

# Part B: Making the Means Test Better

This section addresses how we can amend the existing means test to meet the objectives of the review. That is, changing the means test so that it is more accessible, more transparent and fairer to the wider community.

Part B is divided into two parts. The first sectiondescribes each of the elements that make up the means test. An [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) needs to be found eligible under each element in order to obtain a grant of assistance.

There are a number of elements to the means test. Each of these is designed to build a picture of a person’s financial circumstances and assess whether they are able to afford a lawyer.

The second section presents the options available to us following stakeholder and community feedback received during our previous consultation period. The options are evaluated against three criteria.

The three criteria are:

* How simple and/or fair the option is;
* The number of additional people eligible under the option; and
* The implementation and ongoing costs of the option.

The options are also divided into four categories which tell us the overall impact the option will have, both in implementing the option and the changes that will flow from the option.

The categories are:

* Operational
* Straightforward
* Bigger changes
* Planning for a more equitable future

The categories are explained in more detail at [page 12](#_Options_1).

The feedback received during the consultation period was invaluable in creating these options. What you told us during consultation can be found in **Part D** of this paper.

The next section of this paper, **Part C: Future Focus**, looks at how we can implement these options into a means test that remains sustainable into the future. It is important to consider these elements when evaluating the options, so that we can create a means test that is fair, accessible and transparent.

A summary of the options can be found below.

Summary of Options

The following is a list of proposed options categorised by the existing elements of the means test. You can click on any of the options to find them described in more detail.

# Income Test

1. [Introduce a waiver of documentary requirements in particular circumstances](#_Operational)
2. [Introduce a better approach for people with irregular incomes](#Two)
3. [Increase allowable income](#Increase)
4. [Increase the range of deductions](#deductions)
5. [Increase the value of child care deduction](#childcare)
6. [Increase the dependant allowance](#dependant)
7. [The definition of ‘dependant’ could be clarified](#clarified)
8. [Change the benchmark to the Income Test](#benchmark)
9. [Standardised household expenditure could be considered](#standardised)
10. [Allow a higher income threshold for certain ‘priority matters’](#prioritymatters)

# Assets Test

1. [Clarify treatment of superannuation](#Clarify)
2. [Increase the allowable assets threshold](#allowableassets)
3. [Introduce separate asset allowances for home owners and non-homeowners](#separate)

# Financially Associated Persons

1. [Reduce the documentary proof required from financially associated persons to reduce administrative requirements and improve rates of compliance](#Reduce)
2. [Allow for dependants of financially associated persons to be included in the means test calculations](#Allow)
3. [Develop guidelines for scenarios where support and assistance is being provided by a family member](#developguide)
4. [Include express exclusions to clarify treatment of financially associated persons](#expresseclu)
5. [Narrow the definition of financially associated persons](#narrow)

# Estimated Legal costs

1. [Include additional cost categories to better align with cost of legal services](#cost)
2. [Update existing cost categories](#update)
3. [Apply means test only to highest cost matter](#Apply)

# The Contributions Policy

1. [Allow a repayment schedule for asset contributions](#repayment)
2. [Increase the income and asset thresholds before contribution is required](#increaseincomeandasset)
3. [Fix the rate of contribution repayments based on income as opposed to contribution amount](#fixtherate)
4. [Charge interest on secured contributions](#chargeinterest)
5. [Introduce a clearer financial hardship process regarding contributions](#introduceaclearer)
6. [Extend the availability of legal assistance with a contribution to increase access to justice](#extend)
7. [Provide discounts to people who pay their contributions back sooner than required](#provide)
8. [Exclude certain assets from being included in contributions](#exclude)
9. [Capping contributions for certain legal matters](#capping)
10. [Introduce exemptions from contributions for people in certain circumstances](#circumstances)
11. [Stop collecting unsecured contributions](#Stop)
12. [Exempt certain matters from the contributions policy](#Policy)

# Exemptions from the means test

1. [Narrow exemptions to statutory requirements](#narrow)
2. [Exempt certain categories of people from the operation of the means test](#operation)
3. [Include a public interest exemption to the means test](#Include)
4. [Promote continuity of service](#Promote)
5. [Exempt certain types of legal matters from the operation of the means test](#Exempt)

# Use of Discretion

1. [Document circumstances where discretion is exercised and publish this information](#documentcircumstances)
2. [Provide guidance on the circumstances when discretion may be exercised](#provideguidance)
3. [Incorporate matters into the means test that are currently dealt with through discretion](#incorporate)

# Better information about financial eligibility

1. [Plain language information on VLA website](#plainlanguage)
2. [Publications on financial eligibility](#publications)
3. [Better linkages and training of support workers about eligibility for legal assistance](#betterlinkages)
4. [Online means test indicator tool](#meanstestindicator)

# Reviewing and updating the means test

1. [Implement automatic annual indexation of means test thresholds against agreed benchmarks](#automaticannual)

# Looking beyond the means test

1. [Prioritise access to grants of legal assistance for ‘priority clients’](#Prioritse)

# Elements of the means test

# Income test

Current approach

The means test includes an assessment of an [applicant’s](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) income to determine what financial resources they have available. The **income test** considers ‘assessable income’, rather than an applicant’s total income.[[1]](#footnote-1)

An applicant’s assessable income includes pensions, benefits, allowances (excluding Family Tax Benefit), earnings from employment, income from self-employment, interest on investments, maintenance or child support and a range of other potential income streams.[[2]](#footnote-2) It may also include the income of any [financially associated persons](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test).

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If an applicant receives the maximum rate of Centrelink, they automatically meet the income test because we know how much income they receive. However, eligibility for legal assistance is not restricted to people who receive Centrelink payments. People who earn an income from their employment may also be eligible without paying a contribution if their net income is under $360 per week after cost of living allowances.

The income levels were last updated in March 2016.[[3]](#footnote-3)

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# Cost of Living Allowances

Current approach

A person’s income is only part of the equation. The means test recognises that people have everyday living expenses that impact on the amount of money they might have available to pay for a private lawyer. Allowances are made for housing costs, child care costs and [dependants](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test).[[4]](#footnote-4) These are called ‘[allowable deductions](#_Appendix_3_–)’.[[5]](#footnote-5) The deductions are a mixture of standard deductions (e.g. $130 for the first dependant and $125 for each further dependant) and capped actual amounts (e.g. a maximum of $400 for housing). A capped amount means that even if an applicant pays more than $400 per week for housing, VLA will only take account of $400 for housing costs under the means test.

Deductions are subtracted from an applicant’s total assessable income. Once these amounts have been taken into account, an applicant will be financially eligible for a grant of legal assistance without having to pay a contribution if their income is less than $360 per week and they satisfy the assets test.

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Above $360 per week, an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) may receive a grant of legal assistance with a condition that they have to make a contribution towards the cost of legal assistance.

**Other Legal Aid Commissions**

Other Legal Aid Commissions in Australia share a broadly similar approach to the assessment of income, with the exception of the Legal Aid Commission of Tasmania and Legal Aid Queensland who use a simplified process. For example, Legal Aid Queensland take into account gross income and apply a formula based on certain factors (household composition, work status and number of children/dependants) to work out the income threshold (with and without contribution). The simplified income test does not separately consider cost of living deductions.

