# Family law worksheet – Litigation Adults - Guideline 1.3

*Refer to parts 4 & 13 of the VLA Handbook and Notes on the Guidelines*

**Client Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**VLA Grant No**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Your client seeks a grant of assistance to:

apply for or respond to an application for a parenting order

apply for or respond to an application to discharge or vary existing parenting orders

apply for or respond to an application for contravention or enforcement of parenting orders or for [contempt of court](https://www.handbook.vla.vic.gov.au/node/6054#contempt-of-court-def)

## Criterion 1 - Threshold Tests

### Jurisdiction tests

*Refer to part 4 of the VLA Handbook (under Jurisdiction of Family Paw Proceedings)*

Under forum test, Victoria is the appropriate jurisdiction (*eg. resident parent lives in Victoria*)

Proceedings issued in lowest court with appropriate jurisdiction to hear the matter (*if not, file must record why choice to issue proceedings in higher court was appropriate*)

### Substantial Issue in dispute test

*Satisfaction of this criteria requires ongoing assessment. Where substantial issues in dispute are resolved, but non-substantial issue remains, a further grant of aid is not available*

An issue that:

is likely to have a significant impact on the child’s safety or welfare; or

where the dispute is about with whom a child is to live; or

where the dispute is about the child’s right to spend time with their parents or other people significant to their care, welfare and development.

**Provide further details of basis for being ‘substantial issue’**

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### Commonwealth merits test

Reasonable prospects of success test (*legally and factually, the matter is more likely than not to succeed – more than having a 50/50 chance of success*); and

Prudent self-funding litigant test (*person with limited financial resources would use their own finances in paying for the matter*); and

Appropriateness of spending limited public legal aid funds test (*costs involved in granting assistance are justified by the likely benefit to the person seeking the grant of assistance (or, if appropriate, the likely benefit to the community)*)

**Provide details of how test is satisfied or not satisfied (as applicable) for each new application or extension**

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### Contravention test

Applicant has **not** been found by a court within the last 12 months to have contravened a Federal Circuit and Family Court of Australia order without reasonable excuse

### Means test

*Refer to part 12 of the VLA Handbook. Completing the Proof of Means Worksheet is recommended*

*If an extension application* - Applicant’s financial details:

Have not changed; or

Have changed (*update ATLAS and ensure new documentary proof of means is on file*)

## Criterion 2 or Criterion 3

### Criterion 2: EITHER is applicant a ‘family law priority client’?

A family law priority client is:

1. a person with one or more of the following vulnerabilities:

a disability  diagnosed psychiatric or psychological illness  literacy barriers  
cultural and/or language barriers  drug and/or alcohol issues

and this

makes the person unable to effectively run their own case in court without a lawyer representing them  
OR

B. a person who:

is experiencing homelessness or  
identifies as Aboriginal or Torres Strait Islander or   
has experienced, or is at risk of experiencing family violence  
 **Provide further details on how this guideline is satisfied**

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### OR Criterion 3: One or more of the following apply:

One or more of the following apply:

allegations have been made that indicate there is a risk to the wellbeing and/or safety of the [child](https://www.handbook.vla.vic.gov.au/key-definitions) from being subjected or exposed to abuse, neglect or family violence; or

The [child](https://www.handbook.vla.vic.gov.au/key-definitions)’s ability to maintain a meaningful relationship with one or both of their parents (or where the person seeking assistance is not a parent of the [child](https://www.handbook.vla.vic.gov.au/key-definitions), with that person) will be substantially prejudiced by the proposals or conduct of a party to the dispute; or

There are allegations that there is or has been a risk of family violence. The person alleged to be the victim, as a [family law priority client](https://www.handbook.vla.vic.gov.au/key-definitions), and the person who is alleged to be the perpetrator of the family violence are both included in this definition.

**Provide further details of on how this guideline is satisfied**

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## Criterion 4

Where the person applying for assistance is the person who is making the application to the court, there is evidence kept on the file showing:

that there has been an attempt to resolve the dispute by attending family dispute resolution and that a [required section 60I certificate](https://www.handbook.vla.vic.gov.au/key-definitions) has been issued in relation to the dispute  
or

where a [required section 60I certificate](https://www.handbook.vla.vic.gov.au/key-definitions) has not been issued in relation to the dispute, that it is an [urgent matter](https://www.handbook.vla.vic.gov.au/key-definitions).

## Other Requirements (if applicable)

### If the person applying is not a parent of the relevant child

Applicant for an early intervention and dispute resolution grant of legal assistance where applicant is a party but not a parent and:

the person is significant to the care, welfare and development of the child (eg. grandparent); or

it is in the child’s best interests.

**Provide details of how the guideline is satisfied**

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### If the person applying seeks to discharge or vary existing parenting orders

Significant change of circumstance

If the applicant is the cause of the significant change, VLA will need to consider the surrounding circumstances.

**Provide details of how the guideline is satisfied**

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### If contravention/enforcement of parenting orders; or contempt of Court

*A Stage 2(i) grant will usually be made on the condition of seeking a costs order (except where the respondent is also receiving legal aid). VLA will treat proceedings as a ‘new matter’ (refer to* [*Family law costs management, VLA Handbook)*](https://www.handbook.vla.vic.gov.au/family-law-costs-management) *)*

[substantial contravention](https://www.handbook.vla.vic.gov.au/key-definitions) of the orders

For applicants - no unreasonable delay in requesting assistance

**Provide further details of how the guideline is satisfied**

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*\* If additional space is required, attach a separate sheet*

Applicant for a grant of legal assistance where they are:

an applicant in relation to a family law or child support matter for contempt of court (‘contempt of court proceedings); or

respondent to contempt of court proceedings. *Note*: VLA may have regard to the severity of any penalty which may be imposed

**Provide further details of how the guideline is satisfied**

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## Part A - For applicants in legal proceedings

Threshold test met (see Criterion 1 above); and

Family law priority client (see Criterion 2 above) or  Criterion 3 (see above); and

Other requirements (if applicable, see above); and

a ‘requisite section 60I Certificate’ has been issued by VLA’s FDRS (and the certificate was not issued due to the applicant for assistance not making a genuine effort to resolve the dispute or refusing or failing to participate); or

a ‘requisite section 60I Certificate’ has been issued by another FRD practitioner where:

the parties made a genuine effort to resolve the issue; or

FDR not appropriate to continue after it has commenced; or

other party did not make a genuine effort to resolve the dispute; or

‘urgent matter’ – being a matter where:

it relates to recovery of a child (Stage 2(b) funding should be recommended); or

the child’s safety or welfare is at immediate risk and a court order must be obtained to ensure the safety of the child; or

the safety of the person seeking assistance is at immediate risk and a court order must be obtained to ensure their safety

there is an immediate risk of removal of a child from Australia or to a remote geographic region within Australia; or

other exceptional circumstances exist that require urgent court orders; or

the matter involves current reported allegations, investigations and/or court proceedings relating to the abuse of the child. The Risk Notice filed by the lawyer must set out the allegations that support this, or

a state child protection order (including an interim order) is in place in relation to the child and the state Department of Families, Fairness and Housing (DFFH) has recommended that the parties obtain family law orders relating to the child when the child protection order lapses

**Provide details of how this guideline is satisfied**

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## Part B - For respondents to a legal proceedings

Applicant for a grant of legal assistance to be a respondent in litigation for parenting orders where:

Threshold tests met (see Criterion 1 above); and

Priority litigation client (see Criterion 2 above) or  Criterion 3 (see above); and

Other requirements (if applicable, see above)