

Means Test Review  
Victoria Legal Aid  
350 Queen Street  
Melbourne VIC 3000

20 September 2016

Dear Sir/Madam

### **Response to Victoria Legal Aid's Means Test Review**

We write this submission in response to Victoria Legal Aid's Consultation Paper released as part of the Means Test Review. IMCL welcomes this opportunity to make a submission to the Means Test Review conducted by Victoria Legal Aid.

#### **Executive Summary**

Inner Melbourne Community Legal is a not-for-profit community organisation that provides free legal assistance, education and advocacy to marginalised people in the City of Melbourne area (North Melbourne, West Melbourne, the Central Business District, Carlton, Parkville and Docklands). Our mission is to promote social justice through advocacy, education and casework delivered by a passionate and talented team.

IMCL has a team of ten staff members, a number of secondees and a pool of volunteers and carries out pioneering and innovative work through its co-located community-justice partnerships, Health-Justice Partnerships, extensive community legal education program and innovative projects.

IMCL focuses its resources towards assisting some of the most disadvantaged members of the community including individuals experiencing homelessness, mental illness, disability, substance dependency and individuals from culturally and linguistically diverse backgrounds. IMCL promotes social justice and aims to improve the health and wellbeing of the community through the provision of high level, accessible legal advice. Acting on the findings of the Legal-Australia Wide survey<sup>1</sup>, IMCL is committed to collaborations and partnerships, and conducts legal outreach programs at Ozanam Community Centre, the Royal Women's Hospital, the Royal Children's Hospital, the Royal Melbourne Hospital, the Centre Against Sexual Assault and cohealth at the Carlton Housing Estate.

As a member of the VLA practitioner panels for summary crime, family law and family violence, IMCL is well placed to make these submissions as we encounter issues with the means test on a daily basis. These submissions are intended to highlight the issues with the current means test that we have identified through our work with vulnerable clients. We have provided de-identified case studies to illustrate the issues we have described.

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<sup>1</sup> Christine Coumarelos et al 'Legal Australia-Wide Survey: Legal need in Australia' (Report, Law and Justice Foundation of New South Wales, August 2012).



***B3: How can we make it easier for people to understand if they are eligible for a grant of assistance based on their income?***

In our experience, people obtain information about financial eligibility for grants of legal assistance largely from legal practitioners. This is because in our experience clients and other members of the general community not readily able to access the VLA Handbook for Lawyers and ascertain this information themselves. However, it is difficult for lawyers to make a quick assessment of a person's financial eligibility even with access to the VLA Handbook – for example where a person's financial circumstances are more complex and they are not solely in receipt of Centrelink benefits and have no assets. In these cases lawyers are required to prepare "dummy" applications for assistance via ATLAS, putting in all of the details regarding a person's income and assets so that they can obtain an accurate means assessment for that client. This process is extremely inefficient for clients and lawyers. Further, only lawyers who are registered with ATLAS have access to make these "dummy" applications and practitioners without access to ATLAS are unable to use this process.

In our submission, VLA should consider developing an online screening tool that is accessible to everyone so that clients and legal practitioners alike can assess whether a person is eligible for assistance based on their financial circumstances. VLA could develop, for example, an online calculator, similar to the child support calculator used by the Child Support Agency that allows people to enter in all the necessary information needed by VLA to conduct a means assessment so that they can ascertain if they meet the means test. A simple calculator that factors in a client's income, living situation (i.e. whether they have dependants), allowable deductions and expenses, as well as any assets would be of great assistance.

***B4: What changes do you think there should be to the financial information required to support an application for grant of legal assistance?***

The financial information needed to support an application for grant of legal assistance is very onerous, both for clients and legal practitioners that apply for grants of assistance. In our experience it can be difficult for vulnerable clients to obtain this information so that they can obtain the vital assistance that they need. Sometimes the information and documentation required by VLA is not readily accessible for clients – for example because they are experiencing homelessness or fleeing family violence – and this can lead to lengthy delays in them obtaining assistance. Just as persons in custody do not have to provide financial documents if they do not have assets to declare, VLA should consider whether documentary requirements should be waived if the person is experiencing homelessness or residing away from their usual accommodation due to family violence.

