# Appendix 1 – Summary of Options

# Operational

**Income Test**

1. Introduce a waiver of documentary requirements in particular circumstances
2. Introduce a better approach for people with irregular incomes

**Assets Test**

1. Clarify treatment of superannuation

**Financially Associated Persons**

1. Reduce the documentary proof required from financially associated persons to reduce administrative requirements and improve rates of compliance
2. Allow for dependants of financially associated persons to be included in the means test calculations

**The Contributions Policy**

1. Allow a repayment schedule for asset contributions

**Use of Discretion**

1. Document circumstances where discretion is exercised and publish this information
2. Provide guidance on the circumstances when discretion may be exercised

**Better information about financial eligibility**

1. Plain language information on VLA website
2. Publications on financial eligibility
3. Better linkages and training of support workers about eligibility for legal assistance

# Straightforward

**Income Test**

1. Increase allowable income
2. Increase the range of deductions
3. Increase the value of child care deduction
4. Increase the dependant allowance
5. The definition of ‘dependant’ could be clarified

**Assets Test**

1. Increase the allowable assets threshold

**Financially Associated Persons**

1. Develop guidelines for scenarios where support and assistance is being provided by a family member
2. Include express exclusions to clarify treatment of financially associated persons

**The Contributions Policy**

1. Increase the income and asset thresholds before contribution is required
2. Fix the rate of contribution repayments based on income as opposed to contribution amount
3. Charge interest on secured contributions
4. Introduce a clearer financial hardship process regarding contributions

**Exemptions from the means test**

1. Narrow exemptions to statutory requirements

**Use of Discretion**

1. Incorporate matters into the means test that are currently dealt with through discretion

# Bigger changes

**Income Test**

1. Change the benchmark to the Income Test
2. Standardised household expenditure could be considered
3. Allow a higher income threshold for certain ‘priority matters’

**Assets Test**

1. Introduce separate asset allowances for home owners and non-homeowners

**Financially Associated Persons**

1. Narrow the definition of financially associated person

**Estimated Legal Costs**

1. Include additional cost categories to better align with cost of legal services
2. Update existing cost categories

**The Contributions Policy**

1. Extend the availability of legal assistance with a contribution to increase access to justice
2. Provide discounts to people who pay their contributions back sooner than required
3. Exclude certain assets from being included in contributions
4. Capping contributions for certain legal matters
5. Introduce exemptions from contributions for people in certain circumstances

**Better information about financial eligibility**

1. Online means test indicator tool

**Reviewing and updating the means test**

1. Implement automatic annual indexation of means test thresholds against agreed benchmarks

# Planning for a More Equitable Future

**Estimated Legal Costs**

1. Apply means test only to highest cost matter

**The Contributions Policy**

1. Stop collecting unsecured contributions
2. Exempt certain matters from the contributions policy

**Exemptions from the means test**

1. Include a public interest exemption to the means test
2. Promote continuity of service
3. Exempt certain types of legal matters from the operation of the means test
4. Exempt certain categories of people from the operation of the means test

**Looking Beyond the Means Test**

1. Prioritise access to grants of legal assistance for ‘priority clients’

# Appendix 2 – Overview of key elements of the means test

# Appendix 3 – Cost of living allowances

The allowable deductions are as follows:

| **Allowance** | **Allowable deduction – Victoria Legal Aid** | **National Means Test benchmark** |
| --- | --- | --- |
| Housing | * To a maximum of $400 per week for inner, middle and metropolitan areas; * $300 per week for outer areas; and * $240 per week for regional areas | Percentage as determined by each Legal Aid Commission of the average rent of a 2-bedroom flat with reference to local Real Estate Institutes or other authorities |
| Child Care | * $310 per week (per household) | Percentage of the figure for childcare relief as determined by the Department of Health and Community Services (Cth) (i.e. A maximum of 50 hours per week) |
| Dependant (any person who relies on the person for financial support. This may include a spouse, partner or child of the person applying for a grant of legal assistance.) | * $130 for the first dependant * $125 for subsequent dependants | Percentage of the Henderson Poverty Line[[1]](#footnote-1) figures of the difference between ‘Head in Workforce, Cost other than Housing, Single parent plus 1’ and ‘Head in Workforce, Cost other than Housing, Single Person’ as set out in Table 1 of the published figures. |

