facing particular matters or in certain circumstances. Note that enhanced duty services already happen in practice, such as where work is done on a minor work file or duty lawyers use their discretion to provide a client a higher level of service, it is just not recognised or valued as such. Greater clarity concerning where enhanced forms of DLS is a VLA priority may also empower and embolden duty lawyers.

An enhanced duty service might be offered on a limited basis at both the 'top' and 'bottom' end of matter severity. Such an approach may be beneficial to the overall client experience and quality of DLS services, as efforts to more appropriately meet needs at the 'top' and 'bottom' could, in turn, free up capacity to more appropriately provide service to the 'middle'.

At the top end, a starting point may be to consider the type of people and matters that may be inefficient, and impractical to deal with in the DLS context, and to reconsider what and how 'enhanced' forms of duty service may manifest. In particular, there appears to be substantial benefit in examining how minor work files might be utilised to support the provision of an enhanced duty service, and to better recognise the more intensive services provided to some people. One reason for reviewing the way in which VLA's minor work file policies operate for summary crime services is to alleviate some of the pressure that complex matters and clients exert in the DLS context. It may be that more appropriate and effective services can be achieved for certain types of matters and clients through greater flexibility to do work on minor work files.

Another option is an 'extended' DLS. By 'extended duty service' we mean adding *additional* limited service offerings that go beyond current SCP services. One way in which this might be achieved is through defining certain 'exceptional circumstances' where extended DLS might be provided for not guilty pleas in defended hearings. One benefit of having tightly

defined capacity to pursue defended hearings through the DLS would be to increase the bargaining power of the defence with police prosecutors, particularly with respect to clients unable to afford private legal assistance who have meritorious cases and would suffer a significant detriment. Where an enhanced DLS is able to successfully filter 'good' not guilty circumstances and candidates (which participants suggested were likely to be limited in number), there is also the prospect of being awarded costs. With this in mind any enhanced duty service should determine appropriate merits and client income thresholds for any enhanced duty services.

Where extended duty services go to contest mention and beyond, this work might be handled either by VLA practitioners or private practitioners. Where services of private practitioners are obtained, that might be on a limited or bulk tender basis. The prospect of 'unbundling' some legal assistance and using the mixed model to purchase limited services from private practitioners offers one way to reshape SCP services to ameliorate the 'justice gap' between the standard SCP grant and DLS eligibility guidelines.

A dedicated approach may be justified by the particular requirements of the summary crime service challenge, and by the difference VLA determines that it wants to make with the DLS, and for whom. Mechanisms to enhance and extend DLS service would address practitioner concerns about the appropriateness of the DLS and Grant guidelines, and how they affect Victorians' access to justice.

Recommendation 13: VLA should review the mix of its summary crime services and consider implementing 'enhanced' and 'extended' DLS services targeted to defined types of clients, matters and circumstances where it seeks to make a difference.

Another basis on which the concept of enhanced duty may be used to recast the purpose and value of the DLS is through making provision for more multidisciplinary and a more holistic approach to meeting the legal and non-legal needs of some clients who are complex and difficult to service in the DLS context. Again, this may be one way for VLA to pursue its *Strategy 2015–18* strategic directions. For instance, there may be long-term benefits to VLA, the criminal justice system and the wider community in seeking to identify and offer enhanced forms of service to particular client groups on the cusp of becoming 'high service users', as well as adult onset offenders who potentially stand to benefit the most from non-legal services that may help to mitigate against continued offending behaviour (see Jolic 2014; van de Zandt & Webb 2013). This also points to potential benefits of dedicated strategies to support diversion and non-conviction outcomes for some identified clients, matters and circumstances.

One possible approach would be to consider integrating greater case assessment and management capacity with an enhanced DLS. We found that VLA duty lawyers often fulfil a 'social work' role, and connect clients with a wide range of social and human services. It may be that some of this work is better performed in a 'slow' or enhanced DLS mode, where the assistance of social workers or 'non-legal advocates' through some level of client case management can be harnessed, which in turn might free lawyers up to work in a 'quick' DLS mode and perform more legal tasks. This recognises the spectrum of matters and clients that the DLS faces.

