



# Victorian Aboriginal Legal Service

13 April 2023

Secretariat  
**Family Law Council**  
By email: [familylawcouncil@ag.gov.au](mailto:familylawcouncil@ag.gov.au)

Dear Secretariat,

## **Re: VALS response to the Family Law Council's Survey on the Rights of Children and Young People in Australia's Family Law System**

### **Our legal services**

VALS is an Aboriginal Community Controlled Organisation (ACCO) with 50 years of experience providing culturally safe legal and community justice services to our people across Victoria. Our legal practice serves Aboriginal people of all ages and genders. Our 24-hour criminal law service is backed up by the strong community-based role of our Client Service Officers (CSOs). CSOs help our clients navigate the legal system and connect them with the support services they need.

Our **Aboriginal Families Practice** provides legal advice and representation to clients in family law and child protection matters. We aim to ensure that families can remain together and children are kept safe. We are consistent advocates for compliance with the Aboriginal Child Placement Principle in situations where children are removed from their parents' care.

Our **Criminal Law Practice** provides legal assistance and representation for Aboriginal people involved in court proceedings. This includes bail applications; representation for legal defence; and assisting clients with pleading to charges and sentencing. We aim to understand the underlying reasons that have led to the offending behaviour and ensure this informs the best outcome for our clients.

Our **Civil and Human Rights Practice** supports clients with consumer issues, infringements, tenancy issues, coronial matters, discrimination issues, working with children checks, employment matters and Personal Safety Intervention Orders.

Our **Wirraway Police and Prison Accountability Practice** supports clients with civil litigation matters against government authorities. This includes for claims involving excessive force or unlawful detention, police complaints, and coronial inquests (including deaths in custody).

#### **Preston Head Office**

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#### **Local Office Network**

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**Balit Ngulu** is our dedicated legal practice for Aboriginal children providing support in criminal matters. Balit Ngulu is designed to be trauma informed and provide holistic support for our clients.

## Responses to the Family Law Council's Survey

VALS appreciates the opportunity to respond to the Family Law Council's Survey on the Rights of Children and Young People in Australia's Family Law System as an organisation.

To ensure our responses to each of the survey questions is clear our responses are set out in the table in Annex A, which clearly identifies each question and response.

Once again, we thank the Family Law Council for accepting our response past the close of the survey and appreciate the opportunity to submit our practice experience.

Please do not hesitate to contact my Executive Assistant, [Marina Korotky](#), or the Head of VALS Policy and Communications department, [Patrick Cook](#), should you require further information.

Yours sincerely,

*Nerita Waight*

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**Chief Executive Officer**

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## Annex A

<b>Name</b>	Victorian Aboriginal Legal Service
<b>Primary occupation</b>	VALS is a public legal service provider to First Nations people who live in Victoria. As mentioned above, VALS Aboriginal Families Practice provides legal advice and representation to Aboriginal and Torres Strait Islander peoples in Victoria regarding child protection and family law matters.
<b>State/Territory</b>	Victoria
<b>Workplace location</b>	VALS operates across the state of Victoria. Our head office is located in Preston and our regional hubs are located in Bendigo, Ballarat, Mildura, Swan Hill, Shepparton and Warrnambool. Our Aboriginal Families Practice services all communities across Victoria and operates from our Preston Head Office. Our family lawyers travel to meet our clients and represent them in their matters.
<b>Formal training</b>	VALS lawyers have formal training in the following areas; child development, child abuse and neglect, child inclusive practice, trauma informed practice, cultural sensitivity and awareness, family violence and mediation.
<b>Does the Australian family law system meet its obligations under the UN Convention on the Rights of the Child?</b>	Strongly agree.
<b>Do Family Dispute Resolution (FDR) processes in relation to parenting and arrangements meet the obligations under</b>	Disagree.

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<p><b>the UN Convention on the Rights of the Child?</b></p>	
<p><b>Do the processes for making parenting orders in court (by consent or litigation) meet the obligations under the UN Convention on the Rights of the Child?</b></p>	<p>Agree.</p>
<p><b>Do you have any further comments to make on the extent to which the Australian family law system meets its obligations and upholds the rights of children and young people under the UN Convention on the Rights of the Child?</b></p>	<p>The system as it currently functions relies heavily on Independent Children’s Lawyers (<b>ICL</b>) to bring the wishes of the child before the Court. An ICL will bring the children’s wishes into the legal matter and will do so even if the lawyer does not agree or support the child’s wishes as being in the best interests of the child.</p> <p>In our lawyers experience, a majority of ICL’s will not meet with the child before the matter coming before the Courts. VALS lawyers believe that an ICL can only determine the wishes of a child by meeting with them in person and engaging with the child directly.</p> <p>The role of an ICL is to present the wishes of the child to the court and the process of obtaining such instructions from a child is undercut when an ICL does not meet with the child. Proper representation of the child and an adequate recount of their wishes is prevented when an ICL fails to meet with and engage with the child before court.</p> <p>The inherent vulnerability of children involved in a legal matter or process means that lawyers involved in the process should take the utmost care when engaging with children and they must ensure the child’s wishes and best interests are put first. The concept of ensuring the children’s wishes are put first is at odds with legal representatives’ failure to meet and engage with children prior to a court hearing.</p>

