

10th edition June 2010

We have now evaluated your responses to our survey on SGP workshops. A high level of interest in criminal cases was expressed by 69.2% (summary) and 57.1% (indictable) of participants. This was followed by family law matters (48.8%) and child protection cases (40.6%).

Following strong interest from practitioners in regional Victoria, the next workshop will take place in Shepparton on Wednesday 23 June. You may have seen the invitation. As most firms in regional Victoria deal with a full range of cases, workshops held in the country will be open to all simplified grants process related topics, driven by your suggestions and input.

We are looking forward to meeting with you. Meanwhile we will continue our planning to meet the information needs you identified in the survey, and to ensure that future workshops will be a substantial benefit to you.

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Criminal law

Assessment and Referral Court List

A three-year mental health list pilot commenced at the Melbourne Magistrates' Court on 22 April. The Board of VLA has approved funding for Assessment and Referral Court (ARC) List cases. Applicants will be eligible to have their matter listed in the ARC list if they:

- have a mental illness, intellectual disability, acquired brain injury, autism spectrum disorder or a neurological impairment (e.g. dementia); and
- have substantially reduced capacity in at least one of the following; self-care, self management, social interaction and/or communication; and
- would benefit from receiving services.

Please refer to the amended Notes on the Guidelines and the amended fee tables A1 and A1(i) for more details, noting specifically that the ARC List eligibility hearing has been split into two separate court events:

- a) ARC List eligibility hearing (decision whether client will be admitted to the list) – we will pay \$116
- b) ARC List individual support plan ratification hearing (support plan negotiated and agreed) – we pay \$208.

We would like to stress that where assistance has already been granted pursuant to guideline 1.2, the existing grant will not cover the case in the ARC List. An extension of assistance must be sought. This means that the fees specific for cases in the ARC List (eligibility assessment hearing, individual support plan ratification hearing and review hearing) can only be claimed if a specific grant for ARC List matters is in place.

Proof of matter

Proof of matter

Section 5.3 of the S29A Practitioner Manual requires practitioners to have proof of matter on file. Proof of matter needs to substantiate the following:

- a) that the matter exists
- b) that the guidelines/merit requirements are met
- c) that all costs claimed/paid have been incurred.

In summary criminal proceedings, proof of matter can be satisfied by documents such as charge sheets, certified extracts, case summary, or supercase printout. You do not necessarily require all of these documents, however:

- if there are issues of merits of defence, a practitioner may need the summary and/or the statements to support the recommendation
- if a guideline assessment relies on aggravating circumstances (e.g. assault charge), a practitioner will need the summary to support the recommendation.

You must also be satisfied that the documentary proof of matter relates to the current matter for which assistance is sought, and supports the case.

Prior convictions

Often practitioners need to assess whether a copy of the applicant's prior convictions must be retained on file. Please note that a copy of the prior convictions is required where the guideline assessment and your recommendation is based on them.

For example, a charge of breaching a suspended sentence would not require copy of priors because the penalty threshold would be met by nature of the offence. A charge of theft, on the other hand, would require a copy of the priors because on face value a guideline assessment could not be made.

Where a copy of the priors is not available, it is acceptable for a practitioner to copy them from the prosecutor's records if:

- a) it is clearly noted on file that this is a copy of the record (as opposed to notes based on your client's instructions or your memory of the client's history); and
- b) the record shows date of sentence, court location, charge and penalty received.

Proof of means

Disclosure and proof of means for Financially Associated Persons

You may occasionally represent an adult applicant who instructs that there is a Financially Associated Person (FAP), but that the FAP is not prepared to pay costs.

In these cases, it is not sufficient for an adult applicant's FAP to provide a statutory declaration that they are not willing and/or not able to pay, in order to exempt them from the disclosure and proof of means provisions. The FAP's willingness to assist is not a relevant factor to consider. Whether an FAP is able to assist will be determined by VLA through the means test, based on the fully disclosed finances.

For example, the parents are FAPs and full disclosure/means test is required where:

- a) an adult applicant is living with his parents and not paying board
- b) an adult applicant lives independently but receives \$75 per week from his parents.

You may need to consider whether the nature of the arrangements are temporary or arising from a short-term emergency only. In these cases, please call the compliance team and ask for a ruling.

VLA may refuse assistance if we are not satisfied that an applicant whose FAP has refused to provide their financial details does not have the financial resources to fund their matter privately.

Maintenance and child support payments – Proof of means requirements

Please remember that you must obtain the last three months of bank statements where an applicant receives in excess of \$130 per week in maintenance and/or child support payments (see Notes on the Guidelines). Practitioners are encouraged to use the worksheets which clearly document requirements like these.

Cost issues

Indictable crime reading fees

Assistance for reading fees should be in place before reading the documents. Retrospective assistance may not be granted after the reading is complete. Assistance for requests made shortly before trial may also be reduced if the reading can not be completed within the hours you are seeking. For example, VLA would not grant 50 hours of reading two days before the trial.

Family law cases – Subpoena list

VLA has revisited its policy for payment of fees and changed its interpretation of the fee provisions for subpoena lists.

A fee of \$310 is payable for subpoena list. The fee covers the issue of subpoena, service, notice of intention to inspect, appearance (if necessary) and inspection of documents at court.

This means that VLA will pay the \$310 fee in all cases, including those where objections have not been filed and an appearance is not required. Please note also that the fee can only be claimed if a party participates in the subpoena process (i.e. that minimum documents have been inspected).

General

New Commonwealth Guidelines

New guidelines will apply to Commonwealth cases once the new National Partnership Agreement for legal aid with the States and Territories has been signed. This Agreement will settle arrangements for legal aid service delivery for the next four years. We will keep you informed of the new Commonwealth Guidelines that will come into effect after the Agreement has been signed.

Transfers

If you are requesting a transfer of a grant of assistance, please keep in mind that it will only be allowed if it is cost neutral to VLA. VLA will only allow additional costs if there is a conflict of interest or other extraordinary circumstances such as an objective and demonstrable breach in practice.

Please also ensure that you have an application form, proof of means and sufficient documentation on file to enable you to make a recommendation before certifying a checklist.

Contact details

Please remember to keep your contact details up-to-date. This includes addresses, telephone numbers and email addresses. If any of your details have changed, please let us know by emailing compliance@vla.vic.gov.au