

Victoria Legal Aid

Via email: meanstestreview@vla.vic.gov.au

19 September 2016

Means Test Review – response to the Consultation Paper

About

Living Positive Victoria (LPV) is a not for profit, community based organisation representing all people living with HIV in Victoria since 1988 and is committed to the advancement of human rights and wellbeing of all people living with HIV. LPV works closely in partnership with a range of HIV-sector and other organisations to deliver a comprehensive and coordinated response to the needs of PLHIV in Victoria, nationally and internationally.

Straight Arrows (SA) is a not for profit organisation governed by and for heterosexual people living with HIV and is Victoria lead agency for heterosexuality and HIV. SA offer peer support, information, advocacy, health promotion and referrals for HIV positive heterosexual men, women, their partners and families.

Summary of recommendations

1. Recognise within the means test that the costs of managing one or more chronic illnesses is not limited to 'medical costs';
2. Establish criterion for vulnerable populations, that may include people living with HIV and people who use drugs (and other categories) as a criteria for consideration of a grant of legal assistance;
3. Low or no superannuation should be considered as a concession against income and assets in the means test; and
4. Communication and promotion of legal concepts and the means test eligibility criteria, could be better represented utilising Plain English, infographics and animated videos.

Context

LPV and SA recognises that the resources of Victoria Legal Aid (VLA) have been stretched in recent years, due to a number of factors including:

- A reduction in federal funding: representing a realised reduction in total amount of assistance available via grants to individuals;
- Changes to policing and sentencing policy in some areas of the law such as family violence and illicit drug possession and supply: the result of which increases the number of people wishing to access legal assistance grants; and
- The tightening of the eligibility criteria in 2013 responding to VLA deficits in the 2011/12 and 2012/13 financial years.

LPV and SA support access to justice as a fundamental human rights principle. Justice should not just be for those who can afford legal counsel and so we welcome this review into the means test. We see the review of the means test as one part of broader structural reform that needs to occur in some areas of the justice system such as drug law reform and non-adversarial approaches to sexual assault prosecutions, as well as justice reinvestment, that may reduce the number of people needing to access grants of legal assistance, whilst increasing eligibility through assessment of means and assets. Therefore, the Department of Justice and Regulation should not see the means test review as a single solution to increase access to justice.

HIV/AIDS Legal Centre

In Victoria, people living with HIV have access to the HIV/AIDS Legal Centre (HALC Vic), a Community Legal Centre that operates out of the Positive Living Centre (managed by the Victorian AIDS Council). The service is complimentary to clients and is run on a volunteer basis for one two-hour session per fortnight for matters specifically related to HIV and the law. LPV and SA currently refer our clients and members to HALC Vic for a variety of issues, but most recently around issues regarding immigration and family law. However, due to the very limited hours of operation for HALC Vic, we are likely to refer a client to the HIV/AIDS Legal Centre Inc NSW (HALC NSW) as well as they operate five days per week.

Legal issues regarding HIV are usually complex and require a specialised understanding. Therefore, HALC Vic is suitably positioned to look after the needs of Victoria's HIV-positive community. It is however evident that two-hours per fortnight is grossly inadequate. It may also not be in the best interests of the person seeking legal assistance to be relying legal centres in other jurisdictions. It is possible that Community Legal Centres, if properly funded and resourced, may be able to take some of the pressure off Victoria Legal Aid.

Legal issues not relating to HIV

In addition, people living with HIV may face legal issues that are not directly related to HIV and therefore cannot access the services of HALC Vic. Of those individuals, there are both those that can and cannot afford private legal counsel. The latter may seek a grant of legal assistance through VLA but may not meet the means test as it currently operates.

Management of one or more chronic illnesses

It would be worth considering how HIV and other chronic illnesses, mental health conditions and physical disabilities may impact on an individual's financial circumstances that is not just about the cost of medical care. For example, the impact of a reduced ability to earn income as a result of HIV/HIV-related comorbidities or the importance of adequate money for healthy and nutritious food, diet supplements and vitamins, as well as complimentary medicine, which might not otherwise be considered within 'cost of medical treatment'.

Vulnerable populations such as people who use drugs

Studies have shown that there is a higher level of illicit drug use among some subgroups of people living with HIV compared with the general population. For people who misuse drugs or have drug dependency, the likelihood of legal issues surrounding their use is high. In addition, many people living with HIV use cannabis for medicinal purposes. The current medicinal cannabis legislation does not capture HIV/AIDS.

Consideration of how structural inequality relates to illicit drug use could be added to the means test by establishing a 'vulnerable population' category. If an individual meets more than one of the vulnerable population categories, this could be grounds for special consideration for grants of legal assistance.

Superannuation

For people living with HIV who were diagnosed in the 1980s and 1990s, their health prospects were not optimistic. Many of these individuals were advised by health professionals that they had only months or years to live, resulting in many getting access to their superannuation and retirement savings. As improvements in HIV treatment were realised, people living with HIV began to live beyond what they were told at the time of their diagnosis. Today, many of these individuals have no or very little superannuation but they may be earning a part-time wage or have assets that would exclude them from accessing a grant of legal assistance. It would be worth VLA to consider if no or low superannuation savings could be considered as a concession against income or assets.

Low literacy skills

Some people living with HIV, due to their education attainment level or cultural background, have low literacy skills. LPV and SA have recently been using infographics to help summarise complex research. This approach could be adapted to summarise complex legal concepts and information on means test eligibility by VLA. Another tool could be the use of animated videos with Plain-English narration and captions via YouTube. The 'shareability' of content could be useful in disseminating VLA's content via community groups and individuals.

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