Simplified grants process

Notes on VLA guidelines

03 May 2024

© 2024 Victoria Legal Aid. Reproduction without express written permission is prohibited. Written requests should be directed to Victoria Legal Aid, Corporate Affairs, Level 9, 570 Bourke Street, Melbourne Vic 3000.

Disclaimer. The material in this publication is intended as a general guide only. The information contained should not be relied upon as legal advice, and should be checked carefully before being relied upon in any context. Victoria Legal Aid expressly disclaims any liability howsoever caused to any person in respect of any legal advice given or any action taken in reliance on the contents of the publication.

Contents[Important 1](#_Toc164083721)

[1. Introduction 2](#_Toc164083722)

[Purpose 2](#_Toc164083723)

[VLA’s goals 2](#_Toc164083724)

[Extent of SGP 2](#_Toc164083725)

[Applications under SGP to Grants and Quality Assurance 2](#_Toc164083726)

[VLA assessment 2](#_Toc164083727)

[SGP requirements 2](#_Toc164083728)

[Approval must be sought before commencing work on the matter 3](#_Toc164083729)

[Urgent grants 3](#_Toc164083730)

[Applications under Special Circumstances Guideline (General provisions) 3](#_Toc164083731)

[Duty to advise VLA of any extraordinary events 4](#_Toc164083732)

[Transfers 4](#_Toc164083733)

[Lawyers requiring further information 5](#_Toc164083734)

[2. Applications under special circumstances 5](#_Toc164083735)

[Summary Crime – SGP applications for summary crime only 5](#_Toc164083736)

[Consideration of Special Circumstances 5](#_Toc164083737)

[Reading or writing difficulty 5](#_Toc164083738)

[Serious mental health issue or intellectual disability 6](#_Toc164083739)

[3. Documentary proof of income and assets 6](#_Toc164083740)

[Partners with income/assets 7](#_Toc164083741)

[Variable income 7](#_Toc164083742)

[Proof of income 7](#_Toc164083743)

[Where the applicant and/or partner are in employment 7](#_Toc164083744)

[Where the applicant and/or partner are Social Security recipients 7](#_Toc164083745)

[Where the applicant and/or partner are self-employed 8](#_Toc164083746)

[Proof of savings and investments 8](#_Toc164083747)

[Additional proofs 8](#_Toc164083748)

[Waiver of documentary proof – Summary Crime only 9](#_Toc164083749)

[4. Summary crime 9](#_Toc164083750)

[Commonwealth charges take priority 9](#_Toc164083751)

[State criminal law matters 9](#_Toc164083752)

[4.1.1 – Not guilty pleas 10](#_Toc164083753)

[4.1.2 – Guilty pleas 10](#_Toc164083754)

[4.1.3 – Assessment and Referral Court (ARC) List 11](#_Toc164083755)

[4.1.4 – Traffic prosecutions 12](#_Toc164083756)

[4.1.5 – Infringement Court matters 14](#_Toc164083757)

[4.1.7 – Cancellation of drug treatment order (DTO) 14](#_Toc164083758)

[4.1.8 – Children’s Court matters 15](#_Toc164083759)

[Commonwealth Criminal Law Guidelines 17](#_Toc164083760)

[Social security prosecutions 17](#_Toc164083761)

[4.1.9 – Social security prosecutions – trial in Magistrates Court (not guilty) 17](#_Toc164083762)

[4.1.10 – Social security prosecutions – guilty pleas 18](#_Toc164083763)

[Fees in summary criminal matters 19](#_Toc164083764)

[4.1.11 – Matters included in/flowing from the lump sum fee 19](#_Toc164083765)

[4.1.12 – Consolidations 19](#_Toc164083766)

[4.1.13 – Consolidations and not guilty pleas 19](#_Toc164083767)

[4.1.14 – Consolidations – pleas after contest 20](#_Toc164083768)

[4.1.15 – Transcription of sound-recorded records of interview 20](#_Toc164083769)

[4.1.16 – Contest mentions 20](#_Toc164083770)

[4.1.17 – Special mentions – Magistrates’ Court 21](#_Toc164083771)

[4.1.18 – Adjournments 21](#_Toc164083772)

[4.1.19 – Summary Crime accounts 21](#_Toc164083773)

[4.1.20 – Urgent grants 21](#_Toc164083774)

[State criminal appeals – County Court 21](#_Toc164083775)

[4.1.21 – Legal Aid Act 22](#_Toc164083776)

[4.1.22 – Cost/benefit 22](#_Toc164083777)

[4.1.23 – Relevance of summary crime guidelines to cost/benefit 22](#_Toc164083778)

[4.1.24 – Counsel’s advice 23](#_Toc164083779)

[4.1.25 – Appeal bail 23](#_Toc164083780)

[Commonwealth Appeals – County Court 23](#_Toc164083781)

[County Court Breach Proceedings 23](#_Toc164083782)

[Indictable crime 25](#_Toc164083783)

[Restrained assets 25](#_Toc164083784)

[Bail Applications in the County or Supreme Courts 25](#_Toc164083785)

[State and Commonwealth matters 25](#_Toc164083786)

[Commonwealth matters only 25](#_Toc164083787)

[State Criminal Law Matters 26](#_Toc164083788)

[5.1.1 – Committal proceedings 26](#_Toc164083789)

[5.1.2 – Available grants 26](#_Toc164083790)

[5.1.3 – Criminal trials and pleas 26](#_Toc164083791)

[5.1.4 – Two counsel 26](#_Toc164083792)

[5.1.5 – Additional preparation fees for counsel 26](#_Toc164083793)

[5.1.6 – Additional preparation fees for solicitor 26](#_Toc164083794)

[5.2 – Commonwealth Matters 27](#_Toc164083795)

[5. Family Law 27](#_Toc164083796)

[6. Family Violence Protection Act 2008 27](#_Toc164083797)

[Adult applicant – family violence intervention order 27](#_Toc164083798)

[7.1 – Merit 27](#_Toc164083799)

[Child applicants/affected family members 28](#_Toc164083800)

[Respondent – family violence intervention order 28](#_Toc164083801)

[7.2 – Family law matters and family violence orders 29](#_Toc164083802)

[Cross-applications 30](#_Toc164083803)

[Fees 30](#_Toc164083804)

[7.3.1 – Urgent grant 30](#_Toc164083805)

[7.3.2 – Where the matter does not proceed to a contest 30](#_Toc164083806)

[7.3.3 – Directions hearing 30](#_Toc164083807)

[7.3.4 – Multiple complainants or defendants 30](#_Toc164083808)

[7. Personal Safety Intervention Orders Act 2010 30](#_Toc164083809)

[8. Children’s Court (Family Division) 30](#_Toc164083810)

[9. Disbursements 31](#_Toc164083811)

[Definitions 31](#_Toc164083812)

[Claimable without prior notice to VLA 31](#_Toc164083813)

[Video conferencing 32](#_Toc164083814)

[Jail conference – summary crime 32](#_Toc164083815)

[Disbursements granted on recommendation 32](#_Toc164083816)

[10.1.1 – General 32](#_Toc164083817)

[10.1.2 – Specific – crime 32](#_Toc164083818)

[10.1.3 – Cost-benefit 33](#_Toc164083819)

[10.1.4 – Fees – hospital/medical/psychologist/psychiatrist reports 33](#_Toc164083820)

[10.1.5 – Witness expenses (medical) 33](#_Toc164083821)

[10.1.6 – Doli incapax reports (Children’s Court matters where applicant is under 14) 34](#_Toc164083822)

[10.2.1 – Specific – family law 34](#_Toc164083823)

[Disbursements requiring assessment by VLA 35](#_Toc164083824)

[10.3.1 – Other experts reports 35](#_Toc164083825)

[10.3.2 – Other experts (witness expenses) 35](#_Toc164083826)

[10.3.3 – Photocopies 36](#_Toc164083827)

[10.3.4 – Any disbursement not otherwise proved for 36](#_Toc164083828)

[10.3.5 – Limitation on quantum 36](#_Toc164083829)

## Important

These notes should be read in conjunction with the [online Victoria Legal Aid (VLA) Handbook](https://handbook.vla.vic.gov.au/) and the Guidelines for Assistance (“the Guidelines”) contained therein. These notes serve to provide assistance in interpreting the Handbook and are form a directive to lawyers participating in the simplified grants process (SGP) as to how to apply the guidelines contained in the VLA Handbook. Lawyers must make recommendations that are consistent with these notes.

Participants in the SGP are required to apply both these notes and the guidelines contained in the VLA Handbook.

The VLA Handbook can also be obtained online at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

Forms for use by SGP lawyers are also available online.

Any queries Enquiries should be directed to the Grants and Quality Assurance team on phone: (03) 9269 0600 or by email at [grants@vla.vic.gov.au](mailto:grants@vla.vic.gov.au)

# Introduction

## Purpose

The Simplified Grants Process (SGP) simplifies the requirements of VLA in assessing applications for legal assistance without compromising VLA’s statutory obligations to provide legal assistance in accordance with the *Legal Aid Act 1978* (Vic) (“the Legal Aid Act”), guidelines made by it and other legal aid arrangements such as the Commonwealth/VLA Agreement.

## VLA’s goals

It is VLA’s goal to work in partnership with lawyers to achieve a process that is simple, low cost and effective. r, cheaper and will not compromise the legal aid fund.

## Extent of SGP

The SGP is limited to certain areas of law. The further sections in these Notes to lawyers outline the areas which are covered.

## Applications under SGP to Grants and Quality Assurance

All applications under the SGP should be directed to Grants and Quality Assurance, and should contain only the checklist and the VLA application form. lawyers must retain a complete copy of the signed checklist and application form on their file, along with all other documentation substantiating the matter and the applicant’s financial means.

Where a lawyer has ticked the relevant box on the checklist making a recommendation and certifying that a matter is within the guidelines and meritorious, the grant will be processed based on that recommendation. VLA cannot consider or resolve any question as to whether the matter is within the Guidelines or meritorious. Correspondence sent in with the checklist raising questions of guidelines/merits will not be considered. Lawyers cannot rely on that correspondence when non-compliance issues are raised. In cases requiring advice from a compliance Officer, lawyers must seek a ruling **before** making a recommendation for a grant of aid.

## VLA assessment

Where a matter is referred to a VLA officer for decision, only that part of the decision is subject to the assessment by VLA. VLA will continue to rely upon the lawyer’s recommendation contained in the checklist for matters such as proof of means, and whether the matter is within the guidelines and is meritorious. and merits recommendation.

If other issues arise which require consideration in relation to the guidelines, lawyers should obtain a ruling on that aspect from a compliance officer.

## SGP requirements

It is VLA’s view that the SGP will greatly reduce the administrative steps the lawyer ordinarily has to take in order to obtain a grant of legal assistance. A properly maintained casework file should contain all relevant documents and reflect the work done and the recommendations made eg a file note of attendance at a contest mention or negotiations.

