

12th edition December 2010

Thank you to everyone who attended the SGP workshops in Bendigo and Geelong. Feedback was again positive and we will keep you posted on future sessions. We find that they work best if you raise questions and problems for discussion. This way the workshops remain focused on your needs.

The roll-out of ATLAS+, the new grants management system, is set for 18 January. All members of the S29A panels for the SGP can use the web-based portal for all matter types. This includes applications for matters which proceed through the traditional grants process.

ATLAS+ will provide faster responses, such as instant online confirmation of grants in most SGP matters and advice on whether your client meets VLA's means test, including what contribution, if any, may be sought by us.

You would have received an invitation to register for web portal access to ATLAS+ and to attend a training session after having viewed the CD enclosed with that letter. I encourage you to take up these opportunities and to contact the ATLAS+ Helpdesk on 9269 0600 or atlashelpdesk@vla.vic.gov.au if you have any questions.

Some important changes to services that will affect you in the lead up to and during the roll-out are also covered in this newsletter. Please familiarise yourself with them and, if you haven't already, register for ATLAS+ now to help minimise delays and improve our service to you. To register, select the ATLAS registration link on the VLA website homepage.

All the best for a happy and safe festive season.

Gerda White

VLA Compliance Coordinator

Key contacts

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Criminal law

Childrens' Court criminal cases

VLA aims to assist children with criminal cases in the Children's Court. However, a grant of assistance is not available for a minor matter. As an example, the guideline lists public transport fare evasion. Other offences that fall into this category are having feet on seats, smoking on a train, spitting and drunk in public.

Neuro-psychological reports

For sentencing considerations, the court must take into account the issue of an Acquired Brain Injury (ABI) where raised. A report is required from a neuro-psychologist to prove the ABI, so when will VLA provide funding?

Practitioners must be satisfied that the client's history reveals either brain trauma or a drug/alcohol addiction, and that clear symptoms (for example, blackouts, memory loss, seizures etc) displayed by the client make it a fair and reasonable assumption that the client has an ABI.

Practitioners should not seek an adjournment of a case to obtain a neuro-psychological report unless satisfied of the above. A grant cannot be provided based only on the suggestion that a client may have an ABI or that a client is addicted to alcohol and/or drugs.

Family law

Unaided property cases

While VLA has stopped funding property issues, practitioners do occasionally ask if they can issue an application for property settlement and conduct the case alongside the application for parenting orders.

VLA would not usually oppose this course of action. However, several issues need to be considered before proceeding:

- only the children's issues will attract a grant of assistance. VLA will therefore not pay for specific events (for example, conciliation conference) or items of work (for example, documents) that relate only to the property issue
- assistance will not continue where children's issues could be settled, but the settlement is prevented by property issues
- assistance cannot be granted for property or children's issues if an assisted person is likely to receive funds from a settlement at the end of proceedings that could finance the costs of legal representation. VLA would expect that the whole case would be conducted on a basis of payment at the end.

Special circumstances

Some of VLA's guidelines have special circumstances built into them. For this reason, practitioners cannot recommend assistance based on special circumstances where the guideline has not been satisfied.

Examples:

Children's Court guideline for criminal cases: where the guideline is not satisfied (for example, fare evasion), assistance cannot be recommended based on provisions for special circumstances solely because the applicant is a child.

Divorce applications: the guideline includes special circumstances as one of the criteria. Where the guideline is not satisfied (for example, divorce not imperative), assistance cannot be recommended based on provisions for special circumstances.

Infringement cases: where the guidelines are not met, assistance cannot be recommended under special circumstances.

Cost issues

Family law cases - Distance fees

We have been asked if metropolitan firms located in Frankston, for example, can charge a distant venue fee for hearings in Melbourne.

VLA introduced the distant venue fee to ensure that practitioners and clients in *rural and regional* Victoria are not disadvantaged. Based on this rationale, practitioners from firms based in metropolitan and suburban Melbourne are not entitled to the fee to travel within Melbourne, or to or from the CBD.

Children's Court (Family Division) cases

Hearings in the Family Division of the Children's Court are often referred to as 'mentions.' The name of the hearing does not necessarily determine the fee payable. The principle set out in the preamble to Table A2 provides that a directions hearing fee is payable if the interim accommodation order (IAO) is continued by consent, without any substantial negotiation.

