# Part C: Future Focus

We know that many of the options proposed in **Part B** of this paper will not be possible to implement without additional funding. Similarly, the options that can be implemented without funding will still have an impact on the ongoing financial health of VLA. In order to present a means test that is both accessible and sustainable, we need to create a roadmap for the future that will ensure our test is contemporary while remaining financially viable.

The purpose of **Part C** is to do just that. This section seeks to answer the following questions:

* Do the changes proposed meet the initial objectives of the means test review?
* What plan do we have to make changes to the means test depending on the level of funding available?
* How do we ensure the sustainability of the means test?
* What impact will these changes have on the broader community?
* What other innovations are occurring to assist with increasing access to justice?

It is important to read Part C in conjunction with **Part B** of this paper, which outlines the existing parameters of the means test and the proposed options currently available to us. We also want your answers to these questions, and what you think we should consider when assessing the right options to incorporate into the means test considering funding constraints. We want to know what you think of our methodology and whether there are additional factors that should be taken into consideration when evaluating our options. Details on how to make a submission to this paper can be found in the **Introduction to the Options Paper**.

# How will the means test better reflect a contemporary understanding of disadvantage?

An important aspect of this review is having a means test that better reflects a contemporary understanding of disadvantage. This means considering not just how the means test can have different thresholds, or include different assets, but also whether there’s an entirely different way of doing things that places our client’s experiences at the centre of the test. This is what we looked at in Part A, and was also used to develop some of the options discussed in Part B of this paper.

It won’t be possible to implement all the options without additional investment. This means looking at the options that best achieve the objectives of the means test review without too much additional cost. Some of the options work better together and make more sense to be implemented as a complementary team of changes.

We have identified key themes that the review is seeking to achieve: creating a means test that is simpler, fairer and will have the most impact in our community. These three factors combine to create a means test that will better reflect a contemporary understanding of disadvantage.

Some of the changes suggested exemplify these categories, and are explored further below.

# Simpler

**Defining financially associated persons**

Aside from bigger policy changes to the test, there are smaller changes to the existing means test that could be just as helpful in redefining the means test to better reflect disadvantage. One of the biggest pieces of feedback we received was in relation to the definition of financially associated persons and how it was too broad and too vague to be relied on. By expanding the definition of dependant and narrowing the definition of financially associated person, we can help the means test become simpler and more accessible.

**Simplifying the presentation**

Another option that received much feedback from a diverse range of stakeholders was on the presentation of the means test. It felt inaccessible and complicated and is spread across several pages online. Simplifying the presentation alone will make the means test easier to understand and similarly, to apply, by both staff of VLA and private practitioners who provide advice on the means test to clients on a regular basis.

**Training staff**

An essential component of a means test that is fair and simple is one that people understand easily. This is not just for people that use our services, but for the people that apply our means test every day. Additional training for staff to understand what disadvantage looks like and how the test should be applied is essential to ensuring that there is a consistent application of the means test.

# Fairer

**A better measurement benchmark**

One of the key potential changes identified is having a better benchmark on which income thresholds are set. VLA currently uses the Henderson Poverty Line, as do all other Legal Aid Commissions in Australia. However, there may be better benchmarks out there, including the OECD Relative Poverty Line, which looks not just at income but other factors that impact on a person’s living status. If our income threshold was set against this benchmark, more people living in poverty would become eligible for assistance under the means test.

**Referrals for ineligible applicants**

We spoke a bit in Part A about what we know happens to people who are refused assistance as a result of being financially ineligible. Often they must navigate the court system on their own or incur significant amounts of debt to pay for a lawyer privately. There will always be people who do not qualify for assistance under the means test and while the review aims to reduce that number we won’t be able to create a sustainable means test that results in everyone being eligible. What could assist people being refused is having a better referral system to other avenues of assistance or self-help material that people could use when they are refused.

**Implementing changes that address the inequity between homeowners and non-homeowners**

A few of the suggested options relate to providing different asset thresholds between those who own a home and those who don’t. Currently the means test allows homeowners to have equity of up to $500,000 in their principal place of residence and remain eligible, but this is not afforded to those who are renting. Allowing non-homeowners to have a higher threshold of savings before a contribution is required or before they are considered ineligible, could help address some of this discrepancy.

# Most Impact

**Exempting priority clients**

VLA has a priority client framework that is used in many other aspects of our service provision. It is not used with our grants of assistance, which are the most time and resource intensive service that we provide, as well as being the highest level of service for a client we can provide. A means test that factored the priority client framework into its assessment would be a test that is more properly targeted to those most in need.

