

# Applying for Legal Assistance

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## 3.1 Introduction

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This chapter contains information about applying for a grant of assistance including how to fill in the application, where to send it, documents which must accompany an application, obtaining urgent grants and how VLA deals with late applications.

## 3.2 The Application for Legal Aid Form

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Any person who wants legal assistance must fill in an application for Legal Aid and send it to a VLA office. Each application form comes with a guide to legal assistance which contains crucial information for the applicant.

Application forms are available from VLA and most solicitors' offices. See Appendix 1A for the addresses of VLA's offices.

Anyone who wants multiple copies of the application form should write to or telephone the Knowledge and Community Resources Division at VLA's Melbourne office 9269 0326.

### 3.2.1 Filling In The Application

An application must be fully and accurately completed and signed by the applicant or legal guardian if one is appointed. VLA must have sufficient information to decide:

- the merits of the application;
- if the applicant is financially eligible for legal assistance (see Appendix 2I);
- what, if any, payments towards the cost of legal assistance VLA will require from the applicant; and
- the conditions of assistance, including the stage to which VLA will make the initial grant.

A covering letter or memorandum about the merits of the application will usually be necessary.

The applicant's solicitor should also ensure that all relevant information is attached to the application, including:

- copies of court documents; and
- proof of the financial position of the applicant and financially associated persons (if any). See section 3.3 of this chapter.

### **3.2.2 Solicitor's Certificate**

If a solicitor sends an application form on behalf of an applicant, the solicitor must sign a certificate stating that the case has legal merit and deserves assistance. If the certificate is not signed VLA may assume that the case does not deserve assistance.

### **3.2.3 No Charge For Application**

The Act does not allow a charge to be made for preparing an application or for providing information about filling in an application. This work is included in the definition of "legal advice", (s. 2) which must be provided free of charge (s. 26).

Attempting to charge for this service is a ground for the removal of a practitioner's name from VLA's referral panel.

### **3.2.4 Further Applications And Grants**

#### ***Cost Ceilings***

If an applicant:

- applies for assistance or seeks a further grant of assistance; and
- has previously been granted assistance for that matter; and
- it is a matter to which a cost ceiling applies,

the costs previously incurred by VLA are taken into account in determining the cost ceiling for this matter.

#### ***Example:***

Mr & Ms Smith have a long running dispute over residence of their child John. In 1993 both Mr and Ms Smith were granted assistance and VLA assisted the child representative. VLA incurred costs of \$5,000 for Mr Smith, \$4,500 for Ms Smith and \$2,500 for John's representative.

The cost ceiling for an adult party in the Family Court is \$12,000 and for a child representative is \$18,000.

In 1997 the dispute flares up again. Assuming the guidelines and the means and merits tests were met VLA would limit assistance to \$7,000 for Mr Smith, \$7,500 for Ms Smith and \$15,500 for the child representative.

#### ***Further Applications***

VLA requires a person to lodge another application for a new matter unless the matter involves summary criminal proceedings and a previous grant of assistance for such a matter is less than three months old. An appeal is regarded as a new case.

### **Further Grants**

VLA may make further grants of assistance if:

- the assistance was insufficient to resolve the matter and a stage of matter limit or cost ceiling has not been reached - for example, a trial which takes longer than expected.
- The scope of the matter changes - for example, a new presentment with additional or significantly different charges is filed.

If the first grant of assistance, or the last grant were made twelve months or more ago, VLA will usually require the assisted person to fill in a financial statement before it considers her/his request.

### **3.2.5 Applications by Children**

If a child is under the age of 18, VLA expects the parent or guardian of the child to complete and sign the application for assistance. VLA will only accept applications signed by children if the child understands the nature of the proceedings and the obligations which attach to a grant of assistance, and:

- there is a conflict of interest between the child and the parent or guardian; or
- it is not practical or appropriate for the parent or guardian to complete and sign the application, or the parent or guardian is unwilling to assist the child. Where the Family Court requests the appointment of a child representative, VLA does not require the child or children to make an application for assistance.

### **3.2.6 Applications by Staff**

An application for assistance made by a member of VLA staff will be referred for decision to an independent reviewer, as delegate of VLA.

