

# Fair and equitable access to legal aid

**VCOSS response to the Victoria Legal Aid  
Means Test Review Options Paper**

June 2017



## About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

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# Introduction

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to comment on Victoria Legal Aid's (VLA) *Means Test Review Options Paper* (Options Paper).

VCOSS acknowledges the comprehensive consultation process already undertaken to inform the Options Paper, including the consultation on the Discussion Paper that occurred in 2016. VCOSS's position remains that legal aid and the community legal system in Victoria are significantly under resourced, relative to demonstrated need in the community. This was highlighted in our submission to the Discussion Paper, where we pointed to the growing 'justice gap' between people who can identify and enforce their legal rights, and those who cannot.

VCOSS represents over 300 community sector members, including large charities, peak organisations, small community services, advocacy groups and networks, who provide a wide range of supports to people who are experiencing poverty and disadvantage. When faced with additional legal problems, VCOSS members told us that their clients need timely and easy access to legal assistance. This is vital and its importance cannot be underestimated. When access to legal assistance is restricted or qualified, people are at risk of unfair treatment by the legal system.

Legal representation in a criminal trial is considered a right in common law. A court can stay proceedings in a serious criminal trial if the accused is unrepresented and will not have a fair trial.<sup>1</sup> In Victoria, the right to a fair hearing is a statutory right under the *Charter of Human Rights and Responsibilities Act*. This extends to the right to counsel.<sup>2</sup>

Victims of family violence also need fair and equitable access to legal services. Family violence cases highlighted through the Family Violence Royal Commission hearings demonstrated the devastating impacts a lack of support can have. A victim of family violence, quoted by the Family Violence Royal Commission, described dealing with the legal system without representation as "*clawing our way through in the dark*."<sup>3</sup>

Other groups that should have timely and easy access to legal assistance include Aboriginal and Torres Strait Islander peoples, who are over-represented in the criminal justice, youth justice and out-of-home care systems.

Young people who have lived in out of home care should also have priority access to legal assistance. The link between child protection and youth justice populations is well documented.<sup>4</sup>

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<sup>1</sup> Australian Law Reform Commission *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (ALRC Interim Report 127) Australian Law Reform Commission, 2015, para. 10.114.

<sup>2</sup> A Flynn, J Hodgson, J McCulloch and B Naylor, "Legal Aid and Access to Legal Representation: Redefining the right to a fair trial", *Melbourne University Law Review* Vol 40:207 2016, p. 210.

<sup>3</sup> State of Victoria, *Royal Commission into Family Violence: Report and recommendations, Vol III, Parl Paper No 132, 2014-16*, p. 129.

<sup>4</sup> P Mendes, S Baidawi, PC Snow, *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System. Leaving Care and Youth Justice – Phase Three Report*. 2014, p. 18

As noted by the Productivity Commission in their review *Access to Justice Arrangements*:

Disadvantaged Australians are more susceptible to, and less equipped to deal with, legal disputes. Governments have a role in assisting these individuals. Numerous studies show that efficient government funded legal assistance services generate net benefits to the community.<sup>5</sup>

In developing this submission VCOSS further consulted with our members. They told us there are a number of factors contributing to legal need, beyond capacity to pay, that should be taken into account when assessing eligibility for legal assistance.

In order to address legal need, VCOSS suggests the VLA means test should be more closely aligned with the priority client framework; the framework should not just be used to determine eligibility for triage legal services.

VCOSS supports a number of the options proposed by VLA. We have provided further commentary on options that will make it easier for vulnerable Victorians to deal with their legal issues, with the assistance of legal aid, including:

- **Modernising the income test** to reduce the documentary burden and make it fairer for working people on low incomes,
- **Creating a fairer assets test** to treat renters more equitably and quarantine superannuation that has been accessed to deal with financial hardship,
- **Narrowing the definition of ‘financially associated persons’**, to spouses,
- **Making the contributions policy fairer** to help people who would otherwise be refused legal assistance because of income make a contribution to ensure they can access justice,
- **Establishing clear exemptions from the means test and contributions policy**, to ensure the right people are getting legal assistance quickly, and legal issues of significant public interest are getting heard, and
- **Improving access to information for potential clients and the community sector.**

Areas that require further consideration as part of the VLA means test review include:

- addressing conflicts of interest, especially in rural and regional areas
- the costs framework, and
- the use of discretion in decision making.

