Simplified grants process

Notes on VLA guidelines

22 December 2020

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## 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 contained therein. These notes serve to provide assistance in interpreting the Handbook and form a directive to practitioners participating in the simplified grants process (SGP) as to how to apply the guidelines contained in the VLA Handbook. Practitioners 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 practitioners are also available online.

Any queries should be directed to the Compliance team on phone: (03) 9606 5355 or by email at [compliance@vla.vic.gov.au](mailto:compliance@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, 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 practitioners to achieve a process that is simpler, 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 practitioners outline the areas which are covered.

## Applications under SGP to Assessment Unit

All applications under the SGP should be directed to the Assessment Unit, and should contain only the checklist and the VLA application form. Practitioners 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 means.

Where a practitioner 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. Correspondence sent in with the checklist raising questions of guidelines/merits will not be considered. Practitioners cannot rely on that correspondence when non-compliance issues are raised. In cases requiring advice from compliance, practitioners must seek a ruling **before** making a recommendation.

## 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 practitioner recommendation contained in the checklist for matters such as proof of means, and guideline and merits recommendation.

If other issues arise which require consideration in relation to the guidelines, practitioners 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 practitioner 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.

Practitioners 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 a delegation of VLA’s power to approve legal assistance to practitioners. In simple terms, it is about VLA relying on the practitioner’s recommendation as to merit and guidelines. VLA will assess the application for assistance based on the practitioner’s recommendation and certification as to documentary proof and will usually approve assistance on such recommendations and certifications if the means test is satisfied. Practitioners 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 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 fax
  2. for Children’s Court cases and Magistrates’ Court criminal cases within 14 days of the appearance in accordance with the provisions of Part 15 of the Handbook. Such grants will attract the urgent grant fee.

In these circumstances it is important for practitioners 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 guideline, but the practitioner is of the opinion that special circumstances (as defined in Part 14 of the VLA Handbook) may be relevant, an application and checklist should be directed to the VLA for assessment. Practitioners 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 14.

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 mental illness or 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.
  1. 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.

## 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 practitioner 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 practitioner:

* 1. if the new practitioner 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 practitioner 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 practitioner where it will result in an increase in the amount of funds expended on a case. Any transfer must be cost-neutral to VLA.

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

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.

VLA requires that the following steps to be taken:

1. Discussion with both the client and the previous practitioner to check whether the complaint can be easily rectified/addressed by the previous practitioner.
2. Should the matter not be resolved, a signed transfer authority must be provided to the previous practitioner.
3. A signed transfer authority must be provided to VLA with a written request for transfer which includes:
   1. advice obtained regarding the progress in the matter
   2. whether the transfer of assistance is supported by the previous practitioner, or
   3. whether the previous practitioner 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 practitioner 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 practitioners without delay.

## Practitioners requiring further information

Practitioners should contact the Compliance team for any queries. This includes all questions as to procedures under the simplified process, guidelines and costs. The Compliance team can be contacted on (03) 9606 5355 or by fax (03) 9269 0115.

# Applications under special circumstances

## Summary Crime – SGP applications for summary crime only

Practitioners 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 the requirements of the relevant guideline, but the practitioner is of the opinion that special circumstances apply, assistance can still be recommended on this basis. Practitioners **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 practitioner’s file and be clearly identifiable.

Practitioners considering matters under state and Commonwealth guidelines should refer to part 14 of the VLA Handbook if they believe special circumstances exist. Practitioners 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**  
   Practitioners 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 mental illness or intellectual disability, assistance may be granted where the merit test is not satisfied**
3. **Means test**  
   Special circumstances do not override the means test. Assistance cannot be granted if an applicant has access to financial resources.

Where the Children’s Court guidelines is 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).

### Language or literacy problem

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.

## Intellectual or psychiatric disability

‘Intellectual or psychiatric disability’ means a disability which has resulted in a person either:

* being registered as an ‘eligible person’ under the [Disability Act 2006](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/e62edfa4478288dfca257a2f001023c6!OpenDocument)
* receiving services from an approved mental health service under the [Mental Health Act 1986](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/8e61cc0d8edcf856ca2579560002ad73!OpenDocument).

It is insufficient to recommend assistance on the basis that the client presents as ‘disturbed’ or gave instructions in a manner which would suggest an intellectual or psychiatric disability. Before recommending assistance for client’s with a ABI, intellectual disability or psychiatric disability, the practitioner must have on file:

* confirmation of registration under the Disability Act (there is a formal certificate produced by DHS confirming when the client became eligible for Disability Services). The practitioner will need a signed authority from the client to be able to telephone DHS to ascertain whether the client is registered under the Disability Act. A file note by the practitioner of a telephone conversation with DHS will be required, or
* confirmation of being in receipt of services from an approved mental health service (this may include written confirmation from the service or a file note by the practitioner of a telephone conversation with the health care provider).