Lawyers should refer to the VLA Practitioner Manual for the record keeping and compliance procedure and these Notes on VLA Guidelines for guidance when completing the checklists.

## Approval must be sought before commencing work on the matter

The SGP does not involve require a delegation of VLA’s power to approve legal assistance to lawyers. In simple terms, it is about VLA relying on the lawyer’s recommendation as to merit and guidelines. VLA will assess the application for assistance based on the lawyer’s recommendation and certification as to documentary proof and will usually approve assistance on such recommendations and certifications if the means test is satisfied. Lawyers should not proceed with work on the file until confirmation of the grant of legal assistance is received from VLA.

## Urgent grants

If a matter is urgent and requires an immediate court appearance, a completed checklist together with a VLA application form will need to be sent to VLA:

* 1. for family law matters immediately (on the day) via ATLAS.
  2. for Children’s Court cases and Magistrates’ Court criminal cases, within 14 days of the appearance in accordance with the provisions of Part 16 of the Handbook. Such grants will attract the urgent grant fee.

In these circumstances it is important for lawyers to note the financial status of the client before sending in the application. Should the financial or some other circumstances of the applicant disclose that the applicant is not eligible for assistance, the grant of aid will be refused.

## Applications under Special Circumstances Guideline (General provisions)

Where the application does not meet the requirements of the relevant guidelines, but the lawyer is of the opinion that special circumstances (as defined in Part 15 of the VLA Handbook) may be relevant, an application and checklist should be directed to the VLA for assessment. Lawyers should tick the ‘special circumstances’ box in Part B of the checklist and provide a memorandum/letter setting out what the special circumstances are and any additional information to support the recommendation.

A grant does not automatically follow an assessment that special circumstances exist as defined in Part 15. A VLA assessment indicating that special circumstances exist does not mean that a grant of assistance will automatically follow.

Assistance can only be provided if:

* 1. the applicant satisfies the means test, **and**
  2. the application is meritorious, **and**
  3. the application satisfies the cost/benefit requirements.

**However, in circumstances where an applicant suffers from cognitive impairment due to a serious mental health issue intellectual disability, assistance may be granted where the merit test is not satisfied.**

Examples:

* 1. Summary Crime Contested Hearing:
* An applicant suffering from schizophrenia seeks to contest the charges against him. There is no merit to contest the charges. VLA is of the view that the applicant’s cognitive functioning may be impaired, and they are unable to provide reasoned instructions. As such, representation is necessary to address the issues with the court.
* **Children’s Court – summary crime**:

The argument that ‘the applicant is a child’ cannot be used to overcome guideline issues such as funding on a charge of not wearing a bike helmet. The applicant being a child has already been incorporated into the guideline. Assistance cannot be recommended for special circumstances solely on the basis that the applicant is a child as this is already covered in the guideline (for example, in cases of public transport fare evasion).

## Duty to advise VLA of any extraordinary events

In the event that a grant of assistance goes beyond what is reasonably expected (eg a multi-day contested bail application, hearing or plea; repeated adjournments etc), the lawyer must advise VLA immediately of such circumstances and seek specific approval from VLA for the assistance sought.

## Transfers

Where the matter for which legal assistance was approved under SGP and is transferred to another lawyer:

* 1. if the new lawyer is also a participant in the SGP, they will need to complete a checklist to certify as to the documents on the file and to confirm that the matter continues to meet the merit test and the guidelines
  2. if the new lawyer is not a participant in the SGP, the matter will be assessed for further legal assistance in the usual way by the grants team outside the SGP.

VLA will not approve a transfer of lawyer where it will result in an increase in the amount of funds expended on a case. Any transfer must be cost-neutral to VLA.

Lawyers are also referred to Part 22 of the VLA Handbook, which sets out the limitations to changing lawyer.

Where an existing grant is transferred from a non SGP firm to an SGP firm, the existing matter will then be part of the SGP and a checklist must be completed.

If a change of lawyer is required, VLA requires the new lawyer at to take the following steps: to be taken:

1. Discussion with both the client and the previous lawyer to check whether the complaint can be easily rectified/addressed by the previous lawyer.
2. Should the matter not be resolved, a signed transfer authority must be provided to the previous lawyer.
3. A signed transfer authority must be provided to VLA with a written request for transfer which includes:
   1. advice obtained from the previous lawyer regarding the progress in the matter
   2. whether the transfer of assistance is supported by the previous lawyer, or
   3. whether the previous lawyer is still willing to act in the matter.

(**NB**: VLA will contact the previous firm to confirm the information provided)

1. Written submission that specifically addresses the criteria as outlined in Part 22 of the VLA Handbook.
2. Completed checklist recommending assistance and certifying as to merits and proof of means.

**Note:** Where a lawyer takes over a matter after transfer both a copy of the client’s application for assistance and proof of means (POM) **must** be retained on file.

VLA expects transfer of the file between the lawyers without delay.

## Lawyers requiring further information

Lawyers should contact the Grants and Quality Assurance team for any queries. This includes all questions as to procedures under the simplified process, guidelines and costs. The Grants and Quality Assurance team can be contacted on (03) 9269 0600 or by email: grants@vla.vic.gov.au.

# Applications under special circumstances

## Summary Crime – SGP applications for summary crime only

Lawyers who are on VLA’s Summary Crime Panel **and** who submit applications for assistance using ATLAS may recommend assistance having regard to ‘special circumstances’.

Where an application does not meet all of the criteria under the relevant guideline, but the matter is one where VLA ordinarily grants legal assistance under an existing guideline and the lawyer is of the opinion that special circumstances apply, assistance can still be recommended on this basis. Lawyers **must ensure** that they select ‘Special Circumstances’ as the applicable guideline in the ‘guideline statement’ of the online form. Any information or corroborating documentation to support a recommendation of this nature should be retained on the lawyer’s file and be clearly identifiable.

Lawyers considering matters under state and Commonwealth guidelines should refer to part 14 of the VLA Handbook if they believe special circumstances exist. Lawyers are reminded that they **cannot** recommend assistance for a state matter, citing special circumstances defined under the Commonwealth priorities.

### Consideration of Special Circumstances

Although VLA may fund cases under special circumstances, this is only a discretion. The following issues must be considered:

1. **Cost/benefit**  
   Lawyers must have regard to the nature and extent of the benefit and/or detriment to the client and give due consideration to the legal costs involved, recognising that it is public funds being spent.
2. **Merit**  
   If a matter is not meritorious and/or does not satisfy cost/benefit criteria, a grant cannot be made based on special circumstances (eg summary contest where full admissions made). See Part 13 (State matters) or Part 12 (Commonwealth matters) of the VLA Handbook.  
   **However, in circumstances where an applicant suffers from cognitive impairment due to serious mental health issue or intellectual disability, assistance may be granted where the merit test is not completely satisfied.**
3. **Means test**  
   Special circumstances do not override the means test. Assistance cannot be granted if an applicant has access to financial resources.
4. **Child applicants**

Where the Children’s Court guidelines is are not satisfied, assistance cannot be recommended for special circumstances solely on the basis that the applicant is a child as this already factored into the actual guideline (eg fare evasion).

### Reading or writing difficulty

It is insufficient to recommend assistance on the basis that English is the client’s second language and/or that they have a limited understanding of court procedures. There must be real and demonstrable reasons why the client would be unable to utilise the services of a court interpreter and the required representation is outside the normal level of representation which could be provided through the duty lawyer scheme.

Clear file notes must exist detailing the grounds on which assistance is being sought on this basis.

## Serious mental health issue or intellectual disability

**Serious mental health issue** – A person is considered to have a serious mental health issue if the person is receiving mental health services from a ‘designated mental health service’ within the meaning of [*Mental Health Act 2014*](https://www.legislation.vic.gov.au/in-force/acts/mental-health-act-2014/022).

**Intellectual disability –** as defined in the [*Disability Act 2006* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006/046) for a person over five years old, means both the existence of:

* a significant sub-average general intellectual functioning and
* significant deficits in adaptive behaviour

These must be diagnosed before the age of 18.

Intellectual disability does not apply to a person with cognitive disabilities that have developed after childhood, such as an acquired brain injury or age-related cognitive degeneration.‘

Before recommending assistance for a client with an intellectual disability or serious mental health issue, the lawyer must have on file:

**In case of intellectual disability:**

* Evidence that the person is receiving disability services from a registered disability services provider based on their intellectual disability
* Evidence that the Secretary to the Department of Families, Fairness and Housing (**DFFH**) has made a decision that a person has an intellectual disability
* Evidence that a person is a NDIS (**National Disability Insurance Scheme**) participant or receives services under the NDIS for their intellectual disability
* Evidence of the nature of the disability, provided by the registered disability services provider, NDIS or Secretary to the DFFH.

Note: A letter from a person’s General medical Practitioner alone is not sufficient evidence of a person’s intellectual disability. DFFH provides a [register of disability services providers](https://providers.dffh.vic.gov.au/register-disability-service-providers-xls) funded by DFFH that can be consulted when considering evidence from a registered disability services provider. More information on eligibility status can be found at the [NDIS provider finder](https://www.ndis.gov.au/participants/working-providers/find-registered-provider/provider-finder).

**In case of serious mental health illness:**

* Evidence from a designated mental health service confirming that the person is receiving services from that mental health service. See the Victorian Government's [Designated mental health services](https://www.health.vic.gov.au/practice-and-service-quality/designated-mental-health-services)

For more information please see:

* [15 – Special Circumstances](https://www.handbook.vla.vic.gov.au/15-special-circumstances) (the special circumstances guideline)
* [Notes on the special circumstances guideline](https://www.handbook.vla.vic.gov.au/notes-special-circumstances-guideline)

# Documentary proof of income and assets

Lawyers must ensure that the proof of means which they obtain correctly reflects what is contained in the VLA application form. Lawyers should check the documentation provided, and clarify any discrepancies which may be apparent either from the proof of means or the instructions provided by the applicant. If there are complex financial arrangements lawyers should contact the Compliance team for advice/guidance.

In the ordinary case, documentary proof of both **income** and **assets** for applicants and any their partners must be obtained and retained on file.

## Partners with income/assets

VLA will consider the income and assets of a partner of a person making an application for legal assistance and will apply the normal proof of means test requirements to that person.

**‘Income’** means the gross income derived directly or indirectly from all sources whether in or out of Australia. It includes:

* receipts by way of salary, wages or allowance (including all government assistance programs)
* child support and spousal maintenance
* income from property, including royalties, rent, dividends and interest
* capital profits from the purchase and sale of property
* amounts received from life insurance, annuity or superannuation fund.
* Income received from share trading or trading in cryptocurrencies.

