

Welcome to the fifth edition of E News, VLA's newsletter for section 29A panel practitioners.

Do you have suggestions for inclusion in future newsletters?

This newsletter aims to assist you, as a panel practitioner, in dealing with the requirements of the simplified grants process. To this purpose, we would like feedback from you. If you are unclear about a policy or guideline, other practitioners may share the problem. What problems do you encounter? What works and what does not work? Which issues would you like to see addressed and clarified by way of a newsletter article? Let us know, by contacting Gerda White, Compliance Coordinator at gerdaw@vla.vic.gov.au

VLA's RDM Service

A court can only hear a matter if a Family Dispute Resolution (FDR) certificate has been issued. Whilst there is provision to obtain an exemption from FDR under certain circumstances, this does not automatically mean that a grant for RDM is inappropriate. Most frequently the exemption is sought on the basis of family violence. The RDM service is equipped to deal with such cases. It conducts an assessment of the needs for a successful dispute management conference in each case. A conference may take place with all parties present in the same room, by way of a shuttle between separate rooms or with telephone link ups. This (and the service attending regional VLA offices when necessary) also makes the service accessible to clients in remote locations.

The *Notes on Guidelines* provide commentary on this issue.

If in doubt, practitioners should contact a case manager at the RDM service on 9269 0500 or via email at rdm@vla.vic.gov.au for advice.

Dissolution proceedings

Assistance for dissolution proceedings can only be considered in the very limited circumstances which are set out in Guideline 11 of the family law guidelines. To qualify for assistance the applicant's case must satisfy guideline 11.1.(a) **and** either (b) or (c).

Examples of when it is appropriate to recommend assistance are provided within the guideline itself.

Practitioners must also consider the VLA divorce workshops, where a solicitor provides advice and assists with required documentation. Applicants are expected to access the workshops at first instance. A grant of aid is only appropriate if attending the workshops will not assist the client due to the complexities of the divorce application (eg substituted service).

Language difficulties alone may not be sufficient as a VLA lawyer may be able to assist the applicant with the help of an interpreter. Practitioners must make necessary enquiries and address the issue/s in a file note.

Unaided property matters

Occasionally practitioners will issue applications for property proceedings that run in parallel with applications concerning children's issues. Only the children's issues will attract a grant of aid. Practitioners should be mindful of the following:

- VLA will not pay for specific events or items of work that relate only to the property issue
- Assistance will not continue where children's issues could be settled but such settlement is prevented by property issues. VLA will not pay for additional costs incurred.

Practitioners must also have regard to the orders sought and the likely outcome of any property settlement. If an assisted person is likely to receive sufficient funds from a settlement towards the end of proceedings to finance the costs of legal representation, assistance cannot be sought / granted.

Bail revocations

Applications to vary bail conditions are outside of VLA's guidelines and are generally not funded. Applications to defend an application to revoke bail are treated like bail applications. The Commonwealth guideline makes specific reference to such applications. The assessment is made subject to the likelihood of bail being granted (more likely than not).

State Trustees

Where an applicant declares that their finances are managed by State Trustees and their assets would affect the applicant's eligibility for aid, the practitioner must first ask State Trustees whether they are prepared to release funds for the purpose of funding legal costs. Only if State Trustees refuse to release monies should the application form be submitted. A copy of the letter from State Trustees must be attached.

Financially associated persons (FAPs) and adult applicants

In the scenario where an adult applicant lives with a FAP and that person refuses to provide VLA with their financial information or assist the applicant with the costs of legal representation, this is not sufficient to exempt the FAP from VLA's means test. A Statutory Declaration is therefore of no effect in such situations. Assistance would be refused because VLA cannot be satisfied that the client cannot afford the costs of legal assistance (S24 of the Legal Aid Act 1978).

Practitioner assessment of matters

Where a practitioner is not certain as to whether a matter falls within the guidelines or is meritorious, the practitioner is required to contact VLA to obtain a ruling from the Compliance Unit prior to submitting a checklist. Once a practitioner ticks the box certifying that the matter is within VLA's guidelines and has merit, the application **will** be processed on that basis. It is not acceptable for a practitioner to later rely on attached covering letters questioning their assessment.

Solicitor certification of proof of means

A practitioner should not certify that proof of means is on file unless:

- a) the documentary proof required has been obtained and is retained on file; and
- b) the practitioner is satisfied that the information contained in the documentary proof of means is consistent with and substantiates the information provided by the client on the application form or by way of instructions.

Please remember that practitioners do not conduct the actual means test. In all cases **VLA** will assess an applicant's financial eligibility.

Documents to be retained after transfer of a grant

When a transfer of aid has been approved by VLA

- a) the original practitioner must ensure that sufficient documents are retained to enable a compliance check to proceed (application form, checklists, proof of means, proof of matter, relevant file and attendance notes, court appearances, court documents, briefs, any material relevant to guideline and merits assessment etc). (The same principle applies where a file is released to the client.)
 - b) the new practitioner must ensure that a copy of the application form and current proof of means are on file.
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Child support matters – fees

Practitioners should note that at first instance **all** child support matters must be referred to VLA's Child Support Legal Service. Only in the case of a conflict of interest or other compelling reasons should a grant of aid be recommended by a private practitioner. Special fees have been fixed for child support matters and are included at the end of Fee Schedule 1L of Appendix 6F of the VLA Handbook. There is a checklist available for such matters which is structured in accordance with the fee stages.