**Looking at factors of disadvantage**

The priority client framework is one way of understanding the more vulnerable communities in our midst, but we also know there are other indicators that exist that identify when someone is at a significant disadvantage. These indicators could be built into the test so that people that don’t fall into a priority client group still don’t miss out because they might have additional finances.

**Providing a continuity of service**

We established in **Part A** of this paper that there is a significant amount of unmet legal need in the community, and that this is often faced by the most disadvantaged. The most disadvantaged are also likely to face a multitude of legal problems. Providing a grant of legal assistance for a client who has already been through a duty lawyer service could help streamline a person’s contact with VLA and could avoid the need to overcome multiple eligibility hurdles to qualify.

# Methodology Roadmap

Without additional investment into VLA, we cannot meaningfully consider all the potential changes to the means test. As part of the ongoing process for this review, we will be looking at what changes will be possible and what impact we could have if additional funding is made available to us.

To do this will involve extensive financial modelling, so that we can provide our Board with a better idea of the cost and impact some of our options will have. This will include looking at what combination of options are available should we receive additional funding in the amount of $1 million, $3 million, $5 million and beyond. We have currently engaged with an actuary to provide this advice, who will also provide us with better data around who we are currently able to assist based on the existing parameters of the means test. This data will tell us how many more people we can fund if we did have more funding available, and how much it will cost to implement.

This will occur in conjunction with the consultation on the Options Paper and combine with the work done around evaluating the impact and cost of each of the options. The options will be considered through the following matrix:



Options that are low effort and high impact, or low effort and low impact may make the most sense to implement. Options that have a high effort but result in a low impact may not be worth pursuing within the current financial climate. Finally, there are the options that will be a high effort to implement but will also have a high impact. It is these options that we want your feedback on, and whether you think they are worth implementing. By combining this evaluation with financial modelling, we can better plan a roadmap for the future.

# Without additional funding, what are our options?

There are a range of options we can implement that are low cost but will still make the means test more accessible and enable more people to become more eligible for assistance. Many of these options are listed in the ‘Operational’ and ‘Straightforward’ categories of options in **Part B** of this paper. While low cost, they are also low impact, and it is forecast that we will not see the increase in clients expected as we would if options listed in ‘Bigger Changes’ were implemented.

The options in the first two categories are mainly focused on making the test easier to understand, by narrowing or widening definitions or by increasing thresholds slightly, to bring them in line with the current benchmarks that we base our test on.

# Sustainability & Fairness

# How do we ensure the sustainability of a new means test?

One of the keys to making the means test fairer and more accessible is to keep it sustainable. Making changes to the test that will see the organisation unable to keep up with demand 12 months in would not result in a workable means test. This does not just mean financially sustainable, but ensuring the sustainability of a contemporary and fair means test. In this context, it’s important to look at how we can create a test that is sustainable for VLA staff to manage and that can remain relevant in the face of changing workforce patterns and household expenditure.

In this section, we will look at the different ways we can help achieve a sustainable means test. The potential actions have been categorised in three ways:

* Sustaining a contemporary means test
* The actions outlined under this section are those that look at less traditional ways we could keep the means test contemporary. They are a departure from the standard model of ensuring sustainability and would involve a significant amount of change in processes to occur.
* Traditional methods of sustainability
	+ This section looks at the more traditional ways that we can help the test remain sustainable, that will help us keep track of the ways the means test is being applied, and who is being affected by the means test. It will involve ongoing monitoring of the application of the test.
* Financial sustainability
	+ This section is focused on how we can keep the means test financially sustainable for VLA while helping us meet one of the objectives of the means test review, that is to make more people eligible under the means test. Without a focus on financial sustainability, it may be difficult for any revised means test to remain viable.

# Sustaining a contemporary means test

**Being Flexible**

Currently, any changes made to the means test need to be approved by VLA’s Board. This provides important oversight to any changes that might impact a significant number of people in the community, or impact the amount of funding available to VLA. To assist with flexibility, some types of means test changes could be delegated to areas within VLA to decide and implement. This would give the means test the flexibility to keep up with the changing climate and utilise different levers to respond appropriately.

Delegation from the Board may not be possible based on the existing parameters of the *Legal Aid Act 1978 (Vic).* To implement this type flexibility may require amendments to the legislation.