## Variable income

To calculate average weekly salary, add the net weekly salary for the last 13 weeks and divide the total by 13 (or if employed for less than 13 weeks, divide the net total by the number of weeks employed).

**‘Assets’** means any tangible or intangible property or interest that has economic value to its owner. It includes:

* real estate
* investment, shares, options or interest in trusts or companies
* trading stock
* plant and equipment
* unpreserved superannuation
* an option, a debt, any other right, goodwill and any other form of incorporeal property
* Cryptocurrency
* any asset over which the applicant has an equitable interest

## Proof of income

The minimum documentary requirements for applicants **and their partner** are:

### Where the applicant and/or partner are in employment

Latest pay slip or letter from the employer showing earnings. Proof of savings will also be required in the form of bank statements for the last three months (see [Proof of savings and investment](#Proof_of_savings)).

### Where the applicant and/or partner are Social Security recipients

Current pension or health care card is required.

For applicants in receipt of Centrelink benefits with partners also on benefits If both the applicant and their partner receive Centrelink benefits, copies of both **all** persons’ health care cards (or other proof of benefits) must be obtained.

It is not sufficient to provide a card with either the partner listed on the applicant’s card or the applicant listed on the partner’s card. A separate document must be provided for the applicant and each their partner.

### Where the applicant and/or partner are self-employed

Copies of the most recent Latest tax return, profit and loss statement and balance sheet are required.

Proof of means for a self-employed applicant and their partner must be sent to VLA for consideration.

Lawyers should ensure that the applicant’s instructions accord with the financial position disclosed to VLA. If an applicant makes reference to financial support received from any other person, the nature of that person’s relationship with the applicant must be considered i.e. whether the person is the partner. The same applies if other instructions received indicate the existence of a partner (eg plea instructions, affidavits). If that person is not disclosed in the application form, lawyers must seek further instructions and notify VLA.

## Proof of savings and investments

No proof of savings and investment is required if Where:

* an applicant and their partner has combined savings and investments of less than $1095, **and**
* their **only** income is a Centrelink social security pension or benefit., no proof of savings and investments is required.

**All** other applicants must provide proof of savings and investments for both themselves and their partners, including statements for the last three months from

* banks
* building societies
* credit unions.

Where an applicant or their partner is on a part pension and also receive an income from any other source, then bank statements for the last three months must be obtained and retained on file, in addition to the documentary proof of that income (eg payslips).

Where an applicant receives child support or spousal maintenance of more than $130 per week, bank statements for the last three months must be obtained and retained on file.

The statements must be obtained for all accounts. Where transactions on bank statements provided indicate the existence of other accounts (eg regular internet or telephone transfers between accounts), lawyers must obtain further instructions and proof and advise VLA.

## Additional proofs

Subject to the information given by the applicant on the application form, VLA may require lawyers to obtain further documentary proofs of assets and income. Further proofs may be required where:

* the applicant’s lifestyle is inconsistent with the financial information provided
* the value of assets is disputed
* another person has contributed to the applicant’s previous legal costs.

In such circumstances, VLA may direct the lawyer to obtain:

* tax returns and assessment notices for the previous two years
* bank passbooks or statements showing transactions for the previous 12 months
* annual company or trust returns for the previous two years
* rate certificates for the current year
* proof of payments of rent or mortgage instalments for the previous six months
* statutory declarations about the applicant's ability to pay legal costs
* statutory declarations from persons who contribute to the applicant's financial support
* applicant’s consent to other persons, such as banks, employers and accountants, providing financial information about him or her.
* documents revealing the true nature of a contributing person’s relationship with the applicant i.e. whether that person is applicant’s partner?

Lawyers should contact VLA if they are in doubt as to what proofs should be obtained.

## Waiver of documentary proof – Summary Crime only

In certain circumstances a waiver of the minimum documentary proof of income and assets may be obtained from VLA. Where the applicant is seeking assistance for a summary criminal matter in the Magistrates’ or Children’s Courts a waiver will be approved if:

* the applicant is a child (aged 18 years or younger) and the matter is to be heard in the Children’s Court
* the applicant is experiencing homelessness
* the applicant is fleeing from, or experiencing family violence
* the applicant resides in a remote area (As defined by the Australian Tax Office as “at least 40kms from an urban center with a population of 14,000 or more and at least 100kms from an urban center with a population of 130,000 or more”)
* the applicant is an Aboriginal or Torres Strait Islander person.

# Summary crime

This section provides definitions and guidance for lawyers submitting applications for assistance in both state and Commonwealth summary criminal matters. Assistance can only be sought where the person is **charged** with an offence which satisfies the summary crime guidelines.

Also see [Legal terms – definitions and meanings](https://www.handbook.vla.vic.gov.au/legal-terms-definitions-and-meanings).

## Commonwealth charges take priority

Where a person is charged with a combination of state and Commonwealth matters, lawyers should first consider the merits of the application as it relates to the Commonwealth charges. If the lawyer forms the view that the application does not qualify for assistance under the guidelines on the Commonwealth charges, the application as it relates to the state charges should then be considered.

When filling out the checklist lawyers must tick the Commonwealth Summary Crime guideline box whenever the Commonwealth charges are the basis for the recommendation.

## State criminal law matters

**This section should be read in conjunction with Part 3 of the VLA Handbook.**

There are 5 guidelines of relevance to state summary criminal matters. They are:

* Guideline 1.1 – not guilty pleas
* Guideline 1.2 – guilty pleas
* Guideline 1.3 – Assessment and Referral Court List
* Guideline 2 – traffic prosecutions
* Guideline 5.1 – Children’s Court matters
* Guideline 6 – bail applications

### 4.1.1 – Not guilty pleas

Before recommending that assistance be granted for a not guilty plea in the Magistrates’ Court, lawyers mustform the view that:

* the person has a [reasonable prospect of acquittal](https://www.handbook.vla.vic.gov.au/legal-terms-definitions-and-meanings#reasonable-prospect-of-acquittal) on one or more charges

and one or more of the following applies:

* a conviction is [likely to result in](https://www.handbook.vla.vic.gov.au/legal-terms-definitions-and-meanings#likely-to-result-in) a term of immediate imprisonment, or
* the person is an Aboriginal and/or Torres Strait Islander person, or
* the person is a woman and/or a lesbian, gay, bisexual, transgender, intersex, queer or other sexually or gender diverse (LGBTIQ+) person charged with family violence offence(s) as a result of being [misidentified as the predominant aggressor of family violence by police](https://www.handbook.vla.vic.gov.au/notes-guideline-11-not-guilty-plea-magistrates-court#misidentification-as-the-predominant-aggressor-of-family-violence-by-police), or
* an [unjustified, disproportionate or unreasonable use of power by a person in a special position of authority](https://www.handbook.vla.vic.gov.au/notes-guideline-11-not-guilty-plea-magistrates-court#unjustified-disproportionate-or-unreasonable-use-of-power-by-a-person-in-a-special-position-of-authority) (such as a police officer) led to the charge(s) being laid.

A person charged with a traffic offence under the Road Safety Act is not eligible under this guideline (see [guideline 2](https://www.handbook.vla.vic.gov.au/guideline-2-traffic-offence-charges-magistrates-court)).

The lawyer’s file must include:

* a reference to guideline 1.1
* copies of the charge or charges
* the basis for the defence or defences
* full details of the person's prior convictions (if any)
* details of the evidence they will rely on to support the defence or defences
* the lawyer’s assessment of the strengths and weaknesses of the defence or defences
* relevant [proof of means](https://www.handbook.vla.vic.gov.au/node/5804) (if a waiver does not apply).

For the avoidance of doubt, the evidence that an assisted person is willing to give at a contested hearing may be sufficient to demonstrate a reasonable prospect of acquittal.

Lawyers are also encouraged to complete a [summary crime worksheet](https://www.handbook.vla.vic.gov.au/node/5731), a [proof of means worksheet](https://www.handbook.vla.vic.gov.au/node/5731) and a [medical/psychologist/psychiatrist report worksheet](https://www.handbook.vla.vic.gov.au/node/5731) (where relevant) for their file.

If the lawyer forms the view that the application does not meet the prospect of acquittal requirements of guideline 1.1, assistance can only be considered for plea.

#### Contested hearing

Should the matter fail to resolve, and the requirements of Guideline 1.1 continue to be met, the lawyer may take the matter to a contested hearing **without** seeking a further grant of assistance.

In the event that the contested hearing is likely to exceed five days, VLA must be notified of the number of days the matter is listed for hearing.

### 4.1.2 – Guilty pleas

Before recommending that assistance be granted for a guilty plea, lawyers must form the view that a conviction is [[likely to result in](https://www.handbook.vla.vic.gov.au/legal-terms-definitions-and-meanings#likely-to-result-in)](https://www.handbook.vla.vic.gov.au/legal-terms-definitions-and-meanings#likely-to-result-in) **a term of immediate imprisonment**

Victoria Legal Aid (VLA) may make a grant of legal assistance to a person who has been charged with a criminal offence to be heard in the Magistrates’ Court if:

* VLA is satisfied there is no [reasonable prospect of acquittal](https://www.handbook.vla.vic.gov.au/legal-terms-definitions-and-meanings#reasonable-prospect-of-acquittal) or the person or their lawyer (if any) does not provide enough information to support a view of a reasonable prospect of acquittal
* a conviction is [likely to result in](https://www.handbook.vla.vic.gov.au/legal-terms-definitions-and-meanings#likely-to-result-in) a term of immediate imprisonment.

A person charged with a traffic offence under the Road Safety Act is not eligible under this guideline (see [guideline 2](https://www.handbook.vla.vic.gov.au/guideline-2-traffic-offence-charges-magistrates-court)).

The lawyer’s file must include:

* a reference to guideline 1.2
* full details of the charges
* full details of prior convictions
* the lawyer’s assessment of the likely penalty.

VLA anticipates that, say where the offences are extremely serious or numerous, a person with no prior convictions will not ordinarily qualify for assistance under this guideline.

#### Breach offences not filed with the court

Where a person is facing charges which are punishable by imprisonment because the person may have breached a suspended sentence, the potential breach charge will be taken into account when assessing a matter under the guidelines despite not being filed yet by the informant.

If a suspended sentence is breached by a person charged with a traffic offence, the traffic guidelines must be applied (please refer to [4.1.4](#_4.1.4_–_Traffic)).

Where a person qualifies for a grant of assistance on the new charges, the potential breach of a suspended sentence will be taken into account when assessing a matter for a consolidation grant despite not being filed yet by the informant.

#### Applications to vary court orders – CCOs etc

Applications to vary orders (eg CCOs) are **not** in the VLA Guidelines and accordingly are **not** aidable and **cannot** be the subject of a recommendation for assistance.