# Assets Test

Current approach

The assets test completes the picture of a person’s financial circumstances and assists VLA to understand what resources may be available to the person to meet their legal costs.

Assets include real estate, investments, shares, options, unpreserved superannuation and a range of other property and interests.[[6]](#footnote-6) It may also include the assets of a [financially associated person](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test).

A person can still be eligible for a grant of legal assistance even if they have some assets. The means test includes some ‘allowable assets’. For example, an applicant may have up to $500,000 equity in their principal place of residence and up to $20,000 equity in a car and still be eligible for a grant of legal assistance.

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Allowance is also made for household furniture and personal belongings, clothing, tools of trade and equity in a farm or business that is the main source of income of the person.[[7]](#footnote-7)

If the person applying for a grant of legal assistance has no [financially associated person](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) or [dependant](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) and the value of the person’s assessable assets is $1095 or less:[[8]](#footnote-8)

* VLA may make a grant of legal assistance; and
* VLA will not require the person to make an initial contribution from their assets towards the cost of the grant of legal assistance.

If that person’s assessable assets exceed $1095, VLA will calculate the amount of any initial contribution by the person towards the cost of a grant of assistance.[[9]](#footnote-9) If the amount of this contribution is more than the estimated total legal costs, VLA may refuse to make a grant of legal assistance.

An initial contribution based on assets is usually payable in a lump sum. However, if an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) can show that this would cause undue hardship, VLA may allow the applicant to pay by instalments or extend the time for the lump sum payment to be made.

**Other legal aid commissions**

All legal aid commissions in Australia use a combination of an income and assets test to assess financial eligibility. While different asset thresholds apply, the categories for allowable or excluded assets are largely the same.

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# Financially associated persons

Current approach

The means test considers the financial circumstances of the applicant as well as the circumstances of any financially associated persons. A financially associated person is any person who provides, or could “reasonably be expected” to provide, assistance to the applicant.[[10]](#footnote-10) This might include a parent, partner, child or sibling.

The test used by VLA is broader than the test applied by other agencies, such as Centrelink, which usually only consider the resources of a spouse or partner (including a de facto partner).

The Financially Associated Person definition is structured to ensure that the resources of a household or a relationship are considered as part of the assessment of whether a person can afford to pay for a private lawyer. This is underpinned by the assumption that certain people in a household or relationship have a moral obligation to support the applicant by contributing to their legal costs. It also supports the idea that publicly funded legal assistance is a safety net for people in need that should only be available where a person does not have access to other resources.

If a person is considered to be a financially associated person to an applicant, then the person’s income and assets will be included in the assessment of the application for legal assistance. This may affect the applicant’s financial eligibility for services or the conditions of a grant of legal assistance. A contribution may also be required from the income or assets of the financially associated person.

Norman’s case study illustrates how the means test operates where there is a financially associated person.

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| **Case Example – Norman** Norman lost his job and experienced a period of depression in the following months. His relationship with his girlfriend deteriorated and she asked him to leave their shared apartment. By this stage, Norman was receiving a Newstart Allowance but struggled to find a rental property within his budget. His parents offered him the use of the bungalow in the backyard of the family home in Melbourne. The power and water were connected to the family home and Norman shared meals with his parents. His parents also supplemented his Centrelink income from time to time. Norman did not pay any rent. Norman applied for a grant of legal assistance for a summary crime matter. As he had no assets and was receiving the full rate of Newstart, Norman met the income and assets test. However, when looking at his living and financial arrangements, Norman is being financially supported by his parents. As a result, the income and assets of his parents are relevant to the assessment of Norman’s capacity to pay for a private lawyer. It is likely that Norman will be refused assistance, or be required to make a contribution, on the basis that his parents are financially associated persons. |

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# Estimated Legal Costs

Current approach

The amount of legal assistance, and the conditions under which legal assistance is provided, will depend on the estimated cost of a legal matter if the matter were privately funded.

One of the key functions of the means test is to assess whether an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) has enough money to pay for a private lawyer. The cost and affordability of a private lawyer will depend on the type of legal issue. If a legal issue is more expensive to resolve, the financial resources required to obtain that service are higher. The inclusion of estimated legal costs in the means test is designed to ensure that the assessment of an applicant’s ‘capacity to pay’ is related to the actual legal assistance they require.

Taking into account the estimated legal costs means that an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) may be eligible, with or without a contribution, for one type of legal matter but ineligible for another. Generally, if a client contribution exceeds the estimated costs of a legal matter, aid will be refused. This is because that applicant should be able to pay for legal services from a private lawyer.

| **Costs Category 1** | **Estimated Legal Costs** | **Assistance granted** |
| --- | --- | --- |
| Includes: summary crime, family violence, personal safety intervention orders, infringements. | Less than $1555 | * VLA will make a grant of assistance for net disposable income up to $469 a week.
* Between $361 and $469 the person would be required to pay a contribution.
 |
| **Costs Category 2** | **Estimated Legal Costs** | **Assistance granted** |
| Includes: family law (up to and including trial stage), child protection, criminal appeals to the County Court, family law appeals. | Between $1555 and $6560 | * VLA will make a grant of legal assistance for net disposable income up to $539 a week.
* Between $361 and $539 a week the person would be required to pay a contribution.
 |
| **Costs Category 3** | **Estimated Legal Costs** | **Assistance granted** |
| Includes: indictable crime, family law (trial stage), criminal appeals to the Court of Appeal | More than $6560 | * If net disposable income is more than $360 per week, VLA will only provide a grant of legal assistance until the required contribution exceeds the estimated legal costs.[[11]](#footnote-11)
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The effect of estimated legal costs is illustrated in Shaun’s case study.

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| **Case study – Shaun** Shaun approaches a lawyer for assistance with $8000 worth of infringements and representation in upcoming family law proceedings. Shaun is 45 and owns his own home in regional Victoria. Shaun has been on a full disability support pension for 5 years due to a work-related back injury. He has equity of $425,000 in his home and no mortgage. He also has cash of $5,000 as a result of savings from his prior employment.Under the means test, Shaun would not be eligible for a grant of assistance for his infringements matter, because of his cash savings. However, he would be eligible for assistance in his family law trial as it is costlier. Shaun may be requested to provide an equitable charge over his property as the estimated legal costs for a family law trial are $6560 which is more than the $1700 threshold for securing the cost of a grant of assistance. |

# The Contributions Policy

Current approach

Legal aid is not necessarily free. People may be required to contribute to the cost of providing legal assistance. This is referred to as a ‘client contribution’. In 2014/15, VLA collected approximately $3 million in client contributions.[[12]](#footnote-12) A portion of this is then written off against debts not collected, resulting in an overall lower amount of contributions, closer to $2 million.



The staff that are responsible for contributions are known as client contributions officers, and are located within the Assignments section of VLA. The work is undertaken by the equivalent of 4 full-time roles. In addition to processing and finalising contributions, these officers also handle appeals costs recovery work, attend settlements where properties are being sold and following up costs orders against third parties in criminal matters. The cost of administration is approximately 16% of the contributions recovered. This figure also includes the work done to apply, collect and retrieve cost orders made by the court. There are additional costs involved where other Assignments staff also assist with aspects of contributions work.

