#

# Part D: What you told us

This section covers the feedback we received during the first stage of consultation following the release of our consultation paper in August 2016. We received responses through online surveys, written submissions, as well as a significant amount of verbal feedback through a number of roundtables held with various community organisations and private practitioners across Victoria. A full list of the submissions received is contained in the Appendix. The feedback helped us develop the options that are presented in **Part B** of this paper. This is what you told us.

# Income Test

**People living in poverty are missing out as the current income threshold is too low**

People generally agreed that the income levels for eligibility for a grant of legal assistance without a contribution are too low.

The Law Institute of Victoria (LIV) reported that lawyers identified the income test as the most common reason for refusal of an application for a grant of legal assistance.[[1]](#footnote-1) They have recommended that the assessable income test be raised to maintain parity with the actual income of low-income households with reference to household wealth data collected by the Australian Bureau of Statistics.[[2]](#footnote-2) The LIV identified that the average weekly disposable income for low income households in the 2013-2014 financial year was $407, 11.5% more than the $360 allowable under the current means test without incurring an income-based contribution.[[3]](#footnote-3)

The LIV indicated that its members often identify that a person would not be able to afford legal representation, even where they are unlikely to be eligible for a grant of legal assistance.[[4]](#footnote-4)

Jesuit Social Services recommended that VLA ensure that the means test will be met by anyone living below the poverty line.[[5]](#footnote-5)

**People relying on income from employment should not be disadvantaged**

The Victoria Council of Social Services (VCOSS) highlighted the importance of ensuring that the means test does not disadvantage people who rely on wages for income. One third of people living in poverty rely on wages for income.[[6]](#footnote-6) VCOSS members reported that many of these people – including single parent families, under-employed people and people working part time for low wages – are now seeking help from emergency relief and other agencies, and are experiencing financial insecurity and stress.[[7]](#footnote-7)

**People with fluctuating income or insecure employment should not be disadvantaged**

A number of stakeholders – including the LIV, VCOSS and Eastern Community Legal Centre (ECLC) – also raised the issue of casual or insecure employment and its treatment under VLA’s current means test. They supported greater discretion or a revised approach to the assessment of the financial circumstances of people with irregular incomes.[[8]](#footnote-8)

The LIV submitted that people employed on a casual basis should be able to provide evidence of earnings over a longer period of time. It suggested six months of earnings rather than the existing three months. This longer period of time would allow for a more accurate assessment of an [applicant’s](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) income and would ensure that an applicant is not adversely affected by a temporary increase in their earnings.[[9]](#footnote-9)

VCOSS also submitted that ‘assessment based on income alone can exclude people with unusual, complicated or unexpected financial situations’.[[10]](#footnote-10)

**People should be assessed on a full picture of everyday expenses and financial circumstances**

Since the current means test was introduced in 2007, there is now better information available about household income, expenditure and liabilities. This information helps to build a picture of some of the challenges experienced by households in meeting the cost of living. It supports some of the experiences shared by people who need and use our services.

The limited range of deductions available for household expenses contributes to an incomplete picture of the discretionary income available to households. The LIV noted that its members have suggested that the ‘VLA means test does not adequately allow clients or potential clients to provide the information required to paint an accurate picture of their financial circumstances in the first instance’.[[11]](#footnote-11)

Jesuit Social Services supports consideration of a broader range of asset and expense deductibles in the means test.[[12]](#footnote-12) Similarly, VCOSS expressed strong support for the consideration of deductions including medication and pharmacotherapy costs, servicing debts, essential service costs such as electricity and out-of-pocket expenses.[[13]](#footnote-13)

The LIV noted that, while some expenses can be dealt with on a discretionary basis, the essential nature of certain expenses (including bills for household utilities and telecommunications) justifies their inclusion in the means test.[[14]](#footnote-14) They also supported the consideration of consumption debt in an assessment of an [applicant’s](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) financial circumstances, noting that consumption debt can sometimes be linked to family violence and other legal problems.[[15]](#footnote-15) Other stakeholders expressed concern that the inclusion of consumer and other debt may unintentionally disadvantage people who have not accessed credit or incurred debt but may still be living in a position of financial stress or insecurity.[[16]](#footnote-16)

Straight Arrow & Living Positive Victoria supported the consideration that HIV and other chronic medical conditions, mental health conditions and physical disabilities may impact on an applicant’s financial circumstances. This may not be limited to the actual cost of medical care but may extend to their capacity to earn an income, special diets, diet supplements and vitamins and complementary medicine.[[17]](#footnote-17) This was emphasised by the submission made the Victorian Alcohol and Drug Association which identified that expenses for medication can have a daily cost that is not recognised by the current means test.[[18]](#footnote-18)

The importance of ensuring that an applicant’s everyday expenses are taken into account was also highlighted by a number of other submissions.

People shared their experience of trying to meet the growing costs of raising a family and the need to prioritise spending within their households from limited resources. This was described by one survey respondent in the following terms:

*“Having equity in the home does not mean I have disposable income. Having children to feed, clothe, educate etc. is the priority.”[[19]](#footnote-19)*

**The documentary requirements are too onerous and may have a disproportionate impact on certain groups**

Requirements to produce financial information in support of an application for a grant of legal assistance can be difficult for people to satisfy. In particular, people who are experiencing family violence or homelessness may not be able to access the documents required to support their application. The waiver of documentary requirements in these circumstances was supported by Inner Melbourne Community Legal Centre.[[20]](#footnote-20)

The LIV observed that a substantial administrative burden falls on lawyers assisting legally aided clients to collate the information required to support an application for legal assistance. The LIV has recommended some measures to streamline the documentary requirements for a grant of legal assistance.

However, in some circumstances it may be appropriate to collect information relating to a longer period of time. For example, the LIV considers the assessment of income over a six-month period may promote greater fairness for casual employees. [[21]](#footnote-21) To do so would require the collection of additional financial documents, which would increase the administrative burden. The LIV suggest that the additional administrative burden could be mitigated through flexibility and discretion.[[22]](#footnote-22)

**The definition of dependants should be expanded beyond those residing with the applicant**

The definition of ‘[dependant](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test)’ under the current means test is anyone who relies on the [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) for financial support. VLA interprets this to mean someone who resides in the applicant’s household, such as a child or elderly parents. People who live outside of the household are not usually classified as a dependant.

CLCs raised that people who identify as Aboriginal or Torres Strait Islander (ATSI) often support a number of people in their extended family, in both financial and non-financial ways, such as providing a relative with somewhere to stay.[[23]](#footnote-23) It was also raised that many people from culturally and linguistically diverse (CALD) backgrounds regularly send money overseas to support family members who reside in another country.

**Child care expense is not accurately taken into consideration by the means test**

Child care allowances in the means test is calculated on a per household basis, not on a per child basis. This results in houses with one child and houses with four children having the same amount of income accounted for child care. Feedback received indicated that this does not accurately reflect the changing landscape of Australian households, which has moved away from the “nuclear family” standard.