Where the Office of Corrections seeks to vary an order, this does not form part of the SGP, and an application should be made to VLA through the traditional non-SGP grants process. Such applications will be considered on a case-by-case basis.

### 4.1.3 – Assessment and Referral Court (ARC) List

The *Magistrates’ Court Amendment (Mental Health List) Act 2009 (Vic)* provides for the creation of a pilot mental health list at the Melbourne Magistrates’ Court, known as the Assessment and Referral Court List (ARC) List.

A Person will be eligible to have their matter listed in the ARC List if they:

* have a mental illness, intellectual disability, acquired brain injury, autism spectrum disorder or a neurological impairment (eg dementia), **and**
* have substantially reduced capacity in at least one of the following; self-care, self-management, social interaction and/or communication, **and**
* would benefit from receiving services.

Prior to recommending a grant of assistance, the case must be listed for the ARC List eligibility assessment hearing following the Court Integrated Services Program (CISP) assessment.

The lawyer’s file must include:

* a reference to guideline 1.3
* full details of the charges
* full details of the person’s prior convictions
* details of the person’s mental health issues
* copy of report from CISP/copy of the draft individual support plan.

#### Person found not suitable at ARC List eligibility assessment hearing

Where a person is found not suitable and the case is referred back to the standard list of cases, assistance will continue under the existing grant with fee payable per Table A.

#### Person in receipt of standard summary grant already

Where assistance has already been granted pursuant to guideline 1.2, the existing grant will **not** cover the case in the ARC list. An extension of assistance must be sought.

### 4.1.4 – Traffic prosecutions

This section relates to prosecution involving charges under the [*Road Safety Act*](https://www.legislation.vic.gov.au/in-force/acts/road-safety-act-1986/218).

Before recommending that assistance be granted for a traffic prosecution matter the lawyer must:

* Confirm that the person has a psychiatric or intellectual disability, or an acquired brain injury, **and**
* form the view that conviction is [likely to result in](https://www.handbook.vla.vic.gov.au/legal-terms-definitions-and-meanings#likely-to-result-in) imprisonment.

Before recommending assistance for clients with an ABI, intellectual disability or serious mental health illness, the lawyer must have on file:

For intellectual disability:

* Evidence that the person is receiving disability services from a registered disability services provider based on their intellectual disability
* Evidence that the Secretary to the Department of Families, Fairness and Housing (**DFFH**) has made a decision that a person has an intellectual disability
* Evidence that a person is a NDIS (**National Disability Insurance Scheme**) participant or receives services under the NDIS for their intellectual disability
* Evidence of the nature of the disability, provided by the registered disability services provider, NDIS or Secretary to the DFFH.

Note: A letter from a person’s General medical Practitioner alone is not sufficient evidence of a person’s intellectual disability.

For serious mental health issues:

* Evidence from a designated mental health service confirming that the person is receiving services from the service. A list of designated mental health services can be found [here](https://www.health.vic.gov.au/practice-and-service-quality/designated-mental-health-services).

The State special circumstances guideline does not apply to traffic matters.

A lawyer must be satisfied that the matter is likely to result in imprisonment or a suspended term of imprisonment, regardless of whether the person is pleading not guilty or guilty. If the person is pleading not guilty, there must also be merit in the defence (ie there must be a reasonable prospect of acquittal).

A grant may only be recommended for traffic offences heard in the Magistrate’s Court.

Traffic offences involving children are dealt with in the Children’s Court. Lawyers may consider recommending a grant for a Children’s Court matter (see [4.1.8](#_4.1.8_–_Children’s)).

#### Suspended sentence triggered by traffic offences

The traffic prosecution guideline will apply in circumstances where a traffic offence will trigger a breach of suspended sentence, or breach of a CCO. It does not matter whether the suspended sentence or CCO were incurred for previous traffic offences or other offences.

Where the offence breaches a suspended sentence, the primary charge is still the traffic offence. It is the finding of guilt for this offence that triggers the suspended sentence.

VLA acknowledges that although a person charged with a traffic matter in breach of a suspended sentence will face a real prospect of imprisonment, the requirement under the new guideline precludes aid being granted unless the person has a cognitive impairment as outlined in the guideline.

#### Breach offences not filed with the court

Where a person is facing charges which are punishable by imprisonment and have technically breached a suspended sentence, the potential breach charge will be taken into account when assessing a matter under the guidelines despite not being filed yet by the informant.

Where a person qualifies for a grant of assistance on the new charges, the potential breach of a suspended sentence will be taken into account when assessing a matter for a consolidation grant despite not being filed yet by the informant.

The lawyer’s file must include:

* a reference to guideline 2
* Documentary proof that the person is receiving services from an approved mental health service or is registered under the *Disability Act 2006 (Vic)*
* full details of the charges
* full details of the person’s prior convictions
* the lawyer’s assessment of the likely penalty.

and if contested:

* full details of the defence
* the lawyer’s opinion as to the merits of the defence.

A failure to pay traffic fines which has resulted in the person facing the possibility of imprisonment does not form part of the traffic guideline. These matters must be assessed under the Infringement Court guideline (see [4.1.5](#_4.1.5_–_Infringement)).

### 4.1.5 – Infringement Court matters

See [State civil law guideline 13](https://www.handbook.vla.vic.gov.au/guideline-13-infringements-cases) for information on these matters.

**4.1.6 – Bail applications**

Before recommending that assistance be granted for a bail application in the Magistrates’ Court the practitioner must form the view that there is a reasonable basis of bail being granted.

The practitioner’s file must include:

* full details of the charges
* the grounds to be relied upon in support of the application
* the practitioner’s assessment of the strengths and weaknesses of the application.

For the purposes of the SGP practitioners should ignore the provisions relating to negotiated bail applications. It is not expected that any negotiated bail settlement would meet the requirements of the bail guideline.

#### Where Counsel appears and matter proceeds as a plea

If Counsel appears and forms the view that the client’s best interests would be served by proceeding to a plea rather than proceeding with the bail application, VLA will pay the appearance fee for a plea instead of the bail appearance fee. No further preparation fee is payable as preparation for the plea has not been undertaken.

#### Bail revocations

Applications to defend an application to revoke bail are treated like bail applications. The assessment is made subject to the likelihood of bail being granted (a reasonable basis).

Applications to revoke bail are not covered by the SGP, and cannot be the subject of a recommendation for assistance. An application must be made through the traditional non-SGP process.

Lawyers should note that the bail guideline and the Magistrates Court guidelines set out in 1.1, 1.2 and 2 have separate requirements. A person may qualify for funding under the bail guideline but then not go on to qualify for funding under guidelines 1.1, 1.2 or 2 because they are not likely to receive a sentence of immediate imprisonment. This is particularly the case where a person held in custody on relatively minor charges is released following a successful bail application.

#### Bail variations

Applications to vary the conditions of bail are not covered by the SGP, and cannot be the subject of a recommendation for assistance. An application must be made through the traditional non-SGP process.

### 4.1.7 – Cancellation of drug treatment order (DTO)

Applications to cancel a drug treatment order (DTO) are heard in the Drug Court.

Applications to cancel a DTO arise in circumstances where the person has breached their DTO, usually through re-offending, and accordingly they are always facing an immediate term of imprisonment if the application to cancel the DTO is granted.

In addition to the application to cancel the DTO, in most cases the person will also be charged with further summary offences. The application to cancel the DTO and the summary hearing are usually heard together, however it is noted that in some circumstances, the application to cancel the DTO may be heard separately to the summary hearing.

#### Grants of assistance

Given that an application to cancel a DTO arises out of a breach of a court order, VLA will treat these matters as breaches of court orders pursuant to VLA’s summary criminal prosecutions guideline.

If the application for assistance relates only to the cancellation of the DTO, the appropriate grant will be a summary crime grant (Table A).

Where the new summary charges and the application to cancel the DTO are heard together, if the new summary charges satisfy the summary crime guideline, the appropriate grant of assistance is the consolidation grant (Table A)

It is not appropriate to obtain two separate summary crime grants where both the application to cancel the DTO and the new summary charges are proceeding together.

Applications to cancel a DTO (either a stand-alone grant or consolidated grant) can be submitted through ATLAS. The matter type to be used is ‘drug treatment order’ which can be located in the matter group ‘breach offences other courts’.

### 4.1.8 – Children’s Court matters

Before recommending that assistance be granted for a criminal matter in the Children’s Court, lawyers should form the view that:

* a finding of guilt is likely to result in youth detention or an order involving youth justice supervision, or
* the child has a reasonable prospect of obtaining diversion.

The State's special circumstances guideline does not apply to matters in the Criminal Division of the Children’s Court.

#### Diversion in the Children’s Court

**Diversion** is any program that may be available to the child that upon successful completion results in the charge(s) being discharged without any formal finding of guilt.

**Reasonable prospect of diversion** means that a careful and experienced lawyer would consider it likely that the child be found suitable for diversion. The lawyer must take all the circumstances of the case into account and the chance of diversion must be real and not fanciful.

The circumstances include:

* the child’s instructions and general acknowledgment of the offending
* the nature and gravity of the offences
* any prior findings of guilt that may preclude them from participating in diversion.

VLA considers that the likely penalty may be assessed by reference to the following:

* The primary charge or main group of charges
* the child’s prior convictions
* the seriousness of the offence relative to other examples of the same offence (eg quantum of theft, nature of injuries, amount of drugs) requiring consideration of:
  + the existence of mitigating circumstances
  + the extent to which the law was breached
  + whether aggravating circumstances exist.

#### Example 1

A child is charged with burglary and criminal damage. Police allege that after school hours he was on the roof of a school building. They broke into the building through the skylight causing $4,000 of damage. Once inside they found nothing of interest and left through the emergency exit.

The child’s defence is:

* They were playing cricket with a friend that on the oval that evening and their ball went onto the roof. They climbed onto the roof to retrieve their ball. They accidently fell through the skylight whilst looking for the ball. Once inside he immediately left through the emergency exit. They did not think the school would have minded them climbing on the roof to retrieve their ball.
* They have a prior finding of guilt for burglary where they received good behaviour bond. If they are found guilty then it is likely that they would receive a penalty that would result in the court making an order involving youth justice supervision and assistance would be granted.

#### Example 2

A 16-year-old child was charged with theft of two casks of wine from a liquor store. The child was with two other co-accused who were also charged with taking other items of alcohol. The child and their co-accused were also charged with theft of a motor vehicle.

In their interview, the child admitted to taking the wine, telling police they knew it was wrong. They explained that the reason they stole the alcohol was because they had no money and wanted some for a party that night. They also admitted to being in the motor vehicle as a passenger knowing it was stolen, said that they were all in the car to go to the party.

The child has twice been cautioned by police – the first time for criminal damage and the second time for possession of alcohol as a minor. As result, on this occasion police decided to proceed to charge and summons. The police also referred the child to the Youth Support Service (YSS) to address any alcohol issues.