**Gradual Changes**

Implementing changes in a staggered approach would let us monitor the impact of each of the changes better, and better understand the cost each of the changes have. Depending on the viability of the initial changes, further changes can be introduced – particularly if the cost is lower than initially forecast. This would aid in providing a more flexible means test, particularly when phasing in several changes at once. It would be essential to ensure that all relevant people that are affected by such changes - VLA staff, private practitioners, clients and the wider community - are informed of this.

One of the risks with this type of method is that it may end up discriminating against an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) if they end up applying at different times of the year. A person who applies in the first half of the year may be subject to a stricter means test than a person who applies later in the year. Any sort of gradual schedule would need to be balanced against ensuring the means test remains as simple and as accessible as possible.

**Other levers**

Using levers to assist with sustainability is an important tool that can be used to ensure the means test can remain viable. Income thresholds or assets thresholds could be reduced at certain times, depending on the financial climate. Similarly, we can stop exempting certain matters or groups of people from the means test if it is found to be too much of a burden on the system. Using these types of levers within the means test to restrict and expand the test where necessary will avoid us having to look beyond the test to tighten access in other ways, such as restricting the guidelines or the merits test. This would create a means test model that isn’t reliant on other areas of assessment to change to remain viable.

# Traditional methods of sustainability

**Indexation**

A sustainable means test should keep up to date with the rising cost of living compared to growth of income, and should remain relevant to contemporary society. One way of doing this is through indexation. VLA currently indexes fees paid to lawyers on a yearly basis, and the same could apply to the thresholds set within the test. Whatever benchmark is used to establish the thresholds could be reviewed on a yearly basis. This would avoid the scenario of having an income threshold that is fixed on an amount that was set 15 years ago instead of in the last 12 months. Indexation could be done in conjunction with the levels of funding available at the time and with relevant data we can forecast whether or not the increase would actually see more people eligible or just ensure that the people that are currently eligible, remain eligible.

**Using reporting**

We can create a more sustainable means test by using the information we already have at hand. In March 2016, we made some modest changes to the means test as a precursor to the means test review. These changes were made because the means test had not been reviewed in a significant amount of time. This has enabled us to monitor what impact even modest changes to the means test might have.

Following these changes there was a 24% reduction in refusals pursuant to the means test. This is significant as the changes mainly involved increasing some of the assets thresholds and the income threshold to put it back in line with the Henderson Poverty Line scale.

Data provided by an actuary has given us information about how much of the Victorian population is eligible under the existing means test, and their key demographics. Using both data sets, we can create a model that allows as to craft a sustainable means test for the future. Work on this has begun and will make up part of the final report that goes to the VLA Board with our recommendations for change.

# Financial sustainability

**Smaller regular reviews**

The means test has not been reviewed prior to this project in many years. Aside from the modest changes to the means test made in March of 2016, there had not been a significant review and consideration of the means test since it was implemented. By having smaller regular reviews of the means test, we can avoid waiting until the means test is out of date again to undergo significant amendments. More regular reviews would be of a smaller scale and would avoid the need to see significant financial investment to keep the means test contemporary.

**Using financial data**

Sustainability of the means test would be assisted by running regular data reports on grants, so we know who we are funding. While we already do this – and much of this information is provided in VLA’s annual report - by examining the data against the criteria we have set to evaluate the means test, we can find out whether the changes are impacting the right people, or the right numbers of people. This would also include examining the demographics, not only of those that are eligible for funding, but also those that are refused assistance. By running these reports on a quarterly basis, we can monitor how many people we are funding and compare what numbers of people would have been ineligible under the previous means test, to see how many additional people we are assisting and the cost of doing so.

**Contribution levers**

Some of the options around amending the contribution policy may see an increase in money received which could outweigh the cost of making those changes. These options include:

* Adding interest to equitable charges
* Increasing contribution amounts imposed
* Clarifying the debt policy

These options will assist with more people qualifying for aid, but equally, will result in VLA possibly increasing their contribution intake. Clarifying the debt policy will enable VLA Assignments officers to make more consistent decisions when waiving or writing off contributions which could also result in higher contributions recouped.

The impact of these changes, however, will not be seen until later. We know on average that contributions secured over properties are not received for almost 14 years, and while adding interest might encourage people to make repayments sooner, this is unlikely to have an immediate impact on our finances.

This lever can be used in multiple ways throughout the life of the means test. The level of interest can be adjusted, and the contribution amounts can be varied depending on the financial constraints on the means test. Additionally, discount offers on repaying contributions sooner can also assist with an injection of cashflow when required.

