



SUBMISSION BY EASTERN COMMUNITY LEGAL CENTRE

Victoria Legal Aid Means Test Review

October 2016

Background

Eastern Community Legal Centre (ECLC) is located in the Eastern region of Melbourne and serves the Cities of Whitehorse, Boroondara, Manningham, Maroondah, Knox and the Shire of Yarra Ranges. ECLC offers free legal advice from its offices in Box Hill, Boronia and Healesville during the day, at night and also through various outreach locations across the East, with a priority being given to those who are disadvantaged. Having operated for over 40 years, the ECLC is one of Australia's most established community legal centres.

The Eastern Region has a number of areas of significant disadvantage. Healesville, in the Shire of Yarra Ranges, is home to the second most populous indigenous population in Victoria. The cities of Whitehorse, Maroondah and Knox host large communities of migrants to Australia, particularly from the Horn of Africa and Burma. The Eastern Region houses over 850,000 people from a diverse range of backgrounds.

In addition to direct legal services, ECLC also focuses on community development and education activities that empower clients, workers and the general community. It raises awareness of its service, new legal developments and human rights through various projects.

ECLC welcomes the opportunity to be able to provide our views on this issue that directly impacts upon our communities and will address a number of the questions raised in the consultation paper including making recommendations. ECLC looks forward to future consultations in relation to this very important review.

(Income) B1- do you have some examples of circumstances where you think the income test has been unfair or could be improved?

Case Study:

Michael has approximately \$13,000 owing for outstanding infringements which were incurred during 2012-2013 while he was homeless (living in his car and using toll roads) and using drugs. He may also suffer from an undiagnosed mental illness. He is eligible to apply to have these fines revoked on the basis of special circumstances but requires a grant of legal aid to assist him to obtain relevant reports and be legally represented in court. Michael seeks legal advice from ECLC and discloses that he has recently been employed and is currently earning up to \$1200 per week. He has no employment contract and does not receive any payslips. He has no job security and has been advised by his new boss that the work 'may dry up'. He lives with a new partner who receives Newstart allowance and they pay \$600 per week in rent. He is also paying off a \$4,000 personal loan and has no savings. He is ineligible for a grant of legal assistance due to his income.

(Income) B2- How can we make the assessment of income fairer to make sure people who need legal assistance are eligible for help?

As evidenced in the above case study, it is important that recently acquired or unstable employment be assessed differently to long-standing employment, particularly where there is no formal instrument of appointment. Allowances need to be made for seasonal and casual employment, where an average yearly income may provide greater insight into a person's financial stability than a weekly assessment.

Recommendation 1:

That assessment of income take into account stable income only (as evidenced over a 12 month period) rather than unstable sources of income (particularly casual or seasonal employment).

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

Some applicants cannot provide payslips as they are often not provided by employers where an informal arrangement has been made. Also, many people provide casual services under an ABN as a sole trader. This increases the ability of people skilled in trades to obtain access to paid employment, however no formal employment arrangement or access to paid leave or other workplace entitlements exist. Currently it is difficult for these people to obtain legal assistance due to the onerous paperwork requirements. If these requirements were relaxed in favour of the client completing a statutory declaration and providing their personal and business bank statements, grants of aid would be more accessible.

Recommendation 2:

That the documentary evidence requirements for sole traders be reduced to allow for informal employment arrangements. In these cases requirements should be limited to a statutory declaration and production of bank statements.

B5 – Should there be any additional allowances for other expenses? If so, what should they be?

As mobile phones and internet plans are often very costly and are increasingly relied on by people as a vital part of everyday life, these should be included as an additional allowance. This is particularly important in circumstances where applicants may be experiencing family violence; a mobile phone can be a lifeline.

(Assets) B8 – Do you have any examples of circumstances where you think the assets test has been unfair or could be improved?

Case study:

Amy approaches ECLC for legal advice in relation to child contact arrangements for her two daughters. She has recently separated from the girls' father and has a full intervention order against him. There has recently been a property settlement, in which her ex-partner retained the family home and paid Amy out a

lump sum of \$45,000. Amy currently has this money in a savings account and is looking to put it towards a deposit for a new home for her and her daughters. Amy would currently be ineligible for a grant of legal assistance due to this \$45,000.

(Assets) B9 – How can we increase fairness in the assessment of assets?

ECLC submits that there should be a greater discretion during the application stage to consider other proposed uses for cash kept in savings accounts. This would ensure that people are not unfairly penalised for having hard-earned savings or recent property settlements that are being used for another, yet suitably important purpose.

Recommendation 3:

That exemptions from the asset test be available to people fleeing family violence situations and more generally to people who have acquired savings for an appropriate, demonstrated purpose. Applicants should be allowed to seek an exemption on the basis of ‘special circumstances’ in such cases.

(Financially Associated Persons) B18 – Should the definition of ‘financially associated person’ be changed? If so, how?

Given ECLC’s work in examining and identifying trends in relation to elder abuse, we are concerned that the inclusion of parents of adult children in the definition of “financially associated persons” has the potential for abuse. Increasingly we have noticed a trend of adult children returning to their parents following critical events such as a relationship breakdown or significant financial strain. It is in this context that financial elder abuse can often arise, particularly in conjunction with criminal offending.

There is a significant risk to older persons in these circumstances being identified as ‘financially associated persons’ as they may be experiencing abuse and/or feeling pressured to provide financial assistance to an applicant. In such circumstances, it would be inappropriate to include adult parents in the definition of ‘financially associated person’ without them being entitled to receive independent legal advice

prior to being asked to provide financial assistance. Such advice should be obtained from a community lawyer experienced in elder abuse law.

The potential for abuse in this context is similar to that observed in relation to parents of adult children providing their homes as security for their children's loans/investments. This and other related themes of financial abuse were explored by ECLC in its "Matter of Trust" project.

Similarly, in circumstances where families are experiencing financial stress, there is potential for an increase in family violence. Therefore an exemption from being considered a financially associated person should apply in all cases where there is (or has ever been) a Family Violence intervention order in place between an applicant and a FAP.

Recommendation 4:

That independent legal advice (for instance, from a Community lawyer) be provided to parents financially supporting adult children prior to their consideration as a financially associated person.

Recommendation 5:

That any person who has been a named affected family member in an intervention order where the respondent is the person applying for legal assistance be exempt from the definition of Financially Associated Person.

ECLC appreciates that this consultation paper is the first of a number of consultations that VLA will undertake in this review process and welcomes the opportunity to contribute in the future.

Contact

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