A list of approved mental health services may be found on the Department of Human Services website.

# Documentary proof of income and assets

Practitioners must ensure that the proof of means which they obtain correctly reflects what is contained in the VLA application form. Practitioners 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 practitioners should contact the Compliance team for advice/guidance.

In the ordinary case, documentary proof of both **income** and **assets** for applicants and any financially associated person (FAP) must be obtained and retained on file.

## Dependants with income/assets

VLA will consider a dependant over the age 18 who has assets and/or income to be a FAP and not a dependent and will apply the normal proof of means 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.

## 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
* any asset over which the applicant has an equitable interest

## Proof of income

The minimum documentary requirements for applicants **and any disclosed financially associated persons (FAP)** are:

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

Current pension or health care card.

For applicants in receipt of Centrelink benefits with FAPs also on benefits copies of **both** persons’ health care cards (or other proof of benefits) must be obtained.

It is not sufficient to provide a card with either the FAP listed on the applicant’s card or the applicant listed on the FAP’s card.

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

Latest tax return, profit and loss statement and balance sheet.

Proof of means for a self-employed applicant/FAP must be sent to VLA for consideration.

Practitioners 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 others, that person must be treated as a FAP. The same applies if other instructions received indicate the existence of a FAP (eg plea instructions, affidavits). If that person is not disclosed in the application form, practitioners must seek further instructions and notify VLA.

## Proof of savings and investments

Where:

* an applicant and any financially associated person has savings and investments 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 FAPs, including statements for the last three months from

* banks
* building societies
* credit unions.

Where an applicant or their FAP 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), practitioners 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 practitioners 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 practitioner 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.

Practitioners 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 in custody and the matter for which legal assistance is sought will be heard and determined within seven days of the date of the application for legal assistance
* the applicant has been remanded into custody and the matter for which legal assistance is sought relates to a bail application
* where the applicant is in custody and has savings and investments of less than $865. Where the applicant has investments of more than $865, proof of assets only will be required (eg bank statements).

Practitioners seeking a waiver on behalf of their clients should so indicate on the checklist accompanying the application form.

The waiver provisions relate to **documentary proof** only. They do not relate to disclosure of means or the means test. Full disclosure of means is required in all cases.

### Expiration of waiver

If waiver of proof of income and asset was granted because the applicant was in custody and during the currency of the grant of legal assistance the applicant is released from custody, proof of income and assets will be required before any further work may be conducted under the grant of assistance. The waiver ceases to operate once the applicant is released from custody.

If waiver of proof of income and asset was granted because the matter was expected to be finalised within 7 days of the date of the application but does not finalise, the waiver is not available. Proof of income and assets must be obtained unless a different waiver applies.

### Important

Practitioners should note that the policy waives **documentary proof** of means. It does not waive the obligation to give the information about means. Applicants must still complete the application form in full and all applicants must meet the means test. Applications with lines drawn through them are **not** sufficient. All questions **must** be completed.

Practitioners should also note that the policy applies only in respect of the person in custody. **If a financially associated person is disclosed, documentary proof of means of that person’s income/assets is still required.**

## Waiver of documentary proof – appeals/indictable crime

A limited waiver of the minimum documentary proof of income and assets may be obtained from VLA where the applicant is seeking assistance for an appeal or indictable criminal matter:

* if the applicant has been remanded into custody and the matter for which legal assistance is sought relates to a bail application
* where the applicant is in custody and has savings and investments of less than $865.

Practitioners seeking a waiver on behalf of their clients should so indicate on the checklist accompanying the application form.

Practitioners should also note that the policy applies only in respect of the person in custody. **If a financially associated person is disclosed, documentary proof of means of that person’s income/assets is still required.**

## Waiver of Means Test – Children’s Court

Where the matter is being heard in the Children’s Court and the applicant is aged between one and eighteen (1–18) years of age, the applicant is not subject to the means test and the waiver of documentary proof applies.

## Currency of documentary proof of means

Once documentary proof of means has been obtained at the start of a file, it remains current for 12 months. Where a file has been open for over 12 months, practitioners must ensure that they obtain new documentary proof of means for the applicant on the anniversary of that file and every 12 months thereafter. This will apply mainly to family law matters as they tend to remain active for a greater period of time. Practitioners are reminded that they must advise VLA immediately upon any change to the applicant's financial circumstances and obtain appropriate documentary proof of means on their file.