**The elements of the income test should be regularly updated**

The LIV recommends the annual update of the assessable income test against an independently determined index.[[24]](#footnote-24) Regular updates of the means test thresholds will guard against the assessment of financial eligibility becoming harsher over time.

The Access to Justice Review report has recommended that there should be reviews of the fees provided to lawyers and structures for grants of legal assistance and that these reviews should occur at intervals of no more than three years.[[25]](#footnote-25) A combined review of both the fees and means test thresholds on a regular basis would provide a consistent means of analysing the demands on the grants system and assist with accurately reflecting the broader financial circumstances of people applying for legal assistance.

# Assets Test

The allowable asset limit is too low and has a disproportionate impact on some people

There was strong support from stakeholders for increasing the allowable assets threshold to a level which allows an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) to maintain a modest financial safety net without affecting their eligibility for legal assistance.[[26]](#footnote-26)

The LIV recommended that VLA raise the assessable assets threshold before a contribution is required to at least $2000.[[27]](#footnote-27)

Increasing the allowable assets threshold would also assist to minimise the current inequity between homeowners and non-homeowners.

VCOSS also supported raising the current allowable savings threshold ‘to allow and encourage people to put aside money for unexpected or urgent expenses, or to budget for an upcoming expense.’[[28]](#footnote-28)

People may have assets but still experience financial insecurity and stress

Many people who shared their story with us missed out on legal assistance due to the equity in their home. Despite having equity in their home, they did not have disposable income available to them to meet the costs of a private lawyer. As a result, many people took on debt to pay for their legal matter. In some cases, this had substantial personal and financial consequences. Some community members told us that they faced bankruptcy or were burdened with a large debt as a result of missing out on legal assistance and paying for a private lawyer. Others told us about the stresses and emotional toll placed on them and their family members by having to take on debt to pay for assistance for their legal problem, on top of standard household and every day expenses.

People should not be disadvantaged because they do not own a home or other asset

People with very few assets may not be eligible for a grant of legal assistance or will have to make a contribution towards the cost of assistance due to the different way assets are dealt with under the assets test. A number of stakeholders noted that the current means test is more generous towards home-owning households over rental households.[[29]](#footnote-29)

VCOSS noted that the assets test is particularly harsh for tenants.[[30]](#footnote-30) They described the current inequity in the following terms:

‘a person may be ineligible for a contribution-free legal assistance grant because they have modest savings, for a tenancy bond, medical expenses or a child’s school costs. A person with a similar, or much higher, amount of equity in their home would be eligible without making a contribution.’[[31]](#footnote-31)

While the LIV noted that it supported the indexation of the home equity threshold,[[32]](#footnote-32) a number of stakeholders noted that the existing threshold for home equity was quite high and expressed support for closing the gap between people with home equity and other asset types. Other agencies such as Centrelink have dealt with this discrepancy by introducing different asset tests for people who own a home and those who do not.

The LIV recommended including an additional allowance for rent to assist to close this gap and achieve greater equity for non-homeowners. It suggested an additional liquid asset allowance of a month of average rent.[[33]](#footnote-33)

**People may have savings in the bank for a reason**

Assets in the form of cash savings may not portray the true picture of a person’s financial situation. Whilst this money may indicate that a person has the resources to potentially pay for private legal representation, the savings may be intended for other high priority expenses. VCOSS highlighted that a person may be ineligible for contribution-free legal assistance due to savings for a tenancy bond, medical expenses or a child’s school costs.[[34]](#footnote-34)

This may especially be the case for renters who are saving for the purchase of a home.[[35]](#footnote-35) While the same amount of money in the form of equity in a home would allow a person to remain eligible for legal assistance, such liquid savings would see an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) refused legal assistance under the means test. It is acknowledged that savings in a bank account are more accessible for an immediate need than equity in a home, which may not be refinanced or sold quickly.

The availability of superannuation may be a relevant consideration

Straight Arrows & Living Positive Victoria support low or no superannuation being considered as a concession against income and assets in the means test.[[36]](#footnote-36) It provided the example of a person who has been given early access to superannuation due to a medical condition and has low or no superannuation remaining.[[37]](#footnote-37)

People who experience financial hardship may also access their superannuation from time to time. The means test currently only considers unpreserved superannuation when considering eligibility. Unpreserved superannuation is superannuation amounts that have been voluntarily contributed into the fund by the person. If the person has also accessed their superannuation for other reasons on the basis of financial hardship, the Means Test treats any remainder as a ‘lump sum’ asset.

An [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) is not required to disclose to VLA their superannuation fund. There may be people, particularly those who have previously worked for an extended amount of time, who have a large sum of superannuation that could potentially be accessed for legal representation. Any access must be seen as potential only, given that release of superannuation is based on establishing severe financial hardship to the superannuation fund, which is not guaranteed and can take some time to determine.

# Financially associated persons

**The definition of financially associated person should be narrowed**

There was general support for a revised approach to the assessment of the joint resources of a household or partnership. The current approach to the assessment of [financially associated persons](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) was criticised for being too broad and may result in a person being considered to be a financially associated person when there was no ongoing financial relationship with the applicant. Community members shared examples of circumstances where they had provided one-off support to an applicant but could not have been reasonably expected to fund their legal matter.

At a minimum, stakeholders suggested aligning the test with the approach adopted by other agencies by only assessing the resources of an applicants’ spouse or partner. For example, the LIV suggests that the definitions used in the *Social Security Act 1997* (Cth) might be a suitable starting point.[[38]](#footnote-38) Hume Riverina Community Legal Service submitted that the definition for financially associated persons should correspond with the test applied by Centrelink to ensure consistency across government organisations.[[39]](#footnote-39) Express exclusions would assist lawyers who are making an assessment about what information to ask for and from whom when applying for a grant of legal assistance. Such exclusions would also help VLA officers who are requested to apply discretion on an application. The categories could be aligned with other agencies that assess a person’s financial status, such as Centrelink.

**Family members who have provided one-off support in a time of crisis may be unwilling or unable to continue providing support**

A number of examples were provided of family members who had provided support to an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) but were unwilling or unable to continue providing this support.

A common example is where a family member provides a surety to a person in a criminal matter.[[40]](#footnote-40) A surety is where a person agrees to pay a specific amount of money if the person charged fails to attend court. They will not have to make any payment as long as the person appears at court. This may lead to an assessment that the person is a financially associated person, even where they had no intention of providing any form of support to the applicant in relation to their legal matter.

