

9th edition March 2010

Thank you for participating in our survey about SGP workshops. It was really encouraging to have received over 130 responses, with only 2 indicating no interest in attending future workshops. Your responses will help us plan our next events so that they meet your demands and suit your interests. All indications are that there is a need for all areas of law to be covered, with strong interest expressed from regional areas.

The last newsletter touched on the upcoming implementation of ATLAS, VLA's new web-based system for lodging and tracking applications, extensions and invoices. VLA staff have now started ATLAS training and this may mean occasional delays in processing. We ask for your understanding and assistance by ensuring that requests for funding are made in a timely way.

ATLAS is an automated system which allows submission of applications, extension requests and invoices via a web-based portal. For members of the S29A panels, the new system will allow straight through processing for many requests when forms are completed appropriately and nothing is out of the ordinary. Feedback from the testing team indicates turnaround times on approvals of 20 to 30 seconds, with confirmation letters sent to you electronically. So the new system should provide distinct advantages for SGP practitioners.

Roll-out of the new system is anticipated in the coming months in several stages, with preference given to SGP practitioners. If you would like more information about ATLAS, please check out our website.

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### ► Family law

#### Roundtable dispute management (RDM)

The existence of a family violence intervention order does not preclude a grant of assistance for RDM. In the absence of other compelling reasons such as urgency, a grant for RDM should be recommended and sought at the first instance. The RDM service will assess whether the matter is suitable. This assessment will take into account their facilities, options for shuttles, telephone conferences etc.

#### Relevance of family relationship centre (FRC) certificates

A certificate issued by an FRC satisfies the court's requirements to initiate proceedings. However, VLA still requires an assessment whether RDM is appropriate. In the absence of compelling reasons such as urgency, the first grant of assistance should still be for RDM.

## Examples

- a) Certificate issued because the other party has refused to participate:  
Refusal of family dispute resolution through an FRC does not necessarily lead to refusal to participate in RDM. A party's refusal to participate at an FRC may have been due to issues of domestic violence or due to the other party not having a lawyer at that stage. Both issues can be addressed or may not be a concern proceeding through RDM services.
- b) Certificate issued that FDR not suitable:  
What may not be suitable at an FRC could still proceed at RDM. RDM has a far greater range of options available to facilitate mediation while ensuring the safety of all parties involved.
- c) Certificate issued after unsuccessful mediation:  
Based on experience, RDM mediation may still succeed despite failure to settle at FRC level.

## Urgent matters

Urgency covers issues of child abduction, recovery, or immediate threat of harm of an extreme nature requiring immediate police or Department of Human Services (DHS) action.

Where urgency has been established, RDM is not suitable and a grant to issue proceedings will be provided subject to guideline and merits assessment. The applicant's claim must be assessed against what is actually happening, e.g. a claim that the father is severely abusing the child is not consistent with the mother still allowing weekly overnight contact.

If you are unsure about suitability for RDM, please contact the RDM service on 9269 0500 for assessment.

## Family reports

A brief reminder that assistance can only be granted where:

- a case is (appropriately) funded to prepare for trial; and
- the order for the report was made by the court (not by consent between the parties); and
- the court's in-house counselling service is unable to prepare the report.

VLA may consider a request for family report at interim stages. However approvals are limited to exceptional cases only. Orders for a report at interim stage must also be made by the court.

Please document reasons for your recommendation on file, unless they are obvious. When briefing counsel, you must ensure that counsel is aware of VLA's policy.

## Criminal law

### Breach offences

We received feedback from practitioners after the December 2009 edition about cases where a breach charge has not been filed with the court. As a result, VLA has changed its policy:

- where an applicant is facing charges which are punishable by imprisonment and have technically breached a suspended sentence, the potential breach charge, although not yet filed by the informant, will be taken into account when assessing a matter under the guidelines
- where an applicant already qualifies for a grant of assistance on the new charges, the potential breach of a suspended sentence, although not yet filed by the informant, will be taken into account when assessing a matter for a consolidation grant.

### Trafficking charges

A charge of drug trafficking does not automatically satisfy the summary criminal guidelines.

While the nature of the charge may indicate more serious circumstances of offending, you must still consider the likely penalty when making your guideline assessment. Factors to consider are the client's prior history, the type and amount of drugs, and other general circumstances of the offending.

## Special circumstances

VLA may provide a grant of assistance where the guidelines are not satisfied. However, such grants are made at the discretion of VLA. A grant does not automatically follow an assessment that special circumstances exist as defined in Chapter 2, section 2.3.1 (State matters) and Appendix 2D, section 4.2 (Commonwealth matters).

Assistance can only be provided if:

- the applicant satisfies the means test; and
- the application is meritorious; and
- the application satisfies the cost/benefit requirements.

## Examples

### a) Dissolution application:

Special circumstances have been built into the guideline and have been considered when setting parameters within which assistance can be considered. To argue special circumstances outside the guideline will therefore require an extraordinary case.

### b) Children's Court - summary crime:

The argument that 'the applicant is a child' cannot be used to overcome guideline issues such as funding on a charge of not wearing a bike helmet. The applicant being a child has already been incorporated into the guideline.

