26 September 2016



Means Test Review

Victoria Legal Aid

GPO Box 43.80

Melbourne VIC 3001

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

**MEANS TEST REVIEW - SUBMISSION FROM THE**

**HUME RIVERINA COMMUNITY LEGAL SERVICE (HRCLS)**

**ABOUT HUME RIVERINA COMMUNITY LEGAL SERVICE (“HUME RIVERINA CLS”)**

Hume Riverina CLS is a regional community legal centre based in Wodonga (Victoria) on the Victorian/New South Wales border. The centre provides generalist legal services to a vast catchment area of 17 Local Government Areas (LGA’s) in North East Victoria and the Southern Riverina of New South Wales, and is a cross border community legal centre.

ABS statistics from 2011 indicate a total population of 292,497 within the 17 Local Government Areas serviced by Hume Riverina CLS. In the 201/2016 year, 59% of our clients resided in Victoria and 41% in New South Wales.

Services provided include legal advice and casework assistance with family law issues (child contact, property disputes, child support and spousal maintenance), family violence, child protection, credit and debt problems, fines, motor vehicle accidents, criminal law issues, consumer law issues, neighbourhood disputes, wills and estates, employment issues and tenancy issues. Clients often have interrelated Victorian and NSW legal problems.

Hume Riverina CLS focuses on assisting disadvantaged people who are not eligible for legal aid, yet cannot afford to pay for a private lawyer.

In the 2015/2016 year, Hume Riverina CLS provided 2119 advices with a total of 2861 legal problems, provided over 2100 information activities, delivered 51 community legal education sessions, and provided intensive casework to more than 388 people

During this the 2015/2016 year, Hume Riverina CLS assisted 866 clients in relation to family law matters. 11 grants of aid were obtained for clients through Victoria Legal Aid and 17 grants of aid were obtained for clients through Legal Aid NSW. The reason for the higher number of grants of aid in NSW is due to the forum test. The Federal Circuit Court which services North East Victoria is located in Albury, New South Wales (on the Victorian/New South Wales border) and the forum test requires Victorian clients to therefore seek grants of aid in New South Wales if they seek to litigate their matter in the Albury Federal Circuit Court, being their nearest Court.

We welcome the Means Test Review commissioned by Victoria Legal Aid and make the following submission based on our experience of the Victoria Legal Aid approach in relation to our Victorian clients.

We also note that in this submission, these people are referred to as “clients” but often these were clients who received a one-off advice session only, and did not receive ongoing assistance from HRCLS due to HRCLS having no capacity to assist, despite being ineligible for legal aid.

**PART B – THE MEANS TEST**

**Income Test**

*B1. Do you have any examples of circumstances where the income test has been unfair or could be improved?*

Occasionally Hume Riverina Community Legal Service (HRCLS) has assisted clients where the client is clearly ineligible for legal aid based on the income test, and therefore HRCLS has advised the client not to apply for a grant of aid. HRCLS does not collect data regarding circumstances where clients were advised not to lodge a legal aid application due to their ineligibility for legal aid on the means test.

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

A calculator available on the Victoria Legal Aid website to assist people to check their eligibility would improve people’s understanding of the eligibility criteria as well as providing them with a mechanism to check their eligibility more easily. Legal Aid NSW have a calculator available on their website to guide people as to whether they are likely to be eligible for legal aid based on their means. The calculator is available at:

<http://www.legalaid.nsw.gov.au/get-legal-help/applying-for-legal-aid/means-test-indicator>

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

We submit that any legal obligation to pay a debt, fine or medical expense should be included in the financial information that is taken into consideration by legal aid in assessing eligibility. There should also be greater discretion to take into account other expenses that are being paid by people on a case by case basis if they are genuinely required to be paid.

We also note that vulnerable and disadvantaged clients (the cohort who are likely to be seeking a legal aid grant) often have difficulty getting paperwork together to support their application for a grant of legal assistance. This means in our experience that some clients fail to proceed with their legal aid application because it is too hard to gather all of the financial information required. A simplification to the financial information required would reduce the barriers to applying for legal aid for these people. Alternatively, having support available to assist people to gather their information would also be helpful.