The circumstances of family members who have previously paid for legal proceedings may also change. This is illustrated by the following case example from Inner Melbourne Community Legal Centre:

|  |
| --- |
| **Case Example – Nicole** Nicole was suffering from a terminal illness, and was unable to properly instruct a lawyer in contested family law proceedings involving her children. One of Nicole’s siblings was appointed as her case guardian, and their extended family privately paid for a lawyer to assist the case guardian, even though Nicole was only in receipt of Centrelink benefits. They did not know at that time that she may have qualified for legal assistance from VLA. After the family could no longer afford to pay for the private lawyer, the case guardian was later unrepresented. As Nicole’s family had previously been able to afford to pay for a private lawyer, they would have had to disclose on the application for legal assistance that they had previously paid for legal assistance. As a result, her application may be refused depending on how much money her family still has, even if they are not willing to contribute further. This leaves Nicole in a difficult position because the family members that had been paying for a private lawyer, have obviously made a decision that they can no longer afford to [do] so. She had no control over this, and yet she is ultimately left with no assistance. [Inner Melbourne Community Legal] was able to make a referral for the case guardian to a private lawyer for pro bono assistance in this matter, but it highlights the unfair impact [an] assessment of [financially associated persons](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) can have.[[41]](#footnote-41) |

**A perpetrator of family violence should not be treated as a financially associated person**

There was general support from stakeholders for excluding perpetrators of family violence from the operation of the financially associated person test.[[42]](#footnote-42) To not do so may expose a person to further danger or risk, with an additional concern that financial abuse can be used as a means of control against the person.

Recently, VLA has clarified that discretion would be exercised so that a friend or family member temporarily providing accommodation or other support to assist a person escaping from family violence is not considered to be a financially associated person and their financial information is not required.

**Certain categories of proceedings may not be suitable for consideration of financially associated persons**

Due to the difficulties that arise in some proceedings, there was also support from lawyers and community organisations for excluding from assessment the financial circumstances of [financially associated persons](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) in certain proceedings. For example, the LIV recommends that the income of any financially associated person should be excluded from the income test if that associated person is likely to be party to any anticipated or potential proceedings.[[43]](#footnote-43)

This could be where the associated person may have adverse interests to the [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) such as in family law dispute matters, or in family violence legal proceedings. In such scenarios it would not be reasonable to expect the associated person to financially support proceedings that may be contrary to their own interests.

**The operation of the current approach to financially associated persons may cause harm to family members**

Eastern Community Legal Centre recommended that independent legal advice be provided to people who are assessed as financially associated persons to minimise any potential harm to that person.[[44]](#footnote-44) Eastern CLC raised the issue of potential elder abuse resulting from adult children financially exploiting parents with whom they reside. Elderly parents may not be aware of all the risks and implications when they agree to pay a contribution or have a [caveat](https://handbook.vla.vic.gov.au/handbook/20-contributions-and-overdue-payments/charge-or-other-security-over-assisted-persons-property/caveats) lodged over their property. This risk could be reduced by requiring third parties to obtain independent legal advice before accepting the responsibility of providing a contribution.

**It is difficult to obtain financial information from a financially associated person and may operate as a barrier to justice for some people**

In some cases, an applicant may abandon their application for legal assistance due to the requirement to obtain detailed financial information from a financially associated person because of the strain it can cause on relationships.[[45]](#footnote-45) This may leave an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) with even fewer options for the resolution of their legal issue. The LIV has recommended that VLA consider ways to address the practical difficulties that arise in instances where a financially associated person does not provide the required financial information.

Additionally, there is an administrative burden where financial information has been requested from a financially associated person and the applicant is having difficulty obtaining this information. This often requires additional work for assessing officers at VLA and the applicant’s lawyer to manage this, which can cause a delay in assessment and having legal representation in place prior to the commencement of legal proceedings.

The definition of financially associated persons does not take into account if they are supporting other people

The means test currently does not take into account any [dependants](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) of a financially associated person. If a financially associated person is supporting children, the appropriate dependant allowance is not reduced from their income. This results in an inaccurate picture of a person’s true financial circumstances as it assumes that any assets or income of a [financially associated person](https://handbook.vla.vic.gov.au/handbook/12-means-test/whose-income-and-assets-are-assessed-in-means-test) which are above the means threshold can be used to assist the applicant.

# Estimated Legal Costs

**Current categories of legal costs do not reflect the actual cost of legal services**

There was feedback that the categories of legal costs do not reflect the actual cost of obtaining legal services from a private lawyer. There is currently no mechanism for regular review of these categories against the cost for legal services if paid for privately. One of the challenges associated with estimating legal costs is that this will often depend on the specific issues raised in the individual legal matter.

The submission from the LIV includes feedback from private lawyers indicating that the existing cost categories are well below what they might charge for a private representation matter. This suggests that the existing cost categories may no longer provide a useful measure for assessing whether a person is able to “afford” the cost of a private lawyer.[[46]](#footnote-46)

The LIV recommends that further examination of the categories of estimated legal costs be undertaken using a complete set of statistical data.[[47]](#footnote-47)

**Cost categories should be increased**

As part of their submission to the Consultation Paper, the LIV conducted a survey that included querying the true cost of legal representation. The results show that there is a significant gap in all three existing cost categories between the fees paid to lawyers for legal assistance by VLA and the fees paid to lawyers if the proceedings were run privately.[[48]](#footnote-48) Currently *category one* is used to determine if a person can pay for a low cost matter such as a summary crime grant of assistance. For category one matters the estimated costs of are less than $1555 per matter. Data from the LIV Survey about the cost of legal representation has indicated that the mean estimate for category one type matters was $869 higher than the current estimate, coming in at $2,404.[[49]](#footnote-49)

Jesuit Social Services noted that the threshold of the means test is set so low and the contributions set so high, particularly for Category 2 and 3 matters, that “those least likely to be able to navigate the court system are often excluded from aid.”[[50]](#footnote-50) The cost categories should be increased to better reflect whether an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) who is ineligible for legal assistance really does have the ability to pay privately for a lawyer.

**Continuity of service should be encouraged**

There was also concern that it was inefficient not to provide assistance to an applicant for a lower cost matter if they were already receiving assistance for another higher cost matter. By resolving multiple legal issues at one time there is an increased likelihood of a better long term outcome for that person. This could be achieved by only requiring an applicant to satisfy the means test for the highest cost matter. There may be some inequity as a result of this approach – where one person may receive assistance for a holistic service and others not eligible at all.

However, referral to another service for the lower cost matter creates unnecessary duplication and service congestion when it may be simpler to provide continuity of service. This would mean that an applicant who was eligible for legal assistance for an indictable trial, would also be eligible for an infringements matter which costs much less. While they may be ineligible for their infringements matter based on their financial circumstances, this proposal would see that all of their legal problems (that are aided under VLA guidelines) would be dealt with by the same lawyer, resulting in a better outcome for the person and less pressure on multiple service providers.

The difficulty with this approach is that a person that only has a minor legal matter but has the same financial circumstances as a person with multiple legal matters may not be eligible for the same matter. This may be seen as unequal to some people; however, it also recognises a more appropriate framework for addressing intersectional legal problems. It has been shown that a person who may be experiencing mental health issues, have an acquired brain injury, or identify as an Aboriginal or Torres Strait Islander, were more likely to access legal assistance services multiple times.[[51]](#footnote-51) This fits into the existing priority client framework that VLA has identified as being those most in need of legal assistance.

