VLA means test review – Response from the Young People’s Legal Rights Centre ( Youthlaw) . 19-9-2016

1. Youthlaw is concerned that many young people 18 to 25 are unable to afford private legal assistance, whether with or without parental assistance. Anecdotally we hear that private lawyers charge what is in our assessment exorbitantly for ‘relatively’ minor matters. We often hear of charges such as $1200 for a court appearance for a simple diversion or criminal matter.
2. Most young people who seek our assistance have no income, low income or are on Centrelink benefits. However we do see a number of young people who we assess as vulnerable but who do not meet the current VLA means test. These young people are often estranged or living away from family and decide to self represent. Our concern is that due to their vulnerability they are unlikely to effectively represent themselves, will invariably plead guilty to charges rather than challenging them, and with established priors and being vulnerable are at greater risk of repeat engagement with criminal justice system and when they do, court results impacted by their priors.
3. The impact of the means test is compounded by the VLA eligibility guidelines. In our opinion both need to be addressed particularly in regard to the cohort of 18 to 25 year olds appearing before the Magistrates court.

To do so is in our view not only responding to the VLA strategic objectives in regard to young people but is also important to avoid young people obtaining poor outcomes albeit for ‘less serious matters’ that set them up for more detrimental outcomes in subsequent interactions with the criminal justice system. Most importantly lack of assistance for 18-25 year olds is a missed opportunity to get in early with interventions and supports.

Since the guidelines were tightened in late 2013 there is a substantial and very concerning gap in legal assistance for vulnerable young people between 18 and 25. The guideline changes exclude young people from being assisted who are not facing a jail sentence. The VLA duty lawyer service broadens assistance to those facing straightforward offences and are assessed as having mental illness /impairment , unable to communicate in English, or indigenous. This still leaves a significant number of vulnerable young people unable to obtain assistance or be provided with a service that responds to their needs. Some of the obvious issues with this and impacts are that these young people represent themselves (usually pleading guilty) are unable to interact effectively with the duty lawyer service ( eg. do not disclose their vulnerability/ have little time to be explain their situation) or do not attend court. .

Since the guideline changes in 2013 Youthlaw has assisted many young people (18 to 25) no longer eligible to be assisted by VLA due to the guideline changes. Our own guidelines preclude us taking on matters unless we can establish the person is vulnerable and disadvantaged and cannot be assisted by VLA and yet most meet our criteria.

Each year we represent over 200 young people highly vulnerable young people at court, mostly between the age of 18 and 25. Many who meet our criteria cannot be assisted due to our limited capacity. In these cases we usually refer them to the duty lawyer services in the Magistrates Court. They are not always able to be assisted because of the guidelines restrictions detailed above. They also have a high rate of not showing. This is not surprising to us as we know that vulnerable young people are more likely to attend when they already have a relationship with a trusted lawyer and are given reminders and encouragement to attend. Our experience of these young people is also that they have a very high drop out rate when referred to non-legal services or legal and non legal services that are not youth friendly. Some of the mechanisms and features we utilise are preparation for court & personal contact beforehand, co-located services, drop in services and warm referral.

We would welcome any dialogue with VLA to better address the needs of the 18 to 25 year old cohort.

Views from 3 of our lawyers are provided below:

* “Give us money for a pilot service for summary crime matters for young people (18 – 24), who are at the vulnerable spot who do not qualify for legal aid funding. With proper intervention NOW we could prevent them getting stuck in the criminal justice system and having the same issues 10 years down the track “
* “ The guidelines and means test should be changed to allow all YP aged  18-25 who have been charged to be assisted in line with the VLA strategic plan & practice to assist young people as early as possible, and/or that 18-25 year olds with a CCO or above should be aid able “ .
* “The majority of my crim clients are in this age group. I suggest that VLA should extend funding to this cohort and specifically fund a service such as Youthlaw that understands the benefit of early intervention to address issues that can lead to further interactions with the criminal justice system in the future such as: mental health concerns, alcohol and drug dependency, family violence and homelessness.  We currently fill this gap as much as we can; however, we are incredibly limited with staffing.  So many young people will go in self represented a quick PG will occur and the issues that underpin the offending are not dealt with until later on and usually when there is more involvement with the criminal justice system. This approach fits with a justice re-investment model “