

Means Test Review
Victoria Legal Aid
570 Bourke Street
Melbourne VIC 3000

11 June 2017

Dear Sir/Madam

Response to Victoria Legal Aid's Means Test Options Paper

We write this submission in response to the Options Paper released as part of the Means Test Review. Inner Melbourne Community Legal (**IMCL**) welcomes this opportunity to make a further submission to the Means Test Review conducted by Victoria Legal Aid (**VLA**), to coincide with our earlier submission to the Review on 20 September 2016.

Executive Summary

IMCL 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 survey¹, 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. We also provide a family violence duty lawyer service at the Melbourne Magistrates Court.

As a member of the VLA practitioner panels for summary crime, family law and family violence, IMCL is well placed to comment on the Options Paper as we encounter issues with the means test on a daily basis. These submissions are intended to highlight any strengths or weaknesses with the options outlined in the Paper. We have provided de-identified case studies to illustrate the issues we have described.

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

Operational changes proposed

We have not responded to all of the operational changes proposed in the Paper, as some of the issues and changes proposed have not been relevant to our clients:

1. Income Test – waiving documentary requirements

We support the waiver of providing documentary proof of means in certain cases, and we would recommend that it extend to people that are:

- Experiencing homelessness;
- Unable to live in or access their usual accommodation because they are experiencing family violence, relationship breakdown or receiving medical treatment; or
- Living in remote areas.

As part of our Health Justice Partnerships with the Royal Women's, and Royal Melbourne Hospitals, we provide legal advice and assistance to people receiving medical treatment as either inpatients or outpatients. For some of these people they have been inpatients for substantial periods of time, and do not have ready access to documentary materials needed to apply for grants of legal assistance. We strongly advocate for a waiver of documentary proof of means for inpatients, and not just those undergoing Compulsory Treatment under the *Mental Health Act 2014 (Vic)*.

2. Introducing a better approach for people with irregular incomes

While we agree that for people earning irregular incomes, it would be appropriate to consider their income over a longer period of time, from anywhere from six to twelve months. Requiring people to provide documentary proof of income over a longer period of time, could make it difficult for people to obtain these records and also increase the administrative burden on practitioners administering grants of legal assistance. It would require practitioners to potentially scrutinise payslips, bank statements and tax returns to better assess peoples income, in circumstances where there is no compensation for practitioners the work that is required to assess peoples eligibility for grants of legal assistance.

3. Treatment of superannuation

In addition to clarifying what superannuation amounts are taken into account by VLA when administering the means test, further consideration should be given to how VLA would assess payments made to people under Total Permanent Disability (**TPD**) claims. Given that TPD payouts can also be directed to a person's medical and living expenses, when they can no longer work, there needs to be clarity about whether this would also assessed as part of the means test.

4. Reducing documentary proof from Financially Associated Persons

We agree that requesting documentary proof from Financially Associated Persons (**FAP**) creates a huge burden for applicants and for practitioners when administering the grant. As well as accepting statutory declarations in place of financial documentation from a FAP, there should be consideration that if the income or assets of a FAP has not affected the applicant's entitlement to receive Government tested pension, that this information is not required.

Case study 1

Mary receives the maximum amount of the parenting payment (partnered), together with Family Tax Benefit A and B. Her husband operates a small business to supplement their incomes, but the income generated from this business is still relatively small and the total income for the business does not exceed \$15,000 per year. They care for five children, who are all listed as dependants on Mary's application for grant of legal assistance. Given that her husband is considered a Financially Associated Person (FAP), we needed to obtain tax returns, profit and loss statements and bank statements from her husband before her application could be considered. Her husband could not provide us with all these documents because some of the records simply did not exist, so we had to provide an additional statutory declaration from him. Both Mary and her husband are refugees and come from a Culturally and Linguistically Diverse Background, and it took over three months for them to gather all of these documents for us. It then took over a month for Assignments to assess the application and supporting documents. This has led to significant delays for Mary in obtaining legal assistance, and uncertainty about what she should do in the meantime.