Contributions allow VLA to recover some of the cost of proving grants of legal assistance. VLA uses two principles to guide the calculation of contributions:

* An assisted person should be put in a position which is equal to, but not better than, the position of a person who is paying their own legal fees; and
* An assisted person should contribute to their legal costs according to their ability to pay, without undue hardship.

Contributions may promote increased fairness by ensuring that a person continues to be eligible for a grant of legal assistance with a financial contribution rather than being refused a service because the value of their income and/or assets was over a certain limit. In short, the effect of the contributions policy is that there is no ‘hard cut-off’ for grants of legal assistance.

The amount a person is required to pay is based on the outcome of the means test, considering income, assets, and an assessment of the expected cost of providing legal assistance. Tables setting out the calculation of initial contributions based on income and asset are included in Appendix 5.

A contribution may be an upfront lump sum payment or paid by instalments over a period of time. Lump sums are usually payable when the contribution is based on the value of an [applicant’s](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) assets, such as their car or savings in the bank. In some cases, an applicant will be required to make a regular payment from their income. If they lose their job or their circumstances change, VLA may make some adjustments to the amount they are required to pay.

In some cases, the cost of a grant of legal assistance is secured against an applicant’s asset. The contribution is recovered by VLA when that asset is sold or otherwise dealt with. An example of this is a ‘[caveat](https://handbook.vla.vic.gov.au/handbook/20-contributions-and-overdue-payments/charge-or-other-security-over-assisted-persons-property/caveats)’ being placed over a person’s home. This means that VLA will be notified if there is a dealing with the property (e.g. refinancing, sale, transfer etc.) where the person has an interest in the property so that VLA can recover its costs.

Currently, a caveat will only be considered where the cost of a grant of assistance exceeds $1700. Recovery of secured contributions can take a long time. The average time before a secured contribution is paid is 14 years. VLA does not charge interest on secured and unsecured debts. If a person does not pay a contribution, legal assistance may be terminated.

Decisions about how to deal with people who owe money to VLA are made in accordance with the [Debt Policy](http://handbook.vla.vic.gov.au/handbook/20-contributions-and-overdue-payments/debt-policy). The Debt Policy provides a framework for managing secured and unsecured contributions, payment of debts and managing debts where a person experiences hardship or special circumstances.

**Other Legal Aid Commissions**

Different Legal Aid Commissions have different approaches to contributions. For example, Legal Aid NSW requires a compulsory upfront contribution of $75 in most matters. A further contribution may then be payable depending on a person’s income or assets. Most Legal Aid Commissions except Victoria have a compulsory contribution for approved grants.

# Exemptions from the means test

Current approach

The means test and contributions policy apply to all applications for grants of legal assistance except for children, war veterans[[13]](#footnote-13), and any person who is subject to a supervision order under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.[[14]](#footnote-14) In some circumstances, an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) may request discretion for an application to be approved that does not meet the means test. There are also other matters – such as criminal trials and family violence proceedings – where VLA may be required to provide representation to people who may not qualify for assistance under the means test.[[15]](#footnote-15)

Current exemptions are based on a mixture of the characteristics of the client and the type of legal matter. VLA did not decide to exclude all of these groups of people and legal matters from the means test. We are required to exclude some of these matters due to the operation of laws and agreements relating to the provision of legal aid.[[16]](#footnote-16)

# Use of discretion

Current approach

A person may request that VLA use discretion to approve an application that does not meet the means test. This means that VLA can choose to approve some applications even though they don’t meet the requirements for financial eligibility.

The means test does not provide guidance or examples on the use of discretion. It is up to the individual decision-maker to determine how to use their discretion. However, examples where discretion can be sought may include:

* Allowing a vehicle of a higher value because it has been modified for a person living with disability;
* Allowing additional cash savings in excess of the allowable limit of assets because the money was already allocated to upcoming bills and expenses;
* Where a person does not have access to their financial resources due to family violence.

**Other Legal Aid Commissions**

Some other Legal Aid Commissions provide more guidance to the exercise of discretion in relation to financial eligibility for grant of legal assistance.[[17]](#footnote-17) Legal Aid NSW and Legal Aid Queensland sets out the circumstances where discretion could be exercised on their website.[[18]](#footnote-18) The United Kingdom has a Hardship Review which provides for situations where an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) has expenses that are not taken into account under the means test.[[19]](#footnote-19)

# Information about financial eligibility

Current approach

One of the objectives of the Means Test Review is to increase the accessibility of information about financial eligibility for grants of legal assistance.

Currently, information about the means test is included in the [VLA Handbook for Lawyers](http://handbook.vla.vic.gov.au/handbook/12-means-test) and on the [VLA website](http://www.legalaid.vic.gov.au/get-legal-services-and-advice/get-lawyer-to-run-your-case). This sets out the elements and requirements of the means test and contributions policy. While this information is publicly accessible, the audience for the VLA Handbook is lawyers providing legal aid services. The information may be difficult and confusing for members of the general public.

General material on financial eligibility that provides guidance to people applying for legal assistance can be hard to provide because financial eligibility is closely linked to the individual circumstances of that person.

**Other Legal Aid Commissions**

Some Legal Aid Commissions have adopted self-help tools where people considering applying for legal assistance can enter their financial information onto a website and receive a response that indicates whether they may be eligible for a grant of legal assistance. This is not a final decision about eligibility but aims to assist people to understand what options may be available for the resolution of their legal issue.

Legal Aid NSW has a ‘Means Test Indicator’ on its website and mobile application.[[20]](#footnote-20) Other jurisdictions publish a simple overview for people on the test for financial eligibility. The United Kingdom includes a self-help tool for financial eligibility on its website that also assists a person to understand whether legal assistance is available for their particular legal issue.[[21]](#footnote-21)

Legal Aid Queensland provides a four-page fact sheet outlining if a person may qualify for legal assistance, what financial tests exist, and what documentation they need to provide for assessment.[[22]](#footnote-22) A similar approach is taken by Legal Aid Western Australia, as well as providing information about a person’s right to reconsideration or ability to make a complaint.[[23]](#footnote-23)

# Reviewing and updating the means test

Current approach

There is no regular scheduled update or review mechanism for the existing means test. The National Means Test includes a suggested regular review period but the differing financial circumstances of each of the Legal Aid Commissions has meant that the means test thresholds are not regularly updated or reviewed. Centrelink, by contrast, updates its thresholds on a quarterly basis.

The effect of this lack of review and update is that the means test has become harsher over time. This is also known as ‘bracket creep’ where inflation pushes salaries into a high tax bracket but there is no equivalent purchasing power increase. As a result, an increasing number of people are not poor enough to qualify for legal assistance but still cannot afford a private lawyer. However, without additional funding, regular increases in the means test are not affordable without applying other restrictions to service eligibility, such as narrowing existing guidelines, and thereby limiting the pool of people eligible for legal assistance in other ways.

# Options

The potential options for changes to the means test have been separated into four distinct categories. The options under each category are then divided under each of the elements of the means test, so it’s easier to understand which limb of the means test the option relates to. Supporting options under one category does not preclude the implementation of options in another category. We are considering all the options available so that when we present recommendations to our Board, there may be options from each of the categories.

