

# Means Test Review

# Options Paper

# April 2017

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# About this Options Paper

This options paper covers possible changes to the means test and contributions policy, which have been suggested and informed by a consultation process with clients, partners and the public. A number of the possible changes are interrelated. The ultimate decision about changes to the means test or contributions policy rests with the Board of Victoria Legal Aid (VLA). In considering what, if any, changes to make, the Board will consider the financial sustainability of any changes. We want to know what you think about the possible options for reform.

The Options Paper is broken down into four different sections. It may not be necessary for you to read every part of the paper, but rather, decide what is most relevant to you and read that section.

If you want to find out the range of options we have outlined, you can go straight to **Part B** of the paper. We’ve listed 47 potential changes to the means test. We’re interested in knowing what you think about them, and whether you think we have evaluated them accurately. Your feedback will help form the recommendations for change that will go to the Board.

If you’re more interested in the feedback we have received to date and what we consulted on, you can check out **Part D** of the paper, which lists the common themes that were drawn from our consultation in 2016. Alternatively, if you want to know how we are preparing to sustain a revised means test, you can find this information located in **Part C**.

The sections of this paper are broken down as follows:

**Part A: How do we measure eligibility?**

This section examines unmet legal need in Victoria and in Australia more broadly. It examines the characteristics that make up a disadvantaged household and looks at what happens to people when they miss out on legal help. It also considers other agencies that have eligibility criteria, both in Australia and abroad, and whether they provide different models worth considering. The purpose of this section is to examine whether our means test should take into account more factors than just financial eligibility when creating a test that better reflects disadvantage in our community.

**Part B: Making the means test better**

Part B provides a brief summary of how the means test currently operates, and the different elements that make up the existing means test. It then provides a number of options that could improve the means test. The options are broken down into four categories: operational, straightforward, bigger changes and planning for an equitable future. These categories tell us what kind of impact we think an option will have. Each of the options are also ranked against three types of criteria, to better evaluate the effectiveness of each option. These criteria are: **cost** (both to implement and in providing the option to the community), **impact** (both to the number of people that will now be eligible and the groups of people eligible) and whether the option will make the means test more **simple**, and/or **fair**.

A list of the options identified can be found in the **Appendix**.

**Part C: Future Focus**

Part C looks to the future of the means test, and how the options can be effectively implemented and monitored going forward to establish a sustainable means test. The section also looks at what mechanisms can be used to support a sustainable and accessible means test. Finally, the section also considers the impact the changes to the means test will have on the broader community and within other sections of the legal sector, including the courts and community legal centres.

**Part D: What you told us**

The last section of the paper summarises the submissions and advice received from key stakeholders that the options in Part B are based on. It is made up of the feedback from members of the community, our external partners and other organisations who contributed to the first stage of public consultation. It also includes feedback from VLA staff during roundtables and meetings held internally.

# About Victoria Legal Aid

Victoria Legal Aid (VLA) helps people with legal problems involving family separation, child protection, family violence, criminal matters, social security, mental health, discrimination, guardianship and administration, fines, immigration, tenancy and debt.

We provide:

* free legal information through our website, our Legal Help telephone service, community legal education (CLE), publications and other resources;
* legal advice and minor assistance through our Legal Help telephone service, duty lawyer service and advice appointments on specific legal issues;
* support to people in the mental health system through non-legal advocates in the Independent Mental Health Advocacy service;
* family dispute resolution services to help families make decisions about family law disputes away from court; and
* grants of legal assistance to pay for legal representation by a lawyer in private practice, a community legal centre or a VLA staff lawyer.

Most of our clients are people who are socially and economically disadvantaged; people with a disability or mental illness; children; the elderly; people from culturally and linguistically diverse (CALD) backgrounds; Aboriginal and Torres Strait Islander people; and/or live in remote areas.

In addition to helping people resolve their legal problems, we work to address the barriers that prevent people from accessing the justice system. We contribute to law reform, influence the efficient running of the justice system, and ensure the actions of government agencies are held to account. We take on important cases and campaigns that aim to improve the law and make it fairer for all Victorians. This is one way we extend the reach of our services and improve outcomes for the community more broadly.

We are funded by the Victorian and Commonwealth Governments to provide these services but we are independent from government. We are required by the *Legal Aid Act 1978[[1]](#footnote-1)* to provide services in the most effective, economic and efficient manner and manage our resources in a way that makes legal aid available at a reasonable cost to the community and on an equitable basis throughout the state.

By providing a range of services – from information and early intervention services to intensive assistance under a grant of legal assistance – VLA aims to provide improved access to justice and legal remedies for people when they need it most.

# About the Means Test Review

# Background

Access to publicly funded legal assistance is important for people in financial need. It is an essential element of a fair and accessible justice system.