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<sup>5</sup> Productivity Commission, *Access to Justice Arrangements: Overview Inquiry Report No. 72*, 2014, p. 2.

# Modernise the income test

VCOSS understands that the current means test includes an assessment of a person's income, to help determine whether they can afford private legal services. VLA looks at sources of income including pensions, benefits, allowances, earnings from employment or self-employment, interest on investments, maintenance or child support, and other potential income sources. VLA will also look at the income of 'financially associated persons', who are people who provide, or could reasonably be expected to provide, assistance to an applicant, such as parents or partners.

Under the current income test, a person will be eligible for legal aid if their income is \$360 a week or less, after living cost allowances are deducted. Allowances include housing, child care costs, and the costs of caring for dependants. People with incomes above \$360 per week may be eligible for legal aid if they make a financial contribution.

VLA's income testing could be revised to better reflect the nature of poverty and disadvantage in Victoria. Current testing can too easily deny legal aid to people on low incomes who face significant financial stress, including the one third of people living in poverty who rely on wages as their main source of income,<sup>6</sup> often called 'working poor'. This includes many single parent families, under-employed people, and people working in part-time or casual roles for low wages. VCOSS members report low wage workers are accessing emergency relief and other support services, which shows the degree of financial need among this group of people.

Based on its 2017 survey, the Salvation Army states:

[we have] observed a growing trend of underemployed individuals seeking support through emergency relief services, sometimes referred to as 'the working poor'. Despite being employed, 14% of [survey] respondents were looking for additional work. Casualisation of the workforce has caused increased financial pressures for many, and led to instability, uncertainty and economic vulnerability.<sup>7</sup>

Low wage workers may therefore have little to no capacity to pay for legal services.

With this context in mind, VCOSS makes the following observations on the proposed changes to the income test.

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<sup>6</sup> Australian Council of Social Service and Social Policy Research Centre, *Poverty in Australia 2016*, 2016.

<sup>7</sup> The Salvation Army, *The Hard Road: National Economic & Social Impact Survey 2017*, 2017, p. 32.

## Exempt vulnerable people from providing documentary proof of means

At the moment, people seeking legal aid have to provide documentary proof of income and assets, unless they are in custody. VCOSS supports waiving this requirement for a broader group of people who may find it very difficult to provide documentary proof of means, or whose safety and wellbeing may be compromised if they try to obtain documentary proof. For example, we support the proposed waiver for people experiencing homelessness, people residing away from their usual accommodation due to family violence, and people living in remote areas. However, we suggest the waiver apply to all family violence victims, who may be at greater risk of harm if requests to banks, employers and others alert the perpetrator that the victim is seeking help (particularly in small communities). It may also be practically impossible for a family violence victim to seek documentary proof of means when they urgently need legal assistance (for example if they have fled their home in an emergency, without any belongings).

## Fairly assess the incomes of people with irregular work

VLA suggests income assessments could better reflect changing workforce patterns, including the greater proportion of people in casual or irregular work. To provide a true picture of an applicant's income, VLA proposes documentary proof of income could be extended from three months to six months or potentially 12 months, on the basis this 'may more accurately reflect an applicant's income and their ability to pay for a lawyer'.<sup>8</sup>

VCOSS supports this option, provided VLA takes into account the unique circumstances of people in irregular work. VLA should ensure people with irregular incomes are allowed to quarantine a reasonable amount of income for future use. For example, while a person's earnings from six months' seasonal work may indicate sufficient income to pay for legal services, these earnings may be needed over 12 months. Also, for people working in casual or contingent roles (including in the 'gig' economy), past income could be an unreliable indicator of future income and capacity to pay for legal services.

## Use an appropriate measure of low incomes

At the moment, people are eligible for legal aid (without having to make a financial contribution) if their weekly income is \$360 or less, following deductions for housing and the costs of caring for children and other dependants. VLA proposes increasing the allowable income threshold from \$360 per week, so more people on low incomes can receive legal aid. As VLA notes in the Options Paper Part A, this is particularly relevant for people who rely on low-waged employment income.