Of course, the parameters of such a service would have to be tightly defined, but examples exist in some of the ways that duty lawyers work alongside non-legal professionals at the

Neighbourhood Justice Centre. For instance, there may be benefits in having social work capacity help coordinated medical and other assessments to better meet the needs of complex clients. One such example is the Client Assessment and Referral Service of Legal Aid NSW, which works collaboratively with lawyers to meet the needs of complex clients.

Again, the intention would be to more appropriately meet client needs, and improve client experience by alleviating pressure on duty lawyers and the DLS service context. The integration of legal and non-legal services within the summary crime service mix is something that VLA may want to trial and evaluate on a limited basis.

Recommendation 14: To improve capacity for timely intervention and match services to needs, VLA should investigate whether or not there are client and operational benefits in integrating social work capacity into the SCP. Any such service innovation should be trialled and evaluated to determine if benefits outweigh costs.

One of the key public legal assistance service challenges is targeting and reaching the small minority of clients who experience the overwhelming disproportion of legal needs (i.e. in Victoria less than 20 per cent of people experience 82 per cent of legal problems; Coumarelos et al. 2012b). As such, there are opportunities for timely intervention by improving capacity to work more intensively to better meet the wider legal needs of some clients when they come into contact with VLA. In particular, criminal offenders have been shown to have higher vulnerability to civil legal problems (Pleasence & McDonald 2013). There are a variety of options for integrated or 'joined-up' services to better meet complex legal and non-legal need (see McDonald, Forell, Wei & Williams 2014; Pleasence et al. 2014).

To give but one example, when people experiencing homelessness, or other identified key priority client groups, come into contact with the SCP there may be significant client benefits in undertaking a broader diagnosis of their legal needs. For example, there are various tools for conducting 'legal health checks', although generally they should only be undertaken where there is some capacity to respond to identified needs. Similarly, because criminal matters are one type of legal issue that triggers seeking of legal help, the DLS can potentially be harnessed as a point of 'earlier intervention'. Other examples of client groups likely to have other legal needs when they seek summary crime DLS include victims of family violence, and young families at risk of care and protection issues.

Recommendation 15: To improve capacity for timely intervention and to match services to needs, VLA should consider the utility of screening tools such as 'legal health checks' to identify the wider legal needs of particular identified priority client groups. Any such service innovation should be trialled and evaluated to determine if benefits outweigh costs.

At the 'bottom end', enhanced forms of duty service might target some types of highly disadvantaged and low capability clients who would benefit from legal advice, and where deemed appropriate, in-court advocacy, even for 'minor' criminal matters. Again, this could be provided on a limited 'exceptional circumstances' basis. Enhanced DLS could be targeted to accused assessed as having poor literacy, comprehension, communication and confidence. For example, some types of VLA and DLS priority clients can be expected to have difficulty self-representing for minor matters, not only in terms of comprehending and using legal information, but also in terms of navigating to and through required processes.

While magistrates reported that they were able to effectively deal with accused self-representing in minor matters, police prosecutors reported frustration with some accused in minor matters who they thought would benefit from legal advice. Enhanced DLS at the 'bottom end' of the matter severity spectrum would be intended to provide more appropriate forms of service to highly disadvantaged and vulnerable accused on a limited basis, and to better support the operation of the summary crime system. It may be that obtaining legal advice from the DLS for minor matters is sufficient to self-represent in court, although there are likely to be some clients for whom duty lawyers appearing in court, subject to capacity, would be beneficial.

Such an approach may have a number of benefits. First, it may improve client service and experience. Second, it may help to engender trust and confidence in VLA from a cohort of clients likely to have multiple and complex legal needs, and who stand to benefit the most from seeking legal assistance services for other matters from VLA. Third, it may help to strengthen relationships with police prosecutors and the Magistrates' Court.

Recommendation 16: VLA should consider defining 'exceptional circumstances' for enhanced DLS services for minor matters.