* **Operational**

These are options that are minor in both implementation and cost and will assist in making the means test more streamlined, easier to understand and provide better guidance around how assessment of finances is made. Most of the options listed under this category are considered operational because of a combination of their low cost and low impact but will help the means test become more transparent and accessible.

* **Straightforward**

Options under this category are ones that have broad support from many parts of the community and are easier to accommodate into the existing means test. There might be a small cost to implement them and they may have more of an impact on the number of people found eligible than the options listed in the operational category.

They are considered straightforward because they don’t require big changes to the means test and generally involve adjusting thresholds to existing elements of the means test. For many people during our consultation, these are the changes that ‘just made sense’.

* **Bigger changes**

Bigger options are those that are more likely to impact a greater number of people, but will also cost VLA more money to implement and will see a greater cost subsequently as more people will be able to obtain a grant of assistance. They are more substantive changes to the means test that might result in the test not operating in the way it does currently.

Most of the options listed in this section will alter the means test significantly, and see the means test operating differently for different groups in the community. These options will likely make the means test fairer but may make it less easier to understand.

* **Planning for a More Equitable Future**

The options in this last category are ones that might change the means test so that it looks radically different to the way it does now. These changes might result in larger groups of people being eligible for assistance and therefore have a greater impact and a greater cost.

They are also changes that will help create a means test that may not be possible within the existing funding pocket but with additional money would enable us to create a means test that is not only fairer but has the biggest impact in various areas of the community.

# Rating System

Each of the options have been evaluated against three criteria that will be considered as part of recommending options to the VLA Board. The following key is used to explain this:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|

|  |
| --- |
| **F** |
| **S** |
| **F/S** |

 | **Simple and/or Fair**. This rating indicates whether the option will make the means test fairer, or simpler to understand. Some options will make the test both fairer and simpler which have been highlighted as both F and S. |
|

|  |
| --- |
| **I** |
| **II** |
| **III** |

 | **Impact**. This establishes the impact the option will have in terms of the number of people eligible under the means test because of the change, or the impact it will have on a certain category of people. **I** indicates a smaller impact in comparison to **III** which may have the most impact. |
|

|  |
| --- |
| **$** |
| **$$** |
| **$$$** |

 | **Cost.** This rating evaluates the cost of the option, both in implementing the option into the test, and the ongoing cost of including such an option. An option that impacts a lot of people will generally have a higher cost, as we are likely to be providing additional grants of aid. An option may also have a high cost because it will cost a lot to integrate into our existing systems, or to change how our processes work.  |

The following icons are used where an option may increase revenue for VLA:

|  |  |  |
| --- | --- | --- |
| **$** | **$$** | **$$$** |

We want your feedback on these options, and whether you consider our rating against each of the options accurate. If you think an option will have more of an impact than suggested, or is not as fair as we have indicated, we want to know why. Your feedback is essential towards creating a fairer and more sustainable means test.

# How have we assessed impact?

One of the criterion used to evaluate the options is impact. This impact has been defined in two ways:

1. Impact in terms of number of people eligible
2. Impact on the broader community

There is the impact in the number of additional grants and the number of additional people we foresee aiding because of an option being implemented. The second way is where an option will assist a priority group as identified by VLA’s priority client framework and will therefore have a substantial impact to that section of the community.

Whether an option meets the first or second definition for this criteria is not explicitly defined against each option, rather, a general rating has been provided. These two definitions for “impact” have been used as they best align with the objectives of the review – namely to have a means test that enables more people to become eligible, and a means test that reflects contemporary understanding of disadvantage.

All of the options will impact the community in some way, including options that make the test more simplified or easier to understand – these will enable the test to become more accessible. Even if the option does not inherently make more people eligible, the flow on effect of some of the more operational options may assist in more people understanding that they may be eligible because of the changes.

# Operational

# Income Test

1. **Introduce a waiver of documentary requirements in particular circumstances**

|  |  |  |
| --- | --- | --- |
| **F** | **II** | **$** |

Introducing a waiver for providing documentary proof of means in particular circumstances could acknowledge the difficult living situations that some people seeking legal assistance are in. Waivers are already provided for those currently in custody/detention. This waiver could be extended to those that are experiencing homelessness, residing away from their usual accommodation due to family violence and those living in remote areas.[[24]](#footnote-24)

A waiver for people in these circumstances may better reflect the difficulty people have in obtaining the relevant documentary proof of means and also reduce the administrative burden on lawyers and VLA assessment officers. Additionally, a waiver of providing documentary proof of means may avoid compromising a person’s safety, such as where a person is escaping family violence. Requesting documentation in these circumstances may alert a perpetrator of family violence of the person’s intention to leave.

1. **Introduce a better approach for people with irregular incomes**

|  |  |  |
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| **F** | **II** | **$** |

Assessment of people’s income could reflect the changing workforce patterns in Victoria, with a greater proportion of people now employed on a casual and fluctuating basis. To provide VLA with a true picture of an [applicant’s](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) income, documentary proof of income could be extended from three months to six or potentially even 12 months. This may more accurately reflect an applicant’s income and their ability to pay for a lawyer.

To avoid a greater administrative burden on all people applying for legal assistance the application form could be modified to include an additional question about an applicant’s working conditions, such as ‘are you receiving regular income?’. If the answer is ‘yes’, the standard three-month documentary proof of income can be supplied. If the answer is ‘no’, an applicant could then provide their lawyer with documentary proof of income over a six-month period, with their income then averaged out across 24 weeks.

# Assets Test

1. **Clarify treatment of superannuation**

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The amount of superannuation taken into account by VLA could be clarified. Currently VLA only assesses unpreserved superannuation. Unpreserved superannuation are funds that have already been accessed by a person, either as a result of having reached the age necessary to unlock it or because they are in a position of financial hardship which enabled them to access their superannuation earlier.

Accessing superannuation is difficult and time consuming, such that funds may not be released prior to a court date. While some applicants may have some superannuation savings available, it could be that this is directed to medical expenses or the person’s retirement. A clearer guideline in the means test about what types of superannuation that VLA will consider may assist people to know how superannuation is assessed.

The guideline could advise that the only types of superannuation that VLA will consider is that which has already been accessed by the applicant and is not subject to any taxation. Additionally, if the superannuation has been accessed due to ongoing medical issues, then VLA will not assess this under the means test.

# Financially Associated Persons

1. **Reduce the documentary proof required from financially associated persons to reduce administrative requirements and improve rates of compliance**

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We know that requesting additional documentary proof of means from friends and family can be burdensome and in some instances, prevent an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) from pursing their application for legal assistance. It also places an administrative burden on lawyers to ensure they have all the appropriate information before proceeding with a grant of assistance. We know that it has also affected rates of compliance with VLA guidelines.

To assist with this, the guideline on [financially associated persons](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) could be updated to clarify what information is required and under what scenarios. Where it is difficult to obtain financial documentation, statutory declarations could be accepted in its place.

VLA could also obtain additional information with the consent of the applicant if it has concerns about a financially associated person. This could apply where an applicant is currently homeless, fleeing from family violence, or living in remote rural areas and have provided VLA with an authority to seek this information directly from their bank provider.

