

Victoria Legal Aid
Means Test Review
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The Victorian Alcohol and Drug Association (VAADA) welcomes the opportunity to contribute to the ongoing review of the means test for VLA clients. Central to this issue is access to vital legal services and the complex interplay between disadvantage and appropriate service access. Regrettably, as with many service systems, demand outstrips capacity and in this case, there will also be genuine and vulnerable individuals who cannot access appropriate legal counsel. More broadly, more needs to be done to link vulnerable individuals experiencing alcohol and other drug (AOD) dependency with appropriate and sensitive legal counsel. Any workarounds and innovations which establish service linkages that ameliorate this need are to be applauded.

Our earlier submission to this process highlighted a number of indicators of disadvantage, which co-occur with AOD dependency, many also creating greater demand for legal aid through engagement with the justice system.

The evidence identifying the contribution of AOD use to offending behaviour is robust although it should be noted that AOD use is not a sole contributor with many cases involving a range of complexities broadly associated with various vulnerabilities and disadvantage. It should also be noted that in many cases, the individual who has committed the offending behaviour, while having used AOD, may not necessarily be experiencing AOD dependency. It should also be noted that there are many individuals experiencing dependency who do not engage in offending behaviour.

AOD dependency, like many other indicators of disadvantage, including both social and health related indicators, can create significant challenges across a wide range of areas which are often inter-related. Challenges in accessing AOD treatment for dependence can result in a range of adverse circumstances, such as an increased risk of unemployment, which may result in homelessness or contribute for tensions within the household. It may also result in deteriorating mental health issues, and/or involvement with the criminal justice system. All of these issues impact upon a range of community and government services, as well as the private sector, families and the wider community. Barriers in accessing a specific necessary service and treatment can lead to increased demand for a broader array of community services.

It is important, when considering the various options listed in the *Means Test Review* paper, to note that VLA funding and endeavour should go beyond the immediate scope of the funding available. It should consider the significant costs to government through the implications of limited access to legal aid for various high risk cohorts and the wide ranging adverse consequences of these limitations on the broader range of government funded community, health and justice services.

As noted in our submission to the earlier phase of this review process, AOD treatment achieves a significant saving for government, with a portion of that attributed to reduced engagement of individuals with the justice system.

We note from *Part A* of the options papers that many legal aid clients are unable to access basic medical and hospital services and that a large portion of legal aid clients cannot afford prescription medication (Saunders and Wong 2012). In light of this, reflecting on our earlier submission, we would recommend that expenses

attributed to engaging with AOD treatment be listed as allowable deductions. This includes dispensing fees associated with pharmacotherapy, in particular where families are involved, medication associated with non-residential withdrawal, various costs associated with residential rehabilitation and any necessary specialists where there may be an out of pocket expense.

These various treatment modalities provide stabilisation and support for many individuals experiencing dependency and are key elements to remaining within the treatment system and therefore achieving successful treatment outcome. In many cases, AOD treatment is seen as necessary in responding to, and reducing, offending behaviour.

Reflecting on sector experience, it is evident that there is a large proportion of AOD service users who experience legal issues relating to infringements. A number of experts have expressed the view that legal aid is often only available for those facing imprisonment thus creating barriers to service users in need to low cost legal counsel to address burgeoning infringement matters. Currently, there are only two Drug Outreach lawyers operating within Victoria, with an understanding of AOD related complexity and the types of matters and circumstances relating to these matters confronting AOD service users. This model should be expanded to provide specialist capacity to assist AOD service users with legal issues. Currently, those AOD service users outside of the catchment where the drug outreach lawyer practices experience significant challenges to obtaining free legal assistance. While seeking to address a complex dependency issue, they may need to liaise with legal aid, at times with no support, where there will be varied levels of sensitivity to AOD issues. They will need to work through a complex process of establishing their financial circumstances, requiring liaison with family, at times exacerbating already complex relationships. We note that there are many cases among AOD service users where there is an experience of family violence overlaid by compounding infringement related legal issues creating additional challenges and impediments to positive treatment outcomes. We note that legal aid is not provided for individuals with infringements totalling less than \$5000, which may result in AOD service users ignoring the infringements, allowing them to escalate, until they reach the designated limit. This financial duress also exacerbates co-occurring issues, such as increasing risky AOD use in line with increasing stress.

Options

There is a range of options listed in *Part B* of the options paper. We will not be commenting on all of the options detailed, but rather those that have a notable and specific impact on AOD service users and individuals experiencing AOD dependency.

3. Clarify treatment of superannuation.

This should be considered as it has relevancy for individuals who may have made the difficult decision to access superannuation to access private AOD treatment. As noted in our earlier submission, due to the limitations in funded sector capacity, many individuals feel that their only option is to access unregulated private sector, for-profit treatment facilities. Many these facilities charge high fees, at times in excess of \$30,000 with no guarantee or refund. We are aware that many individuals need to access their own or their loved ones' superannuation in order to afford this treatment. Ideally, there would be adequate capacity within the funded AOD treatment system to provide for community demand, but within the context of available resources, superannuation accessed for private rehabilitation should not be assessed by VLA under the means test.

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

There would be benefit in providing training to both the AOD workforce and more broadly throughout the community sector on issues of processes for accessing legal aid and the various options available. Having a basic knowledge of the processes relating to legal aid could assist in providing direction to service users.

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

AOD dependency can often contribute to strained relations within a family context and a source of ongoing expense associated with treatment as well as in some cases, behavioural issues. These complexities can lead to arrangements that often create a significant financial impost upon the family and lead to difficulties with family relationships. This can contribute to challenges in communication, as well as other issues.

It should not be assumed that the family will have capacity to provide additional financial support to assist with legal matters especially if there are competing financial obligations relating to funding treatment. The provision of financial support from family members covering the legal expenses of individuals experiencing AOD dependence should be considered on a case by case basis.

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

We note that the list detailing categories of priority clients in this option does not specifically include individuals experiencing AOD dependency. While AOD dependency often co-occurs with a number of the elements listed, in light of the associated harms and impact it should be listed as a standalone item.

We appreciate the opportunity to provide further content to this review process and can be contacted should you require further detail.

Sincerely,

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Acting Executive Officer
Victorian Alcohol and Drug Association

References

Saunders, P & Wong, M 2012, *Analysis of Legal Aid NSW Client Social Exclusion Survey Data*, Social Policy Research Centre, UNSW, viewed 6 June 2017,
https://www.sprc.unsw.edu.au/media/SPRCFile/Phase_3_ReportFINAL.pdf