DLS client expectations

The findings point to client and DLS benefits associated with strategies to better manage DLS client expectations. One option is provision of bespoke information concerning what users of the DLS can expect at particular court locations, given that the way in which the DLS and court operates vary. For example, such information might cover registering attendance with the court, factors that affect the order in which clients are seen, how long they might have to wait to see a duty lawyer, what type of assistance they might expect to receive, and the DLS stages that have to occur before the court will call their matter into court.

Recommendation 17: VLA should develop strategies to manage DLS client expectations. Where practices vary, information tailored to particular locations may be necessary.

DLS priority clients

Some VLA staff questioned the differences between VLA's Priority Client Framework and the DLS priority client groups, and why some types of people were priority clients for VLA but not the DLS. Children, young people and women victims of family violence, and people with physical disability are within VLA's Priority Client Framework but are not a DLS priority group. VLA lawyers reported exercising discretion to provide higher level service to a range of vulnerable clients, including people assessed as being incapable or unlikely to adequately self-represent due to being a victim of family violence, being in poor health, having significant physical disability, as well as young people and elderly people.

While the DLS provides duty lawyers' discretion to provide in-court advocacy where there are compelling reasons why the person cannot represent themselves, there may be benefit in providing some examples of the types of 'exceptional circumstances' where this discretion can be used after weighing competing priorities.

Recommendation 18: VLA should review inconsistency between VLA's Priority Client Framework and DLS priority client groups. VLA should also provide further guidance to support and direct duty lawyer discretion to provide a higher level of service.

DLS assessment and triage

There may be benefits in developing a more comprehensive and sophisticated approach to supporting DLS assessment and triage. For example, VLA could periodically review its scheme of 'minor', 'straightforward' and 'significant' matters against Sentencing Council of Victoria data, and could provide a more comprehensive 'look-up' listing of the severity of different types of matters. In addition, there may also be benefits in formally trialling evaluation of different models of assessment and triage, such as assessment and triage undertaken by a senior managing or coordinating lawyer, particularly at locations where there are high numbers to manage.

Recommendation 19: VLA should periodically review assessment of matter severity against Sentencing Council of Victoria data. To support and improve triage practice, VLA should consider developing a more comprehensive listing of criminal matter severity. There may also be benefits in trialling and evaluating alternative DLS assessment and triage models, and comparing them to the current practices, to determine operational cost-benefits, particularly at those locations with higher caseloads.

Capping the DLS

The pros and cons of capping the DLS, in terms of either number of clients or time, was repeatedly raised by VLA staff as one option to manage the appropriateness and sustainability of the DLS. A preliminary step to capping DLS services should be further investigation concerning the minimum acceptable standard of service that VLA expects.

Assuming a 9am–4pm court day, with an hour break for lunch (which in practice the duty lawyer may be unable to take) this means a six hour court day for staff on the mentions list. There is a four-hour window of opportunity for summary case conferencing before Police Prosecutions close at 1pm.

If each client received, on average, 20 minutes of service, this would be 18 clients per day per duty lawyer; if it was only 15 minutes of service, it would be 24 clients per day per duty lawyer. When client numbers hit 30 per duty lawyer, as they can in certain courts, then this equates to only 12 minutes per client. Depending on DLS service eligibility, this includes time required to review the police brief, see and take instructions from the client, summary case conference charges, provide advice as to next steps and possible courses of action, potentially seek a sentence indication, and either make a plea of guilty or seek an adjournment for those clients eligible for in-court advocacy.

Anytime incurred obtaining the brief, dealing with more complicated matters and clients, such as those requiring interpreters, or who have impaired comprehension or communication, and waiting to summary case conference, necessarily eats into the available time. This means that where VLA does not have priority in obtaining briefs and summary case conferences, or deals with a higher number of complex and time-consuming clients, service capacity will be further eroded.

Similar logic can be applied to determining minimum accepted service standards for the in-custody list, including a realistic cut-off time for 'late custodies'.

