# Family law worksheet – Recovery Order - Guideline 2.1

*Refer to parts 4 & 24 of the VLA Handbook and Notes on the Guidelines*

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

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

## Criterion 1 – Urgent Matter

a child has been removed from, or has not been returned to the care of a person and a court order is required for the return of the child; or

there is immediate risk of removal of a child from Australia or to a remote geographic region within Australia; 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; 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 Health and Human Services (DHHS) has recommended that the parties obtain family law orders relating to the child when the child protection order lapses; or

there are other exceptional circumstances that require urgent legal assistance.

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

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## Criterion 2 - 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 3 or Criterion 4

### Criterion 3: 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 4: 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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## 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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## Part A – Recovery Order Criteria

Urgent Matter (see Criterion 1 above); and

Threshold test met (see Criterion 2above); and

Family law priority client (see Criterion 3 above) or  Criterion 4 (see above); and

Other requirements (if applicable, see above)