The reduced fee of \$140 therefore applies to:

- roll over appearances
- IAO appearances which for some reason cannot proceed, and the IAO is continued without changes that require negotiations. Practitioners who claim the full IAO fee in these scenarios must provide proof on file that substantial negotiations have taken place (for example, file note indicating which issues needed to be settled).

Family law cases – Court filing fees

From 1 November 2010, a reduced fee of \$60 is payable for legal aid clients filing an initiating application or a response to final orders in the Family, Federal Magistrates or State Magistrates Court. The only exception is that the FMC does not levy the fee for filing applications or responses dealing with child support matters.

The fee is only payable once, providing the client's financial circumstances have not changed, making them ineligible for the reduced fee. No further fees are payable when setting the case down for trial or for subsequent trial days.

Practitioners can claim the fee as a disbursement on their invoice without seeking an extension of assistance. Please note that the fee for filing consent orders remains \$80 and cannot be reduced.

For more information, see the Family Law Courts website

Summary criminal cases – transcription of ROI

The fee set in the preamble to Table A1 is for the clerical task of producing a hard copy of the record of interview (ROI). To claim the fee, the transcription *must be necessary*. It would not normally be required for pleas of guilty, but would be considered necessary where the ROI is disputed or in issue.

The fee is not intended to cover a practitioner's preference to read a transcript over listening to a recording. The fee can also not be claimed in situations where a practitioner listens to the recording and makes notes. This is included in the preparation component of the lump sum fee.

General

Application form

When completing an application for assistance, please ensure that applicants complete the relevant assets information regarding bank accounts and cars. Even if a bank balance is '0', this should be noted in the application form.

A reminder also that if you do not register for ATLAS+ web portal access, you will need to submit the most up-to-date version of our 'Grants for legal assistance – guide and application form' available on the forms page of the VLA website. If the correct form is not used, or if any questions are not answered, the application will be returned to you and you will be required to re-sign and submit using the new form.

File keeping

Separate files must be maintained for matters funded under separate grants of assistance. A compliance officer must be able to clearly identify what material belongs to which file and to satisfy this requirement, as a minimum you should keep separate spikes/folders within the one file.

Applications for family violence cases (intervention order matters) must be maintained separately from the substantive family law case.

Applications in Family Violence Protection Act (Intervention order) cases

Practitioners on VLA's S29 panel for Children's Court (Family Division) cases (child protection matters) can submit applications for proceedings in the Children's Court under the Family Violence Protection Act via the SGP, by way of checklist.

Means queries

Please contact the Assessment Team on 9606 5353 if you have any questions about whether or not your client qualifies under VLA's means test. These queries should only come to the Compliance Team if linked to other substantive issues such as guidelines, merits, or documentary requirements.

ATLAS+ and temporary changes to services

There are some important changes to services that practitioners may experience in the lead up to and during the roll-out of ATLAS+:

- there will be delays in payments being made via EFT and cheque for a short time prior to and following the roll-out of ATLAS+. To help reduce delays, we are prioritising processing of invoices before Christmas and prior to the roll-out of ATLAS+, and ask that you submit your invoices as soon as possible.
- as our staff will be undertaking extensive training, we anticipate delays in processing new applications for grants of aid, extensions and invoices in the lead up to and for a period following the roll-out of ATLAS+
- requests for retrospective grants of aid or extensions will not be prioritised until ATLAS+ is rolled-out and all backlogs are cleared.

We ask that until ATLAS+ is rolled-out you please be patient and, unless absolutely urgent, do not call to follow up outstanding matters.

More information:

[ATLAS+ training videos](#)

[ATLAS+ terms of use](#)

[ATLAS+ general information](#)

Submission to DPP on sentencing practices

In October 2010 VLA responded to the Director of Public Prosecution's (DPP) campaign to increase sentences for aggravated burglary. The submission has been filed in all of VLA's in-house cases, and made available to practitioners and to the Criminal Bar Association for their use. You can download the submission from the 'For lawyers' news section of the VLA website.

Contact details

Please remember to keep your contact details up-to-date with VLA. 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