At those locations where DLS demand routinely exceeds the maximum number and types of matters that VLA determines can be seen to the minimum accepted service standard, a service cap may be a useful short-term solution while other ways to manage service sustainability are investigated. As also noted above, working with magistrates and registry staff to try to manage the number of matters that the DLS faces day-to-day, as informed by minimum acceptable standard of service, may be preferable to service caps in the first instance.

Recommendation 20: To improve services to clients and manage excessive demands on the DLS, VLA should investigate developing a framework to determine the maximum volume of work that a duty lawyer should be expected to deal with, to the minimum acceptable standard in the mentions list. Where caseloads are excessive, strategies to manage demand and preserve service quality and sustainability should be implemented and clearly communicated to key stakeholders.

Valuing VLA's summary crime services

An issue common to both VLA and private practitioners was the value of the summary crime work they do. Private practitioners thought that it was not understood, particularly by government, that the work they provide under a grant often exceeds the fees they are paid. One of the reasons they undertake VLA funded work is to provide access to justice. VLA lawyers similarly reported often working long and hard to keep up with their workload and make a difference for clients.

One limitation of VLA administrative data is that it cannot readily demonstrate the difference made to clients, nor the difference made to the operation of the courts and justice system.

By comparison, Victoria Police track and report the number of summary case conferences undertaken by their prosecutors, and monitor the number of matters they handle resulting in a guilty plea, contest mention and contested trial. In addition to client outcomes, part of the 'value' that VLA's summary crime services create is supporting the effective and efficient operation of the system, through provision of legal information and advice, summary case conferencing and in-court advocacy.

VLA does not, however, record the number of summary case conferences done on behalf of clients, nor any difference made in terms of negotiating the charges, or the number of sentence indications sought for clients. Nor does VLA routinely record the number of clients connected with the CREDIT/Bail Support, or CISP programs, or other programs. Duty lawyers also frequently respond to ad hoc requests from magistrates, and assist in the flow of matters through the court. A number of duty lawyers, particularly in regional areas where there is less provision of court support programs, also reported successfully assisting clients to obtain diversions.

Duty lawyers may have undertaken summary case conferencing over the course of multiple mention dates to get to the point where the accused agrees to the charges and pleads guilty. However, if the client is a self-represented defendant at the plea, because they were

assessed as ineligible for in-court advocacy, then the sentence outcome is not recorded, and the value of this level of work is not captured and reported.

Some VLA staff questioned whether VLA collected and reported the right data, and whether or other measures would provide useful information about the performance and 'true value' of the SCP. Although it was beyond the scope of the evaluation, some VLA staff also questioned the alignment of VLA's performance management model and the 'value' ascribed to different summary crime services. Some VLA staff thought that there was extensive work that was done to benefit clients and the court that was not captured and recognised, and because this work was not counted, that this was to VLA's detriment. In particular, the way in which DLS work is done and recorded on DLRs does not appear to usefully distinguish the level of work or the benefit to clients and summary crime system. Given that what is measured tends to be what is valued, there may be benefit in recalibrating how VLA measures and reports DLS work.

Of course, the *a priori* question for valuing VLA's summary crime services is determining the purpose of VLA's SCP, and what it wants to achieve with the services it provides.

Recommendation 21: VLA should review how it 'values' SCP services and develop indicators to monitor and report this value. For example, VLA might consider standard recording of some additional aspects of its summary crime services, such as number of summary case conferences, sentence indications, diversions and number of clients assisted to get into and complete various Magistrates' Court programs.

Smarter data

In compiling and reviewing VLA's administrative data for analysis, we found the utility of the data VLA routinely records was somewhat limited. This is common to all administrative data. Consequently, we had to develop a number of proxy measures to use in the analyses. There is scope, however, to improve the information that VLA routinely collects and to improve how recorded information can be used. This might, in turn, be used to better inform and monitor practice and performance, and to learn about what works, for whom, and under what conditions. Smarter data could then be linked to smarter systems to monitor and evaluate client outcomes and improve services.