**Alternative models of funding**

Funding is provided to VLA by the and Commonwealth and Victorian governments on a yearly basis. Indexation of these amounts is also currently locked in because of existing agreements. The Access to Justice Review has recommended that State funding to VLA be provided in four year allotments as opposed to each financial year to provide the organisation with more stability and to assist with forecasting for the years ahead. This type of funding could incorporate any indexation to the means test thresholds and the funding levels adjusted accordingly on this basis.

Providing funding on a four year basis would assist with the financial sustainability of any changes made to the means test, and the organisation more generally. It would be useful to consider what other forms of funding arrangements could look like that depart from the traditional model that is currently used.

# What external issues impact the scope of the Means Test Review?

Some of the feedback that we received during consultation related to topics that are outside the scope of this review. Nevertheless, it is important to consider the means test not in a vacuum, but in the context of other factors that limit and expand the test. The means test is just one of the limbs of eligibility that exists, and there are additional factors that impact a person’s ability to qualify for assistance. Without adjustments made to these other areas, accessing a grant of aid may remain difficult for many [applicants](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance).

Whilst these topics are outside the scope of review, without considering the impact of these other issues, the test may not be as fair and accessible as it could be.

Selected here are some of the key issues that should be considered, but greater detail is provided in **Part D** of this paper – **What people told us**.

**Reviewing practitioner fees**

Feedback from practitioners highlighted the complexity of cases aided by VLA, and that both the content of the matter and the vulnerability of the client led to a significant amount of time invested in preparing and progressing the case in a way that was not reflected by the fees paid to them.

Lower fees represent VLA’s commitment to provide an economic and efficient service that allows legal services to be provided to the widest number of people in the community as possible. Lower fees enable this to occur and result in lower repayments required from clients in the form of contributions. The fees may act as a disincentive for some lawyers, particularly sole practitioners, and it is worth considering how best the fees can be amended to better reflect the work conducted while ensuring the sustainability of service provision.

**Updating the application form**

The application form that clients or their lawyer must complete to get a grant of aid is available in both soft and hard copy. It includes all the information needed to make a full and proper assessment of the matter a person is seeking assistance for. The form is quite lengthy and there are often parts of the form that are not relevant to a person depending on the nature of their matter, or their financial status.

Work is being done in this area to improve the accessibility of application forms. Some of this work, like the Legal Aid Checker, developed by VLA in conjunction with Code for Victoria is detailed [below](#_What_else_is). The Legal Services Commission of South Australia has introduced an [online application form](http://www.lsc.sa.gov.au/cb_pages/legal_aid.php) that clients can complete themselves.

Whatever changes that result from the means test review will see a modification of the application form to some extent to reflect these changes. However, a form that is more accessible and easier to understand would also assist in achieving some of the objectives of this review.

**Other eligibility criteria**

The means test is only one of the hurdles that an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) must overcome to be considered eligible for a grant of legal assistance. The other two components are the guidelines and the merits test. Changes to the means test that result in additional people qualifying may still see those same people being refused based on the matter they are seeking aid on, or their prospects of success.

The guidelines have also been historically used as a way of restricting access at times when VLA has had to limit grants due to budgetary constraints. Efforts are currently underway to review some of the guidelines. A civil law guidelines review is being undertaken by VLA, and re-drafted family law guidelines will be coming into effect as of 3 July 2017.

Consideration of the impact that the guidelines and the merits test have on people accessing VLA’s services is necessary to achieve the objectives stated by this review in a wider context. The review may enable the means test to become more fair and more accessible, but without consideration of the other elements of eligibility– access to a grant of assistance may remain too restrictive.

# Impact

It is important to recognise the impact that changes to the means test will have, not just on the people who will become eligible, but also in other areas of the community – such as within the legal sector. As part of our evaluation of the means test review, we want to evaluate the impact had on the following areas, and whether the changes we propose end up assisting the community as intended.

**Clients**

The objective of this review is to create a means test that is simpler, more accessible, more transparent and ultimately makes more people eligible for assistance. Many of the changes proposed will meet one or more of these objectives, although the impact and cost will vary.

We know that significant portions of legal need relate to consumer debt and different civil matters such as bankruptcy and wills – all which VLA does not fund.[[1]](#footnote-1) Becoming eligible for legal assistance under the means test will not address this limitation. Other eligibility criteria play a significant part in restricting access to a grant of assistance and it will be important to consider how they can be shaped to also become more accessible and more transparent for potential applicants for legal assistance.

* Will the means test changes help clients better understand how the means test works and is applied?
* Will people in the community find the test more accessible and find they can navigate applying for aid with less assistance?
* Will clients understand better the basis for why they have been approved or refused assistance?

