

# Reconsiderations, Reviews, Complaints And Disputes

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## 7.1 Introduction

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Any person affected by a decision about the provision of legal assistance may ask for a reconsideration of the decision (s. 34). A “person” includes applicants for assistance and assisted persons.

If a person is dissatisfied with the result of the reconsideration, she/he may apply for a review by an independent reviewer.

The decisions which can be reconsidered or reviewed are defined (in s.36(5)) as -

- (i) a decision refusing to provide legal assistance under the *Legal Aid Act*;
- (ii) a decision refusing to provide legal assistance under the Act of the nature or to the extent applied for;
- (iii) a decision imposing a condition on the provision of legal assistance under the Act or varying adversely to an assisted person a condition so imposed; or
- (iv) a decision to terminate or vary the provision of legal assistance; or
- (v) a decision of VLA under section 48.

If a solicitor or barrister is not satisfied with fees payable by VLA, the work or brief should not be accepted. Decisions as to fees payable are not reviewable at the instance of either a practitioner or the assisted person.

VLA Board determinations and Commonwealth guidelines setting costs ceilings cannot be reviewed.

## 7.2 Reconsiderations

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Requests for reconsideration must be made within 14 days after the date of the decision. This time limit cannot be waived or extended where the request for reconsideration relates to a criminal trial or a criminal appeal in the Supreme Court or the County Court (s.34 (1A)).

VLA's practice regarding reconsideration of decisions is to:

- (i) fully inform an applicant about the rights of reconsideration and review:
  - when the applicant applies for assistance;
  - when informing the applicant about the results of the application;
  - during the case, if appropriate; and
  - if VLA terminates the grant of assistance.
- (ii) give any person requesting a reconsideration a reasonable opportunity to provide reasons why VLA should change its decision.
- (iii) if the original decision maker is not minded to reverse his/her decision, have another staff member reconsider the decision wherever possible. This person has the power to change the original decision.
- (iv) notify the person who requested the reconsideration of the result and of her/his right to have the decision reviewed by an independent reviewer.

### 7.3 Reviews

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#### 7.3.1 Independent Reviewers

The Attorney-General has appointed a panel of independent reviewers pursuant to section 18 of the *Legal Aid Act*

Under s.19, the functions of the independent reviewers are;

- to exercise any power or function delegated by VLA;
- to review decisions under s.35; and
- to hear and determine any matter under s.30.

The independent reviewer may, in the interests of justice, reconsider any decision she/he has made and confirm, vary or reverse the decision.

#### ***Requests for Review***

Requests for review by an independent reviewer must be made in writing within 21 days after the date of the reconsideration. This time limit cannot be waived or extended where the request for reconsideration relates to a criminal trial or a criminal appeal in the Supreme Court or the County Court (s.35 (1A)).

An independent reviewer may only review the actual decision referred to him/her (s.35(2A)(a)) and must comply with and give effect to the Act, the Commonwealth/VLA Agreement and the determinations of VLA (s.35(2A)(b)). These determinations include VLA's cost ceilings and the matters in which VLA can provide assistance.

An independent reviewer may confirm, vary or reverse a decision (s.35(2)).

The decision of an independent reviewer under s.35 is final and conclusive (s.35(3)).

### 7.3.2 Primary Decision Maker

If the independent reviewer was the primary decision maker, (for example, considering applications for assistance by members of staff and their families), his/her decision may be reconsidered (s.34) and then reviewed by other independent reviewers who can confirm, vary or revise the decision under s.36. That decision on review is also final and conclusive.

## 7.4 Complaints

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Complaints about the conduct of VLA staff, or its compliance with proper procedures, should be made to the Managing Director of VLA. He or she will usually refer them for investigation to the General Manager of the division responsible for that member of staff or the Investigations and Compliance Officer.

Complaints about the (professional) handling of a matter by a private practitioner will be investigated by the Investigations and Compliance Officer. If the complaints are substantiated, VLA may exclude the practitioner from its referral panel under s.30 (see 5.3.3, Chapter 5).

Complaints about a solicitor's conduct can also be made to the Victorian Lawyer's Registered Professional Association Ltd and the Legal Ombudsman.

Complaints about VLA's compliance with proper procedures under the Act can also be made to the Ombudsman.