# The Contributions Policy

**Contributions can be harsh and unfair and may not be appropriate in certain circumstances**

Community members have told us that there are circumstances where the operation of the contributions policy is harsh and unfair. Some examples were provided where people were required to pay contributions on low incomes or based on limited pools of assets.

The LIV cited the example of where a person may have equity in their home that exceeds the non-contribution asset threshold yet the equity is inaccessible to that person. This can result in an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) facing the choice between going unrepresented at their legal matter or selling their house to pay for a lawyer privately. Examples include:

* grandparents with primary care of children in family law who have a family home but are beyond working age;
* people who have inherited an asset that exceeds the threshold but have no regular or secure income;
* people who have secured an asset through property settlement but have no regular or secure income.[[52]](#footnote-52)

The LIV recommends that the contributions policy be amended so that it does not apply to applicants on little or no income who are unable to borrow against their assets, regardless of their home equity.[[53]](#footnote-53)

There was support for the closer consideration of equity and reasonableness when deciding whether an applicant should pay a contribution towards the cost of legal assistance. This would require a subjective assessment based on the person’s financial and other circumstances. For example, it may not be reasonable to require an applicant who is in custody to continue to pay a contribution towards the cost of legal assistance. While they may have capacity to pay, it may not be reasonable to require a contribution while detained.

**An upfront contribution in matters is not appropriate**

The LIV does not consider an upfront contribution for all grants of legal assistance to be appropriate noting that there was broad opposition to the reintroduction of an upfront contribution from its members.[[54]](#footnote-54) Upfront contributions exist in other Legal Aid Commissions and was previously in place at VLA. Through consultation with community legal centres’ as well as with VLA staff, it was generally accepted that an upfront contribution that applicants are required to pay regardless of their financial circumstances was not favoured as it may deter people from seeking assistance when they need it. There would also be the administrative burden in implementing and upholding this process that would negate some of the financial benefits accrued.

**Lump sum contributions can create hardship**

Currently, contributions imposed on non-secured assets (such as a car or cash in the bank) are expected to be paid to VLA a month after a grant of legal assistance is approved. In contrast, contributions imposed on a person’s income may be spread across a number of months. While a person with an asset may have access to that money immediately (such as through liquid savings), this is not always the case. A person may have to sell their car to repay a contribution which can be difficult to do in a short time frame. Occasionally, people that have these type of contributions have requested that they make installment payments and such requests are considered on a case by case basis. Because these decisions are made by the exercise of discretion, these decisions are not consistent and only occur if requested by the [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance).

**Contributions may be an instrument of access to justice for some people**

Some stakeholders suggested increasing the use of contributions to bridge the divide between people who cannot afford to pay for private legal assistance but may just miss out on obtaining a grant of legal assistance from VLA. Lawyers suggested that people would be happy to pay a small contribution out of their income to ensure that they had a lawyer to represent them when they needed it. According to the LIV, ‘this would allow a greater number of low-income earners and modest asset holders to be eligible for a grant of legal assistance within the tight fiscal restraints of Victoria’s chronically underfunded legal assistance sector.’[[55]](#footnote-55)

Also relevant is the fact that a grant of legal assistance with a contribution makes legal assistance available at a lower rate than a person would be expected to pay if they were fully funding their own matter. While fees paid to lawyers to represent a legally aided client are out of scope to this review, regard will have to be had to this component of a grant of assistance when examining expanding the contribution schedule.

A contribution also provides the flexibility of a repayment schedule, allowing people to repay their contributions in instalments over a 12 or 24-month period. If the contribution scheme was extended it may have the effect of bridging the gulf between eligibility for legal assistance and the affordability of private legal services.

A number of responses to the Community Survey recorded examples where the cost of privately funding legal assistance has resulted in damaging consequences and negative financial outcomes. Extending financial eligibility with a contribution to people who are otherwise going to be forced into debt to meet legal costs may assist to reduce the justice gap.

**Increase the income and asset threshold before a contribution is required**

Alongside support for broadening the use of contributions, there was also support for raising the income threshold beyond which a contribution is payable.[[56]](#footnote-56)

The LIV recommended a significant increase in the threshold for an initial contribution based on income and assets.[[57]](#footnote-57) It also recommended the broadening of the income range to allow for a greater number of people to be eligible for legal assistance with contributions. [[58]](#footnote-58)

**Contributions should be linked to the capacity to pay rather than the cost of the legal matter**

Stakeholders also favoured the contribution scheme being tied to the capacity to pay rather than simply a regular debt payment modelled on the total value of the contribution. For example, VCOSS expressed concern that the amount of a contribution calculated according to a person’s income can vary based on the estimated cost of their legal matter. Therefore, the contribution was more closely linked to the cost of legal help rather than their capacity to make regular contributions from their income. For example, two people who have been granted legal assistance may be expected to pay a different repayment amount each week even though they have the same income, if one of the legal matters has a higher contribution imposed.

Providing a set repayment figure a month that is tied to a person’s income as opposed to the contribution owed would be fairer. This would have the flow on effect of having a contribution repayment scheduled extended beyond the normal 12-month or 24-month period. Repayment schedules that extend beyond a 24-month period have a depreciable return as the value of the dollar drops the longer it takes to be paid back. As a result, the financial viability of longer contributions can impact on the amount ultimately recouped by VLA. Where contributions extend beyond when legal proceedings have been finalised, it becomes harder for VLA to recoup costs from the applicant. There is often a drop-off of repayments after a matter is over. Extending out repayment schedule would result in VLA recovering less of the contribution imposed.

**Clear rules should set out circumstances where a contribution can be varied or waived**

Feedback at roundtable meetings indicated that there should be clearer rules and processes for revising a contribution when a person’s circumstances change. While currently a person is able to notify VLA at any point when their financial circumstances have changed, people may not be aware of this process and how to go about it. The Debt Policy as it currently operates is confusing and unclear to many in the wider community. The policy is used as a guide for when people may have their contribution reduced or waived. The policy also provides guidance about managing secured and unsecured debts that relate to grant of legal assistance. A clearer and more publicised process would assist people applying for legal assistance, lawyers and assessment officers at VLA to ensure there is a consistent application of the contribution policy and variations and waivers of contribution are put in place where appropriate.

**Consider charging interest on contributions secured to a home asset**

It has been submitted that the fact that interest is not payable on contributions is a relevant consideration as to how the scheme is structured.[[59]](#footnote-59) This is particularly relevant where a contribution is secured against an asset that is likely to increase in value – such as a home – before the value of the contribution is recovered. Additionally, while a contribution over a home asset is considered a secured contribution as opposed to an unsecured contribution (such as those linked to income), it takes on average 14 years to recover a secured contribution, with the value of this money having been reduced by that time.

*Legal Aid Act (1978)* empowers VLA to charge interest on contributions that are secured by way of a [caveat](https://handbook.vla.vic.gov.au/handbook/20-contributions-and-overdue-payments/charge-or-other-security-over-assisted-persons-property/caveats) over a person’s property. This is currently not imposed and has not been done so previously. Currently secured contributions do not accrue interest or increased for indexation. Charging interest on secured contributions would also assist with VLA recouping a higher amount of funds that would help defray the administrative costs of managing contributions. Imposing interest would also provide an incentive for people to pay back their debts as soon as they are able to, rather than waiting until they sell or refinance their house at some later point. This would enable VLA to recover costs sooner.

