

15th edition September 2011

Welcome to the 14th edition of SGP Navigator.

In addition to legal aid fee increases across VLA fee scales, this newsletter also covers some issues that arise with applications, retrospective grants of assistance and matters relating to compliance requirements.

Practitioners should also note that there is reference to some court applications where clarification is provided regarding VLA requirements and the fees allowed in such applications.

Recently the Assignments Unit, incorporating the Assessments, Compliance, Legal and Policy, and Client Contributions Units, moved to VLA's Legal Practice Directorate.

The responsibilities of each unit remain unchanged. Meagan Keogh is the Director of the Legal Practice Directorate and Nella Buccheri will continue to manage the Assignments Unit.

Finally, please be aware that I will be acting as Compliance Coordinator, while Gerda White is engaged in other duties.

If practitioners need to seek any clarification on the compliance process, or have concerns or issues with compliance, please contact me on 9606 5247 or email johnda@vla.vic.gov.au

John D'Aloia

Acting VLA Compliance Coordinator

Increase to all legal aid fees

Victoria Legal Aid is increasing all professional fees and disbursements by 10 per cent effective 1 October 2011.

We have also committed to indexing all fees and disbursements in line with the applicable Government 'inflator' from 1 July each year.

The fee increases recognise the valuable work done by practitioners, fee erosion that has occurred over time and changes to the way legal aid work is performed.

In addition to the 10 per cent increase, brief fees for summary crime contested hearings in the Magistrates' and Children's Courts will increase by a further 39 per cent for contests that proceed, and 11 per cent for contests that settle on the day. This is in recognition of the skills and effort associated with a contest requiring evidence handling and submission skills. This fee increase will also become effective on 1 October 2011.

Any additional changes to fees will be aligned with good practice, and designed to deliver improvements to the system and to outcomes for legally aided clients.

The new fees apply to:

- all existing grants of aid where the matter has not been finalised, and
- new grants of aid made on or after that date.

All appearances and additional preparation/reading completed prior to the changes attract the old fees.

For more information, visit

<http://www.legalaid.vic.gov.au/forlawyers.htm>

Compliance

Claims for fees where retrospective assistance is required

Practitioners were provided with a quick guide to retrospective grants of assistance in our April 2011 newsletter. Unfortunately, VLA has found that when billing, some practitioners have entered incorrect appearance dates to accommodate an appearance that may have pre-dated the effective date of assistance. This approach is not correct. In such circumstances, practitioners should assess whether the matter satisfies VLA's requirements for a retrospective grant of assistance, and make the necessary application to VLA, or accept that they cannot claim for such an appearance.

Where a practitioner is making a request for a retrospective grant of assistance or extension, it is necessary for the practitioner to await the outcome of VLA's decision before claiming any fees.

Currency of proof of means

There are times when practitioners have submitted checklists or made application through ATLAS+ where the proof of means is not current. This most commonly occurs when there is a lengthy delay between the signing of the application for assistance and its submission to VLA.

As many practitioners may attest, this has resulted in Non-Compliance Notices being issued and additional work being undertaken to obtain the necessary proof of means. Worst case scenarios have seen some firms being required to refund all VLA costs in the matter.

To avoid possible breaches and/or loss of costs, practitioners should ensure that their clients' proof of means are current at the time the initial checklist is signed and the application is submitted to VLA.

Correspondence and documentation to Compliance Unit

VLA's Compliance Unit has been receiving hard copy or faxed documentation and correspondence from some practitioners, which are then required to be converted to an electronic document by VLA staff. This process can create delays.

In order to streamline this process, it is requested that when dealing with the Compliance Unit, practitioners either send their correspondence and/or documents through ATLAS+ (or by email to compliance@vla.vic.gov.au)

Criminal Law

Committal mentions, case conferences and summary jurisdiction hearings

The compliance team has received a number of enquiries relating to fees payable where a practitioner has engaged counsel who appeared at committal mention, case conference and a summary jurisdiction hearing on the same day. If all of the above occurred on the same day, VLA only pays one fee. If, however, such appearances occurred on separate days, then appearance fees are paid for each day of appearance.