### **3.2.7 Applications to Take Legal Action Against VLA**

Any application for assistance to begin or continue a legal action against VLA requires a decision of the board of VLA.

## **3.3 Financial Information**

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VLA assesses the income and the assets of both the applicant and any financially associated persons. See Appendix 2I, containing the Means Test, for the definition of a financially assisted person. Unless the case is urgent, an applicant must send a photocopy of proof of means with the application form.

### 3.3.1 Proof of Income

The following proof of income must be provided:

- **Employed applicants and financially associated persons**  
Latest pay slip or letter from the employer showing earnings.
- **Social Security Recipients**  
Current pension or health card.
- **Self-Employed**  
Latest tax return, profit and loss statement and balance sheet.

### 3.3.2 Proof of Savings and Investments

When an applicant and any financially associated person have savings and investments less than \$860 and their only income is a Department of Social Security pension or benefit, no proof of savings and investments is required.

All other applicants must provide proof of their and their financially associated persons' savings and investments, including statements for the last three months from;

- banks,
- building societies, and
- credit unions.

### 3.3.3 Additional Proof

VLA may require additional verification of income and assets, such as:

- tax returns and assessment notices for the previous two years;
- bank passbooks or statements showing transactions for the previous twelve months;
- annual company or trust returns for the previous two years;
- rate certificates for the current year;
- proof of payments of rent or mortgage instalments for the previous six months;
- statutory declarations about the applicant's ability to pay legal costs; or
- statutory declarations from persons who contribute to the applicant's financial support.

VLA may also require an applicant to consent to other persons, such as banks, employers and accountants, providing financial information about him or her.

### 3.3.4 Urgent Cases

VLA will not require immediate proof of income or assets where the case is urgent. See 3.7 for further information.

Any legal assistance provided is conditional on subsequent proof of eligibility.

### 3.3.5 Proof of income and asset waiver

Subject to 3.3.2 VLA will not require proof of income or assets in summary criminal proceedings, bail applications and Children's Court proceedings if:

- the applicant is a child and there are no financially associated person(s) (FAP); or
- the applicant is a child and the FAP should be disregarded for the purposes of the means test; or
- the applicant has been remanded into custody and the matter for which legal assistance is sought relates to a bail application; or
- the applicant is in custody and the matter for which legal assistance is sought relates to a summary case that will be heard and determined within seven days of the date of the application for legal assistance; or
- the applicant is in custody; and
  - has no income but was, prior to being taken into custody, in receipt of a Centrelink benefit as their sole source of income, and
  - has assets of less than \$865, and
  - the matter for which legal assistance is sought relates to a summary criminal proceeding.

If waiver of proof of income and asset was granted because the applicant was in custody and during the currency of the grant of legal assistance, the applicant is released from custody, proof of income and assets will be required before any further assistance may be granted.

In all other proceedings where the applicant is in detention, proof of income (except Centrelink benefits) and assets will be required in accordance with 3.3.1, 3.3.2 and 3.3.3.

VLA will deem that it has received valid proofs of income and assets if:

- the applicant has received a grant of assistance in the last six months, AND
- documentary proofs of income and assets were provided by the applicant at the time of that previous grant, AND
- those documentary proofs are still current.

### 3.3.6 Time Limits

It is the obligation of the applicant or the applicant's legal practitioner to comply with time-limits in legal proceedings. VLA will not accept responsibility for the expiry of any statutory or judicial time limit irrespective of whether an application for assistance was lodged prior to its expiry.

### 3.3.7 Faxed Applications

VLA will accept a faxed application. Proof of income, assets and investments should be faxed with the application.

A solicitor must keep the original application and original/copied supporting documentation on file but need not send them to VLA.

### 3.4 Where to Send the Application

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VLA's regional offices have "catchment areas". These are usually the cities, towns or suburbs closest to the office and are listed in Appendix 3A. Any locality not included in a regional office catchment area is considered to be part of the Melbourne office catchment area.

#### 3.4.1 Catchment Areas

VLA considers that it is in the interests of both practitioners and VLA that, where possible, practitioners deal with only one VLA office. Therefore, VLA developed the following guidelines about where matters are handled.