The child was and charged and given court dates. The child met her lawyer and instructed that she has engaged in alcohol counselling with the YSS.

Their lawyer now intends to engage the informant to see whether they would be amendable to the Ropes diversion program, highlighting the child’s changed circumstances through engagement with the YSS.

Assistance would be granted on the basis that the child has a reasonable prospect of obtaining diversion.

#### Breach of previous court order

VLA may make a grant of legal assistance under this guideline to a child charged with breaching a previous court order if that breach is likely to result in an order involving youth detention or youth justice supervision.

#### Children’s Court – serious indictable criminal cases

Indictable criminal cases in the Children’s Court may be recommended for assistance at the Table F(i) level. This table covers all indictable criminal cases in the Children’s Court where **had the charges been brought against an adult the Magistrates’ Court would not have jurisdiction to hear the matter** (eg rape). Lawyers are referred to Fee Schedule 1 of the VLA Handbook.

#### Documentary requirements

The lawyer’s file must include:

* a reference to guideline 5.1
* full details of the charges
* full details of the child’s prior convictions if any
* the lawyer’s assessment of likely penalty
* the lawyer’s assessment of the reasonable prospects of diversion (where relevant)
* defence or defences (where relevant).

## Commonwealth Criminal Law Guidelines

The state guidelines for criminal cases apply to Commonwealth matters except for social security prosecutions where a specific guideline has been introduced. Please refer to Part 3 of the VLA Handbook in conjunction with the commentary on state summary crime in these notes for all other prosecutions.

### Social security prosecutions

There are two guidelines relevant to social security prosecutions. They are:

* Trial in Magistrates’ Court – guideline 1.4 of Part 3 of the VLA Handbook
* Guilty plea – guideline 1.5 of Part 3 of the VLA Handbook.

### 4.1.9 – Social security prosecutions – trial in Magistrates Court (not guilty)

Before recommending that assistance be granted for a not guilty plea, the lawyer must form the view that the person has a **reasonable prospect of acquittal** and either:

* 1. conviction would be likely to have a significantly detrimental effect on the person’s livelihood or employment, (current or prospective)
  2. conviction would be likely to result in one of the following penalties being imposed:
     1. a term of imprisonment, including a suspended term
     2. detention
     3. a community correction order requiring more than 200 hours of unpaid community work.
     4. a community correction order where the person will have difficulty communicating their rehabilitative needs because of a psychiatric or intellectual disability, lack of education or difficulties in understanding English.

The file should contain:

* a reference to the guideline
* full details of the charges
* full details of the defence
* proof of detrimental effect or special circumstances upon which the lawyer relies, including (where relevant) documentary proof of disability
* the lawyer’s opinion as to the merits of the defence.

An example of a ‘significant detrimental effect’ is the inability to pursue the career of choice (eg dishonesty convictions for person in banking industry or law student unless the person already has prior convictions of the same nature).

The detrimental effect must be real and not speculative or a mere possibility.

If lawyers wish to recommend assistance for defended summary proceedings, the manner of seeking assistance, and limitations of that assistance, are identical to those set out in the provisions relating to State Summary Criminal Matters.

### 4.1.10 – Social security prosecutions – guilty pleas

A grant of legal assistance may be made for a social security prosecution for a plea of guilty if any of the following apply:

* 1. a conviction will have a significant detrimental effect on the person’s livelihood or employment (current or prospective)
  2. it is not appropriate for the matter to be dealt with by a duty lawyer due to complexity or any other aggravating circumstance.
  3. the likely penalty upon conviction is:
     1. imprisonment
     2. detention
     3. a community correction order requiring more than 200 hours of unpaid community work.
     4. a community correction order where the person will have difficulty communicating their rehabilitative needs because of a psychiatric or intellectual disability, lack of education or difficulties in understanding English.

Examples of aggravating circumstances are:

* a disability or disadvantage of the person, such as a language or psychiatric disability.

The lawyer’s file should contain:

* a reference to guideline
* full details of the charges
* details of the complexity/aggravating circumstances, including (where relevant) documentary proof of disability.

## Fees in summary criminal matters

**The following commentary applies to the fee schedules implemented as of 18 January 2011. For fee before this date, please see the August 2010 edition of the Notes on Guidelines.**

The fees for summary criminal matters are as set out in Table A of Fee Schedule 1 of the VLA Handbook (for infringement matters, Fee Schedule 2 applies).

### 4.1.11 – Matters included in/flowing from the lump sum fee

Where the lawyer has recommended that assistance be granted for a summary criminal matter and VLA has granted assistance under table A, it is not necessary for lawyers to separately recommend the granting of assistance for the following matters (as they are events that are part of the initial lump sum fee and may be claimed without specific approval):

* gaol conference
* second day fee
* appearance for sentencing
* appearance at contest mentions
* group conference

### 4.1.12 – Consolidations

Lawyers should only recommend assistance at the consolidated rate where:

* 1. there are two or more sets of charges within the guidelines for assistance, **or**
  2. a grant of aid is current pursuant to Table A (or the previous Table A1), and the person receives a further charge, or charges, that fall within the guidelines for assistance.

A consolidation grant is not appropriate where the person is charged with more than one set of charges which on their own would not satisfy the guidelines, but when taken as a whole justify a grant of assistance (for example where the person – in the absence of any relevant prior convictions – has been charged with two briefs containing a charge of drive whilst disqualified each). A standard grant of assistance applies.

A specific grant of aid is required to claim fees pursuant to the consolidation guideline prior to performing the plea. An exception is where:

* the person is aided pursuant to Table A (or previous Table A1), and
* the prosecution, without prior notice, and at the return date of the plea, brings further charges which meet the consolidation guideline, and
* the consolidated plea is conducted on that same day.

In such a case, **only** the advocate at court may claim the consolidated appearance component of the Table A fee.

### 4.1.13 – Consolidations and not guilty pleas

Where a client has two or more sets of charges satisfying the criteria for consolidation, the appropriate grant is a consolidation grant irrespective of the proposed plea.

The proposed plea is only relevant insofar as it may render a matter aidable (not guilty) where otherwise it would not be aidable (guilty).

A lawyer receiving instructions for two or more matters that would be aidable in their own right and otherwise satisfy the consolidation criteria should only apply for a consolidation grant. In the event that one or more of the matters fails to resolve at a contest mention then the unresolved matters should be separately aided as a standard grant with contest. This rule applies even if one or more matters are only aidable pursuant to the not guilty guideline.

If the matter is to be disposed of at contest mention and subsequent hearing, the following rules apply:

1. All matters resolve into plea > the matter remains a consolidated grant
2. (X) One or more matters resolve and (Y) Another matter does not resolve

**Then:**

* Convert (X) and (Y) to summary grants from the beginning to allow preparation to be paid in each matter
* Assistance for (Y) includes assistance for the contested hearing.

### 4.1.14 – Consolidations – pleas after contest

Where several matters are listed on the same day, one for contested hearing and one (or more) for plea, the relevant fees are as follows:

* if the contested hearing resolves into a plea, lawyers can claim for a **contest not proceeding fee** and an **uplift to consolidated grant appearance fee** (which accounts for multiple briefs)
* if the contested hearing proceeds, lawyers can claim for a **standard contest fee and uplift to consolidated grant appearance fee** (which accounts for multiple briefs).

Victoria Legal Aid will not pay the standard plea fee in addition to the contest fee.

Please refer to [Table A f](https://www.handbook.vla.vic.gov.au/table-fees-summary-criminal-proceedings)or all fees in relation to summary criminal matters.

### 4.1.15 – Transcription of sound-recorded records of interview

The fee allowable under this table is a fee for the clerical task of producing a hard copy of the record of interview. Such a hard copy will usually only be necessary where the record of interview is disputed or in issue. The fee does not relate to the time spent by a solicitor listening to the recording and taking notes. That work forms part of the solicitor’s professional costs and is already included in the lump sum fee.

### 4.1.16 – Contest mentions

The contest mention is part of the initial grant of assistance, and you do not need to seek a further extension. However, before attending a contest mention the lawyer must be satisfied that the requirements contained in Fee Schedule 1 of the Guidelines are met:

*‘Where an individual charge or charges to be negotiated qualify for assistance pursuant to the guidelines, VLA will pay for each necessary attendance at a contest mention in the following circumstances:*

* 1. *the accused had a reasonable prospect of acquittal on those charges, or*
  2. *where the summary alleged by the prosecution does not reflect the evidence and it is likely to impact on the sentence.’*

Please note that a contest mention fee is not payable solely for the purposes of an informal sentence indication.

### 4.1.17 – Special mentions – Magistrates’ Court

Generally, a fee is not payable for attendance at mention. A fee can be claimed for a special mention if the appearance relates to an issue that has arisen out of the case, which must be dealt with and resolved before the substantive case can commence or continue the appearance. A fee is not payable in situations where a mention is listed to monitor progress.

#### Examples

*VLA will pay a special mention fee if the question of jurisdiction requires determination, and the magistrate listed a special mention.*

*VLA will not pay a special mention fee if a case has been adjourned because the outcome of another case is deemed vital. Special mentions may then be listed to advise the magistrate whether the matter has finalised. VLA considers that this information can be conveyed to the court by letter, or alternatively, the client could attend and advise the court.*

No prior authority is required to incur the fee. However, reasons must be obvious from the file or well documented.

### 4.1.18 – Adjournments

VLA generally does not pay for adjournments at the request of the defendant. In exceptional cases where it is reasonable in all the circumstances, VLA will allow an adjournment (eg in cases where something could not have been reasonably foreseen). VLA considers such requests to be rare, and that wherever possible a matter should be administratively adjourned to another date. Adequate file notes for the request for the adjournment must be made on the solicitor’s file.

### 4.1.19 – Summary Crime accounts

Lawyers must ensure that they fill out the dates of their appearances when completing the lump sum tax invoice. The date of the contest mention, the date of the substantive appearance claiming the lump sum fee, and any further appearances should all be noted on the tax invoice. If the tax invoices are not fully and/or correctly completed VLA will not be able to certify your account.

### 4.1.20 – Urgent grants

Urgent grants apply where VLA receives the request for assistance the day before a substantive hearing or on the day of the substantive hearing. VLA will pay an urgent grant preparation fee as set out in Table A in both standard summary hearings and consolidation of charges where a lawyer is in receipt of an urgent grant. The appearance fees remain the same whether the matter is standard or urgent.

Lawyers must be aware of the 14-day time limit for submission of applications for urgent grants.

## State criminal appeals – County Court

Before recommending that assistance be granted for an appeal to the County Court, lawyers must form the view that there are reasonable grounds for the appeal and that the matter would be eligible for legal assistance under the criminal law guidelines for matters heard in the Magistrates’ Court or, in a traffic matter, where the person received a term of immediate imprisonment.