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<sup>8</sup> Victoria Legal Aid, *Means Test Review – Options Paper Part A: How do we measure eligibility?*, April 2017, p. 3.

VLA's current income threshold is based on the Henderson Poverty Line. VLA proposes two potential ways of increasing the allowable income threshold:

- increasing the threshold to 110 per cent of the Henderson Poverty Line, which would raise the current allowable income from \$360 to \$390 per week, or
- setting the income threshold at 110 per cent of the OECD Relative Poverty Line, which would raise the current allowable income from \$360 to approximately \$469 per week.

The OECD Relative Poverty Line measures poverty as a percentage of a country's median after-tax household income. This widely accepted method is used by the Australian Council of Social Service (ACOSS). ACOSS defines the poverty line as either 50 per cent or 60 per cent of median household income, a common measure used internationally. As ACOSS states:

This approach means that the poverty lines rise or fall in accordance with changes in the income (including wages and any government benefits) of the median household. That is, the poverty lines aim to measure living standards relative to those enjoyed by 'middle Australia'. This is appropriate, given the cost of achieving an acceptable standard of living varies over time and between countries as living standards rise or fall.<sup>9</sup>

Using the 50 per cent of median household income measure, in 2013-14 the poverty line for a single person was \$426 per week after tax and before housing costs. For a lone parent with two children, it was \$682 per week after tax and before housing costs. ACOSS also measures the post-housing costs poverty line, which was \$343 per week for a single person, and \$548 for a lone parent with two children.<sup>10</sup>

VCOSS considers the relative poverty line a reliable measure of poverty in Australia. However, we understand VLA aims to assist a broader group of people on low incomes—not just those in poverty—which may mean income thresholds need to be based on another measure, such as Australian Bureau of Statistics' measures of household income.

We also note the relative poverty line represents post-tax income available for essential living expenses (or the income available post-housing costs). However, the VLA allowable income threshold represents net disposable income after deductions for housing, child care and dependant costs. As the measures take into account different things, a direct comparison of the two measures is difficult (that is, one of the measures takes into account income for all essential expenses after housing costs and the other takes into account income left after housing costs, child care and dependent expenses are deducted). It may be necessary for VLA to further explore appropriate measures of low incomes to ensure income thresholds reflect the circumstances of people VLA is aiming to assist.

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<sup>9</sup> Australian Council of Social Service and the Social Policy Research Centre, op cit, p. 9.

<sup>10</sup> Ibid.

## Increase the range and value of living cost deductions

VLA allows certain expenses to be taken into account to determine a person's allowable income and their capacity to pay for legal services, including:

- housing costs (to a maximum of \$400 per week for inner, middle and metropolitan areas; less for other areas, including regional areas)
- childcare costs (to a maximum of \$310 per household per week)
- dependants (\$130 per week for the first dependant; \$125 for any other dependants)
- maintenance or child support payments (to a maximum of \$130 per week for the first child and \$125 for any other children).

'Weekly housing costs' include rent, mortgage instalments and local government rates.

VCOSS supports increasing the range of allowable deductions, in order to capture the breadth of essential living expenses, and help to properly bring people's incomes within the allowable limit.

Deductions should be available for:

- regular medical expenses
- transport costs
- food costs
- utility bills, including electricity, gas, water and telecommunication/internet costs (the latter is increasingly regarded as an essential service, necessary for day-to-day and emergency communications, engaging with Centrelink, children's education etc)
- reasonable education expenses
- credit and personal loan debt, particularly where linked to essential household expenses such as utility bill payments
- other reasonable household expenses and regular payments, such as fines debt.

VCOSS supports increasing the childcare deduction by providing a set amount for each child and not capping the number of children calculated.

As a 'bigger change', VLA has suggested a standardised household expenditure allowance, which would incorporate utility, food and other expenses, and could be adjusted according to the number of household dependants. This would make the application process easier, but may make the means test less fair if it does not adequately capture the higher living costs faced by low income households. For example, low income households (particularly those with children) are at risk of higher than average energy bills, partly due to poor quality, energy inefficient housing. People on low incomes can also face higher than average transport costs if they are living on the urban fringe or in areas poorly serviced by public transport. Debt servicing may also be more expensive for low income households if people have taken on high-interest 'payday' loans and other fringe lending products.