Secured contributions places a person who has an asset in a better financial situation than a person earing an income and who is required to pay a contribution upfront, with their grant of legal assistance directly tied to their ability to repay their contribution at that point in time.

|  |
| --- |
| **Case study – Jacob**Jacob was provided a grant of legal assistance by VLA to contest drug trafficking charges being heard in the Supreme Court. As Jacob owned a property, the grant of assistance was approved subject to a caveat being held over his home. This would mean that if Jacob ever sold his home, the cost of legal assistance would be paid from the settlement received.Jacob was found guilty of the drug trafficking charges and sentenced to a term of imprisonment. Following his conviction, the Department of Public Prosecutions applied for and obtained a Pecuniary Penalty Order (PPO). PPOs compel offenders to pay money which is the equivalent to the benefits obtained from the commission of the offence. The PPO allowed Jacob’s property to be sold to make this payment. As VLA held a caveat over the property, we also had a say in deciding whether the property could be sold and payment made to the PPO first before paying off the debt owed to VLA.VLA decided to allow Jacob to refinance the property and use additional mortgage funds to pay off the PPO with VLA’s caveat to be reinstated on the property, and the caveat to remain until the property is ultimately sold. Part of this decision was made because it was considered that there was a greater public benefit in Jacob retaining stable accommodation, even though it meant VLA would be paid later. As funds recovered from caveats over property take on average 14 years to recover, it is likely that VLA will not recover its debt for a long time. |

Jacob’s case study is a good example of why imposing interest on debts can be a useful lever to assist with the recovery of debt. Decisions about when to recover funds occur on a regular basis for VLA and comes at a financial cost to the organisation. The longer it takes to recoup the costs of a grant of legal assistance the less ‘value’ that money has.

**The efficacy of the contributions policy is closely linked to the cost of administering the scheme**

According to the LIV:

‘for the Contributions Policy to be viable, the majority of payable debts must be recovered by VLA from its clients. The LIV submits that any amendment to the Contributions Policy should be measured against the likelihood of recovery and the administrative costs involved in recovering any outstanding debt.’[[60]](#footnote-60)

The Law Institute of Victoria also requested VLA publish more complete information about the operation of the contributions policy to assist the consideration of options for reform.[[61]](#footnote-61) VLA recovers almost 3 million in contributions each financial year, with contributions not recovered written-off against this amount, resulting in a total contribution of closer to 2 million. The majority of all secured contributions (that is [caveats](https://handbook.vla.vic.gov.au/handbook/20-contributions-and-overdue-payments/charge-or-other-security-over-assisted-persons-property/caveats) held over a property) are recovered, however, it takes on average 14 years to recover this debt. We know that the rate of recovering unsecured contributions drops off once the person’s legal matter has finalised. Where a large contribution is spread out across many years, a significant amount of the contribution may be ultimately ‘written off’ as a bad debt.

# Exemptions from the means test

**Certain groups of people should have priority access to grants of legal assistance**

Stakeholders identified a range of circumstances that may warrant priority access to a grant of legal assistance. For example, VCOSS and Jesuit Social Services supported the idea that there be a means test special circumstances guideline that can be utilised when considering whether people should be made exempt from the means test.[[62]](#footnote-62) Types of groups identified included:

* Young people aged between 18 – 21;
* Victims of family violence;
* Have an intellectual disability, acquired brain injury or other mental health issue;
* Are experiencing homelessness; and
* Are indigenous Australians.

In the United Kingdom, a review happens if a person has special circumstances which result in them having expenditure higher than average as a result of medical costs or caring for others with a disability or illness.

Jesuit Social Services highlighted that access to a duty lawyer from VLA only requires proof of concession card if an [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) falls into certain priority categories, some of which are highlighted above.[[63]](#footnote-63) This common income test applies to duty lawyer services, new client appointments and minor work files, however the standard means test applies for more high intensity services such as for grants of legal assistance. The lower means test threshold for duty lawyer services is in recognition of the hierarchy of services which enables more people to get a duty lawyer service as they are less resource and time intensive than a full grant of legal assistance.

Youthlaw identified that there are many young people between the age of 18-25 who are unable to afford private legal assistance, with or without parental assistance.[[64]](#footnote-64) Given the increasing difficulty for young people to live independently, the waiver of the means test could be extended from children (defined as 18 years or younger) to cover those up to the age of 25.

**Current exempt categories do not reflect financial or legal need**

Applicants in current exempt categories may have more income or assets available to them to pay for a private lawyer than people who currently miss out on assistance from VLA. The current categories of people that are exempt from the means test include war veterans and children 18 years or younger in some matters.

Children may have financially associated persons in their life that have significant income or assets that would enable them to pay for a private lawyer, however, there was continued encouragement from all submissions that this exemption remains.

Veterans are currently exempt from the means test for all veteran pension matters but VLA is only required to exempt them where their matter is being heard in the Administrative Appeals Tribunal. They may have relatively stable financial circumstances in comparison to other people who are missing out on aid. Veteran affairs matters that progress to the higher courts, such as the Full Federal Court or the High Court on appeal are quite expensive to run. Limiting the exemption of the means test to our statutory obligations would enable VLA to assess an applicant’s means prior to the appeal stage and ensure they do not have the income or assets to pay for a lawyer privately.

Conversely, there are a very few veteran affairs matters that are funded by VLA, with 27 new applications being received in the last financial year, all of which were in the Administrative Appeals Tribunal Review stage. Given that there are a low number of veteran affairs matters that are funded, any change may not have a meaningful financial impact on VLA.

**The impact of a particular matter is relevant to the consideration of whether a person should receive a grant of legal assistance**

There is no exemption from the means test for matters which may bring broad public benefit to a larger group of people and result in systemic change beyond the individual applicant. People that are funded under VLA’s Public Interest and Strategic Litigation guideline can currently seek discretion to have the means test and/or any subsequent contribution waived.

Matters that will have an outcome that may be beneficial to not just the [applicant](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) but other groups of people, particularly those identified in VLA’s priority client framework, may benefit from having the means test waived.

**Any further exemptions should be grounded in evidence**

The LIV supports the exemption of vulnerable groups who are particularly at risk to ensure that they receive appropriate legal assistance when needed. However, the LIV also supports additional analysis to determine which groups should be exempted. They have recommended the examination of information about grants of legal assistance to determine how discretion is currently exercised in relation to vulnerable groups and the economic impact of any broad exemption from the means test.[[65]](#footnote-65)

Child protection matters that proceed in the Family Division of the Children’s Court has been identified as an area where it is appropriate that all parties involved be legally represented as these matters involve the care and wellbeing of children.