***Case study 1***

*Pete came to us for assistance with his family law matter. He was homeless and living in crisis accommodation, and coupled with this he had physical disabilities as a result of an acquired brain injury. He requires disability aids for his mobility and has difficulty communicating and being understood. Pete had lost all of his identity documents when he entered the crisis accommodation service. For IMCL to be able to apply for a grant of legal assistance on his behalf we needed him to provide us with his Centrelink Pensioner concession card together with copies of his bank statements. This was extremely onerous for Pete, and he did not have intensive casework support to help him get these documents. It involved him travelling to our office, via his bank and Centrelink*



*with his disability aids. Pete was able to provide us with the documents we needed ultimately, but it was not easy.*

A strict application of the documentary requirements can also lead to unfair outcomes for victims of family violence that are at high risk, and particularly where they have already experienced economic abuse.

### **Case study 2**

*Bindi wanted to leave a violent relationship but had no access to the assets owned and controlled by her husband, supposedly on their behalf. They owned some property together, but she had no knowledge of what the value of the property was or how to access further information about the property without alerting her husband to the fact that she wished to leave. Even if she was not listed as the legal owner of this property, VLA would assess that she had an equitable interest in this property which she would have to declare. But she could not declare information about property that she did not have access to, particularly where it put her and her children's safety at risk.*

This example highlights the need for greater discretion in exercising the means test, so that VLA can decide whether to exclude this property from any means assessment and whether a person in Bindi's circumstances needs to provide information about this property prior to a grant of assistance being granted.

### **B14: Do you have any examples of circumstances where you think the assessment of financially associated persons has been unfair or could be improved?**

Requiring financial information from financially associated persons, and considering this information as part of any assessment, can result in unfair outcomes for clients. While friends and family may be supporting our clients in different areas of their lives, this support may not be able to extend to paying legal fees.

### **Case study 3**

*Nicole was suffering from a terminal illness, and was unable to properly instruct a lawyer in contested family law proceedings involving her children. One of Nicole's siblings was appointed as her case guardian, and their extended family privately paid for a lawyer to assist the case guardian even though Nicole was only in receipt of Centrelink benefits. They did not know at that time that she may have qualified for legal assistance from VLA. After the family could no longer afford to pay for the private lawyer, the case guardian was later unrepresented.*

*As Nicole's family had previously been able to afford to pay for a private lawyer, they would have had to disclose on the application for legal assistance that they had previously paid for legal assistance. After which her application would most likely be refused, because they previously had been able to pay their legal fees. This leaves Nicole in a difficult position because the family members that had been paying for a private lawyer, have obviously made a decision that they can no longer afford to do so. She had no control over this, and yet she is ultimately left with no assistance. IMCL was able to make a referral for the case guardian to a private lawyer for pro bono assistance in this matter, but it highlights the unfair impact as assessment of financial associated persons can have.*



This case illustrates that there is a much broader issue of how a strict application of the means test cannot effectively deal with a dramatic change in a client's circumstances – for example where a client experiences a sudden loss of income and has no access to any other assets or savings that could be used to pay legal fees.

IMCL considers that there should be greater discretion to exclude financially associated persons from an assessment of an applicant's financial resources in certain circumstances. Alternatively, there should be recognised categories or circumstances where financially associated persons' financial details are automatically excluded from any assessment. For example, where an adult child is living with their parents but is contributing in some way to their parent's living expenses (by paying board or contributing to the food budget), then they should automatically be considered as independent from their parents and their parents should not be classified as financially associated persons.