## Cost issues

### Case in list not reached: Indictable criminal cases

In the absence of an appeal cost fund certificate, VLA has not traditionally paid a fee to counsel when a matter is not reached. VLA has received advice from the Appeal Costs Board that:

- the Appeal Costs Board makes payment on certificates awarded for a matter in the list but not reached; and
- the courts grant certificates where a matter is in the list but not reached; and a certificate is sought.

As a result of this advice, VLA has changed its policy and will now will pay the appropriate brief fee in circumstances where a matter is listed for trial but not reached and an appeal cost certificate has been granted.

Practitioners therefore need to ensure that appeal cost certificates are sought where applicable. Counsel briefed must be instructed on that basis.

### Additional work: Family law matters – Stage 3(e)

A grant of assistance per stage 3(e) cannot be the subject of a practitioner recommendation. The grant is only available in exceptional circumstances. You must provide details on why the grant is required and how many hours are sought.

A request for additional preparation requires a two-step assessment:

#### 1) The work must be extraordinary.

Unless the work is outside the work reasonably expected for preparation for trial, there is no room for paying additional fees. A grant for additional preparation cannot be used to increase the fees that may be considered inadequate by a practitioner (for example where an affidavit is longer than usual or a conference is longer than expected).

#### 2) The reasonable hours of preparation required to complete the extraordinary work.

Adjourned trials:

Preparation for trial fees are fixed against the expected length of trial. However, where trials are adjourned part heard to another date, the preparation grant may no longer reflect the actual length of the hearing.

In these cases it is more appropriate for a practitioner to apply for an amended grant rather than additional preparation (uplift preparation for 1 day to preparation for more than 1 day under stage 3(d)).

### Subpoena list

VLA has been advised that a new practice direction in the Federal Magistrates' Court only requires a practitioner to attend for subpoena listing if objections have been filed. If no objection is filed, a 'Notice of Request to Inspect' must be filed to make an appointment with the court to view the documents the day after the hearing.

VLA considers:

- a fee to appear at a subpoena list hearing is only payable if the appearance was required and made
- no additional fee is payable for 'Notice of Request to Inspect' (part of general preparation under the substantive grant / stage in place)
- time and work involved in inspecting (reading) the documentation subpoenaed is covered by the substantive grant, usually preparation for trial / sometimes stage 2(f).

### Consolidation: County Court breach and appeal

Where an appeal to the County Court is consolidated with a County Court Breach proceeding, the fees payable remain as set in table D1.

## Special mentions: Magistrates Court summary crime

VLA does not generally pay a fee for attendance at mentions. To attract a fee for a special mention, the appearance must relate to an issue that has arisen out of the case, which must be dealt with and resolved before the substantive case can commence (or continue).

It does not cover a situation where mentions are listed to monitor progress.

### Examples

- a) VLA will pay a special mention fee if the question of jurisdiction requires determination, and the Magistrate listed a special mention.
- b) VLA will not pay a special mention fee if a case has been adjourned because the outcome of another case is deemed vital. Special mentions may then be listed to advise the Magistrate whether the matter has finalised. VLA considers that this information can be conveyed to the court by letter, or alternatively, the client could attend and advise the court.

If appropriate, the fee for special mention is \$116.

No prior authority is required to incur the fee. However, reasons must be obvious from the file or well documented.

## Special mentions: Children's Court criminal cases

Special mentions are listed in the sexual offences list at the Melbourne Children's Court. The list is designed for contested matters. Where an accused indicates a plea at the first mention, the matter will remain in the list for standard cases (no referral to the sexual offences list).

- A fee of \$208 is payable where the 'mention' is the actual contest mention. We would expect that generally only one contest mention fee is incurred in any matter.
- A special mention fee of \$116 is payable where mentions are only listed to keep the Magistrate updated on what is happening, or for any other purposes.

## General

### VLA assessment

As you know, some decisions like committal contests of more than 2 days duration and neuro-psychological reports are not subject to practitioner recommendation.

Where a matter is referred to a VLA officer for decision, only that part of the decision is subject to the assessment

by VLA. VLA will continue to rely upon the practitioner recommendation contained in the checklist for matters such as proof of means, and guideline and merits recommendation.

If other issues arise which require consideration in relation to the guidelines, practitioners should obtain a ruling from a compliance officer.

### Worksheets

We have amended the worksheet for expert reports so that they can be used for all criminal cases. They are not limited to summary criminal cases.

### New VLA application form

You might have seen the new application forms now available on our website. The forms have been amended so that they are consistent with the online applications of ATLAS, the new web-based system. We strongly encourage you to use these new forms as it will give you the opportunity to get used to them before ATLAS is rolled-out.

When completing the form please note that where applicants are asked to list their assets, 'cash/savings' includes monies held in a bank account.

### Compliance checks

Some practitioners have asked why files have to be sent to VLA for compliance checks. Why can't compliance officers come out to conduct the check at your office?

While we would like to conduct more checks at your offices, we do not have the capacity. The team has to schedule checks for over 250 private firms, as well as VLA's in-house practice, both metropolitan and regional.

We appreciate your assistance in avoiding delays by sending us files for the day requested. Files sent after the allocated day may be delayed as priority is generally given to files scheduled for checks from firms that provided them on time.

### Remedial action

It is important to ensure that remedial action is completed within the time limits set to avoid further action. This will also prevent unnecessary administrative work within your office, responding to additional phone calls and correspondence. If you do need more time, please ask for an extension, bearing in mind that time limits are generally only extended once.