## State trustees

Where an applicant declares that their finances are managed by State Trustees and their assets would affect the applicant’s eligibility for aid, the practitioner must first ask State Trustees whether they are prepared to release funds for the purpose of funding legal costs. Applications for assistance should only be submitted where State Trustees have refused to release monies. They must be accompanied by a copy of the letter from State Trustees.

# Summary crime

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

## Commonwealth charges take priority

Where an applicant is charged with a combination of state and Commonwealth matters, practitioners should first consider the merits of the application as it relates to the Commonwealth charges. If the practitioner 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 practitioners must tick the Commonwealth Summary Crime guideline box whenever the Commonwealth charges are the basis for the recommendation.

## Definitions

**Reasonable prospect of acquittal –** means that a prudent and experienced practitioner would consider it likely in all the circumstances of the case. The prospect of acquittal must be real and not fanciful having regard to the evidence and circumstances of the case. This requires more than an arguable case.

**Most serious charge –** means the charge carrying the most serious penalty.

**Likely penalty/likely to result in –** means the actual penalty the applicant could expect to receive, having regard to the nature and circumstances of the charges, the applicant’s prior convictions and any mitigating or aggravating circumstances.

When determining likely penalty, the practitioner must determine what the likely penalty will be irrespective of the applicant’s financial position. That is, if the applicant cannot pay a fine and will seek to have a community corrections order (CCO) or imprisonment, the assessment of likely penalty remains a fine.

Whether the person consents to enter into a CCO is also not relevant. For example, if the likely penalty is a CCO but the person does not consent to enter into an order, and therefore faces an immediate term of imprisonment, that person still does not qualify under this guideline as the likely penalty is still the order.

**Realistic prospect of bail being granted –** means that a prudent and experienced practitioner would consider it likely in all the circumstances of the case. The prospect of bail being granted must be real and not fanciful having regard to the evidence and circumstances of the case. This requires more than an arguable case.

**Opposed –** means actively contested.

**Serious or complex matter –** means a matter where the level of representation required is outside that which could be provided through the duty lawyer service.

**Psychiatric or intellectual disability –** means a disability which has resulted in the applicant receiving services from an approved mental health service under the Mental Health Act 1986 or being registered as an eligible person under the Disability Act 2006.

**Traffic prosecution –** means a prosecution involving charges under the Road Safety Act.

## 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 6 – bail applications
* Guideline 5.1 – Children’s Court matters

### 4.1.1 – Not guilty pleas

Before recommending that assistance be granted for a not guilty plea, practitioners must form the view that:

* + 1. the client has a **reasonable prospect of acquittal** on the **most serious charge**, and
    2. the likely penalty, if convicted on all or any of the charges, would be a term of immediate imprisonment.

VLA considers that whether an applicant has a ‘reasonable prospect of acquittal’ may be assessed by reference to the following:

* Client’s instructions
* Strength of prosecution case in relation to direct and circumstantial evidence
* Availability and strength of evidence supporting the defence
* Admissibility of prosecution evidence, dependent upon:
* Likelihood that evidence was obtained illegally:
  + - the admission was not voluntary
    - the accused was not informed of the right to silence
    - the police engaged in illegal activity without authorisation.
* Likelihood that propensity evidence will be unduly prejudicial to the accused.

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

* The primary charge or main group of charges
* The client'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.

The practitioner’s file must include:

* a reference to guideline 1.1
* full details of the charges
* the basis for the defence(s)
* details of the evidence to be relied upon in support of the defence(s)
* the practitioner’s assessment of the strengths and weaknesses of the defence(s).

If the practitioner 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 practitioner 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, practitioners must form the view that conviction is **likely to result in a term of immediate imprisonment.**

The practitioner’s file must include:

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

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

* The primary charge or main group of charges
* The client'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.

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

#### Breach offences not filed with the court

Where an applicant 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.

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

Where an applicant 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 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* 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.

Applicants 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.

The case must be listed for the ARC List eligibility assessment hearing (after the CISP assessment) before a practitioner can recommend that assistance be granted.

The practitioner’s file must include:

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

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

Where an applicant 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.

#### Applicant 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

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

* Confirm that the applicant has a psychiatric or intellectual disability, or an acquired brain injury, **and**
* form the view that conviction is likely to result in:
* Imprisonment, or
* a suspended term of imprisonment.