We are reviewing our assessment of financial eligibility to make sure it reflects the way people live today. We want to make sure the factors we consider reflect the financial circumstances and experience of people who need legal help, so that disadvantaged people who need access to legal help do not miss out. We also want to increase understanding of our means test.

Since the means test was first implemented, the way people live, work and spend money has changed. For example:

* employment patterns have changed and more people are working in casual, temporary and contract jobs;
* income inequality has grown;
* patterns of expenditure within households have changed;
* households are more likely to have large amounts of debt, including personal debt;
* housing costs have increased; and
* the cost of raising a family has increased.

This means that our current test for financial eligibility may no longer build an accurate picture of whether a person can afford to pay for a lawyer.

In 2014/15, 826 people who made an application for a grant of legal assistance missed out because of their financial circumstances.[[2]](#footnote-2) This number does not include people who did not apply because they thought they would not be eligible or were told by someone they would not be eligible and did not proceed with their application.

In March 2016, modest changes were made to the means test to better reflect the current cost of living in advance of the full review. We want to do more to ensure that people who most need legal help are eligible for grants of legal assistance.

# Objective of the Means Test Review

The purpose of the Means Test Review is to expand access to justice by making more people eligible for grants of legal assistance. We aim to develop an approach to the assessment of financial eligibility that is simple to understand, flexible, efficient to administer, financially sustainable and fair.

# Strategy

**How will we evaluate the proposed options?**

We know that it will be difficult to know which options should be implemented. To assist with this, criteria have been developed to effectively assess each of the options. These same criteria will make up the basis for the recommendations of options that go to the Board. We have evaluated each of the options in **Part B** against the criteria of:

* How simple and/or fair the option could make the means test;
* The increased number of people eligible under the means test, or in certain priority groups; and
* The cost of implementing the changes necessary to make the option effective as well as the ongoing costs (this is directly linked to the level of impact of the option).

The criteria are helpful for understanding what each of the options will mean if implemented, and have been incorporated into the paper to provide you with a better understanding of the effectiveness of each of the options, as well as to help us better evaluate each of the options.

**What is the vision for the means test?**

To evaluate the options better, we need to return to the objectives of this review and the purpose of reviewing the means test in the first place. The means test review was established in part because of [VLA’s Strategy for 2015–2018](https://www.legalaid.vic.gov.au/about-us/news/strategy-2015-18). In this strategy, three core values are identified as being at the heart of what VLA stands for. They are fairness, care and courage. The options, and the review itself, should be evaluated against these values – to ensure that they have been created for the right purpose.

**Fairness:** We want a better deal for disadvantaged Victorians. We know they are missing out on services relative to their counterparts in other jurisdictions. We are committed to being transparent with our processes and increasing and improving the publicly available information about eligibility for legal aid. We want people to experience our decisions as clear and transparent. We want to ensure that people in comparable financial circumstances are eligible for a similar level of assistance. A revised means test will seek to avoid anomalous or divergent decisions for people with comparable financial circumstances.

**Care:** We care about people who are missing out on our services and the experiences that lead to disadvantage. We want to better understand who needs legal aid and how to assess financial eligibility in a way that guards against people missing out on access to a service when they need it most.

**Courage:** We have the courage to demand increased access to justice at a time of competing demands. We are open to new ideas on how we can improve our means test and the targeting of access to legal aid. We want to involve our partners in the legal assistance sector and community sectors, as we know we don’t have all the answers.

# What’s next?

Once we receive feedback on these options, we will make recommendations for reform through a final report to the Board of VLA, which is responsible for setting the means test and contributions policy.

If the VLA Board decides to change the means test and contributions policy, we plan to implement these changes in 2018.

Any change to financial eligibility measures and the contributions policy will have financial implications, particularly if the effect of the changes is to increase the number of people in the community that meet the criteria for financial eligibility. The scale of the changes may depend on whether additional funding is available.

We are in the process of working out what these options for reform are likely to cost. This will be an important consideration for the VLA Board. One of the key objectives of this review is to develop and implement a financially sustainable and fair means test. VLA will continue to discuss funding arrangements with the Victorian and Commonwealth Governments throughout the review process.

Since we commenced public consultation, the Victorian Attorney-General has released the Final Report of the Access to Justice Review. There are a number of findings and recommendations in the Access to Justice Report that are relevant to the issues under consideration in the Means Test Review. These include:

* Longer-term funding to facilitate service provision;
* Increase in State funding for legal assistance;
* Appropriate proportion of Commonwealth funding required;
* Reviewing fee schedules for grants of legal assistance;
* The need for national benchmarking of legal assistance services across Australia;
* A commitment to continuing to improve the simplified grants process.

The Access to Justice report seeks to build on existing strengths in the legal assistance sector, while noting areas for improvement in the operation of the justice system. The recommendations illustrate a commitment to Victoria Legal Aid’s current model, with the relevant proposals incorporated into this Options Paper.

# How to make a submission

There is no specific format for submissions.