##### ***Child Representatives***

The Grants Division of the Melbourne office makes and administers all grants of assistance for child representation in family law matters.

##### ***Committals and Criminal Trials***

All applications for assistance in committals and criminal trials should be sent to the Grants Division of the Melbourne office.

##### ***Public Interest Cases***

Applications for assistance in public interest cases which affect sections of the community as well as individuals, should be sent to the Grants Division of the Melbourne office. They require approval of the Managing Director.

##### ***Application sent by a Solicitor***

If a solicitor is acting for an applicant, the application form should be sent to the VLA office for the catchment area in which the solicitor's office is located.

##### ***Application sent by the Applicant***

If an applicant has not appointed a solicitor, she/he should send the application to the most convenient office.

##### ***Family Law Cases***

If the application is for a family law case and the applicant has received assistance for a family law matter in the past, the application should be sent to VLA office which made the previous grant.

The only exception to this rule is where the initial grant has been finalised for more than three years. In this case the application should be sent to the relevant office as indicated by the other guidelines.

### ***Prior Applications***

If the applicant has previously applied for assistance in the same or a related matter, the application should be sent to the VLA office which dealt with the previous application. If the prior application was refused assistance, the later application will be treated as a request for reconsideration if it relates to the same matter.

## **3.5 Late Applications**

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### ***Criminal Cases***

If VLA receives an application for assistance from a practitioner within 14 days or less of the date fixed for a trial, and there is no reasonable excuse for this late application, VLA may treat the practitioner's conduct as grounds for removing her/his name from VLA's referral panel (s. 30).

### ***Civil Cases***

If a case is fixed for trial and VLA receives either a late application for assistance or a late application to extend a grant of assistance, VLA may require the applicant to adjourn the case at the applicant's expense. This will ensure that VLA has a reasonable opportunity to consider the application.

## **3.6 False Statements**

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The Act (s.44(1)) states:

"A person who in or in connection with an application for legal assistance or the provision of legal assistance under this Act

- (a) knowingly makes a false statement; or
- (b) supplies information that person knows to be false; or
- (c) fails to disclose information which that person knows to be relevant to the application or to the provision of legal assistance is guilty of an offence".

The penalty for breach of this section is \$2,500 or imprisonment for six months.

A court may order payment to VLA of the expenses it has incurred if an assisted person is convicted of making a false statement (s. 45). However, a legal practitioner could also be guilty of an offence under section 44 (1).

### **3.7 Urgent Grants**

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VLA may provide an urgent grant of assistance in the following circumstances:

- Family law cases involving child abduction where recovery of the child is sought;
- Intervention order cases in the Magistrates' Court;
- Children's Court cases; and
- Magistrates' Court criminal cases.

In the case of urgent family law matters regarding recovery of a child, VLA may give an urgent grant over the telephone on the condition that:

- (i) the applicant or the applicant's practitioner send a written application for assistance within the time specified by VLA, or within 14 days of the urgent grant;
- (ii) the applicant qualifies for assistance;
- (iii) the information contained in the application for assistance is consistent with the information provided by the applicant's practitioner on the telephone\*; and
- (iv) the applicant or the applicant's practitioner send the necessary proof of income or assets.

In all other cases where VLA may provide an urgent grant of assistance, the practitioner may proceed with the hearing without prior confirmation of aid from VLA on the condition that:

- (i) the applicant or the applicant's practitioner send a written application for assistance with the accompanying proof of means within 14 days of the hearing date;
- (ii) the practitioner is satisfied that the application meets VLA's merits test; and
- (iii) the applicant otherwise qualifies for assistance.

If the applicant or the applicant's practitioner does not comply with all of these conditions, VLA will not confirm the grant of aid unless satisfied that the non-compliance was due to exceptional circumstances.

Where VLA makes an urgent grant for a matter covered by Fee Table A1 or A1(i) the fee will be the Urgent Grant fee specified in that table.

The Urgent Grant fee applies to all Table A1 applications for assistance made no sooner than the day before the substantive hearing, regardless of the mode of application. The Urgent Grant fee also applies to applications for grants made by fax, post, DX or hand delivery where the hearing date is the day the application is received or the subsequent day.

