

14th edition July 2011

With the end of another financial year it is time for the reallocation of panel firms within the compliance team in order to comply with risk management principles. From July most of you will be allocated a different compliance officer, and I encourage you to get to know them. We realise that the SGP works best in cooperation with practitioners, and as such I encourage the team to build strong working relationships with their practitioners.

Your compliance officer will be your main contact for training needs. Don't hesitate to contact them if you wish to discuss issues or have problems with SGP requirements or general policies and processes.

Of course you can always contact the compliance team on 9606 5355 or at [compliance@vla.vic.gov.au](mailto:compliance@vla.vic.gov.au) if you require assistance with compliance issues.

For questions relating to ATLAS+ including questions about processing payments and technical matters contact the ATLAS+ Help Desk on 9269 0600 or [atlashelpdesk@vla.vic.gov.au](mailto:atlashelpdesk@vla.vic.gov.au).

This edition of the Navigator includes an article from the ATLAS+ Help Desk regarding the new centralised [ATLAS+ information and updates](#) webpage. It is designed to keep you up to date with system enhancements, changes and hints.

I trust you find this update informative and helpful.

**Gerda White**

VLA Compliance Coordinator

## Key contacts

### ATLAS+ Helpdesk

Tel: 9269 0600

Email: [atlashelpdesk@vla.vic.gov.au](mailto:atlashelpdesk@vla.vic.gov.au)

### Compliance & Investigations

Tel: 9606 5355 Fax: 9269 0115

Email: [compliance@vla.vic.gov.au](mailto:compliance@vla.vic.gov.au)

### Client Contributions

Tel: 9606 5356 Fax: 9269 0266

## Proof of means

### Centrelink e-services

If you have a client in receipt of Centrelink benefits but without documentary proof or with expired proof only on their files, you can verify their proof of means by registering for [Centrelink Confirmation eServices](#). This will enable you to check your client's Centrelink status (including time periods past) as long as you have their authority to do so and know their Centrelink Reference Number (CRN).

Please see <http://www.centrelink.gov.au/internet/internet.nsf/businesses/index.htm> and go to 'Register for Centrelink Business Services' under the 'Business Online Services' heading.

## Compliance

### Grant transfers between firms – Record keeping requirements

Practitioners must take care to retain sufficient documentation to satisfy SGP requirements when a transfer of a grant occurs, either to or from another firm.

The practitioner who originally conducted the case must retain the signed application form, checklists, proof of means, proof of matter, proof of appearances, file notes, court documents, briefs and any other material required to validate the guideline and merits assessment.

The practitioner taking over the case must obtain a copy of the signed application form and current proof of means.

Proof of matter will apply to any item of work for which the new practitioner bills costs. Documents on file must support the recommendations made (guideline and merits assessment).

## Criminal Law

### Driving whilst disqualified – Abolition of mandatory sentences

For sentences imposed after 1 May 2011 mandatory imprisonment no longer applies to a second offence of driving while disqualified. Whether a client is eligible for a grant of assistance requires an assessment per guideline 2 (traffic offences). Is the likely penalty at minimum a suspended jail term? The assessment will rely on the circumstances of the offending (aggravating circumstances) and the client's driving record / prior convictions for other traffic offences. A file note setting out the reasons for recommendation should be on file.

It may take some time for sentencing trends to become obvious and practitioners should monitor the outcome of cases for future reference.

### Assessment and Referral Court (ARC) list

VLA has been advised that some defendants are appearing unrepresented at ARC list hearings having incorrectly been advised by their lawyers that VLA does not fund such cases.

VLA provides funding for cases listed for an ARC eligibility hearing and / or individual support plan ratification hearing. Please refer to [guideline 1.3](#) for more information.

ARC list matters are funded under Table A. Special fees have been fixed for the eligibility hearing (\$125), individual support plan ratification hearing (\$227) and where appropriate, review hearing (\$125).

### Criminal Law cost issues

#### Changes to whole of job fees

The Victoria Legal Aid (VLA) Board recently decided to remove the 'whole of job' fees in bail applications and County Court appeals against sentence following feedback from lawyers working on these cases. From 1 July 2011, the old fee scale will apply, but these fees will be increased by nine per cent in line with the increase for summary crime fees that was applied in January 2011.