The guidelines provide for appeals against both sentence and conviction from decisions of the Magistrates Court to the County Court.

The grounds for the appeal should be clear from the lawyer’s file.

The lawyer’s file must include:

* a reference to Guideline 7.1
* full details of the charges
* the grounds to be relied upon in support of the application
* the lawyer’s assessment of the strengths and weaknesses of the appeal against conviction and/or sentence
* in an appeal against sentence, an indication of the likely appropriate penalty that the person should have received and the reasons why.

These provisions only apply to appeals in the **criminal** jurisdiction. Appeals against decisions in the Children’s Court (Family Division) are not in the SGP. Such applications are outside VLA’s guidelines and enquiries must be directed to Grants and Quality Assurance.

### 4.1.21 – Legal Aid Act

Section 24(4) of the[*Legal Aid Act*](https://www.legislation.vic.gov.au/in-force/acts/legal-aid-act-1978/072) provides (inter alia) that in making a decision as to whether it is reasonable in all the circumstances to provide legal assistance, regard shall be had to:

* 1. the nature and extent of any benefit that may accrue to a person, the public or section of the public from the provision of legal assistance (or **detriment** that may be suffered if the assistance is not provided)
  2. whether there are **reasonable grounds for the appeal.**

**Reasonable grounds for the appeal** means that an experienced lawyer exercising normal and honest judgement, would consider in all the circumstances of the case that the appeal has a reasonable likelihood of success. This means more than just an arguable case. The grounds for the appeal must be reasonable. They cannot be fanciful, imaginary/esoteric (vexatious) or contrived.

### 4.1.22 – Cost/benefit

Pursuant to s. 24(4) of the Legal Aid Act, lawyers must also have regard to the likely benefit of the appeal and the other demands on the legal aid fund. Consideration should be given to the penalty against which the appeal is made and the cost to be incurred in funding the appeal.

Where the appeal is in respect of a custodial sentence, the cost/benefit would be more likely to be met.

#### Example

* The person seeking a grant of legal assistance to appeal was sentenced to three months imprisonment. A term of one months’ imprisonment was considered the most likely penalty. VLA would consider the benefit of providing a grant of legal assistance outweighs the cost.

### 4.1.23 – Relevance of summary crime guidelines to cost/benefit

Assistance for a County Court appeal is only available for matters which would be aided under the relevant summary crime guideline or, in a traffic matter, where the person received a term of immediate imprisonment.

#### Example 1

Where the person has pleaded guilty and Community Correction Order with conviction is imposed, then that decision cannot be the subject of a recommendation for assistance for an appeal, as the state guilty guideline requires a likely penalty of an immediate term of imprisonment.

#### Example 2

In a state traffic matter, where an appeal is sought against the period of a suspended term of imprisonment, this cannot be the subject of a recommendation for assistance for an appeal, as the appeals guideline requires the likely penalty to be an immediate term of imprisonment before a matter may be aided.

### 4.1.24 – Counsel’s advice

Lawyers should be cognisant of the legal aid guideline when making a decision to recommend assistance. Counsel’s advice indicating that an appeal should be lodged is not of itself sufficient to satisfy the legal aid guideline. Lawyers should instead determine if there are reasonable grounds of appeal as defined at item 4.1.22. Solicitors will need to consider the appropriate weight to be given to counsel's advice in each case. Lawyers are responsible for independently forming a view about the prospects of the appeal succeeding in the terms set out in the guideline and these notes.

### 4.1.25 – Appeal bail

Wherever possible an application for appeal bail should be made at the conclusion of the summary hearing after sentencing. No further fee is payable for this application, as the bail material will have already been canvassed during the plea.

VLA will not provide assistance for an application for appeal bail where that application is made or could have been made on the same day as the summary hearing.

Where an application is made at a separate hearing date, lawyers may recommend assistance via the SGP for appeal bail from the Magistrates’ Court. Lawyers will need to ensure that there is merit in the appeal, as well as that the other elements of the bail guidelines are met, before determining whether to recommend assistance for appeal bail.

## Commonwealth Appeals – County Court

The State guidelines for criminal cases apply to Commonwealth matters. Please refer to Part 3 of the VLA Handbook in conjunction with the commentary on state summary crime in these notes.

## County Court Breach Proceedings

1. **Breach of Suspended Sentence order**
2. **Breach of Community Correction Order**
3. **Breach of Probation order**

**Breach of supervision orders which fall under the *Serious Sex Offenders (Detention and Supervision) Act 2009.***

These are **not** part of the SGP and must be submitted for full traditional non-SGP assessment by VLA.

These matters do not fall directly within the breach guideline however are considered closely associated and will be considered pursuant section 24 of the *Legal Aid Act*. This section of the Legal Aid Act requires VLA to consider whether it is in the interest of justice to provide legal assistance and incorporates an assessment about the merits of the application and the broader public interest.

**For Breaches of Supervision orders which proceed by way of indictment, please refer to** [**notes on trial in the County or Supreme Courts.**](https://www.handbook.vla.vic.gov.au/notes-trials-county-or-supreme-courts) **These matters must be submitted for full assessment by VLA.**

# Indictable crime

This section provides definitions and guidance for lawyers submitting applications for assistance in both State and Commonwealth indictable crime matters. Assistance can only be sought where the person is charged with an offence which satisfies the appropriate parts of the State or Commonwealth criminal law guidelines relating to committals and trials.

**Note –** Only VLA’s in-house practice and those lawyers appointed to the section 29A indictable crime panel may seek assistance for indictable matters through the SGP.

**Commonwealth charges take priority.**

Where a person is charged with a combination of state and Commonwealth matters, lawyers should first consider the merits of the application as it relates to the Commonwealth charges under the Commonwealth Guidelines. If the lawyer forms the view that the application does not qualify for assistance under the Commonwealth Guidelines, the application as it relates to the state charges should then be considered under the state guidelines. If the matter satisfies the Commonwealth guideline, the whole of the matter is aidable.

When completing the checklist, lawyers must indicate in their guideline selection whether Commonwealth or state legislation applies. If the person is charged with both state and Commonwealth offences, the lawyer must select the Commonwealth guideline.

## Restrained assets

Where a person’s assets have been restrained under the [*Confiscation Act (Vic) 1997*](https://www.legislation.vic.gov.au/in-force/acts/confiscation-act-1997/093), VLA cannot provide a grant of assistance for the person’s substantive criminal matters until an application for a variation of the restraining order is made under section 143 of the *Confiscation Act*.

Where assets are restrained, lawyers should recommend aid for a variation of the restraining order. lawyers must include in their recommendation advice as to which court the application will be filed in. The application must be made in the same court that imposed the restraining order.

An authenticated copy of the orders must be forwarded to VLA immediately the orders are made. Once the orders are received VLA may approve subsequent recommendations for assistance.

Lawyers must retain a copy of the affidavit material and order on their file.

## Bail Applications in the County or Supreme Courts

### State and Commonwealth matters

Before recommending assistance for a bail application, the lawyer must form the view that there is a reasonable prospect of bail being granted.

The lawyer's file must contain:

* full details of the charges
* the grounds relied upon in support of the application, and
* the lawyer's assessment of the strengths and weaknesses of the application.

### Commonwealth matters only

Assistance may also be recommended where aid is sought to respond to an application for revocation of bail.

## State Criminal Law Matters

### 5.1.1 – Committal proceedings

#### Guideline 3.1

See [Guideline 3.1 – committal proceedings involving homicide, consent or identification](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-31-committal-proceedings-involving-homicide-consent-or-identification) and Notes on committal proceedings involving homicide, consent or identification.

#### Guideline 3.2

See [Guideline 3.2 – committal proceedings in other cases](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-32-committal-proceedings-in-other-cases) and [Notes on committal proceedings in other cases](file:///\\VLA89\users\ro8697\!Rhys\2016%201%20January\27%20update%20docs%20for%20handbook\•%09http:\handbook.vla.vic.gov.au\handbook\3-criminal-law-guidelines\guideline-32-committal-proceedings-in-other-cases\notes-on-committal-proceedings-in-other-cases).

### 5.1.2 – Available grants

#### 5.1.2(i) General Preparation – Table E

See [Notes on committal proceedings involving homicide, consent or identification](file://\\vla89\users\ro8697\!Rhys\2016%201%20January\27%20update%20docs%20for%20handbook\•http:\handbook.vla.vic.gov.au\handbook\3-criminal-law-guidelines\guideline-31-committal-proceedings-involving-homicide-consent-or-identification\notes-on-committal-proceedings-involving-homicide-consent-or-identification) or [Notes on committal proceedings in other cases](file:///\\VLA89\users\ro8697\!Rhys\2016%201%20January\27%20update%20docs%20for%20handbook\•%09http:\handbook.vla.vic.gov.au\handbook\3-criminal-law-guidelines\guideline-32-committal-proceedings-in-other-cases\notes-on-committal-proceedings-in-other-cases) for further information.

#### 5.1.2.(ii) Contested committals.

See [Notes on committal proceedings involving homicide, consent or identification](file://\\vla89\users\ro8697\!Rhys\2016%201%20January\27%20update%20docs%20for%20handbook\•http:\handbook.vla.vic.gov.au\handbook\3-criminal-law-guidelines\guideline-31-committal-proceedings-involving-homicide-consent-or-identification\notes-on-committal-proceedings-involving-homicide-consent-or-identification) or [Notes on committal proceedings in other cases](file:///\\VLA89\users\ro8697\!Rhys\2016%201%20January\27%20update%20docs%20for%20handbook\•%09http:\handbook.vla.vic.gov.au\handbook\3-criminal-law-guidelines\guideline-32-committal-proceedings-in-other-cases\notes-on-committal-proceedings-in-other-cases) for further information.

#### 5.1.2(iii) Limited Committals in Sexual Offences Cases

See [Guideline 3.2 – committal proceedings in other cases](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-32-committal-proceedings-in-other-cases) and [Notes on committal proceedings in other cases](file:///\\VLA89\users\ro8697\!Rhys\2016%201%20January\27%20update%20docs%20for%20handbook\•%09http:\handbook.vla.vic.gov.au\handbook\3-criminal-law-guidelines\guideline-32-committal-proceedings-in-other-cases\notes-on-committal-proceedings-in-other-cases).

#### 5.1.2(iv) Crimes (Sexual Offences) Act 2006

See [Guideline 3.2 – committal proceedings in other cases](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-32-committal-proceedings-in-other-cases) and [Notes on committal proceedings in other cases](file:///\\VLA89\users\ro8697\!Rhys\2016%201%20January\27%20update%20docs%20for%20handbook\•%09http:\handbook.vla.vic.gov.au\handbook\3-criminal-law-guidelines\guideline-32-committal-proceedings-in-other-cases\notes-on-committal-proceedings-in-other-cases).

