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Means Test Review

Victoria Legal Aid

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**MEANS TEST REVIEW OPTIONS PAPER**

**HUME RIVERINA COMMUNITY LEGAL SERVICE RESPONSE**

Hume Riverina Community Legal Service (HRCLS) welcomes the Means Test Review commissioned by Victoria Legal Aid (VLA) and commends the development of options based on consultation with stakeholders.

In response to the proposed options for reform, HRCLS has set out its preferences below. We have focused on those terms of inquiry addressed in HRCLS's original submission to VLA, and the alternatives that address those in the Options Paper.

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

* Option: Provide an online tool/calculator such as that used by Legal Aid New South Wales
* Option: Use an online application process for those who submit without the assistance of a lawyer such as that used by Legal Aid South Australia
* Option: Devote a section of the general website to explaining the basics of the means test and what terms and conditions may be set on a grant of assistance, using plain language

HRCLS maintains that the most readily accessible and easy to understand option is an online calculator such as that used by Legal Aid NSW.

HRCLS does not advocate for the use of an online application process (for those who submit without the assistance of a lawyer) such as that used by Legal Aid South Australia as this may still prove difficult for vulnerable sectors of the community such as those with disabilities, literacy issues or from culturally diverse backgrounds.

A dedicated section of the website explaining eligibility using plain language is valuable, however this would not be a stand-alone solution and should be incorporated with a simple tool like the calculator.

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

* Option: Introduce 2 categories of deductions - ‘standard’ deductions (e.g. housing, childcare and utilities) and ‘discretionary’ deductions (personal debt, medical expenses, education expenses)
* Option: Increase the range of deductions available generally to include credit card and personal loan debt, fines, education, medical, utilities
* Option: Waive requirement for documentation in particular circumstances, such as that already available for those in custody
* Option: Update guideline on Financially Associated Persons (FAPs) to clarify what information is required and under what scenarios.
* Option: Allow for statutory declarations to be accepted where it is difficult to obtain financial information
* Option: VLA could obtain additional information with the consent of the applicant if it has concerns about a FAP. 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

HRCLS supports the option to increase the range of deductions available generally; so that it can include credit card and personal loan debt, fines, education, medical bills and utilities. While the option of introducing two categories of deductions – i.e. ‘standard’ deductions (e.g. housing, childcare and utilities) and ‘discretionary’ deductions (personal debt, medical expenses, education expenses) is also accepted as worthwhile, HRCLS would support it to a lesser extent in that it may prove overly complicated.

With respect to the proposed options for provision of financial documentation, HRCLS supports the waiver of requirement for documentation in particular circumstances. HRCLS reiterates its initial suggestion that the waiver currently available for those in custody should be extended to those experiencing homelessness and family violence.

One option proposed is an update to the guideline on FAPs to clarify what information is required and under what scenarios. It is suggested that where it is difficult to obtain financial documentation, statutory declarations could be accepted and VLA could also obtain additional information with the consent of the applicant if it has concerns about a FAP. 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. HRCLS recognises that this option would certainly be an improvement, however maintains reservation in that it may still prove difficult for a vulnerable person to prepare and organise statutory declarations or navigate the requirements. Greater assistance should be afforded to applicants in this regard, as vulnerable clients may find this process too onerous.

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

* Option: Increase the allowable assets threshold by reference to an acceptable safety net e.g. a month’s worth of rent in advance; or a monthly mortgage payment
* Provide for additional assets in the discretion stage of assessment e.g. Allowing additional cash savings in excess of the allowable limit of assets because the money was already allocated to upcoming bills and expenses.

HRCLS does not support the first option of allowing an assets threshold by reference to an acceptable safety net, as it does not effectively account for the variables in client circumstances.

HRCLS does support the consideration of additional assets in the discretion stage of assessment. However, HRCLS maintains the importance of applicants being advised that discretion is available and then VLA (rather than the applicant) considering if circumstances do exist that would require its use. It will be important to ensure transparency of the discretion stage, and HRCLS commends VLA for noting that both NSW and Queensland set out the circumstances in which discretion can be exercised.

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

* Option: 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.
* Option: Categories of people could be expressly excluded as a financially associated person.

Changes to the Financially Associated Persons guideline is welcomed, however HRCLS would have concerns that this may still prove difficult for self-represented applicants to navigate.

HRCLS would prefer an option that allowed for certain categories of people to be expressly excluded. This could mean housemates, or people who provide one-off financial support; 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.

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

* Option: 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.
* Option: Limit the definition of a Financially Associated Person to the living conditions of an applicant. This would incorporate situations where an applicant is living with their parents and not paying rent or board

HRCLS supports aligning the definition of Financially Associated Persons to that applied by Centrelink when assessing eligibility for social security payments.

HRCLS does not support the option of limiting the definition of Financially Associated Persons to the living conditions of the applicant; as if the client is not paying rent then this is already taken into account when considering their net income less expenses.

Part E – Use of Discretion

* Option: A de-identified log of the circumstances where discretion was exercised in favour of the applicant could be linked from the VLA Handbook for Lawyers to provide transparency around the discretion
* Option: 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.

HRCLS supports greater transparency of the use of discretion, and as such does not support the use of a de-identified log of circumstances in which it was used. The variables present in each client case would make it difficult for true comparisons to be made.

Therefore HRCLS is supportive of an option that clearly sets out the criteria applied by officers when assessing requests for discretion, and a guideline in the Handbook to this effect would be welcomed.

TOI 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?

* Option: Exempt some 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
* Option: Relax the income and assets threshold for people identified as priority clients
* Option: Make training available 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

HRCLS strongly supports the option of exempting certain categories of people – such as those from culturally and linguistically diverse backgrounds from the means test entirely, on the grounds that they are usually eligible in any event. HRCLS further supports an option of relaxing the income and assets threshold for people identified as priority clients.

HRCLS is mindful that while the notion of training non-lawyers in the community sector on the grants process is admirable, this may not work to streamline the process and increase access to justice for vulnerable clients – that is, it may add an extra layer to an already complex process.

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

* Option: Devote a section of the general website to explaining the basics of the means test and what terms and conditions may be set on a grant of assistance, using plain language
* Option: 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

HRCLS supports both options in that any efforts to simplify the language used and visibility of the grants process for clients contributes to their access to justice.

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