Submissions are generally public documents and we will generally publish all submissions on our review website. We will not publish submissions that contain offensive or defamatory statements. Please tell us if you would like your submission to be anonymous or confidential.

This is the second stage of our public consultation process.[[3]](#footnote-3) Submissions to this options paper close on **11 June 2017**.

# Issues outside the scope of the Means Test Review

The Means Test Review is considering financial eligibility which is assessed by the means test. It will also consider the circumstances where a person may be required to contribute to the cost of legal assistance.

We are looking at opportunities to improve the means test and contributions policy for **future** applications for grants of legal assistance. We want the experiences of our clients and external partners to inform any future changes. There are some issues that are out of scope for the review and have not been considered.

The Means Test Review has not considered what types of legal issues are covered by grants of legal assistance (guidelines) or how we assess whether a particular legal matter has merit (the strength of a person’s legal case). Fees paid to lawyers, court-ordered representation in criminal law or family violence matters and the use and operation of the ATLAS grants management system are also out of the scope of the Means Test Review. However, any changes to the means test will require ATLAS to be updated to reflect the changes.

# How to make a complaint or request reconsideration

We are keen to hear stories about your experiences seeking legal assistance. However, this review is not the right place to make a complaint or request reconsideration about a decision made by VLA about applications for grants of legal assistance.

We have existing processes for making a complaint or requesting reconsideration of a decision of VLA.

If you want to make a **complaint** about VLA, please call our Complaints and Statutory Compliance team on (03) 9280 3789, Monday to Friday from 8.45 am to 5.15 pm.

If you want to make a complaint in writing, you can email complaints@vla.vic.gov.au or send a letter to:

Complaints and Statutory Compliance
Victoria Legal Aid
GPO Box 4380
MELBOURNE VIC 3001

If you want to request **reconsideration** of a decision made by VLA, please speak to your lawyer or contact Legal Practice (Assignments) on (03) 9269 0600.

Requests for reconsideration must be made within 14 days of a decision by VLA.

# How to get information about eligibility

If you want **information** about your eligibility for a grant of legal assistance or you need help with a legal issue, please contact Legal Help on 1300 792 387.

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# Overview of eligibility for services

Not everyone is eligible for a grant of legal assistance. More people need legal assistance than the amount of legal assistance we can provide. This is because VLA and other legal assistance service providers have limited funding and cannot help everyone who needs help. VLA uses different eligibility filters to ensure that the assistance available is targeted to those most in need of legal help with the funds available.

Stricter eligibility filters are applied to more resource intensive services. Grants of legal assistance are the most costly and intensive service provided by VLA.

# Grants of legal assistance

Financial eligibility, measured by the means test, is the first hurdle for a grant of legal assistance. A grant of legal assistance can enable a lawyer to provide more intensive assistance including the preparation of legal documents and providing ongoing representation in legal proceedings.

Most grants of legal assistance are provided for criminal and family law issues.[[4]](#footnote-4) However, grants of legal assistance are also available for some civil law issues.

When deciding whether an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) is eligible for a grant of legal assistance, VLA is required to consider whether an applicant can meet the full cost of legal services from a private lawyer.[[5]](#footnote-5) VLA does this by applying a means test which is made up of an ‘income test’ and an ‘assets test’. The means test allows us to assess an applicant’s financial circumstances, including income, available cash, debts, and living costs to see if they can afford to pay privately for legal services.[[6]](#footnote-6)

In addition to considering an applicant’s financial circumstances, VLA also considers whether a grant of legal assistance is available for the particular legal issue under our guidelines and whether the matter has merit. These matters are outside of the scope of the Means Test Review.



1. Section 4. [↑](#footnote-ref-1)
2. This figure was previously reported as 888 and has been revised as a result of amended reporting. [↑](#footnote-ref-2)
3. We released a Consultation Paper on 10 August 2016 for a six-week public consultation period. That paper asked people to identify key issues with the operation of the means test and contributions policy to assist with the identification and development of possible changes to the means test and contributions policy. [↑](#footnote-ref-3)
4. In 2015–16, VLA provided 38,345 grants of legal assistance. The majority of grants were in criminal law matters (22,785) with over half of these being provided for summary crime matters. Grants of assistance for family, youth and children’s law matters totalled 14,415 with the majority of these grants being for child protection matters (7,718). The balance of the grants of legal assistance were provided for civil matters (1,145). The majority of these matters were undertaken by VLA staff lawyers (943). [↑](#footnote-ref-4)
5. *Legal Aid Act* 1978, Section 24(1)(a). [↑](#footnote-ref-5)
6. *Legal Aid Act* 1978, Section 24(3). The Means Test may also include the assessment of the income and assets of people who are financially associated with the applicant. A ‘financially associated person’ is a person who usually provides an applicant with financial support or could reasonably be expected to financially assist the applicant. It may include a partner, parent, sibling or child. [↑](#footnote-ref-6)