For these reasons, any standardised household expenditure measure would need to be carefully set by reference to the particular living costs of low income households. Applicants would also

need to be encouraged to identify areas of household expenditure where costs are particularly high, and allowed to deduct higher amounts where necessary.

## **Expand the meaning of ‘dependant’ and increase the dependant allowance**

A dependant is currently defined as anyone who relies on the applicant for financial support, which VLA interprets as a person, such as a child or elderly parent, who lives with the applicant. VLA suggests expanding this definition to include any person whom the applicant supports financially.

We support this expanded definition and agree it would better reflect diverse family and financial support structures in Australia, including among Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds. In this respect, VCOSS members note people may have dependants not just in Australia but overseas who are relying on the applicant’s financial support, which should be taken into account under the income test.

VCOSS also supports an increase to the dependant allowance, to better reflect modern costs of raising children.

## Create a fairer assets test

Along with income, assets are taken into account under the VLA means test. A person may be ineligible for legal aid if they own assets exceeding the allowable limits, or they may still qualify if they make a contribution towards their legal costs. Assets include real estate, investments, shares, unpreserved superannuation and other interests.

The allowable assets threshold is currently \$1,095, which could include modest bank savings. However, a person can have up to \$500,000 equity in the family home and \$20,000 equity in a car and still be eligible for legal aid. This creates a disparity between tenants and homeowners in their access to legal aid.

### Treat tenants fairly and promote financial buffers

As VCOSS previously observed in its submission to the 2016 Discussion Paper, the current assets test is particularly disadvantageous for tenants. It allows people with substantial equity in the family home to access legal aid, but refuses legal aid to tenants who have modest savings or other assets (or requires a contribution from tenants to legal aid costs).

The means test should better recognise the financial wellbeing of homeowners with substantial equity in their property. While homeowners should not be forced to sell their properties, or have their equity reduced to a level that could compromise financial wellbeing, options like equity release can enable homeowners to fund a private lawyer. For example, people on part pensions can apply for a loan through the Australian Department of Human Services' Pension Loans Scheme, which is secured against real estate and paid in fortnightly instalments.<sup>11</sup> VLA could consider whether the current home equity threshold is set at an appropriate level, and whether a reduction in the equity threshold would allow VLA to better target legal services, including to non-homeowners.

VCOSS supports separate asset allowances for homeowners and tenants, in order to protect money put aside by tenants for rent payments, and potential moving costs due to eviction, family violence or other circumstances. VLA suggests savings could be allowed to cover a month's worth of rent plus a bond (in the event of a move). This amount is too low, making a person vulnerable to eviction and homelessness if they only have one month's worth of rent available in the event of job loss, major illness or other income disruptions. We note people who have less than one month's *income* in savings (not only housing costs) are regarded as having very little savings and financially vulnerable. Three months' worth of income in savings is regarded as a 'moderate' level

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<sup>11</sup> See Australian Government, Department of Human Services, 'Pension loans scheme', [https://www.humanservices.gov.au/customer/services/centrelink/pension-loans-scheme?utm\\_id=7](https://www.humanservices.gov.au/customer/services/centrelink/pension-loans-scheme?utm_id=7) accessed 21 June 2017.

of savings.<sup>12</sup> We suggest three months' worth of rent and associated housing costs be allowed, which would promote security of tenure and buffers against financial crisis.

VCOSS also supports a more general increase in the allowable assets threshold for non-property assets, in order to accommodate the complexity of people's lives and particular vulnerabilities. The current threshold of \$1,095 is too low. Some people have to rely on savings for significant periods of time because they have limited capacity to work or employment opportunities, including due to disability or reliance on seasonal work in regional areas. Women facing family violence (whether they are homeowners or tenants) may have put savings aside in order to move from the family home or to another area. The allowable assets threshold should accommodate such circumstances.