**C5: Are there any issues with the content or operation of the debt policy?**

The overarching focus on debt recovery can result in vulnerable clients being refused legal assistance.

**Case study 4**

*Don was working and earning a small income and a lawyer (pursuant to grant of legal assistance) was assisting him with a family law matter. As a result he was assessed as having to pay a contribution amount, which he could afford to pay while he was working.*

*He later lost his job and fell behind on his contribution payments. He was unaware that he could try to have his assessment changed due to his changed circumstances and his legal assistance was subsequently terminated because he failed to make contribution payments. This left him with an outstanding debt, which a year later precluded him from getting legal assistance again with the family law matter. Don was solely in receipt of Centrelink benefits and was unable to represent or advocate for himself in his family law proceedings. As he could not access legal assistance through VLA due to his outstanding debt, he could not bring to the Court's attention the fact that the other parent had been contravening the family law orders. At the time he lived in a remote and regional area and could not access his local community legal centre. The situation continued for many years before he came to Melbourne and later to IMCL for assistance, but by that stage so much time had passed that it he could not bring contravention proceedings.*

*The situation escalated to such an extent that he did not have contact with his child for six years. IMCL was able to provide him with assistance in applying to the Court to spend time with his child without a grant of legal aid, but a significant period of time had passed and this had eroded the child's ability to have a meaningful relationship with Don.*

**F3: Do you have any examples of people who have missed out on legal assistance despite being socially or financially disadvantaged? What happens when a person misses out?**

We have had examples of a number of clients who have missed out on legal assistance despite being socially and financially disadvantaged.

**Case study 3**



**Case study 4**

*Harry, who has a recognised disability, was charged with breaching his reporting requirements under the Sex Offenders Registration Act 2004 (Vic). Harry was not at immediate risk of imprisonment as a result of these breach charges, and came to us for assistance. A lawyer from IMCL identified that Harry had a reasonable excuse for why he could not comply with the reporting requirements, and thus could mount a good defence against the charges. However, he needed to obtain an expert report to show that his disability, affected his ability to understand his reporting obligations. As he was solely in receipt of Centrelink benefits he could not pay for the cost of this report himself, and IMCL does not have capacity to pay for disbursements either. Later with the assistance of a community organisation, Harry was able to pay for and obtain the expert report. After these materials were presented, the charges were dismissed as the Magistrate was satisfied that he had a reasonable excuse.*

Lawyers employed by VLA may have been able to assist in Harry's case by paying for this expert report as a minor work file and by accessing funding set aside for this type of work. However, lawyers that are not employed by VLA, either working in community legal centres or privately, do not have access to these resources. This leads to unequal and disproportionate outcomes for people.

VLA should consider whether funding should be available to pay for expert reports and disbursements in instances such as these, which are readily accessible by all people providing assistance to clients via grants of assistance.

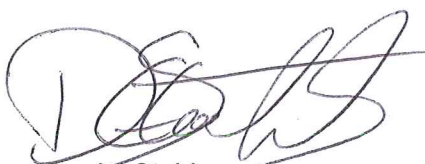
***B20: Do you have any examples where you think the estimation of legal costs has been unfair or could be improved?***

Finally, as a member of the VLA practitioner panels, we can apply for grants of legal assistance on our client's behalf, and in doing so can arrange for payment of counsel fees, expert reports and other disbursements that we cannot fund ourselves.

However, unlike other firms on the VLA practitioner panels, as a community legal centre we are unable to recover from the grant of legal assistance the cost of our preparation work. This work is funded through other existing funding streams. In a time when community legal centres are already facing 30 per cent funding cuts in 2017, we cannot sustain this valuable work without being remunerated for it and consider it unequal that a community legal centre is precluded from recovering preparation costs for work that is subject of a grant of legal aid.

Please do not hesitate to contact me on 9328 1885 if you have any questions at all regarding this submission.

Yours sincerely



Daniel Stubbs  
Chief Executive Officer