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**SUBMISSION OF FITZROY LEGAL SERVICE:**

**VICTORIA LEGAL AID MEANS TEST REVIEW OPTIONS PAPER**

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**ABOUT FITZROY LEGAL SERVICE**

The Fitzroy Legal Service (FLS) is one of the oldest community legal centres in Australia, opening in 1972. FLS is a community-based organisation, independent of government, assisting members of the community whose access to legal resources is limited.

FLS provides legal information, advice and casework and plays a significant role in the areas of law reform and community legal education. FLS publishes a number of hard copy and on-line resources, including the Law Handbook, an iconic, plain language guide to the law.

FLS is an independent, not for profit, membership based organisation, governed by a volunteer Board. An incorporated association, FLS employs a small team of 19 staff and receives support from over 250 volunteers. In the 2015/2016 financial year FLS assisted *over 4,000 individuals* with direct legal assistance services. Many more individuals accessed FLS resources such as the Law Handbook Online – *approximately 700,000 users during the 12 month period to 31st December 2016.*

Our services include:

* a legal advice service that operates five nights a week, staffed primarily by volunteer lawyers;
* an outreach service and four specialist legal advice clinics (specialising in family law, animal law and LGBTIQ-related legal issues);
* a self-funding day practice that offers criminal and family law casework and court representation;
* a Drug Outreach Lawyer program that provides community legal education, referral, advice, advocacy and ongoing casework services to drug users on an outreach basis through health justice partnerships;
* assistance with family law and family violence on an outreach basis through health justice partnerships in the City of Yarra;
* two duty lawyers providing advice, casework and support services at the Neighbourhood Justice Centre;
* a Taxi Driver Legal Assistance Program providing advice and casework for Victorian taxi drivers, assisting across a range of matters;
* community development and community legal education activities, public interest litigation, law reform and the development of legal research and policy; and
* Publication of *The Law Handbook* (hard copy, eBook and online) as well as other websites and resources.

FLS is located in the City of Yarra. A significant percentage of people from outside the City of Yarra receive one-off legal advice from our night service, or are provided with a referral to another service. The reason for this is that many other community legal centres that do not have the capacity to provide the level of legal advice services provided by FLS as a result of our volunteer pool, and regularly refer clients to FLS. Additionally, as a well-established community legal service, there is a level of awareness in the broader community of our existence as a provider of legal advice, referral and casework services.

The central location of FLS in terms of public transport access for volunteers and clients alike is also a significant factor in the level of service we are able to provide. Additionally, the demographic of the City of Yarra is nuanced, and the centralisation of a large number of support services also affects the trajectory of client access. The representation of homelessness in City of Yarra and City of Melbourne is high, and is potentially also linked to the presence of support services. City of Yarra, and particularly Richmond, is also recognised as a drug use ‘hot spot’ where significant numbers of people with complex needs and multiple barriers to equity in access to justice are present.

**INTRODUCTION**

The Fitzroy Legal Service (FLS) welcomes the opportunity to contribute a submission to Victoria Legal Aid’s *Means Test Review.*

FLS undertakes significant legally-aided work in the areas of Criminal Law and Family Law. FLS is a member of a number of Victoria Legal Aid panels, including:

* Indictable Crime
* Summary Crime
* Family Law
* Family Violence 29A

We have not expressed an opinion on every option, noting that there are some key themes coming through, namely trying to strengthen accessibility and sustainability of legal assistance services.

Part C of the Options Paper notes the challenges around levels of practitioner fees. Whilst lower fees support enhanced economic and efficient services, they do act as a disincentive for undertaking legally aided work. We suggest consideration be provided to investigating bundling of legally aided services (ie. paying for an organisation a lump sum to conduct legally aided matters rather than a per matter fee). This would potentially be more efficient.

*Documentary requirements*

We support the option to introduce a waiver of documentary requirements, particularly in circumstances of family violence.

We also suggest that consideration be provided to reducing documentary requirements for people receiving casual/varied income and/or people who are directors of companies that are failing/going bankrupt. These requirements are often are so onerous, that they can lead to lengthy delays, the client simply giving up and not being able to access legal assistance and legal services spending very significant time trying to help the client to satisfy these requirements (rather than resolving legal matters).

*Income, assets and deductions*

A significant number of FLS clients have irregular income and rely heavily on mobile phone use. We support the view that mobile phones should be factored in when considering a person’s necessary expenses.