### 5.1.3 – Criminal trials and pleas

See [Notes on trials in the County or Supreme courts](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-4-trials-in-county-or-supreme-courts/notes-on-trials-in-county-or-supreme-courts).

### 5.1.4 – Two counsel

Assistance to brief two counsel or senior counsel **cannot** be the subject of a lawyer’s recommendation under the SGP and must be submitted to VLA for assessment. Only the managing director or divisional manager (grants) can approve these requests and therefore they should be submitted in a reasonable timeframe to enable the request to be dealt with appropriately.

See [Guideline 4 – trials in the County or Supreme courts](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-4-trials-in-county-or-supreme-courts) and [Notes on trials in the County or Supreme courts](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-4-trials-in-county-or-supreme-courts/notes-on-trials-in-county-or-supreme-courts).

### 5.1.5 – Additional preparation fees for counsel

See [Notes on trials in the County or Supreme courts](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-4-trials-in-county-or-supreme-courts/notes-on-trials-in-county-or-supreme-courts).

### 5.1.6 – Additional preparation fees for solicitor

See [Notes on trials in the County or Supreme courts](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-4-trials-in-county-or-supreme-courts/notes-on-trials-in-county-or-supreme-courts).

### 5.2 – Commonwealth Matters

For all the following topics, see [Notes on trials in the County or Supreme courts](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-4-trials-in-county-or-supreme-courts/notes-on-trials-in-county-or-supreme-courts) for further information.

* **5.3 – Cases in the list – not reached**
* **5.4 – Trial severance**
* **5.5 – Nolle Prosequi**
* **5.6** **– Breach of extended supervision order**
* **5.7 – Section 32C applications – confidential communications**

# Family Law

For Notes of the VLA guidelines applicable to the Commonwealth Family Law and Child Support matters, see <http://handbook.vla.vic.gov.au/handbook/4-commonwealth-family-law-and-child-support-guidelines/notes-on-commonwealth-family-law-and-child-support-guidelines>.

# Family Violence Protection Act 2008

## Adult applicant – family violence intervention order

Before recommending that assistance be granted for an applicant in a proceeding under the Family Violence Protection Act 2008 (the Act), the applicant must begin proceedings with the help of the police or a Magistrates’ Court registrar. VLA will only grant assistance once the case is listed for a contested hearing.

Where the application has been made by a police member with the person seeking assistance listed as an affected family member, assistance will not be granted. It is expected that the police will pursue the matter to completion.

### 7.1 – Merit

The lawyer must have formed the view that the application is reasonable (meaning that the application is not frivolous, vexatious or in bad faith) and it is likely that the court will make the family violence intervention order as sought by the applicant.

The lawyer’s file must include:

* A reference to guideline 8.1 of Part 6 of the VLA Handbook
* A copy of the application for a family violence intervention order including the complaint.

#### Examples

* *The applicant has applied for a family violence intervention order and advises that she requires representation ‘just in case’ the respondent decides to contest. She is scared and intimidated by the respondent and feels that she needs the support of a solicitor in court. There have previously been instances of assault and domestic violence against the applicant. This in itself is not enough to recommend a grant of assistance. The case must be listed for contested hearing. The lawyer should* **not** *recommend a grant of aid.*
* *After an incident involving violence, a member of the police force has made an application for a family violence intervention order on behalf of the affected family member. The lawyer should not recommend a grant of aid as assistance is usually only granted to applicants, not affected family members.*

In cases where the original applicant seeks to respond to the original respondent’s application to vary or revoke a family violence intervention order, VLA will extend assistance to oppose the application only when the matter is listed for a contested hearing.

Where the original applicant seeks to respond to an appeal in the County Court by the respondent against the making of an order in the applicant’s favour, a lawyer may recommend assistance for the appeal providing that the merits of the matter remain substantially the same. In making this recommendation, the lawyer must have regard to the evidence that was adduced on oath by both parties to the Magistrate's Court proceedings.

## Child applicants/affected family members

VLA will not provide assistance for children under 14 years of age (unless leave has been granted by the court pursuant to section 62 of the Act). It is expected that they are included on any application by an adult applicant. Whilst this is also true for children 14 years and older, VLA will grant assistance to them:

* to seek leave from the court to apply for a family violence intervention order
* to apply for the family violence intervention order where leave has been granted, or
* where the court has decided that the child should be represented by her/his own legal lawyer.

Where leave has been granted per section 62 of the Act, proof of leave being granted must be retained on the lawyer’s file.

## Respondent – family violence intervention order

Before recommending that assistance be granted for a respondent to oppose the making of a family violence intervention order the lawyer must be satisfied that:

* the respondent is a child, or
* the order would deprive the respondent of an important right (for example excluding the respondent from his/her home), or
* the respondent was arrested and is still in custody (for the incident that gives rise to the application for a family violence intervention order), **and**
* it is likely that the court will make a less restrictive order or no order at all.

It is **not** a guideline requirement that the matter be listed for contest for **respondents**.

If the respondent seeks to apply for a variation of an existing order, the lawyer must be satisfied that there has been a sufficient material change in circumstances to warrant the application for variation and that the proposed application is not inconsistent with any existing Family Law Orders. Assistance can only be recommended once leave has been granted by the court pursuant to section 109 of the Act.

An application by the respondent to have an order revoked or to appeal to the County Court does not form part of the VLA guidelines and cannot not be recommended for assistance. Any application outside the guidelines must be sent to Grants and Quality Assurance for assessment.

Where the respondent has breached an order, the application must meet the summary crime guidelines, not the intervention order guidelines.

Where assistance is recommended for a respondent to oppose the making of a family violence intervention order the lawyer’s file must include:

* A reference to guideline 8.2 of Part 6 of the VLA Handbook
* A copy of the application for an intervention order including the complaint
* Lawyer’s assessment of the strengths and weaknesses of the response.

**Examples:**

* *The applicant is the respondent in an application for a family violence intervention order. If the order were made, he would be required to stay 200 metres from the applicant’s home. The respondent resides in the same street as the applicant and the result of such an order would mean that the respondent would be unable to attend his home. Assistance should be recommended on the basis that the order would ‘curtail an important right of the respondent’ and a ‘court might be persuaded to make a less restrictive order’ (different terms as to distance etc)*
* *The applicant is the respondent named in an existing family violence intervention order. The order prevents him from attending within 200 metres of his former partner’s place of residence. His employer, with no prompting on the respondent’s part, has transferred him to a different factory, which is located 50 metres from the applicant’s home. The respondent seeks to vary the order to allow him to attend work and was granted leave to apply. The matter is listed for contested hearing. The lawyer should recommend assistance, as an ‘important right of the respondent would be curtailed’ were the order to remain in place without amendment.*

### 7.2 – Family law matters and family violence orders

Assistance can be provided to respondents where the order would curtail an ‘important right’. Changes to the Family Law Act 1975 provide that a court must take into account the existence of an intervention order. Practically however, this only applies to intervention orders made after a contested hearing. Where an order was made by consent (eg consent without admissions) or if there is an undertaking, no finding of fact has been made.

It is VLA‘s view that

* 1. Where the children of the relationship are included in the proposed order and the order includes provision to allow contact with the children by agreement or in accordance with court orders, the order does **not** curtail an important right. Ultimately, defending the application for IO itself would not give the applicant the contact s/he desires. The issue would still need to be pursued through the family court.
  2. Where the children of the relationship are included in the proposed order and it does **not** include provision to allow contact with the children by agreement or in accordance with court orders, the order would curtail an important right.

The respondent’s position in defending the application must be meritorious, ie it is more likely than not that the applicant will not be able to substantiate the allegations set out in the complaint.

If a lawyer in a specific case considers that an 'important right' is curtailed, they should contact compliance for a ruling setting out:

* The basis upon which it is asserted the other side's application is unmeritorious.
* The basis on which the making of the order might impinge/restrict on any current or anticipated family law proceedings, and
* The prejudice that might be suffered generally if assistance was not granted to defend the application.

## Cross-applications

Where the person seeking legal aid is both the applicant and respondent, assistance is still subject to VLA’s guidelines. Consequently, if the person meets the applicant guideline, but not the respondent guideline, assistance will only be provided for the application for an intervention order. Alternatively, if the person meets the guideline for respondents, but does not meet the guideline in relation to applicants (for example, the application may be merely vexatious), then aid will only be provided to respond to the application made against him or her.

## Fees

### 7.3.1 – Urgent grant

Where a lawyer obtains an urgent grant for a *Family Violence Protection Act 2008* case, or the matter for which aid is sought is to be heard on the date the application is received or the following day, the urgent grant fee (for preparation) in Table A4 applies. At all other times the standard preparation fees in Table A4 apply.

Where the matter proceeds before a magistrate **and** evidence is called, a contest appearance fee of $420 may be claimed. In the event that the contested hearing is likely to be of an extraordinary duration, VLA must be notified of the number of days the matter is listed for hearing.

### 7.3.2 – Where the matter does not proceed to a contest

In the event that a matter is listed for a contest but on the day does not proceed to a contest, the appearance fee of $301 is claimable. There is **no** provision in Table A4 for a higher fee where the matter is listed for contest but does not proceed as a contest. Only if the matter proceeds **and** evidence is called is the fee of $420 claimable.

### 7.3.3 – Directions hearing

As assistance for applicants is not available until a case is actually listed for contested hearing, a directions fee is usually not payable for applicants (matter not within guidelines at that point).

### 7.3.4 – Multiple complainants or defendants

Where a lawyer acts for multiple complainants and/or defendants or in circumstance of a cross-complaint, only **one** lump sum fee per Table A4 is payable.

# Personal Safety Intervention Orders Act 2010

For Notes of the VLA guidelines applicable to the Personal Safety Intervention Order matters, see [Notes on guideline 9 – personal safety intervention order cases | Victoria Legal Aid (vla.vic.gov.au)](https://handbook.vla.vic.gov.au/handbook/7-state-civil-law-guidelines/guideline-6a-personal-safety-intervention-order-cases/notes-on-guideline-6a-personal-safety-intervention-order-cases)

# Children’s Court (Family Division)

For Notes of the VLA guidelines applicable to the Children’s Court Family Division see <http://handbook.vla.vic.gov.au/handbook/6-state-family-guidelines/notes-on-guidelines-state-family-guidelines>

# Disbursements

Professional costs in all legally aided matters are governed by lump sum fees and stage of matter limits. For this reason it is essential that a clear distinction is drawn between an item of professional costs and a disbursement.

This section should be read in conjunction with section for disbursements in Part 23 of the VLA Handbook.

Tables P and Q in Part 23 of the VLA Handbook set out some prescribed fees in Criminal and Family Law matters respectively. In the event that a fee in excess of that prescribed in the tables is sought the request for assistance must be sent to VLA for approval.