The assets test should also make allowances for assets that directly support a person's health and wellbeing by enabling them to participate in work, education or community life. For example, mobility scooters and other disability equipment should be treated the same as motor vehicles under the assets test.

## Treatment of superannuation

VCOSS supports clarification of how superannuation assets are treated under the means test, which would make clear that VLA only takes into account superannuation the applicant has already accessed (i.e. 'unpreserved' superannuation) and is not subject to any taxation.

Applicants on low incomes may have accessed superannuation before retiring, due to severe financial hardship, terminal illness, on compassionate grounds, or because the super balance is very low.<sup>13</sup> The guideline needs to clarify whether early release of superannuation on these grounds is taken into account under the means test; we suggest superannuation assets should be excluded from the means test assessment in these circumstances.

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<sup>12</sup> National Australia Bank and Centre for Social Impact, *Financial Resilience in Australia 2015*, August 2016.

<sup>13</sup> See Australian Government, Department of Human Services, 'Grounds for early release of superannuation', <https://www.humanservices.gov.au/customer/enablers/grounds-early-release-superannuation> accessed 21 June 2017.

# Narrow the definition of ‘financially associated persons’

When deciding whether to grant legal aid, VLA looks at the income and assets of ‘financially associated persons’, who are people who provide, or could reasonably be expected to provide, assistance to applicant. This can include parents, partners, children or siblings. For example, if a parent provides financial assistance to an adult child, their child might be denied legal aid, and the parent forced to pay for private legal services. VLA states that:

The Financially Associated Person definition is structured to ensure that the resources of a household or a relationship are considered as part of the assessment of whether a person can afford to pay for a private lawyer. This is underpinned by the assumption that certain people in a household or relationship have a moral obligation to support the applicant by contributing to their legal costs. It also supports the idea that publicly funded legal assistance is a safety net for people in need that should only be available where a person does not have access to other resources.<sup>14</sup>

VCOSS members told us the definition of ‘financially associated persons’ is too wide. It can particularly disadvantage Aboriginal and Torres Strait Islander peoples, and people from culturally and linguistically diverse backgrounds, who support extended family members and can be left with the responsibility for funding legal services for them. The mean’s test harshness can result in a person being impoverished by their relative’s legal problems.

VCOSS members warned against situations where vulnerable people are having to approach family members for support where this could disadvantage or endanger them, such as where a young adult with significant family conflict has to approach parents for help with legal costs.

VCOSS supports narrowing the definition of ‘financially associated persons’ to the applicant’s spouse or partner, consistent with the Centrelink definition. The assessment could also consider the circumstances of other family members identified by the applicant as appropriate financial supporters.

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<sup>14</sup> Victoria Legal Aid, *Means Test Review – Options Paper Part B: Making the means test better*, April 2017, p. 9.

If the definition is narrowed in this way it is important:

- applicants be able to flag during the eligibility assessment that they cannot approach their partner/spouse for legal costs assistance (such as where the applicant is a *victim* of family violence), and
- partners/spouses be able to alert VLA that the applicant is placing undue pressure on them to pay for legal services, and/or it constitutes economic abuse (such as where the applicant is a *perpetrator* of family violence or elder abuse).

When assessing who is a financially associated person, VLA must proactively, but safely, ask about family violence.

## Other reforms to improve fairness

VCOSS supports other proposed measures that will help make the application process easier, and protect family members from harm.

VCOSS welcomes the proposal to reduce the documentary proof required from financially associated persons, which can prevent timely access to legal assistance where there are delays gathering proof, or the applicant is not able to gather this proof. We agree statutory declarations could be accepted where it is difficult to obtain documentary proof.

We also support including dependants of financially associated persons in the means test. We agree this would allow a more accurate assessment of whether they are able to contribute to the applicant's legal costs. It would also help to avoid harm to dependants, such as children, where a financially associated person is required to contribute to legal costs and has to sacrifice spending on dependants.

# Make the contributions policy fairer

A contribution is an amount of money that a person who has been granted legal aid must pay towards the cost of legal assistance. It is based on the estimated cost of the matter and weekly income. The first installment on a contribution is usually paid as a lump sum, unless the person can show that would cause undue hardship.