# Appendix 4 – Categories of estimated legal costs

The three categories of estimated legal costs and the assistance granted for each category are as follows:

| **Costs Category** | **Estimated Legal Costs** | **Assistance granted** |
| --- | --- | --- |
| **Category 1** Includes: summary crime, family violence, personal safety intervention orders, infringements. | Less than $1555 | * VLA will make a grant of assistance for net disposable income up to $469 a week. * Between $361 and $469 the person would be required to pay a contribution. |
| **Category 2**  Includes: family law (up to and including trial stage), child protection, criminal appeals to the County Court, family law appeals. | Between $1555 and $6560 | * VLA will make a grant of legal assistance for net disposable income up to $539 a week. * Between $361 and $539 a week the person would be required to pay a contribution. |
| **Category 3**  Includes: indictable crime, family law (trial stage), criminal appeals to the Court of Appeal. | More than $6560 | * If net disposable income is more than $360 per week, VLA will only make a grant of legal assistance if the required contribution does not exceed the estimated legal costs.[[2]](#footnote-2) |

# 

# Appendix 5 – Calculating contributions

# Calculation of the initial contribution based on income

If the net disposable income of a person applying for a grant of legal assistance is $361 or more a week, the following table[[3]](#footnote-3) shows how VLA calculates:

* the amount of the initial contribution which VLA will require the person to pay towards their legal costs; and
* the period of time over which the person must pay the amount in instalments.

|  |  |  |  |
| --- | --- | --- | --- |
| **Assessable income** | **Category 1:**   * **estimated costs less than $1555** * **contribution paid over 13 weeks** | **Category 2:**   * **estimated costs $1555–$6560** * **contribution paid over 26 weeks** | **Category 3:**   * **estimated costs more than $6560** * **contribution paid over 52 weeks** |
| $365 | $280 | $580 | $1175 |
| $375 | $340 | $800 | $1605 |
| $385 | $430 | $1005 | $1995 |
| $395 | $530 | $1230 | $2455 |
| $405 | $605 | $1500 | $3030 |
| $415 | $740 | $1765 | $3545 |
| $425 | $870 | $2060 | $4180 |
| $435 | $1070 | $2395 | $4855 |
| $445 | $1219 | $2840 | $5670 |
| $455 | $1418 | $3240 | $6485 |
| $465 | $1617 | $3640 | $7305 |
| $475 | – | $3830 | $7720 |
| $485 | – | $4360 | $8770 |
| $495 | – | $4890 | $9735 |
| $505 | – | $5375 | $10,900 |
| $515 | – | $5885 | $11,780 |
| $525 | – | $6435 | $12,835 |
| $535 | – | $6980 | $13,900 |
| $540 and over | – | – | $13,900 plus $1065 for every $10 of net disposable weekly income more than $540 |

# Calculation of the initial contribution based on assets

The following tables[[4]](#footnote-4) shows how the initial contribution payable is calculated for:

* a person who has no relevant financially associated person and the total value of the person’s assets is more than $1095
* a person who has an [FAP](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) and the total value of their combined assets is more than $2190.

# No financially associated person

| **Total Assessable Assets** | **Contribution** |
| --- | --- |
| $1195 | $20 |
| $1295 | $40 |
| $1395 | $60 |
| $1495 | $80 |
| $1595 | $100 |
| $1695 | $130 |
| $1795 | $160 |
| $1895 | $190 |
| $1995 | $220 |
| $2095 | $250 |
| $2195 | $290 |
| $2295 | $330 |
| $2395 | $370 |
| $2495 | $410 |
| $2595 | $450 |

# With financially associated person

| **Total Assessable Assets** | **Contribution** |
| --- | --- |
| $3790 | $500 |
| $3890 | $550 |
| $3990 | $600 |
| $4090 | $650 |
| $4190 | $700 |
| $4290 | $760 |
| $4390 | $820 |
| $4490 | $880 |
| $4590 | $940 |
| $4690 | $1000 |
| $4790 | $1060 |
| $4890 | $1120 |
| $4990 | $1180 |
| $5090 | $1240 |
| $5190 | $1300 |
| more than $5190 | $1300 plus the full value of assets above $5190 |

# Appendix 6 Proposed Discretion Guideline

# Applying for Discretion

# If a person seeks a grant for a legal matter and is found to be ineligible for assistance based on their financial circumstances, or required to pay a financial contribution as a condition of assistance, they may seek for discretion to be applied.