Given that VLA organises and reports its legal assistance services by sub-program, it would be useful to have a 'summary crime flag' in ATLAS. It would also be useful to have demographic indicators permanently recorded for each service event at the time of service, rather than having them overwritten by data entry associated with subsequent service events. In particular, it would be beneficial to have an 'in-custody service' flag on all types of service. Given that ATLAS only records the primary matter type, there is no measure of the *number* of charges for each client that VLA's summary crime services assist with, nor whether a client is facing multi-brief charges and where a consolidation plea is the most efficient way to dispose of those charges. Such recording would help to provide a better measure of the volume and complexity of VLA's summary crime services, and help to identify types of matters and clients potentially best dealt with outside of the DLS context. It would also help to provide a better measure of the *impact* and *value* of VLA's services as discussed above.

With respect to the way in which the DLS assessment and triage process works, it would be useful for monitoring and evaluation purposes to have some additional client and criminal matter characteristics recorded. In particular, client income should be recorded, as should assessment of the severity of the criminal matter: perhaps using the 'minor', 'straightforward' and 'significant' schema employed in the DLS eligibility guidelines. In terms of learning what works, for whom, and in relation to what types of criminal matter types, more comprehensive data recording could allow for more sophisticated monitoring and design of summary crime services, such as better and more nuanced understanding of the types of people and criminal matters where 'legal information only' is effective. With this in mind, further demographic indicators would be useful, such as those that might be used as indicators of client personal and legal capability.

Another benefit of seeking to develop a 'smarter' approach to data may be to support and demonstrate the utility of improved data practices, in terms of supporting service monitoring and performance, informing the design and implementation of improved service provision, and capturing and demonstrating 'value'.

If VLA determines to make changes to summary crime service data recording, then it would be beneficial to consider what else it would be useful to monitor. Of course, modifying data collection practice could have broader implications for VLA administrative data practice.

Recommendation 22: VLA should investigate and consider the utility of modifying what and how it records summary crime service data, and how the data it records can be used for routine monitoring and evaluation of program performance and change.

Smarter services

More comprehensive service data recording that enables more sophisticated data interrogation opens up opportunities to learn more about service effectiveness, such as when effectiveness intersects with client and criminal matter characteristics. This may, in turn, support continuous learning and the design of improved services.

Design of smarter services, however, requires improved understanding of:

- what and how services affect client outcomes, for certain types of clients and matters
- the relative merits of different types or combinations of services
- the potential benefits of legal assistance coming 'earlier' or 'later' in particular types of matters, as well as
- benefits of legal and non-legal services joining to enhance services targeted to priority clients.

One way for VLA to pursue its strategic direction with respect to matching services to the needs and abilities of clients, as set out in its *Strategy 2015–18*, is to seek to learn more about the impact and difference its legal advice and legal information services make, for whom, for what, when, and under what circumstances.

Currently, VLA does not collect any information about what happens to clients using its summary crime services other than those receiving a grant or in-court advocacy. To learn

more, routine service follow-up procedures could be implemented to identify what and how client and criminal matter factors affect the utility of VLA's summary crimes services.

A starting point might be following up on what clients receiving 'legal information only' and 'legal advice and information only' from the DLS do, or do not do, after receiving these services, and what outcomes were achieved. This has the potential to significantly improve the evidence base concerning 'what works' with respect to the utility of legal information, whether or not clients subsequently seek legal assistance from private practitioners, and factors affecting the outcomes of self-representation. Such information could in turn be used to modify and improve summary crime service offerings. In particular, follow-up procedures would ideally be utilised to monitor the impacts of changes to service settings, as part of ongoing monitoring and evaluation of service provision (see Pleasence et al. 2014).

Because routine follow-up can be cost-prohibitive, it is more feasible for larger and higher-cost program areas such as the SCP. There are also advantages in terms of the volume of clients that the DLS sees, which potentially allows for the impact of more client and matter type characteristics to be monitored.

Recommendation 23: VLA should investigate investing in additional monitoring and evaluation intended to learn more about 'what works' in its summary crime service offerings, and improve capacity for evidence-based practice.

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Law and Justice Foundation of New South Wales
PO Box A109, Sydney South NSW 1235
Australia
+61 02 8227 3200
@NSWLawFound
www.lawfoundation.net.au