The intention of the contributions policy is to allow a greater number of people on low or fixed incomes and/or with minor assets to access legal assistance, on the basis that they are able to make some contribution to their legal costs. It helps ensure access to legal assistance is available to those who need it, not based on a strict monetary cut-off.

There are a number of options that can make the contributions policy fairer for people who need legal assistance but have limited capacity to make a contribution to those costs.

## Widen the contributions policy

Members told us that people who are on low incomes would rather make an agreement to contribute to legal expenses rather than miss out on legal assistance altogether. This would include low wage workers. VCOSS recommends ensuring that people have a thorough understanding of the quantum of their contribution, and how it will be collected. Clear information, provided as early as possible in the process, may help to ensure people understand their obligations, and make it more likely that they will make repayments.

As noted in the Access to Justice Review, other parts of the justice system are negatively impacted by low levels of legal assistance. For example, an increase in self-represented litigants has a direct impact on court workload.<sup>15</sup> Part A of the Options Paper supports the view that the costs of providing more people with legal assistance may be outweighed by the broader benefits to the community of providing early support for legal problems.<sup>16</sup> Widening the contributions policy, to allow more people access to legal assistance, with a contribution, may prevent some of these costs to the community.

## Raise the income and asset threshold

VLA's income and assets thresholds are low, and have the potential to exclude people from assistance who are vulnerable or disadvantaged and need access to legal aid. Raising the income and asset thresholds that trigger the point that VLA requires a contribution would ensure a greater

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<sup>15</sup> State Government of Victoria, *Access to Justice Review: Report and recommendations (Volume 2)*, 2016 p. 428

<sup>16</sup> Victoria Legal Aid, *Means Test Review Options Paper - Part A: How do we measure eligibility?* 2017 p. 9.

number of people in need are able to access assistance. VCOSS members advocated for opening up contributions to a wider group of low wage workers. Members also said that there are some people on a fixed or low income, for whom the need to make a contribution will act as a disincentive to seeking legal assistance. This should be avoided.

### **Make the repayments scheme for asset contributions fairer**

VCOSS recommends allowing repayments for asset contributions to be made over a period of time, like income-based contributions. People seeking legal assistance are unlikely to have significant assets. Spreading an asset-based contribution over a period of time would be fairer than requiring a lump sum or higher repayments based solely on the value of an asset.

As previously observed in the comments to the 2016 Discussion Paper, VCOSS suggested mobility aids and disability equipment should be considered allowable assets. Mobility aids and disability equipment are essential tools to support health and wellbeing and should not be considered assets that can be disposed of to pay a debt.

### **Fix the rate of contribution repayments**

VCOSS is of the view that repayment amounts should be based on income (capacity to pay) rather than contribution amount (total owed). Fixing the level of repayment for contributions based on the amount owing creates inequity. Although this may result in some people taking longer to repay a contribution, it would ensure they are not burdened by repayments that they can't afford.

# Establish clear exemptions

There are a number of ways exemptions can be used to streamline decision making and make the tests for obtaining legal assistance clearer. Exemptions fall into two categories:

1. exemptions for groups of people, and
2. exemptions in relation to certain legal matters.

Exemptions that have been proposed in the Options Paper relate to both the means test as a whole or the contributions policy. A clear exemptions policy should be written to cover both aspects.

## Exempt certain groups of people

VCOSS supports a more inclusive approach to granting legal assistance based on disadvantage. This can be through exempting some groups from the means test as a whole, or making specific exceptions in relation to contributions. Research released in 2015 by Catholic Social Services Australia and Jesuit Social Services noted the strong correlation between certain indicators of disadvantage. In the most disadvantaged regions in Australia, there were strong correlations between short and long term unemployment, disability support, child maltreatment indicators and prison admissions. The most disadvantaged regions in Australia experience interconnected vulnerabilities.<sup>17</sup> An assessment based on income and assets alone is unlikely to reveal a complete picture of disadvantage.<sup>18</sup>

VCOSS members agreed that legal assistance should be available to some people regardless of means.

## Exempt (or cap contributions on) certain legal matters

VCOSS members note that certain matters should be exempt from the operation of the means test and/or contributions in relation to those matters capped.