Discretion is where an application is considered by an assessing officer at Victoria Legal Aid who takes into consideration exceptional circumstances that may warrant the means test and/or contribution being waived.

To apply for discretion, a person must, through their lawyer, seek this option at the time of submitting an application for assistance.

When assessing applications for discretion, the assessing officer may take into consideration the following factors:

* The extent and nature of the person’s financial circumstances;
* The extent and nature of any financially associated persons ([FAP](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test)s) financial circumstances;
* The potential financial hardship that may justify special consideration;
* Any compelling circumstances that may warrant the means test and/or contribution being waived; and
* Any additional information that supports the application for discretion.

*Example*

Janelle is seeking a grant of assistance to oppose the making of a family violence protection order. Janelle is on Centrelink benefits and has no additional income. She has been able to save up $4,500 from when she was previously employed. She pays $250 a week in rent and has no financially associated persons that provide her with support. Based on this information, she would be considered ineligible for a grant of assistance for this type of matter due to her savings. When applying for discretion, she discloses that she has been diagnosed with ovarian cancer and her savings will be going towards the associated medical costs. As a result of this information, the assessing officer applies discretion and approves a grant of assistance based on the compelling circumstances that apply.

**Documentary Requirements**

Applications for legal assistance where discretion is being sought can only be assessed by an officer within the Assignments section of Victoria Legal Aid.

To assist with assessing applications for discretion, the person seeking a grant, or their lawyer, should provide the following information with their application:

* A memorandum or letter detailing the nature and extent of the special circumstances;
* The potential financial hardship on the person applying for a grant of assistance if the means test were to be imposed;
* Any compelling circumstances that exist that may warrant a waiver of the means test and/or contribution imposed; and
* Any additional documentation that may support the application for discretion.

# Appendix 7 Consultation

**Submissions Received**

1. Victorian Alcohol & Drug Association Submission to the Means Test Review Consultation Paper
2. Victorian Council of Social Services Submission to the Means Test Review Consultation Paper
3. Confidential Submission 1
4. Jesuit Social Services Submission to the Mean Test Review Consultation Paper
5. Straight Arrow & Living Positive Victoria Submission to the Means Test Review Consultation Paper
6. Youthlaw Submission to the Means Test Review Consultation Paper
7. Inner Melbourne Community Legal Centre Submission to the Means Test Review Consultation Paper
8. Confidential Submission 2
9. Bill O’Donnell (Sole Practitioner) Submission to the Means Test Review Consultation Paper
10. Hume Riverina Community Legal Service Submission to the Means Test Review Consultation Paper
11. Law Institute of Victoria Submission to the Means Test Review Consultation Paper
12. Eastern Community Legal Centre Submission to the Means Test Review Consultation Paper
13. Confidential Submission 3

The table below provides a snapshot of volume of stakeholder engagement with the review so far:

|  |  |
| --- | --- |
| Visits to Means Test Review Website | 665 |
| Submissions Received | 13 |
| Responses to Surveys | 20 (15 received from community members) |
| Internal Staff Roundtables Held | 4 |
| External Roundtables Held | 3 |

1. The Henderson Poverty Line was developed in the mid-1960s and was originally defined as the basic wage plus child endowment for a family of four (two adults and two children). It aims to set out the minimum income levels required to avoid a situation of poverty for a range of family sizes and circumstances. Quarterly updates to the Henderson Poverty Line are published by the University of Melbourne at <https://melbourneinstitute.com/miaesr/publications/indicators/poverty-lines-australia.html>. [↑](#footnote-ref-1)
2. Some exceptions apply to this in indictable crime matters. [↑](#footnote-ref-2)
3. Please note that this table has been adapted from [Table 2](http://handbook.vla.vic.gov.au/handbook/12-means-test/income-test/how-initial-contribution-is-calculated-based-on-income) in the VLA Handbook for Lawyers. The net assessable income amounts shown are the midpoint of the range for ease of reference. [↑](#footnote-ref-3)
4. Please note that this table has been adapted from [Table 3](http://handbook.vla.vic.gov.au/handbook/12-means-test/assets-test/how-initial-contribution-is-calculated-based-on-assets) in the VLA Handbook for Lawyers. The amounts show the total assessable assets rather than the assets over the allowable limit for ease of reference. [↑](#footnote-ref-4)