Victoria Legal Aid Means Test Review Options Paper: The Response of the Centre For Excellence in Child and Family Welfare

The Centre for Excellence in Family Welfare (‘the Centre’) is the peak body for child and family services in Victoria. For over 100 years we have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture. We represent over 150 community service organisations, students and individuals throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care.

The Victoria Legal Aid (“VLA”) Means Test Review Options paper presents a range of options to amend the existing means test to make it more accessible, transparent and fairer to the wider community. The options paper has considered the following aspects of the current means test process:

* Income test
* Assets test
* Determination of financially associated persons
* Estimate of legal costs
* The contributions policy
* Exemptions from the means test

The various options discussed range from relatively simple to adopt, to a major rethink of how the means test is determined and administered.

Disadvantaged Victorians are currently missing out on the legal representation that they need. Even relatively minor unresolved legal issues can escalate and become more serious, and may result in significant financial penalties. This places additional stress on already vulnerable families. Children should be given every opportunity to achieve their full potential. Living in a family facing stress because of unresolved legal issues and an inability to afford to pay for legal assistance may place vulnerable children at a heightened risk of being exposed to family violence and homelessness. Family stress is a known contributor to children entering the child protection system.

Income Test

The starting point to any review of the means test must be a review of the benchmark itself. VLA should move to adopt the OECD Relative Poverty Line as the measure for its means test. The VLA means test benchmark should reflect the reality of poverty in Australia. In addition the VLA benchmark must be regularly reviewed and updated to ensure that it no longer continues to become harsher over time because of bracket creep.

The range of deductions when determining an applicant’s income are insufficient. For example a weekly amount of $130 is deducted for a first dependent and $125 for each subsequent dependent. The current Victorian Foster Care allowance begins at $378.47 per fortnight. This allowance is intended to contribute towards the day to day expenses involved in caring for a child. This is substantially higher than the deduction allowed under the VLA means test. The Centre supports further consideration of a standardized household expenditure allowance.

Asset Test and Financially Associated Person

The Centre also supports the option to increase the liquid asset threshold for people who are renting. It is currently inequitable that people owning property may have equity up to $500,000 in the property and $20,000 equity in a car, but that renters who hold liquid assets greater than $1095 may be required to make contributions towards their legal aid costs. The allowable assets should include three months rental costs. This will provide a buffer for families who need legal assistance and who are experiencing housing stress.

The Centre supports the option to limit financially associated persons to those with a direct personal relationship with the applicant such as their spouse or domestic partner. The current broader definition unfairly targets members of our community who live in larger family groups.

The Contributions Policy and Estimate of Legal Costs

The Centre supports changing the current contributions policy to allow more people to access partial legal aid funding. This would have a significant impact on family law proceedings which can be lengthy and costly. It would be preferable for parties in family law matters who would not otherwise meet the threshold for legal aid funding to be able to make contributions towards the cost of their proceedings. These contributions could be scaled according to income. This may also result in VLA recovering a proportion of its costs upfront, rather than waiting for secured contributions, for example a caveat over the family home, to be released. This approach would reduce the number of self represented litigants and hopefully result in a more timely resolution of matters. This is in the best interests of the children caught up in these proceedings.

Exemptions from the Means Test

The Centre urges VLA to retain its current exemptions from the means test for children and people who are the subject of a Mental Health Supervision Order. Children who require legal representation are some of the most vulnerable members of our society. The Centre urges VLA to not only guarantee legal aid funding to children and young people but to also prioritise their representation by legal aid solicitors. Children should always be represented by the state. This ensures consistency of representation. The Centre recognises that issues of conflict are a real concern, however suggests that these can be dealt with by the creation of a dedicated legal team who operate independently within VLA and strictly adhere to client professional privilege within the organisation.

Exempting certain types of matters from the operation of the means test such as child protection and family violence matters deserves consideration. However, the Centre suggests that in child protection matters, VLA consider the merits of the case before granting aid in non-DHHS initiated applications.

The Centre supports the priority client framework which identifies priority clients for VLA. This includes children and women experiencing family violence. Reducing the documentary evidence requirements, or relaxing the income and assets threshold for these groups when applying for legal aid merits further consideration. The Centre supports further analysis of the economic impact of providing means test exemptions to the broad categories of people identified in the priority client framework.

Funding VLA

The Centre recognises that changing the means test eligibility criteria will mean that more people will be eligible to access legal aid services, and that may result in other restrictions to service delivery such as narrowing existing guidelines because of insufficient funding. As the Productivity Commission found in its Access to Justice Report in 2014;

disadvantaged Australians are more susceptible to, and less equipped to deal with, legal disputes. Governments have a role in assisting these individuals. Numerous studies show that efficient government funded legal assistance services generate net benefits to the community[[1]](#footnote-1).

Access to justice and to appropriate legal representation for the most vulnerable, including children, must be guaranteed in Victoria.

1. http://www.pc.gov.au/inquiries/completed/access-justice/report [↑](#footnote-ref-1)