1. **Allow for dependants of financially associated persons to be included in the means test calculations**

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Including dependants of financially associated persons in the calculation of an applicant’s means would assist in providing a more accurate picture of the financial situation of the applicant and whether they are able to contribute to the cost of providing legal assistance. The same dependant allowances that are provided to the applicant should be extended to the financially associated person. This information could be obtained through an additional question in the application form to be answered if an applicant states that they have a financially associated person.

# The Contributions Policy

1. **Allow a repayment schedule for asset contributions**

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Asset contributions could be automatically placed on repayment schedules similar to those that exist for contributions based on income. This would be where a lump sum contribution is divided across many months to be repaid. This may be a fairer and more consistent approach for people paying contributions and also provide more time for a person to access their asset to make their repayment to VLA.

# Use of discretion

1. Document circumstances where discretion is exercised and publish this information

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It may be useful to document circumstances where discretion was exercised in the past. A de-identified log of the circumstances where discretion was exercised in favour of the [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) could also be linked from the [VLA Handbook for Lawyers](https://handbook.vla.vic.gov.au/) to further assist with this and provide additional transparency around the discretion process.

It is worth considering whether the log should also include scenarios where discretion was not exercised in favour of the applicant, and whether this would provide better guidance to lawyers who apply for discretion. This option could assist with one of the objectives of this review which is to engage externally with stakeholders to increase accountability and transparency.

1. Provide guidance on the circumstances when discretion may be exercised

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A guideline on discretion could be published in the VLA Handbook for Lawyers that provides the criteria that is used when officers assess requests for discretion on the means test. Examples of situations where discretion may be applied may also be useful so that lawyers and people applying for legal assistance can see what type of situations have been provided discretion in the past. Providing a guideline could also illustrate what information is needed for the assessing officer to reach a decision and may also assist with reducing delay in assessment of such applications. A proposed draft guideline on discretion can be found at Appendix 6.

# Better information about financial eligibility

1. Plain language information on VLA website

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A section of the general website devoted to explaining the basics of the means test and what terms and conditions may be set on a grant of assistance using plain language may help alleviate some of the misconceptions about legal aid.

Having this information easily accessible in an online format may also reduce some of the calls of this nature that are made to VLA’s Legal Help line and Assignments unit on a regular basis. The cost of this option stems from the cost of implementation, but there is unlikely to be an ongoing cost in providing this service.

1. **Publications on financial eligibility**

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As part of the implementation of any revised means test, VLA could undertake a plain language review of the existing publications and consider what additional information and publications would assist to increase accessibility and transparency about eligibility for legal assistance. This may require a reconsideration of the role and content of the VLA Handbook for Lawyers in relation to eligibility. Any cost around this option is through the creation and promotion of such publications, and like option 9, is unlikely to see ongoing costs.

1. **Better linkages and training of support workers about eligibility for legal assistance**

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VLA could make available training to non-lawyers in the community sector on the availability and process for grants of legal assistance, as well as eligibility for legal help more broadly. This could assist to build pathways for people who need legal assistance.

# Straightforward

# Income Test

1. **Increase allowable income**

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Increasing the threshold for allowable income before a contribution is required would result in more people who are living on a low income qualifying for a grant of legal assistance. This is particularly relevant for people who solely rely on employment income.

Currently, the income threshold is set by reference to the Henderson Poverty Line (HPL). With the recent modest changes to the means test in March 2016, VLA has set the threshold at 101% of the HPL. The National Partnership Agreement on Legal Assistance Services requires the assessment of financial eligibility to be linked to an objective measure of financial disadvantage, such as the HPL. This also ensures there is transparency and objectivity about the income threshold. The threshold could be increased to 110% of the Henderson Line which would raise the current allowable income from $360 to $390 a week.

1. **Increase the range of deductions**

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Increasing the amounts and types of deductions may result in more people reducing their assessable income to within the allowable limit. This would also address concerns that the current test does not build an accurate picture of disadvantage.

There are a number of possible approaches to extending the availability of deductions:

* Introducing two categories of deductions - ‘standard’ deductions (e.g. housing, childcare and utilities) and ‘discretionary’ deductions (personal debt, medical expenses, education expenses);
* Increasing the range of deductions available generally:
	+ Credit and personal loan debt (where linked to household expenses)
	+ Other regular payments (for example infringements)
	+ Include a deduction on reasonable education expenses
	+ Regular medical expenses
	+ Other reasonable household expenses such as mobile phone bills and other essential utilities including gas and electricity.
1. **Increase the value of child care deduction**

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A set fee could be provided for each child that an applicant or their [financially associated person](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) has and by not capping the number of children calculated, this may more accurately reflect a family’s household expenses.

Similarly, an allowance could be built in for education expenses for when children are commencing formal education and this could be factored into expenses if the applicant has dependants.

1. **Increase the dependant allowance**

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The means test makes some allowance for the cost of raising children by way of a [dependant’s](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) allowance. Research indicates that the cost of children is rising but household incomes are not keeping pace with this cost.

Currently VLA allows a deduction to income of $130 per week for the first dependant and a further $125 for any additional dependant. There could be an increase in the dependant allowance provided by the means test to more accurately reflect the increased cost in raising children which household income has failed to match. This amount could be set at $185 per week, which is the average cost of raising children for a low-income household.

1. **The definition of ‘dependant’ could be clarified**

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The definition of [dependant](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) under the current means test is anyone who relies on the applicant for financial support. VLA currently interprets this as being a person, such as a child or elderly parent, who resides with the applicant. The definition could be expanded to include any person whom the applicant supports financially. The definition could clarify that a ‘dependant’ is any person who relies on the applicant for financial support. Such people may include a spouse, partner or child of the applicant, but is not limited to these groups of people.

An amendment of the definition and including examples may better reflect the different familial structures that exist within communities in Australia and take into account Aboriginal and Torres Strait Islander Peoples and Culturally and Linguistically Diverse communities that may support family members in varied ways. It is also worth considering whether proof of dependency should be included in the documentary requirements, to confirm this. However, this may not be practical, given the many informal living arrangements that exist.

# Assets Test

1. **Increase the allowable assets threshold**

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A more generous threshold for allowable assets before a contribution is required may address some of the issues associated with people who have few assets being required to contribute to the cost of legal help from a limited pool of resources.

The value of an increased threshold could be determined by reference to an acceptable level of safety net. For example, a month’s worth of rent (as rent is paid in advance) and/or a monthly mortgage repayment could be allotted as an allowable asset.

# Financially Associated Persons

1. **Develop guidelines for scenarios where support and assistance is being provided by a family member**

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The financially associated person guideline could provide details of how to treat scenarios where a family member is providing support and assistance in some ways but may still not be considered a financially associated person. This would reduce confusion about to whom the financial associated person test applies and also provide greater clarity to assessing officers that are assessing applications. Examples of these type of scenarios could be where:

* A family member has offered surety to assist with a bail application but has no intention or ability to financially support the person beyond this act;
* Family members are providing temporary accommodation for a person fleeing a crisis like a family violence situation or other safety concerns; or
* A parent is letting their adult child reside with them rent free but the applicant is paying small monetary amounts for groceries and bills.
1. **Include express exclusions to clarify treatment of financially associated persons**

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Categories of people could be expressly excluded as a financially associated person. This option could provide clarity to applicants. Housemates, or people who provide one-off financial support, could be excluded from the definition of financially associated persons, as well as family members with whom the applicant does not reside unless they are providing ongoing and continuous financial support. Another useful category may be exempting individuals who provide temporary shelter for the applicant so that they can avoid homelessness.