**Legal Sector**

**Community Legal Centres**

We know, and have established, that there are significant amounts of unmet legal need. This results in demand on all areas of the legal sector. We also know that for some, when a grant of legal assistance is refused that they turn to a local community legal centre to assist with their problem.

* Will community legal centres see a decrease in demand on their services as result of expanding the eligibility criteria of our means test?
* Will means test changes help CLCs access grants of assistance easier on behalf of their clients?

**Social Welfare Organisations**

It’s important to understand the impact the means test has on social welfare organisations. Some of our feedback was received from mental health organisations and social workers who regularly have contact with clients who are also using VLA’s services. Providing training to those who work at these services so that they are informed about their client’s rights and eligibility may assist in communicating the changes to the means test to clients and may also mean that people won’t necessarily have to speak to a lawyer to understand how to qualify for assistance.

* Will social workers and other non-legal staff that come into contact regularly with our clients be able to explain and assist them with the means test?
* Will the changes to the test allow clients to approach social welfare organisations as a port of call for assistance with obtaining legal aid?

**Courts**

The courts are an integral part of the legal sector and are where many grants of legal assistance are focused on, as people with court proceedings generally require the intensive services that grants of aid provide. The courts themselves will be able to better define what impact changes to the means test will have on the provision of their services.

* Will the Courts see a reduction in self-represented litigants due to changes made to the means test?
* Will the Courts see less funding mentions on issues of means as a result of changes made to the means test?
* Will the Court see a reduction in delays at hearings because a litigant’s representation is resolved at an earlier stage?

**Private practitioners**

Private practitioners are responsible for providing the majority of assistance through grants of aid, with approximately 70% of grants of legal assistance going to lawyers that are not employed by VLA. Any changes to the means test will directly affect them in terms of the additional clients they may be able to take on, and the training they and their staff will require to get across the revised means test.

* Will private practitioners find applying for legal aid easier to navigate as a result of the changes?
* Will private practitioners be able to find they can more easily advise their clients on their eligibility because of changes made to the means test?
* Will private practitioners find the test simpler and more transparent because of changes made from the means test review?

The Review has consulted widely with private practitioners and other stakeholders in the legal sector. You can find out what they told us about the means test in **Part D** of this paper.

# What else is being done to increase access to justice?

There are a number of initiatives being undertaken by VLA to help meet some of the core objectives of this review: namely, to make services more widely accessible, simpler and more transparent. The following is a list of some of the work that is being done to increase access to justice:

[Legal Aid Checker](http://lac.vla.vic.gov.au/)

The Legal Aid checker is an initiative undertaken in combination with VLA and fellows from Code for Victoria. This online tool, currently in beta mode, provides preliminary referral information in a range of areas that VLA does not normally provide a grant of assistance for. These include wills, estates, personal injury and tenancy matters. The checker works through a series of questions to identify what the person’s legal problem is about before providing some initial legal information and directing them to where they can go to for help.

[SMS notification service](https://drive.google.com/file/d/0B2r-YUcKdm80Zks2RE9BNHQwVVE/view)

In conjunction with Code for Victoria, VLA has also developed the SMS appointment tool. This appointment system sends a notification to a client’s mobile phone to remind them when their next appointment with their lawyer is and where it is. Missed appointments have been reduced significantly because of this implementation. This tool links in with some of the consultation had during this review, where it was emphasised that mobile phones are now essential to people’s lives and should be factored in when considering a person’s necessary expenses.

ORBIT

VLA is currently in the process of developing an online booking tool, which will assist clients and staff to identify the service they need and then book an appointment, if they are eligible to do so. It will be building on the functionality developed by the Legal Aid Checker and will be initially phased out to VLA staff.

Other work being done within the legal sector more broadly include:

* [Online pleas in the Neighbourhood Justice Centre](http://www.neighbourhoodjustice.vic.gov.au/home/news%2Band%2Bresources/news/onlinepleas) which lets someone submit a guilty plea online on some summary crime offences.
* [Robot Lawyers](https://www.robot-lawyers.com.au/) which guides users through a series of questions that will assist a self-represented person in court.
* [Online application form](https://fvio.magistratescourt.vic.gov.au/) of the Family Violence Intervention Order application form.
* [Fine Defender](https://au.finedefender.com/) an online service that helps people appeal infringement notices online.
1. Legal Australia-Wide Survey: Legal need in Australia (2012), p xiv. [↑](#footnote-ref-1)