A further increase of 2.5 per cent will also be applied from 1 July 2011 as part of VLA's commitment announced in January to increase summary crime fees annually in line with the State Government's Inflation.

As part of major changes to criminal law fees, VLA introduced a 'whole of job' fee in bail applications and County Court appeals against sentence in January 2011. The 'whole of job' fee for bail included increased fees for applications in indictable cases and where the accused had to show 'exceptional circumstances'.

VLA lawyers, private practitioners and barristers have experienced problems with these 'whole of job' fees where cases are adjourned through no fault of the defence and the judge or magistrate will not issue an appeal costs certificate.

VLA is committed to continuing to work with the private profession and the Bar on an agreed simplified fee structure and to advocate for improvements to the criminal justice system to avoid unnecessary adjournments and delays.

## Preparation (reading) fees

When recommending assistance for reading fees, practitioners must consider whether it is necessary to read / scan / view all the material at hand. Additional preparation fees as per Fee Schedule 4 are only payable where reading / scanning etc is essential. For example, it may not be necessary to scan exhibits which are not relevant to your client's alleged involvement in a case with several accused. Also, it may not be necessary to scan every one of an extensive series of images where each individual image does not carry more incriminating weight than the images as a whole.

## 'Uplift fee' – Preparation (reading) fees

Where assistance has been granted for reading fees at committal stage, the fee would have been calculated at the Magistrates' Court rate. Once the case proceeds to the higher courts (County or Supreme Courts), the difference between the fee allocated and the fee calculated at the higher court rate can be claimed (uplift fee) as long as reading fees are still appropriate at that time. Uplift fees may not be appropriate where a case has settled into a plea.

Take care when completing the worksheet for additional preparation fees. The question "Has a previous grant of aid been made for preparation in this matter?" should be answered with:

- "NO" when seeking uplift fees only. Fees will then be calculated fresh on the higher court scale. The grant will be limited to the difference between the lower fees already approved and the higher fees now sought.
- "NO" where new counsel has been approved by VLA and additional preparation fees are requested. The eight hours included in the brief will be deducted.
- "YES" if assistance is required to read additional material not yet included in previous calculations. Costs will then be calculated without another deduction of the eight hours included in the brief.

## Summary case conference

Practitioners are reminded that VLA does not pay a fee for a summary case conference. It is VLA's view that conduct of the conference is part of the general preparation fee payable. Where a matter settles into plea and is heard (not just entered) on the day, the substantive appearance fee can of course be claimed.

## Urgent grant fees

The urgent grant fees apply where the substantive hearing takes place no more than one day after a grant has been sought. The determining factor is not whether the case is finalised on that day, but whether the substantive hearing commences on that day.

Examples:

Application for assistance 3.5.2011. Case listed 4.5.2011.

- a) Plea commenced and adjourned part heard or for sentence to 25.5.2011. The urgent grant fees apply as the substantive case commenced no more than one day after the application of assistance.
- b) Appearance relates to mention only, contest mention, appropriate adjournment or other preliminary type appearance. Irrespective of whether a fee can be charged for such appearance, the standard and not the urgent grant provisions apply as the substantive hearing has not commenced.

## Table E – Additional preparation fee

All indictable cases attract the \$1000 general preparation fee in Table E. The additional preparation fee of \$625 can be claimed for all indictable criminal cases where a grant per Table E is in place and the case is either proceeding to committal mention with the solicitor conducting negotiations with a view to early resolution; or to committal contest. The quick check would be:

- is matter proceeding by way of straight hand up brief / client is pleading guilty? The additional preparation fee is not payable.
- does the case satisfy the guidelines for committal proceedings? The additional preparation fee is payable once the matter proceeds through the committal stream.

## Family Law

### Forum test

The forum test is applied to all applications for legal assistance to determine which legal aid commission is responsible for funding the case under the reciprocity agreement.

Where a matter is listed for hearing outside of Victoria, an initial application for assistance should be directed to that state. There is no exception for matters listed in Albury. With Albury located in NSW, the appropriate funding body is the Legal Aid Commission of NSW.