# The Contributions Policy

1. **Increase the income and asset thresholds before contribution is required**

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An increase in the income and asset threshold before VLA requires a contribution could be beneficial for people who are applying for legal assistance. While this option alone wouldn’t see more people eligible for assistance, it may ease the financial pressures of those who are eligible with a contribution but may struggle to make repayments as the means test does not take into account all living expenses.

1. **Fix the rate of contribution repayments based on income as opposed to contribution amount**

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Repayments of a contribution could be made consistent regardless of the amount that is required to be paid to VLA. A fixed payment per month could apply if two people are on the same income regardless of the contribution owing. While this may extend out payments and delay VLA from recouping costs, it may be a fairer and more consistent approach to the contribution policy. A risk with this is that we know that many people stop repaying their contribution once their legal matter is finalised, which would result in VLA recouping less money.

1. **Charge interest on secured contributions**

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Imposing interest on a secured contribution (a person’s house) may alleviate some of the unfairness between contributions imposed based on other assets such as a car or cash savings, compared to [caveat](https://handbook.vla.vic.gov.au/handbook/20-contributions-and-overdue-payments/charge-or-other-security-over-assisted-persons-property/caveats) contributions. This is because people with a car or cash contribution have to make payment upfront. It would also preserve the real value of the contribution imposed, as we know that the value of the contribution reduces the longer it takes to be repaid back to VLA. It may also encourage people to reduce these debts prior to waiting until they sell their property, which would allow VLA to recoup costs sooner.

1. **Introduce a clearer financial hardship process regarding contributions**

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To assist with clarity for all involved, the Debt Policy could be made clearer and more accessible for those seeking for their contribution to be varied or waived. Currently, VLA can and has referred debts to a debt collector in circumstances where there is a significant outstanding contribution and we consider that the person is able to make the repayments.

The policy could include the factors that should be taken into consideration when imposing a contribution such as the ability for the person to pay, appreciation of any asset and any exceptional circumstances that may apply.

The guidelines around this process could be provided to all people who have contributions imposed on their legal aid funding so that they are aware of this from the outset. This could be done by incorporating the guideline into the contribution letter that goes out to a person to advise them that they must make repayments. The policy could also be redrafted to provide the additional clarity and provide examples of scenarios where a debt may be reduced or waived as a result of financial hardship.

# Exemptions from the means test

1. Narrow exemptions to statutory requirements

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The means test could start applying to veteran’s affairs appeal matters in the higher courts such as the Full Federal Court and the High Court. Veterans could be required to undergo the full means assessment to qualify for additional grants of aid. The means test exemption to veteran affairs matters would still apply to hearings in the Administrative Appeals Tribunal as required by the National Partnership Agreement.

# Use of discretion

1. Incorporate matters into the means test that are currently dealt with through discretion

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There are some scenarios where discretion is applied for so often that these situations could be factored into the means test to reduce the administrative burden of assessing discretion. This may assist with creating a more consistent approach to these matters as a result.

A checkbox approach could be incorporated if those scenarios apply without the specific need for discretion to be sought. For example, questions could be incorporated into the application form that query whether a person has ongoing medical costs or a terminal illness.

# Bigger Changes

# Income Test

1. **Change the benchmark to the Income Test**

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VLA currently sets its income threshold against the Henderson Poverty Line, which establishes the benchmark income required to support the basic needs of a household. An alternative benchmark that could be used is the OECD Relative Poverty Line (RPL). The RPL defines poverty as half the median household income of the total population of Australia. It is estimated that 13.3% (2.9 million people) of Australians are below this poverty line[[25]](#footnote-25). If the income threshold was set at 110% of the OECD Relative Poverty Line, that would see an increase from $360 per week to approximately $469 per week.

1. **Standardised household expenditure could be considered**

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The Law Institute of Victoria (LIV) submitted that a standardised household expenditure allowance should be factored into the means test, which can also be adjusted according to the number of [dependants](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) in a household.[[26]](#footnote-26) This allowance could be taken to incorporate payment of utilities, other general bills and groceries. An inclusion of this type of allowable expenditure would also streamline the application process and reduce the administrative burden on lawyers to ensure the appropriate financial documentation is on file, which can vary depending on the type of employment in which an applicant is engaged. It may also more accurately reflect the non-negotiable expenses of people who are seeking legal assistance from VLA.

1. **Allow a higher income threshold for certain ‘priority matters’**

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We could allow for a higher income threshold before a person is found ineligible for assistance for VLA’s priority matters. VLA has identified a number of strategic advocacy priorities, including:

* Family violence matters;
* Mental Health Tribunal matters; and
* Child Protection matters.

Ontario Legal Aid uses this system to assess means eligibility. They allow a higher income threshold for domestic violence matters which is set at approximately 67% higher than their standard income threshold. If the same was applied to our existing income threshold, it would increase from $360 to $600 a week for these matters.

This option could target service areas which contain a significant number of vulnerable people. Increasing the income threshold in these matters could help assist disadvantaged people get legal assistance where they normally would not be able to afford to pay for a private lawyer.

# Assets Test

1. **Introduce separate asset allowances for home owners and non-homeowners**

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It was identified that there is a discrepancy between the assets allowed for home owners and non-homeowners. Currently homeowners are allowed to have up to $500,000 in equity in their principal place of residence before they would be considered ineligible for a grant of assistance. To assist with this discrepancy, VLA could assess each category of assets that an applicant is able to have and set different levels based on whether a person is a home owner or a non-homeowner.

Non-homeowners could be allowed a more substantial amount of liquid assets before a contribution is imposed to reflect that their living situation isn’t as secure as those who own a home. Savings could be allowed to cover a month’s worth of rent, plus a bond, in the event that a person has to move quickly if their living situation changes.

# Financially Associated Persons

1. **Narrow the definition of financially associated person**

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Aligning the definition of [financially associated person](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) with the approach adopted by other agencies could increase the fairness and transparency of the assessment of the resources available to an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance). This may let the definition move away from subjective assessments required to decide whether a person is a financially associated person. A narrower definition may be easier for people to understand and could also increase consistency with other organisations that assess means.

VLA could align the definition of financially associated persons to the definition that has been applied by Centrelink when it assesses eligibility for social security payments. For Centrelink, financially associated persons are defined as where an applicant is a member of a couple and this is limited to married, registered and de facto couples of both sexes.

Alternatively, the definition of financially associated person could be limited to the living conditions of an applicant. This would include the above categories but also incorporate situations where an applicant is living with their parents and not paying rent or board.