Before recommending assistance for clients with an ABI, intellectual disability or psychiatric disability, the practitioner must have on file:

* confirmation of registration under the Disability Act (there is a formal certificate produced by DHS confirming when the client became eligible for Disability Services). The practitioner will need a signed authority from the client to be able to telephone DHS to ascertain whether the client is registered under the Disability Act. A file note by the practitioner of a telephone conversation with DHS will be required, or
* confirmation of being in receipt of services from an approved mental health service (this may include written confirmation from the service or a file note by the practitioner of a telephone conversation with the health care provider).   
  A list of approved mental health services may be found on the Department of Human Services website.

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

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

These changes relate to traffic offences heard in the Magistrate’s Court. This does not apply to children, where such offences would be dealt with in the Children’s court.

#### Suspended sentence triggered by traffic offences

VLA holds that the traffic prosecution guideline will also 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 offending 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 applicant has a cognitive impairment as outlined in the guideline.

#### Breach offences not filed with the court

Where an applicant 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 an applicant 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 practitioner’s file must include:

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

and if contested:

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

A failure to pay traffic fines which has resulted in the applicant 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

Before recommending that assistance be granted for an infringement case the practitioner must form the view that:

* 1. the client has, or was suffering at the time of the offence, from either a mental or intellectual disability, disorder or illness, or a serious addiction to drugs, alcohol or a volatile substance, **or**
  2. the client was at the time of the offence homeless, **and**
  3. the client is liable to pay multiple infringements that exceed $5,000 in total, **and**
  4. there is a strong likelihood that legal assistance will result in:
     1. the enforcement order being revoked, **and/or**
     2. the infringement penalty being substantially discharged.

Applicants who are not eligible under this guideline are **not** eligible for a grant based on special circumstances.

Part 1, Section 3 of the Infringement Act requires a causal link between the client’s circumstances (disorder/disability) at the time of the infringements and the conduct. How can the condition excuse the infringements?

The practitioner’s file **must** include:

* full details of the applicant’s mental condition, or
* proof of the applicant’s mental condition **at the time of the offence,** and
* full details of the infringements, and
* **the practitioner’s assessment of the likely outcome.**

Please note that infringement matters will be funded subject to fees under Table X of Fee Schedule 2 of the VLA Handbook.

### 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 realistic **prospect 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 (more likely than not).

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 process.

*Practitioners 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 process.

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

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

Applications to cancel a DTO arise in circumstances where the applicant 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 most cases, in addition to the application to cancel the DTO, the applicant is also 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 ie DTO, 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, practitioners 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 person’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 client’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. He broke into the building through the skylight causing $4,000 of damage. Once inside he found nothing of interest and left through the emergency exit.

The child’s defence is:

* He was playing cricket with a friend that on the oval that evening and their ball went onto the roof. He climbed onto the roof to retrieve their ball. He accidently fell through the skylight whilst looking for the ball. Once inside he immediately left through the emergency exit. He did not think the school would have minded him climbing on the roof to retrieve their ball.
* He has a prior finding of guilt for burglary where he received good behaviour bond. If he is found guilty then it is likely that he 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 her co-accused were also charged with theft of a motor vehicle.

In her interview, the child admitted to taking the wine, telling police she knew it was wrong. She explained that the reason she stole the alcohol was because she had no money and wanted some for a party that night. She also admitted to being in the motor vehicle as a passenger knowing it was stolen. She 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 her to the Youth Support Service (YSS) to address any alcohol issues.

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

Her lawyer now intends to engage the informant to see whether they would be amendable to the Ropes diversion program, highlighting her 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). Practitioners are referred to Fee Schedule 1 of the VLA Handbook.

#### Documentary requirements

The practitioner’s file must include:

* a reference to guideline 5.1
* full details of the charges
* full details of the applicant’s prior convictions if any
* the practitioner’s assessment of likely penalty
* the practitioner’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 practitioner must form the view that the applicant has a **reasonable prospect of acquittal** and either:

* 1. conviction would be likely to have a significantly detrimental effect on the applicant’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 practitioner relies, including (where relevant) documentary proof of disability
* the practitioner’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 applicant already has prior convictions of the same nature).

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

If practitioners 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 applicant’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 applicant, such as a language or psychiatric disability.

The practitioner’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). The following comments should be read as adjuncts to the discussion in that schedule.

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

Where the practitioner has recommended that assistance be granted for a summary criminal matter and VLA has granted assistance under table A, it is not necessary for practitioners to separately recommend the granting of assistance for:

* gaol conference (where necessary)
* second day fee (where necessary)
* appearance for sentencing (where necessary)
* appearance at contest mentions (where necessary)
* group conference (where necessary).

