



Council to Homeless Persons Submission to Victoria Legal Aid's Means Test Review

The Council to Homeless Persons (CHP) welcomes the opportunity to provide input into Victoria Legal Aid's (VLA) Means Test Review. Access to Victoria's Legal Aid services can form a critical part of the recovery of those who have experienced homelessness. Those who experience homelessness face high rates of involvement in legal matters due to the crises that led to their homelessness, actions arising from their homelessness, and laws that unequally impact on those experiencing homelessness.

The Council to Homeless Persons' response is under-pinned by our view that all those experiencing homelessness should be eligible for a grant of legal assistance. CHP understands that Victoria Legal Aid's review found that 98 per cent of those who report their homelessness to VLA receive a grant of legal assistance. It is clear that the current means test, works well for the large majority of those experiencing homelessness, and that for this cohort required change is at the margins. CHP limits its response to those matters with a direct impact on those experiencing homelessness, and those groups over-represented amongst homelessness populations.

Documentary Requirements (Option 1)

CHP strongly supports the proposal for a waiver of documentary requirements for those experiencing (or having recently experienced) homelessness. The nature of homelessness is such that the relevant documentation often no longer exists or is practically accessible. Where it is possible to seek new copies of documents, significant barriers exist including cost. The particular challenge for those experiencing homelessness is the administrative hurdle at a time of significant personal crisis, making pursuit of documentation overly onerous, and unlikely to be carried through. This leads to self-exclusion from services such as those offered by VLA, even before the organisation has an opportunity to consider the merits of an application.

CHP sees this as a simple and common sense reform that can improve access for those most in need, and strongly supports its adoption.





Accounting for irregular incomes (Option 2)

VLA's efforts to more accurately account for irregular payments should further consider the impact of one-off compensation payments.

CHP endorses the exclusion of one-off compensation payments (and assets or income resulting from such) from an assessment of homeless applicants' assets. Examples of such pay-outs may include work-cover, Traffic Accident Commission (TAC), victims of crime, or medical negligence, though this list is provided for illustrative purposes and is not intended to be exhaustive.

While these payments may appear to be substantial assets, they are awarded for the purpose of providing compensation for loss over a significant period of time. As such, recipients can reasonably expect to access these payments (and assets obtained with such) as an alternative to their unlikely ongoing future earning potential. CHP believes that the exclusion of such assets is an important mechanism to improve fairness.

Treatment of superannuation (Option 3)

The current mechanism for assessing unreserved superannuation for those who have 'unlocked' their superannuation due to hardship would seem to be inappropriate. A substantial proportion of those experiencing homelessness in Victoria do not have access to any form of income, including government benefits. Some of these people draw from previously accrued superannuation to meet their living costs. Such payments are capped at \$10,000 per year – an amount when averaged across the year is substantially lower than the allowable income threshold.

Where applicants can have no reasonable expectation of further income that year, hardship payments should not be considered assessable assets.

Provide guidance on the circumstances when discretion may be exercised (Option 8)

It is plain to CHP that VLA intends that those who are experiencing (or have recently experienced) homelessness are intended to be eligible for a grant of legal assistance either via the means test, or through the reasonable exercise of discretion.



However, with two per cent of those experiencing homelessness being denied a grant of legal aid, it is clear that there needs to be more clarity around the circumstances under which discretion may reasonably be exercised in order to ensure greater uptake of this mechanism by the most highly vulnerable.

It is not unusual that those who are experiencing homelessness do not have access to assets which they formally own including due to estrangement, or through spousal abuse. Such applicants would fail the means test, but should be encouraged to apply for a discretionary exemption due to their inability to access these assets. That some applicants in this situation would appear not to be seeking this exemption, suggests that improved information about the available discretion is required.

Increase the range of allowable deductions (Option 13)

CHP supports the option to increase the range of allowable deductions in order to specifically include credit and personal loan debt (where linked to household expenses), other regular repayments (for example infringements), reasonable education expenses, regular medical expenses, and other reasonable household expenses such as mobile phone bills and other essential utilities including gas and electricity. Allowing for such deductions better recognises that nature of disadvantage and the inherent costs.

Incorporate matters into the means test that are currently dealt with through discretion (Option 25)

CHP advises that the current check box for identifying homelessness, while positive, is insufficient to properly account for whether an applicant is experiencing homelessness. Many people experiencing homelessness do not identify as such for a range of reasons, including misconceptions about 'rough sleeping' being the only form of homelessness, and the stigma associated with homelessness.

CHP recommends that while retaining the current self-identification measure, additional questions need to be asked, in order to determine whether an applicant is experiencing homelessness. Asking applicants to describe their current tenure and accommodation, will allow for a more accurate determination of housing status, and is likely to identify a far higher (and more accurate) number of homeless applicants, than is identified through the current system.



Introduce separate asset allowances for home owners and non-homeowners (Option 29)

CHP supports the proposal to allow a higher liquid asset threshold for non-homeowners. The current threshold fails to recognise the cost involved in emergency activities – for example, if a person is escaping family violence, the current threshold is insufficient to cover rent and bond on a new property, let alone living costs.

Financially Associated Persons (Option 30)

CHP is concerned about the broad definition of a ‘financially associated person’, and its use is likely to disproportionately effect on those experiencing homelessness. CHP strongly supports a restriction in use of the term to include only spouses and partners.

The current financially associated persons test is extremely problematic, as it includes all those who provide free housing support to the applicant. Over thirty per cent of all those experiencing homelessness are staying temporarily with friends and family. This form of homelessness is typically safer than other options, and is more likely to provide the stability necessary for a person to successfully address their crises and obtain sustainable housing. The homelessness sector, as well as those experiencing homelessness, rely heavily on the goodwill of those who support friends and family in times of crises.

However it is not accurate to equate this goodwill with deliberate financial support. While it is true that hosts do incur financial costs as a result of providing support, most fail to recognise this in deciding to provide the support. For many hosts this unanticipated financial impost is unwelcome and causes significant difficulty – such costs are a major cause of this accommodation breakdown.

In effect, including these hosts as financially associated persons penalises people for taking couch surfers into their homes. This is totally out of step with community expectations. Nor is it appropriate to withhold a service on the basis of decisions made by parties whose decision is outside of the influence of the applicant.



CHP would add that the current broad definition of ‘financially associated persons’ has disproportionate impact on Aboriginal and Torres Strait Islander households, who may have kin-care responsibilities. This is also the case for culturally and linguistically diverse households who are more likely to live in overcrowded share accommodation, as well as affecting single mothers who are more likely to utilise ‘couch-surfing’ arrangements.

Exempt certain categories of people from the operation of the means test
(Option 46)

CHP supports the option of exempting certain categories of people from the operation of the means test, particularly as this relates to those experiencing homelessness. As mentioned above, CHP believes that the VLA intends that those who are experiencing (or have recently experienced) homelessness are eligible for a grant of legal assistance either through the means test, or through the reasonable exercise of discretion. Exempting those experiencing homelessness from the operation of the means test would see an extremely small increase in the number of grants of assistance (remembering that only two per cent of those experiencing homelessness are refused a grant). The major benefit would be the removal of the administrative burden of satisfying the means test for those in a significant state of crisis. This will prevent an inadvertent contribution adding to that crisis, allowing those experiencing homelessness to instead, focus on addressing its root causes.

Conclusion

The current operation of the means test review is largely effective in supporting the very most vulnerable in society. CHP hopes that with the implementation of the changes outline above, Victorian Legal Aid will successfully achieve full coverage of the needs of Victoria’s homeless community.

We appreciate the opportunity to provide this feedback.