

11th edition September 2010

There was a lot of interest among regional practitioners who participated in the SGP workshop in Shepparton. They raised many issues, a summary of which was emailed to you.

The latest SGP workshop with private and VLA practitioners was held on Thursday 23 September at VLA's offices in Bendigo. The workshop was well attended and extensive discussions generated a number of issues, especially in the areas of family law and family violence protection applications. We will provide more information on these issues in a later SGP newsletter. Invitations have also been sent for the workshop taking place at Geelong VLA, Level 2, 19 Moorabool Street on Tuesday 16 November and we encourage you to attend.

Last month saw the implementation of two changes that you would have read about in our update emails – the new guideline for social security prosecutions, and the fees for the New Model Conferences in the Children's Court (Family Division). The VLA Handbook, relevant tax invoices and all SGP documentation such as checklists and Notes on Guidelines have been amended and are available on our website. Please ensure that you use the most current versions of SGP documents.

Gerda White

VLA Compliance Coordinator

Key contacts

Assessments – Simplified Grants Process (SGP)

Tel: 03 9606 5353 Fax: 03 9269 0348

Email: fab-assess-mailbox@vla.vic.gov.au

Compliance & Investigations

Tel: 03 9606 5355 Fax: 03 9269 0115

Email: compliance@vla.vic.gov.au

Legal & Policy – Full Assessment

Tel: 03 9606 5351 Fax: 03 9269 0250

Email: fablpu@vla.vic.gov.au

Client Contributions

Tel: 03 9606 5356 Fax: 03 9269 0266

Criminal law

Serious Sex Offenders Act

The *Serious Sex Offenders (Detention and Supervision) Act 2009* commenced on 1 January 2010. Applications for assistance to represent clients after a DPP application for a detention order or an application by the Secretary to the Department of Justice for a supervision order are not subject to recommendations under the SGP. They must proceed through the standard process (Legal & Policy Unit).

Assistance will be provided as for *Serious Sex Offenders (Monitoring) Act 2005* with fees under Table Z.

Family law

Recovery Orders – enforcement of orders

As you would be aware, VLA provides funding for recovery applications but not for enforcements. However, the line between the two legislative provisions (Sections 67Q and Division 13A of the *Family Law Act 1975*) is at times not clear. To clarify, VLA will not provide funding for recovery applications that are, in reality and more appropriately, enforcement applications.

VLA considers that an application under guideline 10 (Recovery) is only appropriate where:

- ‘live with’ orders are in place and funding is sought for the parent with whom the child usually lives (in accordance with the orders) to have the child returned
- ‘live with’ orders are not in place but a parent has established a clear status quo of the child living with them; and funding is sought for that parent to have the child returned. VLA expects that such case would usually be funded under cover of a substantive application for parenting orders
- ‘time with’ orders are in place or a parent has established a clear status quo of spending time with the child, and funding is sought for a “contact parent” to have the child brought back into the jurisdiction (one of the parents absconded with the child)

In all other instances, an enforcement application would be the appropriate course of action. We can not provide funding for such applications as they are outside VLA's guidelines.

Where an application for recovery turns into a dispute about substantive parenting orders, an extension for a broadbanded grant must be obtained (for example, stage 2(e)).

Divorce applications

Recent compliance checks have indicated that several recommendations for assistance in divorce cases did not comply with the guidelines. Before taking the guideline assessment any further, a practitioner must be satisfied that the divorce is imperative (see Guideline 11.1(a)). Imperative is defined as “absolutely necessary”, “compelling” and “crucial”.

Imperative means the client must have it as opposed to the client wants to have it. For example, a client instructing that the marriage is over and the client wishes to move on or wishes to put it all behind him/her, does not make the divorce imperative.

If the application for divorce cannot be considered imperative, assistance cannot be granted **even if the other criteria in the guideline are met.**

Proof of means

Centrelink e-services

e-services are available through Centrelink for businesses that have registered to use them. These services could assist you, especially with clients who do not produce current proof or forget to bring their card. As long as you have a CRN, you can make the enquiry yourself and ensure that current proof of benefits is on file.

If you use e-services to confirm that a client is in receipt of benefits, you must ensure that it is clear that the print out provided relates to the client.

In doing this, it may help you to know that:

- the ‘income enquiry’ will list the given name and surname to provide sufficient proof
- the ‘customer enquiry’ will only refer to the CRN. It does not provide details to which client the enquiry relates

If other information is on your file that proves the connection between CRN and the client (for example, an expired card / the client's declaration of the CRN on the application form), then the print out of the customer enquiry results page is sufficient.

If no other information is on your file proves the connection between CRN and the client, you must print out both the enquiry page and the results page.

Cost issues

Children's Court (Family Division) cases – case not reached

Where a final contest is not reached the fee of \$291 is payable in accordance with provision (viii) of the preamble to Table A2.

Family law cases – consent orders

The fee for consent orders at RDM stage can only be claimed where the consent orders have been **filed with the court**. The VLA Handbook has been amended to avoid confusion, and the Notes on the Guidelines already contained this clarification.

VLA does not pay for cases in the list but not reached. This is set out in Fee Schedule 1L, under the heading "Counsel's Fees" (pages 180 and 184).

Family Law cases – divorce applications

The Family law scale contains five different fee categories for divorce applications. As this complicates billing, VLA has decided to pay fees based on two categories:

1. there is a child under 18 (fee \$673) or
2. there isn't a child under 18 (fee \$501).

Family law cases – itemised accounts

Where a stage is not substantially completed or a grant per stage 3(d) is in place, an itemised account is required. Costs must be calculated at 80 per cent of the Family law scale, as applicable 1 July 2006.

Court fees

Practitioners will recall that prior to the Federal election, the Government signalled its intention to introduce a new flat fee of \$60 to replace certain application fees that were previously eligible for fee waivers and exemptions (even for those under financial hardship). The fee was to commence on 1 September 2010 but has been postponed until further notice.

General

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