*B6. Should there be any additional allowances for other types of expenses? If so, what should they be?*

See answer to B4.

**Assets Test**

*B8. Do you have any examples of circumstances where you think the assets test has been unfair or could be improved?*

The ‘allowable assets’ provisions do not seem fair, as a person may have up to $500,000 equity in their family home and up to $20,000 equity in a car, with no other assets and will still be eligible for a grant of legal assistance, while another person that has no major assets (house or car) would only be eligible for a grant of aid (without having to make a lump sum contribution) if his/her assessable assets do not exceed $1,095 (or $2,190 if he/she has a financially associated person). This seems to be unfair and disproportionate as it could be harder for a person with less assets to get a grant of aid.

We have seen clients unfairly prevented from applying for legal aid who own motor vehicles where the value exceeded the allowable equity in a car. These are usually clients who own no other significant assets.

We have seen examples of clients prevented from being able to access a grant of aid due to cash savings in the bank, including in the following situations:

* We recall assisting a client who had a partner with funds in the bank as a result of having sold his motor bike. He had not yet purchased a replacement vehicle. Had the asset not been converted to cash, there would have been no difficulty in obtaining legal aid but in this circumstance, the client was advised that there would be no eligibility for legal aid.
* Clients have sometimes accrued savings in relation to their children (for example, opening bank accounts in their children’s names and putting aside small amounts per week for their children). Some clients who are solely supported by Centrelink benefits have bank accounts with savings of up to $30,000 in these circumstances. As such these clients are not eligible for a grant of aid and are effectively punished for their prudent financial management.
* Clients sometimes have cash savings as they are saving a deposit to put towards the purchase of their first home. These funds render them ineligible for a grant of legal aid, despite the fact that other people who own their own homes and may have significant equity in those homes would by contrast be eligible.

*B10. Should VLA consider a person’s whole assets pool or should the separate asset categories be maintained?*

As discussed above at B8, we submit that VLA should make exceptions for clients who have cash savings in the bank but do not have any assets (such as a motor vehicle), as clients with cash are often treated as ineligible for legal aid when they would have otherwise been eligible for legal aid had the value of the cash been converted into property.

**Financially associated persons**

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

It is not uncommon for clients to balk at the requirement to submit financial documentation on behalf of a new partner, and occasionally this is a disincentive for the client to proceed with their legal aid application, as they regard it as an invasion of their partner’s privacy.

We are also aware of cases where a client has been living with a family member temporarily (such as a parent or sibling) in circumstances where the family member would be deemed by VLA to be a financially associated person, leading to the client either being ineligible for legal aid or the client being unwilling to proceed with their legal aid application. In these cases in our experience, the client may prefer to proceed as a self-represented litigant rather than ask their family member to pay their legal fees or inconvenience them by asking them to provide their financial information to VLA.

*B16. Should financially associated persons continue to be included in the assessment of a person’s financial resources? Why or Why not?*

The test used by VLA should correspond with the test applied by Centrelink in relation to whether a person should be deemed a financially associated person or not.

*B18. Should the definition of ‘financially associated person’ be changed? If so, how?*

As discussed above at B14, VLA should not consider a person as a *‘financially associated person’* when that person merely provides accommodation to the person applying for aid at a time of crisis.

For example, a mother and her children might have left a relationship due to family violence and have to move in with her parents. Her parents might be providing crisis accommodation and even food to the mother and the children. Her parents might be able to provide the mother and the children a short-term shelter, however, her parents might not be able to fund the mother’s ongoing legal matter as they might be on Centrelink benefits themselves. Under the current test for FAP, these parents will be considered ‘FAPs’ and the mother will be assessed as having to provide her parents’ financial details and make a lump sum contribution.

In some situations, emergency assistance might be provided to the client only by extended family members (e.g. uncles/aunts) or friends where they might be able to provide some emergency assistance but unable to provide other forms of direct financial assistance. In that case, the client’s application might be refused these people will be deemed as ‘FAP’ but they might be unable or unwilling to provide their financial details to VLA.