If VLA did not require all of these documentary materials, and instead relied on the assessment by Centrelink that Mary was entitled to the parenting payment, then this stress and delay could have been avoided.

5. Allowing for dependents of financially associated persons when assessing means test

The dependents of any FAP should be included in any calculation, even if the cost of raising and supporting the dependents is shared between the applicant and the FAP. The application form should be altered to include this as a consideration.

7. Use of discretion

Providing a list of de-identified circumstances where discretion has been exercised and where it has been refused, would be helpful for applicants and practitioners, particularly so that they can assess whether the applicant could successfully apply for discretion on the means test.

8. Guidelines on discretion

For the exercise of any discretionary function, there should be guidelines against which decisions can be measured. This would create greater consistency and transparency.

We would also recommend that other factors of disadvantage be taken into account when exercising discretion, and this be expressly included in the guideline.

9. & 10 Information on financial eligibility

As identified in our previous submission, we would welcome the development of any easily accessible means test calculators so that people can do their own basic assessment online of whether they are eligible.

We note that this is identified as an option at 38, but we see this as the best way of providing essential information regarding financial eligibility.

Straightforward changes proposed

12. Increase allowable income

We support increasing the allowable income threshold, and note that this should be subject to automatic update given that this is always subject to change and that it should never fall behind national benchmarks as identified at option 39.

13. Increase range of deductions

The current deductions in the means test do not provide an accurate picture of a person's cost of living, and whether they have capacity to pay for a private lawyer. While we support extending the availability of deductions, consideration of household debts should include not only the total amount owing on the debt but the actual repayments to be made.

We also anticipate that it would be difficult to identify how credit and personal loans are linked to household expenses, as they could be used for discretionary spending such as travel and holidays. There would need to be guidance about how debt would be factored into deductions.

14. & 15. Increase the value of childcare deductions and dependent allowances

Education expenses should be factored into deductions, and not just child care expenses.

Increasing the dependent allowance to actually reflect the cost of raising children, from \$130 to \$185, would also be appropriate.

16. Clarifying dependents

Greater clarification about who is considered a dependent, should be included in the handbook. However, requiring documentary proof of dependency would be unduly onerous.

17. Increasing the allowable assets threshold

We also support increasing the allowable assets threshold, particularly in relation to personal savings. For a lot of our clients that are experiencing homelessness or living in transitional housing, they often have money set aside for bond or rent in the event that they are able to obtain secure rental accommodation. This "safety net" should be excluded.

18. Support from financially associated persons

It's unclear from the options paper whether the scenarios outlined therein, are examples of where a person would not be considered a FAP. If these scenarios are intended to be examples of where the FAP test would not apply, then we agree that this is appropriate. There should also be consideration of when a person may provide assistance to an applicant for a one-off expense, but could not be considered to give ongoing financial assistance to an applicant.

21. Fixing contribution repayments

Given that a grant of assistance that is conditional upon an applicant providing contribution payments can be terminated if the payments are not made, it should be that the contribution amount is determined by what they can afford and not by reference to what their total contribution is. While there is a risk that VLA will not be able to recoup all of their costs if the matter finishes before the

contributions are repaid, this needs to be balanced against placing people who are already experiencing financial disadvantage in an even more precarious financial position.

23. Introduce a clearer financial hardship process

We agree that the debt policy needs to be clearer, so that people are aware of what action VLA can take to recover a debt or in what circumstances they will be waived.

We have included a case study that was provided in our previous submission, which highlights the confusion about the debt policy as it highlights why providing information to people at each stage of their grant is important.

Case study 2

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.

Bigger Changes and Planning for a More Equitable Future

We will not comment on the number of options outlined under the last two categories. We see that implementation of the other options that have been outlined and identified as being operational and straightforward will have the greatest impact, and almost be the most sustainable in the long term if funding to the Legal Assistance Sector is not increased.

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

Yours sincerely



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