## Definitions

A disbursement is a sum of money paid to a third person for a service not usually performed by a solicitor (for example, a medical report is a disbursement).

This is distinct from fees payable to couriers and agents to perform tasks usually performed by a solicitor such as delivering briefs to Counsel, filing documents which are **not** separately allowable as a disbursement.

Photocopying and facsimile charges not paid to a third person are items of professional costs and are included in the lump sum fee. They are **not** claimable separately as disbursements.

For VLA’s purposes disbursements can be divided into the following categories:

* those that may be claimed without the need for prior notice to VLA
* those that require prior notice to VLA but regarding which lawyers may make a recommendation to grant or refuse assistance
* those that require prior notice to VLA and must be assessed by a VLA officer.

## Claimable without prior notice to VLA

The following disbursements may be claimed without giving VLA prior notice (though justification for them must be evident on file):

* Travel in summary criminal matters.
* Court fees (except for those fees for which a waiver is available)
* Interpreter’s fees (this does not include translations)
* Service fees
* Subpoenas
* STD Calls (the actual cost must be claimed, not an approximation. Local calls are not disbursements. See also or 38 rule 12 Family Law Rules)
* Extraordinary postage (ordinary postage is not a disbursement. See also or 38 Rule 12 Family Law Rules)
* Title and other search fees (applicable in family law property matters and where VLA has sought an equitable charge)
* Title office fees (caveats only) (applicable in family Law property matters where the property is in the other party’s name)
* FOI requests from Hospitals (up to $25) and the lawyer has sought a waiver of fees based on the client being impecunious and been refused.

Lawyers are also to refer to the disbursement section of Part 23 of the VLA Handbook.

### Video conferencing

Video conferencing is a means of avoiding the cost of travel. Where VLA does not reimburse the cost of travel the cost of video conferencing may not be claimed as a disbursement. Solicitors must meet that cost out of the professional costs allowed (usually from a lump sum).

#### Example

*No additional fees are payable pursuant to an indictable grant in the County Court where the client is in jail. As such no disbursement claim can be made for attending the client by way of video conferencing.*

### Jail conference – summary crime

Subject to the lawyer otherwise complying with the provisions of Table A, VLA will pay the fee of $126 for a jail conference conducted by way of video conference.

## Disbursements granted on recommendation

### 10.1.1 – General

Before recommending that assistance be granted for a disbursement the lawyer must have formed the view that:

* The disbursement is relevant to the position the aided person wishes to put to the court and is not fishing, **and**
* The disbursement is necessarily and/or reasonably required to maintain that position and cannot be achieved in some other way, **and**
* The expenditure can be justified on a cost/benefit analysis.

Cost/benefit involves recognition that public funds are being spent. The cost of the disbursement must be balanced against the likely benefit that incurring the disbursement may bring to the applicant. If a prudent self-funding litigant would not spend the money, it will not be reasonable to expect VLA to pay for it.

### 10.1.2 – Specific – crime

#### Medical/psychiatric/psychological reports

Before recommending that assistance be granted for such a report, the lawyer should have before them a clear indication of the client’s medical or personal history, which supports the view that a report will confirm the existence of an identifiable condition. Furthermore, there must be evidence available to the lawyer to form a reasonable expectation of the material sought from the report (ie not fishing). The lawyer must form the view from the applicant’s medical, psychological or psychiatric state that:

* the material **cannot be presented to the court** without obtaining the report, **and**
* there is a **reasonable expectation** the report will substantiate a defence to the charges (eg mental impairment) or raise an evidentiary issue (eg fitness to plead), **or**
* the report **directly** relates to the proposed plea and there is a **reasonable expectation** that it will provide **substantial exculpatory** material leading to a **significant reduction** in the sentence that might otherwise be expected. The mere existence of a condition (eg depression) is not sufficient to support a recommendation. A lawyer must have a reasonable expectation that a link can be established between the offending and the diagnosed condition. The report must address the issue of such connection – if any.

A lawyer may have regard to the serious nature of the charge in forming the view that there is a ‘reasonable expectation’.

Lawyers are required to make a file note outlining the evidence which led them to conclude that there was a reasonable expectation that the material fulfilled any of the criteria mentioned in this section.

Before recommending assistance for a medical/expert report, lawyers must consider which is the most appropriate report. All efforts must be made to prevent the legal aid fund incurring avoidable costs by prudently identifying issues from the outset and selecting the most appropriate reports for the case.

### 10.1.3 – Cost-benefit

When forming their view as to the reasonableness of obtaining such a report, lawyers should balance the anticipated probative value of the report with its cost. Indictable matters are more likely to satisfy this criteria.

#### Examples

* *Where the nature and circumstances of the offence are so heinous (eg homicide, serious sexual offences) that it calls into question the mental state of the accused a report may be recommended.*
* *A charge of culpable driving may not of itself give rise to any question of mental impairment.*
* *The seeking of a medical report for a plea for a person charged with trafficking who has a drug addiction, would* **not** *of itself be aidable. But, where the person has successfully completed a drug rehabilitation program post the commission of the offence, then a medical report would be aidable.*
* *The seeking of a medical/psychological report for a plea where the applicant has a drug/drinking problem and is charged with assault would* **not** *of itself be aidable. But where the applicant has successfully completed treatment in the past or has post the offence successfully completed treatment then a medical/psychological report would be aidable.*
* *The seeking of a psychiatric report would be aidable where the applicant has presented with extremely unusual ideas (eg grandiose ideations) or has a history of admission to psychiatric care would be aidable, particularly where the applicant’s behaviour is directly related to the offence.*
* *The seeking of a psychological report for a plea to try to explain a drug addicted applicant’s behaviour where the level of violence used is excessive is not of itself aidable.*

### 10.1.4 – Fees – hospital/medical/psychologist/psychiatrist reports

Lawyers may only recommend assistance up to the fees contained in Table S of the VLA Handbook. Fees higher than this must be specifically considered and approved by VLA.

### 10.1.5 – Witness expenses (medical)

It will rarely be the case that an expert medical witness will need to be called to support a plea.

Before recommending that assistance be granted for witness expenses pursuant to Table S for a psychologist or psychiatrist, lawyers should form the view that the expense is reasonable and proportionate to the likely benefit, having regard to the factors contained in paragraphs [10.1.2](#_10.1.2_–_Specific) and [10.1.3](#_10.1.3_–_Cost-benefit). If assistance is sought for witness expenses for a medical lawyer, then specific approval must be sought from VLA.

### 10.1.6 – Doli incapax reports (Children’s Court matters where applicant is under 14)

Before recommending that assistance be granted for such a report lawyers should form the view that:

* 1. the charges are serious
  2. the report is likely to be supportive of the presumption being upheld
  3. the report is necessary to rebut or explain evidence likely to be led by the police.

Relevant to (b) and (c) will be such factors as:

* the instructions given by the applicant
* any admissions made during the record of interview
* the behaviour of the applicant at the time of the offences (eg fleeing the scene)
* whether the applicant has any prior convictions, and
* previous psychological or medical reports indicating intellectual disability or mental impairment.

### 10.2.1 – Specific – family law

#### Family reports

VLA will not normally fund a private family welfare report unless assistance has been approved for preparation for trial (stage 3 under the fee schedule). VLA must be satisfied that the order for the report was made by the court and not made by consent of the parties and that there is clear evidence that the court’s counselling section is unable to prepare the report.

In determining whether to grant assistance for a private family welfare report at an interim stage, VLA will require detailed reasons outlining the necessity for the report at the interim stage. Such grants are not subject to lawyer recommendation.

#### Supplementary Family Reports

Any subsequent Family Report is to be treated as a supplementary report.

A lawyer should only recommend the granting of assistance for a Supplementary Family Report if:

* a substantial time has elapsed since the previous report
* there are significant changes in the circumstances of the parties
* the order for the report was made by the court and not made by consent of the parties and
* that there is clear evidence that the court’s counselling section is unable to prepare the report.

**Significant change in circumstances** means a change that, if it had occurred prior to the writing of the previous report, would have resulted in a significantly different conclusion.

Lawyers are referred to Table Q in Part 23 of the VLA Handbook for applicable fees.

#### Contact centre reports

Lawyers may only recommend assistance up to a fee of $300. Fees higher than this must be specifically considered and approved by VLA.

#### Individual psychological/psychiatric reports

Before recommending that assistance be granted for such reports lawyers must from the view that:

* there is a history of treatment or a history of behaviour giving rise to a reasonable expectation that a report would provide significant relevant evidence
* the report is reasonably required to rebut allegations made by the other side
* the exercise is not merely fishing.

Proof of these matters should be retained on file.

## Disbursements requiring assessment by VLA

### 10.3.1 – Other experts reports

* Fingerprinting
* Engineer
* Chemist
* Handwriting expert
* Private investigator
* Neuropsychologist
* Accident investigation expert
* Forensic pathologist
* Blood alcohol level expert
* Ballistic expert
* Botanist
* DNA expert
* Information technology expert.

Such experts are very expensive, and lawyers should have special regard to the cost/benefit of obtaining such reports before requesting assistance. The request for assistance should be forwarded to VLA together with details of why the matter complies with the requirements of paragraph [7.3.1](#_7.3.1_–_Urgent) together with advises as to the cost of the report.

### 10.3.2 – Other experts (witness expenses)

Where the lawyer wishes to call an expert (other than a medical expert as referred to in [10.1.4](#_10.1.4_–_Fees)) the request should be forwarded to VLA together with the reason why such witness needs to be called and advises as to the witness expenses.

#### Witness expenses (out of jurisdiction)

Where it is necessary to bring any witness to Victoria from out of the jurisdiction, a request for assistance should be forwarded to VLA with details as to how the witness’s evidence is vital/relevant to the case, whether the evidence could be obtained in some other manner (eg by video link), and an estimate as to the cost of travel and accommodation.

### 10.3.3 – Photocopies

It is sometimes necessary to photocopy large quantity of material and where voluminous material must be provided to an expert to qualify himself to prepare a report. In such cases, subject to prior approval, copying will be allowed at a rate (commercial) fixed by VLA and paid as a disbursement.

### 10.3.4 – Any disbursement not otherwise proved for

Requests for assistance to obtain a disbursement not provided for in this manual must be referred to VLA for assessment. Lawyers should provide VLA with all relevant information, with particular reference to the matters contained in paragraphs [10.1.1](#_10.1.1_–_General) to [10.1.3](#_10.1.3_–_Cost-benefit).

### 10.3.5 – Limitation on quantum

Where the cost of a disbursement that may ordinarily be the subject of a lawyer recommendation (and for which no fee has been fixed by VLA) exceeds $1,000, the request for assistance must be forwarded to VLA for specific consideration and approval (eg valuations).