**PART C – THE CONTRIBUTIONS POLICY**

Contributions are levied without regard to the income level of the person applying for legal aid. This is not a fair approach towards providing grants of legal assistance in cases where people cannot afford to pay the contribution, and would therefore be excluded from utilising a grant of legal aid in circumstances where they would have no ability to pay for a private lawyer (the very category of people that legal aid should be helping).

**PART E – USE OF DISCRETION**

We submit that if there is a reason why discretion could be applied to enable a person to receive a grant of legal aid (who would not otherwise meet the means test), this discretion should be applied in every case without an applicant being required to ask the decision maker to use their discretion.

We submit that the procedure for use of discretion should be transparent and clearly set out in a policy of Victoria Legal Aid, and the discretion should be applied by Grants Officers in every case where it may be available. Alternatively, a Senior Grants Officer perhaps could be given the role of assessing cases that may require discretion to be used, but we note that it would be important to ensure that legal aid applications would not be delayed as a result of such a procedure.

**PART F – LOOKING BEYOND THE MEANS TEST**

*F1. What are some of the barriers to applying for a grant of legal assistance? How can VLA remove or reduce the impact of these barriers?*

As discussed above at B4, we note that vulnerable and disadvantaged clients (who are likely to be seeking a legal aid grant) often have difficulty getting paperwork together to support their application for a grant of legal assistance.

In our experience, a high number of clients fail to return their legal aid application forms at all, or fail to provide the correct supporting documentation, to enable HRCLS to lodge their legal aid application on their behalf. These are clients who would otherwise be eligible for legal aid but are simply unable to cope with the complexity of the paperwork required. HRCLS can only provide assistance to a small number of such clients who need help with their documents, due to HRCLS having limited resources.

We also note that it is extremely difficult for clients with literacy issues or language barriers to get assistance elsewhere in filling out the legal aid application form (or providing relevant information to the panel lawyer to submit the grant application via ATLAS). In the case of clients with language barriers, usually private panel lawyers will not assist these clients as there is no funding to use an interpreter before a grant is approved, therefore, private panel lawyers are unable to obtain instructions and conduct full assessments of clients’ eligibility for aid.

VLA should consider developing a preliminary grant of aid for clients from CALD backgrounds for private panel lawyers and community legal centres to assist clients in making an application for a grant of aid through the use of an interpreter.

Another option would be for VLA to fund social workers or field officers to provide assistance to people with their application forms. In previous years, HRCLS worked closely with a particular volunteer in Wodonga who would provide help for clients with filling out their legal aid application form, gathering their documents and then sourcing a lawyer through whom the client could then lodge their legal aid application. Unfortunately this volunteer is no longer available to provide this sort of assistance for people, however we understand that this volunteer’s work was considered invaluable by the people who were assisted, as well as the private lawyers doing legal aid work.

Should VLA provide funding to support people to put their applications together, it would be important to ensure that the assistance was given in regional areas, especially those lacking a Victoria Legal Aid office.

**PART G – BETTER INFORMATION ABOUT FINANCIAL ELIGIBILITY**

*G1: Where do people usually get information about financial eligibility for grants of legal assistance?*

In our experience, clients usually get information about financial eligibility for grants of legal assistance through initial advice sessions with community legal centres, through making contact with panel lawyers, or through the VLA Legal Help line and VLA in-house lawyers.

*G2: How can VLA improve the information available to people about financial eligibility for grants of legal assistance?*

VLA could improve the information available to people about financial eligibility for grants of legal assistance by creating a page on the VLA website and publishing simple tables/fact sheets like the appendices used in the Means Test Review Consultation Paper. As discussed above at B3, a calculator (similar to that available on the Legal Aid NSW website) would also be extremely useful.

**PART H – REVIEWING AND UPDATING THE MEANS TEST**

The means test should be updated and reviewed at least annually. We also submit that Victoria Legal Aid should consider the means test adopted by neighbouring states to avoid cross border anomalies. For example, clients living in Wodonga on the border of Victoria and NSW may be refused legal aid in situations where Legal Aid NSW would provide a grant, as the means test in NSW is more generous.

Submitted by:

**Hume Riverina Community Legal Service**

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