# Estimated Legal Costs

1. **Include additional cost categories to better align with cost of legal services**

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Additional cost categories may allow for a more nuanced and realistic assessment of capacity to pay for legal services and reduce issues associated with the assessment of contributions against estimated legal costs. Including additional cost categories would mean that matters like a County Court appeal which are placed in the same category as a child protection matter would not attract the same contribution cost, and therefore people that are eligible for legal assistance would be asked to pay contributions that may better reflect the cost of providing these legal services.

This could potentially make the contribution and costs categories more complicated than necessary instead of simplifying the process.

1. **Update existing cost categories**

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The cost categories could be revised to better reflect the true cost of legal proceedings. To do so would require acquiring appropriate benchmark data so that the revised categories are an accurate portrayal of the cost of paying for legal services on a privately funded basis. The scale of costs set by the Courts in Victoria could provide an appropriate starting point to examine VLA’s cost categories. Additionally, we could examine the average amount paid by VLA for legally aided matters and use that as a starting point for an update to the categories. These categories could then be reviewed on a regular basis to ensure that they remain up to date. This could occur on a yearly basis in line with when the fees paid to lawyers by VLA are adjusted.

With appropriate benchmarking in place, such a review may not need to be a resource intensive process and would also provide a useful opportunity to evaluate the means test generally. Whilst there has been some data provided by the LIV, this is a starting point for a more thorough review of the cost of legal assistance that can be utilised to set appropriate categories.

# The Contributions Policy

1. **Extend the availability of legal assistance with a contribution to increase access to justice**

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Increasing the upper thresholds for contribution of legal assistance may allow more people to be eligible for a grant of assistance. It could also assist with closing the gap between people who are currently ineligible for assistance but also can’t afford to pay for a private lawyer. Additionally, more grants with a contribution would provide further cash flow to VLA allowing us to offset some of the cost of providing these additional grants of legal assistance.

Further research can be done in this area to establish appropriate cost categories to assist with this.

1. **Provide discounts to people who pay their contributions back sooner than required**

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A discount of 10% on the contribution amount owed could be applied if a person is able or willing to pay back their contribution within the first 6 or 12 months of the contribution being imposed. This could be applied to both unsecured and secured contributions. There is precedence for this. In the past, discounts of up to 25% have been offered to people with contributions imposed over their property, however these offers were only available for a few months at a time.

1. **Exclude certain assets from being included in contributions**

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We know that there are certain types of contributions that are less likely to be paid. One of these is lump sum contributions imposed over cars, which may require a person to sell their car to provide VLA with payment. Removing these types of assets from being included when being assessed for a contribution will reduce administrative work for client contribution officers, provide VLA with a more accurate picture of the amount of contribution they are likely to collect and avoid situations where a person would find it very difficult to make a repayment in time.

1. **Capping contributions for certain legal matters**

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VLA could cap contributions in situations where a client is receiving a monetary settlement following successful legal proceedings. This occurs in equal opportunity and discrimination matters where the settlement generally received is on the lower end. Pursuant to the Contributions Policy, VLA is entitled to recoup the full cost of legal representation from this amount which can be more than the amount received.

Capping the contribution to 50% of the settlement received or the full amount of legal costs, whichever is lower, may encourage more people to pursue proceedings of this nature.

1. **Introduce exemptions from contributions for people in certain circumstances**

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The Productivity Commission’s report on Access to Justice Arrangements highlighted the damage that contributions can have where imposed on people with extremely limited means.[[27]](#footnote-27) This can be reduced if exemptions from contributions are introduced for certain categories of people depending on circumstances where it would not be appropriate to impose them. Introducing a policy about discretion which could include a list of scenarios where contributions are likely not to be imposed such as:

* Grandparents with primary care of children in family law who have a family home but are beyond working age;
* People who have inherited an asset that exceeds the threshold but have no regular or secure income; or
* People who have secured an asset through property settlement but have no regular or secure income.[[28]](#footnote-28)

# Better information about financial eligibility

1. **Online means test indicator tool**

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A simple method for checking financial eligibility was supported by stakeholders. It is something that is successfully used in other jurisdictions, including Legal Aid NSW.

A means test indicator tool that is available online may allow people who may apply for legal assistance to enter their financial information and be given a provisional indication to the [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) as to whether they may or may not be likely to obtain a grant of legal assistance. The costs identified here involve the cost of developing and implementing an online tool and there is unlikely to be flow-on costs in the way of additional grants of assistance.

There are other initiatives being implemented that could be considered by VLA that may also assist. Legal Aid Commission of South Australia has recently implemented an online application form for people who submit an application without support from an existing lawyer.

# Reviewing and updating the means test

1. **Implement automatic annual indexation of means test thresholds against agreed benchmarks**

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An annual indexation of the means test was recommended in the initial National Means Test introduced in 1995. VLA currently indexes the fees paid to lawyers for grants of legal assistance on a yearly basis and the two could potentially be combined. This would avoid the means test thresholds falling behind any national benchmarks that have been set. Having an automatic annual indexation of the means test would not allow for the necessary flexibility during years where the organisation may have different levels of funding available.

# Planning for a More Equitable Future

# Estimated Legal Costs

1. **Apply means test only to highest cost matter**

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Applying the means test to only the highest cost matter where a person is applying for legal assistance for multiple legal matters recognises that there is an advantage in holistic service delivery that addresses all legal issues that a person is experiencing.There is also the advantage of continuity of service which results in system efficiencies as a person will not have to draw on resources from multiple organisations for legal assistance.

# The Contributions Policy

# Stop collecting unsecured contributions

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We know that currently about 10 to 15% of unsecured contributions are collected. There is a lot of administrative work involved in imposing and following up these type of contributions that is both costly and time-consuming. Removing or restricting unsecured contributions could make the means test easier and simpler to understand. However, it would also impact the cash flow received by VLA.

1. **Exempt certain matters from the contributions policy**

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Certain matters could be exempted from the contribution policy where we know [applicants](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) are unlikely to proceed because of the contribution imposed. An example of this is equal opportunity and discrimination matters, which can result in a small monetary settlement. Pursuant to the contributions policy, VLA will reclaim the full costs of legal representation from this settlement, which can sometimes by the entire settlement amount. Exempting such matters from contributions may encourage more people to pursue their discrimination matter. This issue may also be addressed by the earlier option of capping contribution amounts.

# Exemptions from the means test

1. Include a public interest exemption to the means test

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An exemption to the means test could be provided for matters that have public interest elements or can be shown to have a benefit to the wider public. This would require an applicant or their lawyer applying to VLA to seek discretion on the basis that their legal matter meets a special circumstances means test guideline that would identify “benefit to the wider public” as an exemption to the means test.

1. **Promote continuity of service**

|  |  |  |
| --- | --- | --- |
| **S** | **III** | **$$$** |

Currently people who have been identified as a priority client can access duty lawyer services with proof of a concession card. VLA could provide a grant of legal assistance for those on a benefit based on an applicant satisfying the duty lawyer income test, which is simplified. They would still be required to meet VLA’s guideline and merit requirements. This may prevent delay in arranging legal assistance for an applicant’s matter, reduce the additional administrative burden on obtaining further financial documents, and promote continuity of service so that a person has less uncertainty about the future of their legal representation.