The Royal Commission into Family Violence noted the important role of legal assistance in family violence matters.<sup>19</sup> VCOSS members said responsive and supportive legal assistance in family violence and child protection cases can promote the safety of women and children who have experienced family violence.

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<sup>17</sup> T Vinson, M Rawsthorne, A Bevis and M Ericson, *Dropping off the edge 2015: Persistent communal disadvantage in Australia*, 2015 Jesuit Social Services/Catholic Social Services, p. 10.

<sup>18</sup> Victoria Legal Aid *Options Paper Part A - How do we measure eligibility?*, p. 13.

<sup>19</sup> Royal Commission into Family Violence, *Royal Commission into Family Violence: Report and Recommendations Vol III, Parl paper 132*, 2016 p. 147.

VLA could consider blanket exemptions from the means test or capped contributions in the following matters:

- Equal opportunity and discrimination matters where the contributions might diminish or outweigh the compensation awarded,
- Common legal issues experienced by many vulnerable or disadvantaged people, for example debts and fines, tenancy issues and Centrelink matters,<sup>20</sup> and
- Public interest cases, in which the outcome is of societal benefit and therefore the funding burden should not fall on the applicant.

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<sup>20</sup> Victoria Legal Aid *Options Paper Part A - How do we measure eligibility?*, p. 8.

# Improve access to information

VCOSS members reported that it is hard to find information about eligibility for legal assistance. Community sector workers report that the VLA website is hard to navigate and information about eligibility for legal assistance is difficult to understand.

A more streamlined approach to communications would be appropriate. VCOSS suggests an approach that takes into account the needs of the people seeking information (for example, potential legal aid clients, community support workers who are not lawyers, people from non-English speaking backgrounds and young people) and the type of information they are looking for (for example, eligibility policies, the application process, the contributions policy).

VCOSS members note that while web-based information is useful for some clients, some of the people they support don't have access to the internet. Members told us that people who don't have internet access are likely to be amongst the same groups that need access to information about VLA.

VCOSS recommends using a number of mechanisms to communicate with potential VLA applicants, including plain language, navigable web-based information, plain language and community languages information in printed formats, and training about eligibility and relevant policies for community support workers.

Information that would be helpful for these audiences includes:

- an online means test indicator tool
- information about how to apply for legal aid
- the policy on, and examples of the use of discretion in decision making
- the contributions policy, including how repayments can be made, and how much, and
- the policy on financial hardship for reducing/waiving a legal aid debt.

## Partner with the community sector

VCOSS recommends VLA outreach into the community which could include communicating directly with community sector workers who are likely to have contact with people needing legal support.

Members told us that sometimes people don't know they have a legal problem and might need support from the community sector to identify their problem and assistance to seek legal advice. In these cases, it is helpful for a broader range of professionals to have an understanding of the VLA's policies and application process, which would support holistic responses to people who need legal assistance. This was reinforced by the Productivity Commission's inquiry into access to

justice who found there is a need for “holistic services, outreach, training of non-legal community workers to identify legal problems, and legal health checks would identify those who need additional assistance and help them to navigate the civil justice system.”<sup>21</sup>

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<sup>21</sup> Productivity Commission, *op cit.*, p. 9.

# Other matters

## Conflicts of interest

Members from rural and regional areas told VCOSS that the availability of lawyers in some areas results in priority clients missing out on legal assistance because of conflict of interest (that is, where a law firm has acted for a person in one matter and is then asked to act against them in another matter). VCOSS members told us that availability of lawyers for family violence and child protection matters is contingent on availability of lawyers, rather than the means test. This was raised as a significant issue to be considered as part of this review.

## Estimated legal costs

VLA should review the cost categories to ensure they appropriately reflect the cost of providing legal services and that the types of legal matters are appropriately categorised. This may require the addition of new cost categories.

## Discretion

VCOSS acknowledges there are some issues that are currently dealt with through discretion that should be incorporated within the means test. The examples provided in Options Paper Part A, ongoing medical costs or terminal illness, are those likely to create significant disadvantage for the person experiencing them. Allowing simpler mechanisms for people in those situations to “flag” early that they are impacted by such issues fair approach.

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