Towards a fairer legal system

Outcomes of the means test review

09 July 2018

© 2018 Victoria Legal Aid. Reproduction without express written permission is prohibited. Written requests should be directed to Victoria Legal Aid, Corporate Affairs, Level 9, 570 Bourke Street, Melbourne Vic 3000.

Disclaimer. The material in this publication is intended as a general guide onlyhas been prepared for Victoria Legal Aid staff and community legal centre staff and volunteers for study purposes only. The information contained should not be relied upon as legal advice, and should be checked carefully before being relied upon in any context. Victoria Legal Aid expressly disclaims any liability howsoever caused to any person in respect of any legal advice given or any action taken in reliance on the contents of the publication.

Contents

[Executive summary 1](#_Toc511214096)

[The review’s purpose 1](#_Toc511214097)

[Shaping the future of legal assistance 2](#_Toc511214098)

[Who we are 2](#_Toc511214099)

[Without a lawyer, access to justice is harder 2](#_Toc511214100)

[Since our means test was developed, the way we live now has changed 2](#_Toc511214101)

[Making the means test better 3](#_Toc511214102)

[Deciding who can get legal assistance because there are limited funds 3](#_Toc511214103)

[Who we spoke to 3](#_Toc511214104)

[What we learnt 3](#_Toc511214105)

[Evolution of our recommendations 5](#_Toc511214106)

[How we arrived at our new means test 5](#_Toc511214107)

[Who our changes are focused on 5](#_Toc511214108)

[We made a means test that is: 5](#_Toc511214109)

[Targeting changes to help those most disadvantaged 6](#_Toc511214110)

[Case study - Jess 6](#_Toc511214111)

[Case study – Aldo & Leila 6](#_Toc511214112)

[Case study – Janelle 7](#_Toc511214113)

[Building a sustainable means test 8](#_Toc511214114)

[Increasing demand on our services 8](#_Toc511214115)

[More to be done 8](#_Toc511214116)

[How will we achieve this? 8](#_Toc511214117)

[What’s next? 9](#_Toc511214118)

[Appendix 1 – upcoming changes to the means test 9](#_Toc511214119)

[Expenses and assets 9](#_Toc511214120)

[Financially associated persons and dependants 9](#_Toc511214121)

[Contributions and debts 9](#_Toc511214122)

[Exemptions and waivers 10](#_Toc511214123)

[Guidance and support 10](#_Toc511214124)

# Executive summary

The means test review committed to working with VLA’s partners in the legal and community sectors to deliver these reforms in a collaborative and transparent way.

This report and actions are the result of the ideas of the legal and community sector and the experience of our clients and other people in need.

Without your expertise and engagement in this review, we would not have been able to build a means test that better meets the needs of the community.

## The review’s purpose

1. We commenced a review of our means test in 2016, for the first time in two decades
2. Our purpose was to review our test so we could help more people in legal need
3. We developed 43 changes to our test that will help the test become fairer and more accessible.
4. 13 of those changes will be coming into effect first.

# Shaping the Future of legal assistance

## Who we are

* Access to publicly funded legal assistance is an essential element of a fair and accessible justice system
* Victoria Legal Aid provides grants of legal assistance to people with certain legal problems
* The means test is a measure we use to decide if someone qualifies for one of these grants

## Without a lawyer, access to justice is harder

Not being able to access timely legal assistance can lead to:

* More self-represented litigants, leading to a justice system that faces increasing delays and costs
* Litigants being less satisfied in the outcome of their legal matter
* Legal problems escalating and resulting in a higher change of reoffending
* Community safety being compromised

## Since our means test was developed, the way we live now has changed

* Household liabilities and average household disposable income have not increased at the same rate
	+ In 1988, the average person in Australia had debt that was 64% of the amount of a person’s disposable income
	+ In 2017, debt has now ballooned to 185%
* Annual increase in cost of living since 1984
	+ Income has gone up by 4.4%
	+ Bread has gone up by 4.8%
	+ Urban transport has gone up by 5.1%
	+ Medical/Hospital fees have gone up by 7.2%
* Households renting from a private landlord also increased
	+ In 1995-96 this was at a rate of 19%
	+ In 2015-16 the rate was 25%

# Making the means test better

## Deciding who can get legal assistance because there are limited funds

We wanted to take into account the experiences of people who are missing out on legal assistance.

We wanted to create a test that centred the experiences of its users. This meant finding out what the consequences of missing out on legal assistance were.

Our goal was to create a revised means test that is simple to understand, efficient to administer and financially sustainable.

We haven’t been able to achieve all of this – and will not be able to achieve it all without help.

## Who we spoke to

People who told us they hope to see a real difference made to what is considered to be an outdated means of determining eligibility.

We received over 1,000 contributions from a range of groups, including:

* Social service organisations including:
	+ Victorian Council of Social Services
	+ Jesuit Social Services
	+ Homeless Persons Legal Clinic
* People who have missed out on legal assistance, as well as the general community
* Community legal centres including:
	+ CommUnity Plus
	+ Inner Melbourne Community Legal
	+ Djirra (formerly Aboriginal Family Violence Prevention and Legal Service)
* The legal profession including:
	+ Law Institute of Victoria
	+ Supreme Court
	+ Many private practitioners

## What we learnt

Through consultation over the past 12 months, we now know that:

* the cost of living (including debt) has increased since our means test was last updated. Income and benefits have not kept pace with the increased cost of living
* people use all of their savings to get help for their legal problem, leaving them at increased risk during an emergency
* our means test does not account for a wide range of essential living expenses and does not reflect a person’s true ability to pay privately for a lawyer
* we are not transparent around the decisions we make and what factors are taken into account when assessing a person’s financial means
* contributions are often applied in situations where they are unlikely to be recouped, placing unnecessary pressure on people receiving a grant of legal assistance while creating an administrative burden on VLA
* elements of our means test are difficult to understand, especially documentary proof of means requirements and when a person can ask for VLA to exercise discretion

# Evolution of our recommendations

## How we arrived at our new means test

VLA developed our changes to the means test through the following process:

* Release of a consultation paper
	+ Consultation
	+ Roundtables
	+ Research
	+ Meetings
* Release of options paper
	+ Further consultation
* Development of Recommendations
	+ Approval by VLA Board of Directors

## Who our changes are focused on

The means test recommendations focus on two groups of people.