Section 32C applications – confidential communications

In criminal proceedings for a sexual offence, the defence may seek to access the complainant's medical and counselling records, such as CASA records.

Section 32C of the *Evidence (Miscellaneous Provisions) Act 1958* requires a party to seek leave of the court before they can issue a subpoena to compel the production of confidential communications. These provisions apply to proceedings for a sexual offence in all courts, including committal proceedings.

VLA expects that seeking leave to issue the subpoena(s) would be incorporated in trial preparation and will usually be heard as part of another court event (such as first directions hearing etc). VLA will only consider payment for the contested hearing before the magistrate or judge to determine the issue of confidential communications. It is confirmed that, subject to a specific grant, the following fees for the hearing of these applications are as follows:

- Magistrate's Court – fee equivalent to daily appearance fee – \$371
- County Court – fee equivalent to subsequent plea hearing fee – \$488
- Supreme Court – fee equivalent to subsequent plea hearing fee – \$764

Practitioners should note that they are required to request funding from VLA for this application. Submissions can be made by attaching correspondence in ATLAS+ or by email attachment to atlashelpdesk@vla.vic.gov.au

Change of plea applications

There are occasions in County and Supreme Court criminal proceedings where a change of plea application may need to be made. Subject to a specific grant, fees can be claimed as follows:

- County Court – equivalent to a plea hearing fee in Table F – \$841
- Supreme Court – equivalent to a plea hearing fee in Table F – \$1146

Practitioners should note that they are required to request funding from VLA for this application. Submissions can be made by attaching correspondence in ATLAS+ or by email attachment to atlashelpdesk@vla.vic.gov.au

Counsel fees payable in criminal matters that resolve into plea before trial commences

Where a matter is listed for trial and counsel is able to resolve the matter to a plea before the commencement of the trial, a trial brief fee and conferences can be paid in lieu of plea fees if:

- a grant for trial has been made
- counsel, upon reading the material and taking instructions, resolves the matter into a plea
- counsel conducts the plea.

Key Contacts for Assignments Unit, Legal Practice Directorate

Assessments Unit

Tel: 9269 0600. Press 1.

Email: assessments@vla.vic.gov.au

- Issues for S29A panel members.
- Enquiries about applications for grants of legal assistance or existing grants.
- Enquiries about contributions for clients whose matters are not finished.
- Transfer matters.

Legal & Policy Unit

Tel: 9269 0600. Press 2.

Email: legalandpolicy@vla.vic.gov.au

- Enquiries from non-section 29A panel practitioners about VLA guidelines and fees.
- Enquiries from non-section 29A panel practitioners about applications for grants of legal assistance or existing grants.
- Enquiries from either panel or non panel practitioners about matters that are outside VLA guidelines or for most civil law matters.
- Enquiries from interstate practitioners or practitioners appointed as agents for the purpose of a grant of legal assistance.
- Enquiries about applications under section 143 of the *Confiscation Act 1997* where assistance has been granted to prepare the application.
- Enquiries about caveats and contributions for clients whose matters are not finished.

Compliance Unit

Tel: 9269 0600. Press 3.

Email: compliance@vla.vic.gov.au

- S29A panel members.
- Requests for a ruling or general advice regarding guidelines.
- Requests for a ruling or general advice regarding merits of a case.
- General questions about compliance checks / compliance procedures.
- Queries about fees if the question concerns “what to charge”.

Client Contributions Unit

Tel: 9269 0600. Press 4.

Email: clientcontributions@vla.vic.gov.au

- Enquiries about caveats and contributions for clients whose matters are finished.
- Enquiries about withdrawals of VLA caveats.
- Enquiries about remittance advices.

ATLAS+ Technical

Tel: 9269 0600. Press 5.

Email: atlashelpdesk@vla.vic.gov.au

- Lodgement issues in Web Portal (error messages, aid effective dates, missing items in invoices etc).
- General Web Portal queries.
- Password / Account queries.
- Changing user levels from Practitioner to System Admin, etc.