We support the option to introduce a better approach for people with irregular incomes, however would also caution that the administrative burden of compliance should not be more onerous than those with regular incomes.

The Fitzroy Legal Service assists a significant number of clients who have alcohol and other drug dependence. This impacts on access to legally aided services in a number of ways.

1. We suggest consideration be provided for the inclusion of pharmacotherapy fees as allowable cost of living deductions.
2. We suggest consideration be given to clarify status of drug debts and/or debts where lender may not be reputable but client is making repayments. Our experience highlights that confidentiality issues preclude providing declarations (possible issues of privilege), there are difficulties in meeting VLA requirements for documentary evidence, whilst acknowledging that they are necessary debts.
3. Given the huge demands on government funded rehabilitation services, private services are often the only avenue for individuals to access treatment. Use of superannuation for private rehabilitation services should not be prohibitive to meeting the income and means test.

The onerous requirements regarding assessment of income/assets often unnecessarily prolong resolution of legal matters. This is a major issue for family violence matters where there are now fast-tracking procedures in most courts. This is particularly pertinent to Option One.

We support allowing a higher income threshold for certain priority matters i.e family violence and child protection. We also strongly support option 13 (increasing a range of deductions) but caution against cumbersome documentary evidence requirements, as these would cause delays. Option 27 (standardised household expenditure) may be preferable on this basis.

*Financially associated persons*

We support the option to reduce documentary proof required from financially associated persons and allowance for dependents of financially associated persons to be included in the means test calculations.

We also support the options that discuss dependents of financially associated persons being included in the means test calculations and also narrowing the definition of financially associated person. This is particularly relevant where an individual, over the age of 18, is still living with parents who are classified as financially associated persons but who may be supporting a number of dependents and therefore have limited means to support the individual requiring legal assistance.

The alternative to legal aid, ie. a parent paying for legal fees for their child’s legal matters, creates a high risk of legal ethical issues over the course of acting – ie not being able to appear for a child because their mother hasn’t paid legal fees and how this interplay affects the personal relationship and legal relationship between lawyer and client and mother and son. These people should not be presumed to be able to pay for legal fees just because they are providing support in another way (ie not charging board for living arrangements). Refusing legal aid and requiring the parent to fund private legal assistance can create ethical issues (as noted in the example above where the matters needs to be adjourned contrary to the interests of the child as the mother as been delayed in paying legal fees). It also can lead to delays where there is a breakdown in relationship and the person ceases being a financially associated person and the client needs to apply and receive a grant of legal aid.

In a recent FLS example VLA requested the information below for a parent of a client:

(i) 6 weeks of recent payslips

(ii) If in receipt of a Centrelink benefit, please confirm the type of benefit, the amount being received and if the maximum amount is received

(iii) 3 months of recent bank statements from all active bank accounts

(iv) If property if owned, please provide the value of the property and if any money is still owing

(v) If a car or any other assets is owned, please provide the value and if any money is still owing

(vi)- Confirmation of any cash savings and shares.

For various reasons, the parent may not want to, or feel comfortable, disclosing this information to the child (for example, the parent may not want their child to know about their bank account purchases or their savings). The process of obtaining this information can also be very time intensive for a lawyer, cumbersome for a vulnerable client that might need to be focussing on other things (ie attending appointments, reporting on bail) and create delays in the resolution of the matter.

*Estimated legal costs*

It is our experience that the forecasted costs of criminal matters (used to determine whether someone can afford private legal representation) do not appear accurate in the case of complicated matters. FLS recently had a complicated matter in the summary stream that was booked for a contested hearing. We obtained a quote regarding a barrister’s costs for running the contest and this quote was between $5,000- $7,000. These costs would not include solicitor’s costs.

We also note that there is no ability to claim for assessing a client’s eligibility (means, guidelines and merits tests) and that this may result in panel members feeling reluctant to undertake the work necessary to assess a client who presents with complicated means.

*Eligibility exemptions*

We strongly support the options to exempt certain categories of people from the operation of the means test i.e children, people living on a low income, in custody, experiencing homelessness etc and to prioritising access to grants of legal aid for these priority clients.

If these options result in reduction of administrative burden for clients and lawyers– i.e you just need Centrelink card on file etc - this would means lawyers could spend more time on legal work and less time, collecting and entering data into Atlas.