The VLA Board has approved changes that affect the first group:

1. The people who **used** to be our clients: our means test hasn’t kept up to date with existing cost of living measures. This means that people who have previously always been eligible for assistance are now missing out.
2. The people who **should** be our clients: there are marginalised groups of people who satisfy our priority client framework, but are still not eligible for a grant of legal assistance. We can’t action these changes without additional government funding.

## We made a means test that is:

**Simpler –** by rewriting our test so that everyone can understand how it works

**More transparent –** by publishing more written guidance on how we assess applications for legal assistance

**More accessible –** by providing training to non-legal organisations that our clients are likely to be in contact with

# Targeting changes to help those most disadvantaged

## Case study - Jess

**Under our old means test…**

* Jess is a victim of family violence
* Jess would need to provide us with documents showing her income, bank accounts and other assets
* We ask about assets owned by, and controlled by, Jess’ husband
* Jess has no knowledge of the details of the property
* Jess fears declaring an interest in the property will put her safety at risk
* Jess continues to be a victim of family violence

**Under our new means test…**

* Jess will only need to tell us how much she is earning and how much money is in her bank account
* She will not need to give us pay slips, bank statements or evidence of ownership of assets
* This will make the process of apply for help a little bit easier for Jess and other applicants like her who are going through a crisis

## Case study – Janelle

Janelle is 21 and was renting a flat with her boyfriend and their son, Samuel, until they broke up. She and Samuel move back home to live with her parents temporarily while she saves up to live on her own. Janelle has applied for a grant of legal assistance for family law proceedings relating to the custody of Samuel.

**Under our old means test**

We would ask for the financial information of Janelle’s parents. As they both work, we would expect them to pay for her legal fees and she would not be eligible for legal assistance.

**Under our new means test**

We would not ask for this information. This is because we know that asking other family members to assist with expensive legal costs can lead to relationship breakdown and stress.

# Building a sustainable means test

## Increasing demand on our services

Demand for our legal aid services have been climbing in recent years, in part because of an increased police presence. But unmet demand is worse than we realise.

We want to meet this demand, but even small changes to our means test cost money. This means we need more funding to make substantial changes.

Further investment will mean less people will be left behind, because the means test will stay up to date with cost of living.

More people who are facing life changing legal problems will be able to get assistance. This will reduce delays in the courts and reduce the justice gap.

## More to be done

The 13 changes were approved because they modernise our means test and can be implemented within existing resources. The remaining changes are also essential to disadvantaged groups of people, like the working poor, but cannot be actioned without funding.

These changes include:

* Streamlining access to a grant from duty lawyer services
* Waiving our means test for some priority clients
* Taking into account a person’s medical and health expenses
* Reviewing our estimates of the cost of legal matters

## How will we achieve this?

* The means test changes have focused on making it easier for people who are eligible for legal assistance to access our help.
* Without a substantial update to our means test, we risk leaving behind others who also need our help but don’t qualify.
* More financial investment from government is necessary if we want more people to access our services.
* This requires an additional phase to our Review which will be focused on strategic advocacy.
* We will engage in discussions with the Commonwealth and State governments about how additional funding will assist us to close the justice gap.
* We will also be working with key partners in the justice and community sector to assist with these lobbying efforts.

## What’s next?

We have begun implementing the 13 changes endorsed by the Board. Details about when the changes will come into effect will be published on our website.

For more information about the means test review, you can visit [our website](https://www.legalaid.vic.gov.au/information-for-lawyers/how-we-are-improving-our-services/means-test-review).

# Appendix 1 – upcoming changes to the means test

## Expenses and assets

1. An applicant will no longer be asked whether they have received, or expect to receive, a lump sum amount of money

## Financially associated persons and dependants

1. An applicant’s spouse or de facto partner will be asked for the same information that is asked from the applicant to establish their financial circumstances
2. The definition of financially associated person will be narrowed to an applicant’s spouse or de facto partner
3. Some spouses or de facto partners will be excluded from assessment where it is inappropriate to expect them to financially assist

## Contributions and debts

1. We will publish written guidance on how we will treat debts owed as well as introducing a clear financial hardship process to be used when people ask for their contributions to be waived or varied
2. Indexation in line with CPI will be imposed on future contributions that are secured over an applicant’s property
3. Applicants will be able to pay their asset contributions in monthly instalments instead of as a lump sum

## Exemptions and waivers

1. We will waive the need to provide documentary proof of means for applicants who are:
- experiencing homelessness
- fleeing from or experiencing family violence
- residing in remote areas; or
- identifying as an Aboriginal or Torres Strait Islander person

## Guidance and support

1. We will be building an online means test tool that indicates whether a person will be eligible for a grant of legal aid
2. We will publish written guidance of when our means test should be waived where an applicant is ineligible because of their income or assets
3. Our means test will be rewritten in plain language
4. We will provide training to support workers in the community sector about the eligibility requirements to get a grant of legal aid
5. We will publish when and how often our means test is waived as well as a policy to guide how discretion should be exercised