Matters like this being exempt from the operation of the means test may also create administrative efficiency and reduce the burden on lawyers and assessment officers at VLA alike, particularly in matters where the vast majority of people applying for assistance are always found to be eligible under the means test, such as in mental health tribunal matters. Further analysis could be done as to the financial impact of such changes.

# Use of discretion

**Discretion is often an instrument of fairness and the availability of it should be documented and promoted**

Given some of the current shortcomings of the means test, discretion plays a crucial role in delivering fairer decisions that take into account the particular circumstances of people applying for grants of legal assistance. Discretion allows flexibility in a normally rigid means test and provides people with opportunities for funding even if they don’t meet the required criteria. It recognises that many of the people approaching VLA for assistance are coming from a disadvantaged background and that should be reflected in the assessment of their application.

Feedback suggests that people may not be aware that they can request discretion for their application to be approved or for changes to their contribution. The LIV supported the development of further guidance on the use of discretion, including publication of relevant factors considered for the use of discretion.[[66]](#footnote-66)

It was also submitted that how discretion works is not familiar for all people applying for legal assistance. The process currently requires a lawyer to select ‘seeking discretion’ on an application form and provide reasons why they would like discretion applied in this instance. There is no guidance in the guidelines about this, or what information is required to assist with the decision-making process.

**The exercise of discretion should be transparent**

The use of discretion by decision-makers currently may not support transparency. One way of increasing transparency would be to publish guidelines for the exercise of discretion or publish a record of the circumstances where discretion has been exercised. Stakeholders generally supported increased guidance to the exercise of discretion whilst maintaining sufficient flexibility to deliver fairness on a case by case basis.

The LIV supports the development and publication of guidelines on the use of discretion.[[67]](#footnote-67)

**Some matters should not be left to discretion**

There may be common circumstances that are repeated over numerous applications for the exercise of discretion. Where discretion will be routinely exercised in favour of people applying for legal assistance it may be clearer to deal with these issues in the primary content of the means test.

These matters include:

* If a person declares that a certain amount in savings has been allocated to medical expenses or treatment for either the person or someone that they are caring for
* Where the value of the person’s car is higher than the allowable amount as a result of the car being modified to assist with a disability
* A person is unable to provide the required financial documentation as they are fleeing family violence and do not have access to these materials

The LIV noted that the most commonly granted reasons for discretion may be more appropriately and effectively dealt with through amendment of the means test. [[68]](#footnote-68)

# Looking beyond the means test

What people told us

Jesuit Social Services points to the compounding disadvantage experienced by some people – in particular, people with cognitive impairment, indigenous people, the unemployed, those who have not completed secondary school and those experiencing poverty – are over represented in the prison population.[[69]](#footnote-69) They note that “Victoria Legal Aid provides a vital defence against this compounding disadvantage, aiming to provide much needed legal information and representation to those who can least afford it.” [[70]](#footnote-70) They support ensuring these vulnerable groups are able to access legal assistance when they need it.

Jesuit Social Services identified four structural issues with the legal aid process that present barriers for access to legal assistance:

1. The means test thresholds and exemptions do not sufficiently recognise the weight of disadvantage, especially where disadvantage is present in multiple forms;
2. The geography of access to justice is not sufficiently recognised and weighted in the decision for legal aid;
3. The means and processes to access legal aid remain a significant hurdle, particularly where internet and phone are the standard for general advice and as an entry point for legal aid; and
4. People suffering disadvantage are in particular need of legal support during initial bail applications, yet this is not recognised in current practice. [[71]](#footnote-71)

Hume Riverina Community Legal Service submitted that those experiencing language or literacy difficulties face barriers in obtaining assistance generally, but also with finding assistance to fill out legal aid application forms.[[72]](#footnote-72) This can cause people to drop out of the process and end up not utilising essential legal servicers that they need. It is also difficult for these people to obtain the necessary paperwork required to qualify for legal assistance.

VLA currently has a priority client framework that identifies categories of people that may be most in need of access to legal assistance services.

# Better information about financial eligibility

**Better information will promote better understanding**

It is clear from the feedback we received that the accessibility of our existing information about financial eligibility needs to be improved. Currently, the primary resource for information on grants of legal assistance is the VLA Handbook for Lawyers. While this is available online, it is not simple to navigate and does not provide a clear picture for prospective [applicants](https://handbook.vla.vic.gov.au/handbook/16-applying-for-grant-of-legal-assistance) on the availability and process for obtaining a grant of legal assistance. There is some information available on the VLA website but it relies on people also accessing the VLA Handbook for Lawyers to access this.

As the majority of information about the means test is mainly accessible on VLA’s Handbook for Lawyers, access about this information on the public VLA website would assist people to understand the requirements to obtain a grant of legal assistance. There are still members of the community that are not aware that assistance from VLA is not always free and that financial contributions may be imposed.

**People rely on lawyers for information about eligibility for legal assistance**

Most people rely on lawyers to advise on whether they are eligible for a grant of legal assistance. The LIV submission notes the critical role played by lawyers in providing advice and assistance to people applying for grants of legal assistance on eligibility.[[73]](#footnote-73) This sometimes includes the preliminary assessment of a person’s financial circumstances to decide whether an application for legal assistance is likely to be successful and should be pursued.[[74]](#footnote-74)

Similarly, Inner Melbourne Community Legal Centre supported a more accessible approach by incorporating an online screening tool. There is a current practice of generating “dummy” applications in ATLAS to check whether a person is eligible - particularly in circumstances where their financial circumstances are more complex. This is an inefficient use of time for lawyers and not a service accessible to all people, particularly those who approach VLA prior to going to see a lawyer.

An online means test indicator would reduce this burden for both lawyers and assessing officers at VLA alike, and also provide better clarity about the means test for people, without them having to rely so heavily on lawyers for this information. Such a calculator may also improve people’s understanding of the eligibility criteria as well as providing people with a mechanism to check their eligibility more easily.[[75]](#footnote-75)

**Online information may increase accessibility but is not a complete solution**

Jesuit Social Services was supportive of improvements to practical accessibility of legal information but noted that web-based solutions are not always tools of greater accessibility. They note that there is an ‘emerging risk of specific disadvantage from a lack of access to the internet or the tools of the internet (laptops, iPhones)’. They caution that ‘although internet technology, interactive tools and other innovations have led to vital gains in reach and efficiencies for VLA, it is important to recognise that this “progress” may leave some of the vulnerable even further behind.’[[76]](#footnote-76)

Straight Arrow & Living Positive Victoria reported their use of infographics to summarise complex research for people who have low educational attainment level, low literacy skills, or come from a different cultural background.[[77]](#footnote-77) They have suggested VLA explore the use of animated videos and infographics to summarise complex legal concepts and information on financial eligibility.[[78]](#footnote-78)

**Support workers play an important role in assisting potential applicants accessing a grant of legal assistance**

Some stakeholders have advocated for better support being made available for people to navigate their options for legal assistance. The Hume Riverina Community Legal Service noted the example of people with language barriers or literacy issues struggling to find assistance to complete application forms and proposed that VLA consider piloting non-legal support people to assist with the completion of applications for grants of legal assistance.[[79]](#footnote-79)

Currently, most applications for grants of legal assistance are submitted through lawyers. However, the reality is that many people may not know they can apply for legal assistance but are still accessing non-legal services. By working with these organisations to better identify and deal with legal problems, people may be connected with legal services earlier, and the severity and impact of their legal issue may be lessened.