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<p><b>Do you have any views regarding other options to provide children and young people with a safe and effective opportunity to express their views?</b></p>	<p>Children who are involved in a family legal proceeding should be protected from the litigation process as much as practically possible. Engagement in any type of legal proceeding is daunting and stressful for adults, and these feelings of anxiety and stress can be compounded and more extreme for children as they may struggle to understand many of the nuanced and complicated proceedings. Children who are subject to a family law proceeding should be shielded from the litigation process as much as reasonably practicable in order to avoid unnecessary stress and anxiety.</p> <p>VALS Aboriginal Families Practice is not in favour of Court appearances for children who are involved in family law litigation for the above reasons.</p> <p>In circumstances where the matter has proceeded to Family Dispute Resolution, it would be beneficial to allow children to have a representative who would act as the 'child's voice' to ensure the desires and needs of the child are considered.</p> <p>The proposed amendments set out in the <i>Family Law Amendment Bill 2023</i> that provide a uniform and mandatory framework for ICL's, will ensure that the abovementioned concerns regarding ICL's failing to adequately engage with the children they are representing prior to court will be avoided.</p>
<p><b>Does the Australian family law system uphold the rights of children/young people to participate in the decision-making process in parenting proceedings?</b></p>	<p>Agree.</p>

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<b>Does the Australian family law system uphold the rights of children/young people to make their views known in parenting proceedings?</b>	Agree.
<b>Does the Australian family law system uphold the rights of children/young people to receive information about the decision-making process and outcome?</b>	Strongly agree.
<b>Does the Australian family law system uphold the rights of children/young people to spend time with each of their parents and other people significant to their care, welfare and development?</b>	Strongly agree.
<b>Does the Australian family law system protect children/young people from physical and psychological harm from being subjected to, or exposed to, abuse, neglect or family violence when making parenting arrangements?</b>	Disagree.
<b>Would greater use of child inclusive practices in Family Dispute Resolution</b>	Strongly agree.

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<p><b>improve Australia’s ability to meet its obligations under the United Nations Convention on the Rights of the Child?</b></p>	
<p><b>Would enshrining the Guidelines for ICL’s in legislation improve Australia’s ability to meet its obligations under the United Nations Convention on the Rights of the Child?</b></p>	<p>Strongly agree.</p>
<p><b>Would establishing a new professional role in the family law system to support the participation of children and young people improve Australia’s ability to meet its obligations under the United Nations Convention on the Rights of the Child?</b></p>	<p>Strongly agree.</p>
<p><b>How could Family Dispute Resolution processes for making parenting arrangements be improved?</b></p>	<p>The current Family Dispute Resolution processes do not work to genuinely progress dispute resolution between parties. Initial Family Dispute Resolution processes are currently undertaken by entities like Relationships Australia. These processes typically prove to be ineffective and are in some circumstances only used to obtain the necessary section 60I certificates in order to progress the matter to a Part VII Order.<sup>1</sup></p>

<sup>1</sup> *Family Law Act 1975* (Cth), s 60I. s60I(1) of the *Family Law Act* requires that all persons who have a dispute about matters that may be dealt with by a Part VII order make a genuine effort to resolve that dispute by family dispute resolution before the Part VII order is applied for.

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	<p>As noted in section 60I(1) of the <i>Family Law Act</i>, the process of obtaining a section 60I certificate in order to progress the matter is mandatory.<sup>2</sup> VALS is supportive of this requirement and we believe it is a beneficial tool that works to resolve matters before proceeding to litigation. However, these processes should not be tokenistic. This process would be better delivered by requiring parties to engage in mediation with experienced family lawyers and/or family law mediators. In order to ensure equitable access to such a process, it is imperative that section 60I mediation conferences are legally aided to ensure all people who engage with the process are able to obtain competent and experienced legal representation.</p>
<b>How could court processes for making parenting arrangements be improved?</b>	<p>Funding additional roles for judicial officers who specialise in engaging with children and families who are subject to parenting arrangements would improve processing times and outcomes for those families involved in the system.</p>

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<sup>2</sup> Ibid.

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