Under the agreement, VLA will continue funding cases that have (appropriately) commenced in Victoria but are transferred interstate. This will occur as long as the client's place of residence is in Victoria.

### Funding for family welfare reports

Practitioners are reminded that funding for family reports will generally only be granted where the case is being prepared for final hearing. A stage 3 grant should (appropriately) be in place.

Assistance for family reports at interim stage can only be considered in exceptional circumstances. The request is not subject to practitioner recommendation but requires submission to VLA for assessment.

### Family Law cost issues

#### Solicitor appearing as counsel

VLA has reviewed its policy for payment of fees for Family Law trials. The Fee Schedule provides: "In the event that a solicitor appears as counsel, the fee payable shall be the fee otherwise payable to counsel." The provisions are not limited to the brief only but conference fees can also be claimed under the circumstances.

## ATLAS+ updates

### Centralised ATLAS+ updates page

In response to feedback from VLA staff and practitioners about ATLAS+, VLA is continuously making enhancements to the system to further improve usability. To keep you informed of these updates, a centralised [ATLAS+ information and updates](#) webpage has been created.

You can read about:

- Important message regarding receiving payments and processing new applications for grants of aid, extensions and invoices
- ATLAS+ tip of the week
- Commonly asked questions and answers
- Infringement Court matters – how to apply for aid
- Indictable County Court matter – claiming final defence response
- Help Desk boosted to be more responsive
- Training support available
- New Supreme Court bail template
- Family Violence and Stalking template – inclusion of 'other party' details now mandatory
- Children's Court (Family Division) – New Model Conference fee.

You may wish to add [ATLAS+ information and updates](#) to your 'favourites' and refer to it often.

ATLAS+ will provide significant benefits to practitioners through streamlined grants management and a quicker, more efficient and more secure service. This ultimately benefits clients by ensuring best use of the Legal Aid Fund.

### Simplified Process – Children's Court Family Division (Court Ordered Children's Lawyer) – template change

Changes to the Simplified Process – Court Ordered Children's Lawyer – Children's Court (Family Division) template have made applying for an extension of aid in Children's Court child representative matters easier. The template must only be used for court ordered children's matters and is validated to only accept that matter type.

## Requirement to use SGP templates not VLA Assess templates

Simplified process panel practitioners (Section 29A) should ensure, wherever possible, to use the Simplified Grants Process templates for their particular area of law otherwise the application will be directed for manual assessment.

## Clarification regarding what type of cases are covered by their panel membership

A number of practitioners have asked the ATLAS+ Help Desk what type of cases are covered by their panel membership.

Practitioners on the panels for Family, Summary Crime or Children's Court Family Division cases can submit applications under the SGP using the Stalking and Family Violence templates in courts of summary jurisdiction.

Only simplified process summary crime panel practitioners can submit applications using the simplified Infringements template.

## Delayed submission of applications

All applications should be submitted without delay. If such delay becomes necessary and the application is older than 14 days at the time of submission, you should:

- affirm with the client that the personal and financial details provided in the application form are still correct
- make necessary changes as required
- submit the application to VLA noting the "signed date" in ATLAS+ as the day of the affirmation and
- have a note on file setting out the client's instructions (affirmation of application details provided), the date they were obtained and any changes made to the application. Proof of means should be current at the time of submission.

An application form signed more than 90 days before the submission date is not acceptable, and a new form must be completed.

## Other news

### Talented Junior Counsel Program

VLA's Talented Junior Counsel Program is designed to actively invest in talented counsel to improve criminal trials in Victoria. Junior counsel selected for the program will undertake three to four criminal trials under the mentorship of lead counsel.

To learn more about the initiative go to the [Talented Junior Counsel Program](#) or contact Arna Delle-Vergini, Program Leader – phone (03) 9269 0130 or email [arna.delle-vergini@vla.vic.gov.au](mailto:arna.delle-vergini@vla.vic.gov.au)

### Contact details

Please 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 notify us at [compliance@vla.vic.gov.au](mailto:compliance@vla.vic.gov.au)