# Reviewing and updating the means test

**The means test should keep up with the cost of living**

Stakeholders expressed support for a regular review and update of the elements of the means test that include a threshold value. This will ensure that people are judged against a relevant and accurate set of financial indicators. As noted earlier in this paper in the discussion of the income test, the LIV supports a regular update to the thresholds used in the means test to ensure it does not become harsher over time.[[80]](#footnote-80)

Centrelink update their means thresholds on a quarterly basis. This also results in people who are relying on employment income becoming progressively more disadvantaged to Centrelink recipients whose payments are adjusted upwards. This is because while there have been no substantial changes to VLA’s means test, we do accept people who are only in receipt of Centrelink benefits regardless of the amounts that they are receiving from Centrelink. People in receipt of Centrelink only also receive other income transfers such as subsidies on health care, child care, medications, and concessional rates on other services that are not factored into VLA’s means test.

# Other issues raised with the Means Test Review

There were a number of issues raised in response to the Consultation Paper that are largely out of scope for the Means Test Review but may have some relevance to the consideration of options for change to the means test and contributions policy.

Eligibility for duty lawyer and lower intensity services

Jesuit Social Services noted the value of early intervention for people to avoid or reduce ongoing contact with the criminal justice system. They supported a broadening of the criteria VLA considers when deciding whether to provide a duty lawyer service to include more categories of disadvantage.[[81]](#footnote-81) This is linked to their support for people who are considered to be priority clients at the duty lawyer stage being exempted from the application of the means test in recognition of their particular vulnerability or disadvantage.[[82]](#footnote-82)

Private practitioner remuneration

The LIV expressed concern that fee paying clients were effectively required to subsidise legally aided clients because of the low rates payable on a grant of legal assistance. They also noted that there was an increased administrative burden on lawyers to administer the grants of assistance themselves. While there was costs savings to VLA by introducing the simplified grants process, the increase in paperwork and assessment was shifted to lawyers. Additionally, there was concern voiced that while fees have not been significantly increased, the types of matters that are being funded by VLA have increased in complexity, particularly in criminal law matters.[[83]](#footnote-83)

The Access to Justice Review has recommended that there be regular scheduled increases to fees levels for lawyers that occur at intervals of no more than three years.[[84]](#footnote-84)

Scope of grants of legal assistance available through Community Legal Centres

Inner Melbourne Community Legal Centre raised the issue of the limited scope of grants available to CLCs. In particular, they expressed support for preparation fees being provided to community legal centres in addition to appearance fees.[[85]](#footnote-85) Currently, Community Legal Centres are only entitled to claim appearance fees and disbursement fees, such as to obtain a report from a third party or to brief a barrister, but are not entitled to claim preparation fees from VLA. The basis for this is because of the funding that CLCs receive is intended to cover the salaries of the lawyers’ who are employed to provide legal services to the community. If VLA were to pay preparation fees to lawyers employed by CLCs for grants of legal assistance, this would result in the CLC effectively receiving funding twice for the same service. Being provided with preparation fees would be appropriate remuneration for the work Community Legal Centres’ are able to provide through grants of legal assistance.

1. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 10. [↑](#footnote-ref-1)
2. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper,* p. 10. [↑](#footnote-ref-2)
3. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper,* p. 11. (Recommendation 2) [↑](#footnote-ref-3)
4. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper,* p. 11. [↑](#footnote-ref-4)
5. Jesuit Social Services (2016) *Submission to the Means Test Review Consultation Paper*, p.10. (Recommendation 3) [↑](#footnote-ref-5)
6. Australian Council of Social Services *Poverty in Australia 2014*, p. 32 cited in VCOSS (2016) Submission to the Means Test Review Consultation Paper, p. 5. [↑](#footnote-ref-6)
7. Victorian Council of Social Services (2016) *Submission to the Means Test Review Consultation Paper,* p. 5. [↑](#footnote-ref-7)
8. See Victorian Council of Social Services (2016) *Submission to the Means Test Review Consultation Paper*, p. 6, Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p.12, Eastern Community Legal Centre (2016) *Submission to the Means Test Review Consultation* Paper, p. 2. [↑](#footnote-ref-8)
9. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper,* p. 12. [↑](#footnote-ref-9)
10. Victorian Council of Social Services (2016) *Submission to the Means Test Review Consultation Paper*, p. 5. [↑](#footnote-ref-10)
11. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 14. [↑](#footnote-ref-11)
12. Jesuit Social Services (2016), *Submission to the Means Test Review Consultation Paper*, p. 4. (Recommendation 3) [↑](#footnote-ref-12)
13. VCOSS (2016), *Submission to the Means Test Review Consultation Paper*, p. 6. [↑](#footnote-ref-13)
14. Law Institute of Victoria (2016), *Submission to the Means Test Review Consultation Paper*, p. 14. [↑](#footnote-ref-14)
15. Law Institute of Victoria (2016), *Submission to the Means Test Review Consultation Paper*, p. 16. For example, the findings of the LAW Survey suggest that in Victoria credit and debt issues often occur in conjunction with family issues and consumer issues often occur in conjunction with criminal matters. The Royal Commission into Family Violence also recognised the need for greater legal assistance being provided to victims of financial abuse. [↑](#footnote-ref-15)
16. Confidential Submission 2, (2016) [↑](#footnote-ref-16)
17. Straight Arrow & Living Positive Victoria, *Submission to the Means Test Review Consultation Paper,* p. 2. [↑](#footnote-ref-17)
18. Victorian Alcohol and Drug Association (2016) *Submission to the Means Test Review Consultation Paper,* p. 2. [↑](#footnote-ref-18)
19. Anonymous Respondent, *Means Test Review Community Survey***.** [↑](#footnote-ref-19)
20. Inner Melbourne Community Legal Service (2016) *Submission to the Means Test Review Consultation Paper*, p. 2. [↑](#footnote-ref-20)
21. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 12. (Recommendation 3) [↑](#footnote-ref-21)
22. Law Institute of Victoria (2016*)* *Submission to the Means Test Review Consultation Paper*, p. 12. (Recommendation 3) [↑](#footnote-ref-22)
23. Aboriginal and Torres Strait Islander families were more than twice as likely to have four or more dependant children than other families. *Source: Household and Family Composition of Aboriginal and Torres Strait Islander households in the 2011 Census*. [http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2076.0main+features402011](http://www.abs.gov.au/ausstats/abs%40.nsf/Lookup/2076.0main%2Bfeatures402011) [↑](#footnote-ref-23)
24. Law Institute of Victoria (2016*)* *Submission to the Means Test Review Consultation Paper*,p. 12 (Recommendation 4) [↑](#footnote-ref-24)
25. Department of Justice & Regulation (2016) *Access to Justice Review*, p. 424. [↑](#footnote-ref-25)
26. See, for example, Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper,* p. 17, Victorian Council of Social Services (2016) *Submission to the Means Test Review Consultation Paper* p. 6. [↑](#footnote-ref-26)
27. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 17. [↑](#footnote-ref-27)
28. Victorian Council of Social Services (2016) *Submission to the Means Test Review Consultation Paper,* p. 6. [↑](#footnote-ref-28)
29. See, for example, Law Institute of Victoria (2016) Submission to the Means Test Review Consultation Paper, p. 18 – 19. [↑](#footnote-ref-29)
30. Victorian Council of Social Services (2016) *Submission to the Means Test Review Consultation Paper,* p. 6. [↑](#footnote-ref-30)
31. Victorian Council of Social Services (2016) *Submission to the Means Test Review Consultation Paper*, p. 7. [↑](#footnote-ref-31)
32. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 18. (Recommendation 11) [↑](#footnote-ref-32)
33. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 19 (Recommendation 13) [↑](#footnote-ref-33)
34. Victorian Council of Social Services (2016) *Submission to the Means Test Review Consultation Paper,* p. 7. [↑](#footnote-ref-34)
35. Eastern Community Legal Centre (2016) *Submission to the Means Test Review Consultation Paper*, p. 4. [↑](#footnote-ref-35)
36. Straight Arrows & Living Positive Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 1, 3. [↑](#footnote-ref-36)
37. Straight Arrows & Living Positive Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 3. [↑](#footnote-ref-37)
38. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 19-22. (Recommendation 17) [↑](#footnote-ref-38)
39. Hume Riverina Community Legal Service (2016) *Submission to the Means Test Review Consultation Paper,* p. 4. [↑](#footnote-ref-39)
40. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 19. [↑](#footnote-ref-40)
41. Inner Melbourne Community Legal Centre (2016) *Submission to the Means Test Review Consultation Paper*, p 3. [↑](#footnote-ref-41)
42. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p.19-21. (Recommendation 14) [↑](#footnote-ref-42)
43. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 21 (Recommendation 15). [↑](#footnote-ref-43)
44. Eastern Community Legal Centre (2016) *Submission to the Means Test Review Consultation Paper,* p. 4. (Recommendation 4) [↑](#footnote-ref-44)
45. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p 21. [↑](#footnote-ref-45)
46. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 23-4. [↑](#footnote-ref-46)
47. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 23. (Recommendation 18) [↑](#footnote-ref-47)
48. Law Institute of Victoria (2016), *Submission to the Means Test Review Consultation Paper,* p. 25 – 26. (Recommendations 19 – 21) [↑](#footnote-ref-48)
49. Law Institute of Victoria (2016), *Submission* to the *Means Test Review Consultation Paper,* p. 24. [↑](#footnote-ref-49)
50. Jesuit Social Services *Submission to the Means Test Review Consultation Paper*, p. 6. [↑](#footnote-ref-50)
51. Victoria Legal Aid *Client Profiles – High-contact users of legal aid services*. Available at <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-client-profiles.doc> [↑](#footnote-ref-51)
52. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper,* p. 30. [↑](#footnote-ref-52)
53. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 30. (Recommendation 24) [↑](#footnote-ref-53)
54. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper,* p. 30-31. (Recommendation 25) [↑](#footnote-ref-54)
55. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 29. [↑](#footnote-ref-55)
56. See, for example, Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 29. [↑](#footnote-ref-56)
57. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 29. (Recommendation 29) [↑](#footnote-ref-57)
58. This issue is dealt with separately at p. 1. [↑](#footnote-ref-58)
59. Confidential Submission 2 (2016). [↑](#footnote-ref-59)
60. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 29. [↑](#footnote-ref-60)
61. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 30. (Recommendation 23) [↑](#footnote-ref-61)
62. Victorian Council of Social Services (2016) *Submission to the Means Test Review Consultation Paper*, p. 11. [↑](#footnote-ref-62)
63. Jesuit Social Services (2016) *Submission to the Means Test Review Consultation Paper*, p 9. [↑](#footnote-ref-63)
64. Youthlaw (2016) *Submission to the Means Test Review Consultation Paper*, p.1. [↑](#footnote-ref-64)
65. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p 33 (Recommendation 26) [↑](#footnote-ref-65)
66. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 34. [↑](#footnote-ref-66)
67. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 34. (Recommendation 28) [↑](#footnote-ref-67)
68. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 34. [↑](#footnote-ref-68)
69. Jesuit Social Services (2016) *Submission to the Means Test Review consultation paper*, p. 5. [↑](#footnote-ref-69)
70. Jesuit Social Services (2016) *Submission to the Means Test Review consultation paper*, p. 5. [↑](#footnote-ref-70)
71. Jesuit Social Services (2016) *Submission to the Means Test Review Consultation Paper*, p 8. [↑](#footnote-ref-71)
72. Hume Riverina Community Legal Service (2016) *Submission to the Means Test Review Consultation Paper,* p. 5. [↑](#footnote-ref-72)
73. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 13. (Recommendation 13) [↑](#footnote-ref-73)
74. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper* p. 13. Results of the LIV Survey indicate that the informal assessments undertaken by practitioners’ influence whether or not a practitioner will proceed with making an application for a grant of legal aid funding. Practitioners often did not proceed with making an application for a grant of legal aid funding based on their informal assessment, some LIV members are reluctant to take on legally aided clients noting the significant amount of time spent informally assessing and making the applications for grants. [↑](#footnote-ref-74)
75. Hume Riverina Community Legal Service (2016) *Submission to the Means Test Review Consultation Paper,* p. 2. [↑](#footnote-ref-75)
76. Jesuit Social Services *Submission to the Means Test Review Consultation Paper,* p. 6. [↑](#footnote-ref-76)
77. Straight Arrow & Living Positive Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 3. [↑](#footnote-ref-77)
78. Straight Arrow & Living Positive Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 3. [↑](#footnote-ref-78)
79. Hume Riverina Community Legal Service (2016) *Submission to the Means Test Review Consultation Paper*, p. 5. [↑](#footnote-ref-79)
80. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 11. [↑](#footnote-ref-80)
81. Jesuit Social Services *Submission to the Means Test Review Consultation Paper,* p. 9-10. [↑](#footnote-ref-81)
82. Jesuit Social Services *Submission to the Means Test Review Consultation Paper*, p. 10. [↑](#footnote-ref-82)
83. Law Institute of Victoria (2016) *Submission to the Means Test Review Consultation Paper*, p. 26. [↑](#footnote-ref-83)
84. Department of Justice and Regulation (2016) *Access to Justice* *Review and Recommendations* (Volume 2), p. 424. [↑](#footnote-ref-84)
85. Inner Melbourne Legal Centre (2016) *Submission to the Means Test Review Consultation Paper*, p. 5. [↑](#footnote-ref-85)