The lower threshold has been established because we know that duty lawyer services are less costly and time intensive, which enables us to provide this service to more people for a lower cost. The cost of providing a grant of assistance is much higher and therefore limited to less people. As previously identified, the financial impacts to VLA of providing such services without the application of the means test will need to be examined further.

1. **Exempt certain types of legal matters from the operation of the means test**

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| **S** | **II** | **$$$** |

Certain matter types could be exempted from having the means test applied as a large number of people who experience this legal issue are also experiencing high levels of financial disadvantage. It may also emphasise the importance of certain matters having a lawyer involved regardless of the person’s finances. These matters could include child protection and family violence matters.

1. Exempt certain categories of people from the operation of the means test

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| **S/F** | **III** | **$$$** |

VLA currently has a priority client framework which identifies certain groups of people who are most in need of legal assistance. The framework identifies the following categories of people as being ‘priority clients’ for VLA’s services:

* People living on a low income;
* People in custody, detention or involuntary psychiatric settings;
* Children;
* Children, young people and women experiencing, or at risk of, family violence;
* Indigenous Australians;
* People who experience language or cultural barriers;
* People who are experiencing homelessness;
* People with a disability (physical, intellectual, or cognitive) or who experience mental illness

VLA could exempt some or all these categories of people from the means test. Some of the groups identified by the framework are almost always eligible under the means test currently. Removing the administrative barrier placed by the means test for these groups can ease access to justice. As recommended by the LIV, further analysis could be done to establish the economic impact of providing such exemptions to broad categories of people.

# Looking Beyond the Means Test

1. **Prioritise access to grants of legal assistance for ‘priority clients’**

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| **F** | **II** | **$$$** |

People who meet the priority client framework and are applying for legal assistance could be given priority access to grants of legal assistance by reducing the means test hurdles that people applying for legal assistance have to go through. This could prevent the most vulnerable people from falling between the gaps in the process of applying for legal assistance from VLA.

This could be done by exempting documentary requirements for priority clients except where an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) is deemed ineligible under the means test and is seeking discretion. Alternatively, the income and assets threshold could be more relaxed for people identified as priority clients.

1. This involves the calculation of an applicant’s discretionary income by subtracting (or making ‘allowance’) for certain deductions from their gross (or total) income. [↑](#footnote-ref-1)
2. See the [VLA Handbook for Lawyers](https://handbook.vla.vic.gov.au/handbook/12-means-test/income-test/what-is-included-income). [↑](#footnote-ref-2)
3. From 1 March 2016, VLA extended the existing means test to better reflect the current cost of living. This will make more people eligible for legal assistance in the short term, ahead of the Means Test Review. The current thresholds are set out in [Appendix 3](#_Appendix_3_–). [↑](#footnote-ref-3)
4. A ‘dependant’ is any person who relies on the person for financial support. This may include a spouse, partner or child of the person applying for a grant of legal assistance. [↑](#footnote-ref-4)
5. As set out in [Appendix 3](#_Appendix_3_–), allowable deductions for expenses and cost of living deductions are based on National Means Test benchmarks which were agreed by all Australian Legal Aid Commissions. One of the aims of the National Means Test was to have a consistent approach to eligibility for legal aid across Australia. A consistent approach is also preferred by the National Partnership Agreement on Legal Assistance Services which sets out the funding arrangements between the Commonwealth and Legal Aid Commissions, including VLA. [↑](#footnote-ref-5)
6. ‘Assets’ are any tangible or intangible property or interest which has economic value to the person applying for a grant of legal assistance or to any financially associated person. See [VLA Handbook for Lawyers](https://handbook.vla.vic.gov.au/handbook/12-means-test/assets-test/what-is-included-assets). [↑](#footnote-ref-6)
7. See [VLA Handbook for Lawyers](https://handbook.vla.vic.gov.au/handbook/12-means-test/assets-test/allowable-assets). [↑](#footnote-ref-7)
8. If a person has a financially associated person or a dependant, a higher asset threshold of $2,190 applies. [↑](#footnote-ref-8)
9. The amount of the initial contribution is calculated in accordance with the tables set out in the [VLA Handbook for Lawyers](https://handbook.vla.vic.gov.au/handbook/12-means-test/assets-test/how-initial-contribution-is-calculated-based-on-assets.). The calculation of contributions is outlined in [Appendix 5](#_Appendix_5_–). [↑](#footnote-ref-9)
10. A financially associated person may also be a corporation, association or trust. See [VLA Handbook for Lawyers](http://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test). [↑](#footnote-ref-10)
11. Exceptions to this rule apply for certain indictable crime matters. [↑](#footnote-ref-11)
12. Victoria Legal Aid *Annual Report 2014—15*. Available at <http://annualreport.vla.vic.gov.au/our-income-and-expenditure>. [↑](#footnote-ref-12)
13. War veterans are exempt from the means test for Commonwealth Entitlement matters only. [↑](#footnote-ref-13)
14. See *Legal Aid Act 1978*, section 24 (2A) and [VLA Handbook for Lawyers.](http://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test/people-means-test-does-not-apply-to) [↑](#footnote-ref-14)
15. See, for example, sections 71 & 72 of the *Family Violence Protection Act 2008* and section 197 of the *Criminal Procedure Act 2009.* [↑](#footnote-ref-15)
16. See: <http://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test/people-means-test-does-not-apply-to> [↑](#footnote-ref-16)
17. <http://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/7.-means-test/7.10.-discretions-under-the-means-test>.. [↑](#footnote-ref-17)
18. See <http://www.legalaid.qld.gov.au/Find-legal-information/Factsheets-and-guides/Factsheets/Means-test-special-circumstances-guidelines>. [↑](#footnote-ref-18)
19. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345743/legal-aid-crm16-guidance.pdf>. [↑](#footnote-ref-19)
20. See <http://www.legalaid.nsw.gov.au/get-legal-help/applying-for-legal-aid/means-test-indicator>. [↑](#footnote-ref-20)
21. See <https://www.gov.uk/check-legal-aid>. There are also detailed eligibility calculators for use by practitioners. See, for example, <https://www.gov.uk/guidance/civil-legal-aid-means-testing>. [↑](#footnote-ref-21)
22. See: <http://www.legalaid.qld.gov.au/files/assets/public/publications/about-laq/can-i-get-legal-aid-factsheet.pdf.pdf> [↑](#footnote-ref-22)
23. See: <http://www.legalaid.wa.gov.au/SiteCollectionDocuments/Applying%20for%20a%20grant%20of%20legal%20aid.pdf> [↑](#footnote-ref-23)
24. A remote area is defined by the Australian Tax Office as [“at least 40kms from an urban center with a population of 14,000 or more and at least 100kms from an urban center with a population of 130,000 or more”.](https://www.ato.gov.au/General/Fringe-benefits-tax-%28FBT%29/In-detail/Exemptions-and-concessions/FBT---remote-areas/) [↑](#footnote-ref-24)
25. ACOSS (2016) *Poverty in Australia 2016* <http://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf>, p. 8. [↑](#footnote-ref-25)
26. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper,* p. 14. [↑](#footnote-ref-26)
27. Productivity Commission, *Access to Justice Arrangements*, p. 756. [↑](#footnote-ref-27)
28. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper,* p 30. [↑](#footnote-ref-28)