### 3.8 Assessment of Applications

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The decision whether or not to grant legal assistance is made according to the Act and the determinations of the Board of VLA which are reflected in this handbook at the date of its publication.

If assistance is granted, it will usually start on the day when the application was signed. However, it will start on date of receipt where there has been delay in submitting the application to VLA.

VLA does not grant assistance retrospectively.

If assistance is refused, an applicant can ask for a reconsideration and a review of this decision. For information about this see Chapter 7.

Appendix 3A

## Regional Office Catchment Areas

Note: If a locality is not included in a regional office catchment area, the locality is in the Melbourne office's catchment area.

### Metropolitan Regional Offices

<p><b>Westernport, Dandenong</b> Berwick Cranbourne Dandenong Dingley Doveton Endeavour Hills Keysborough Langwarrin Narre Warren Noble Park Pakenham Springvale</p>	<p><b>North Western Suburbs, Broadmeadows</b> Broadmeadows Essendon Fawkner Glenroy Moonee Ponds Tullamarine</p>	<p><b>Outer Eastern Suburbs, Ringwood</b> Bayswater Belgrave Blackburn Boronia Box Hill Box Hill North Burwood Burwood East Chirnside Park Coldstream Croydon Doncaster Doncaster East Donvale Fernree Gully Ferry Creek Heathmont Kallista Kalorama Kilsyth Knoxfield Launching Place Lilydale Mitcham Mooroolbark Mt Dandenong Mt Evelyn Nunawading Olinda Park Orchards Ringwood Rowville Sassafras Scoresby Selby Sherbrooke Surrey Hills Templestowe Templestowe Lower The Basin</p>	<p>The Patch Tremont Upwey Vermont Wantirna Warburton Warrandyte Wonga Park Yarra Junction</p>
<p><b>Peninsula, Frankston</b> Aspendale Balnarring Carrum Chelsea Crib Point Dromana Edithvale Flinders Frankston Hastings Mornington Mt Eliza Rosebud Rye Somers Somerville Sorrento</p>	<p><b>North Eastern Suburbs, Preston</b> Banyule Coburg Eaglemont Heidelberg West Ivanhoe Macleod Preston Reservoir</p>		<p><b>Western Suburbs, Sunshine</b> Altona Avondale Heights Deer Park Keilor Laverton Maribyrnong Newport Niddrie St Albans Sunshine Werribee</p>

**Country Offices**

<p><b>Loddon-Campaspe, Bendigo</b>                      Bendigo                      Castlemaine                      Charlton                      Cohuna                      Daylesford                      Eaglehawk                      Echuca                      Gisborne                      Heathcote                      Huntley                      Kerang                      Kyabram                      Kyneton                      Maldon                      Maryborough                      Rochester                      Romsey                      St Arnaud                      Strathfieldsaye                      Swan Hill                      Woodend</p>	<p><b>Barwon, Geelong</b>                      Aireys Inlet                      Anglesea                      Apollo Bay                      Bannockburn                      Barwon Heads                      Bell Park                      Bell Post Hill                      Belmont                      Birregurra                      Breakwater                      Camperdown                      Casterton                      Clifton Springs                      Cobden                      Colac                      Coleraine                      Corio                      Drumcondra                      Drysdale                      East Geelong                      Fairhaven                      Geelong                      Geelong West                      Grovedale                      Hamilton                      Heywood                      Highton                      Jan Juc                      Koroit                      Lara                      Leopold                      Lethbridge                      Little River                      Lorne                      Macarthur                      Meredith                      Moolap                      Mortlake                      Newcomb                      Norlane                      North Geelong                      Ocean Grove                      Penshurst                      Peterborough                      Port Fairy                      Portarlington                      Portland                      Queenscliff                      South Geelong                      St Leonards                      Terang                      Timboon                      Torquay                      Warrnambool                      Waurin Ponds                      Whittington &amp; Winchelsea</p>	<p><b>Gippsland, Morwell</b>                      Bairnsdale                      Cowes                      Drouin                      Foster                      Korumburra                      Lakes Entrance                      Leongatha                      Maffra                      Moe                      Morwell                      Orbost                      Sale                      Trafalgar                      Traralgon                      Warragul                      Wonthaggi                      Yarram</p>
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