As those matters are events that flow from the initial lump sum fee and may be claimed without specific approval.

### 4.1.12 – Consolidations

Practitioners 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 applicant receives a further charge, or charges, that fall within the guidelines for assistance.

A consolidation grant is not appropriate where the applicant 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 applicant – 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 applicant 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 practitioner in receipt of instructions in relation to 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, practitioners 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, practitioners 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](http://handbook.vla.vic.gov.au/handbook/24-payments-to-lawyers-and-service-providers/costs-payable-in-criminal-law-matters/fee-schedule-1-lump-sum-and-other-fees-payable-in-criminal-law-matters/table) for 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 flows from the initial grant of assistance and you do not need to seek a further extension. However, before attending a contest mention a practitioner needs to satisfy themselves 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 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 does not pay for adjournments at the request of the defendant. In exceptional cases where it is reasonable having regard to 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

Practitioners 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 practitioner is in receipt of an urgent grant. The appearance fees remain the same whether the matter is standard or urgent.

Practitioners must bear in mind 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, practitioners 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 practitioner’s file.

The practitioner’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 practitioners assessment of the strengths and weaknesses of the appeal, whether in respect of conviction and/or sentence
* in an appeal against sentence, an indication of the likely appropriate penalty that the applicant 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 simplified process. All applications are outside VLA’s guidelines and must be directed to the Legal and Policy Unit.

### 4.1.21 – Legal Aid Act

Section 24(4) of the Act 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 by 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 practitioner exercising normal and honest judgement, would consider in all the circumstances of the case that the appeal has a reasonable likelihood of success. That means more than just an arguable case. The grounds for the appeal must be reasonable, that is to say sound. They cannot be fanciful, imaginary/esoteric (vexatious) or contrived.

### 4.1.22 – Cost/benefit

Pursuant to s. 24(4) of the Legal Aid Act, practitioners 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 applicant 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

Practitioners 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. This is because counsel's advice may be based on a different standard such as ‘arguable case’. Solicitors will need to consider the appropriate weight to be given to counsel's advice in each case. Practitioners 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, practitioners may recommend assistance via the SGP for appeal bail from the Magistrates’ Court. Practitioners 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 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 desirable in the interests 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 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). These matters must be submitted for full assessment by VLA.

# Indictable crime

This section provides definitions and guidance for practitioners submitting applications for assistance in both State and Commonwealth indictable crime matters. Assistance can only be sought where the applicant 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 practitioners appointed to the section 29A indictable crime panel may seek assistance for indictable matters through the SGP.

**Commonwealth charges take priority.**

Where an applicant is charged with a combination of state and Commonwealth matters, practitioners should first consider the merits of the application as it relates to the Commonwealth charges under the Commonwealth Guidelines. If the practitioner 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 filling out the checklist, practitioners must indicate in their guideline selection whether Commonwealth or state legislation applies. If the applicant is charged with both state and Commonwealth offences, the practitioner must select the Commonwealth guideline.

## Restrained assets

Where an applicant’s assets have been restrained under the *Confiscation Act (Vic) 1997*, VLA cannot provide a grant of assistance for the applicant’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, practitioners should recommend aid for a variation of the restraining order. Practitioners 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.

Practitioners 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 practitioner must form the view that there is a reasonable prospect of bail being granted.

The practitioner's file must contain:

* full details of the charges
* the grounds relied upon in support of the application, and
* the practitioner'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 practitioner’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 practitioner 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 practitioner’s file must include:

* A reference to guideline 6.1 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 practitioner 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 practitioner 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 practitioner may recommend assistance for the appeal providing that the merits of the matter remain substantially the same. In making this recommendation, the practitioner 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 practitioner.

Where leave has been granted per section 62 of the Act, proof of leave being granted must be retained on the practitioner’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 practitioner 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 practitioner 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 the Legal and Policy Unit 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 practitioner’s file must include:

* A reference to guideline 6.2 of Part 6 of the VLA Handbook
* A copy of the application for a intervention order including the complaint
* Practitioner’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 practitioner 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 practitioner 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 practitioner 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 then 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 practitioner 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 6a – 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 practitioners 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)
* Interpreters 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 practitioner has sought a waiver of fees based on the client being impecunious and been refused.

Practitioners 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 practitioner 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 practitioner 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 practitioner 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 practitioner to form a reasonable expectation of the material sought from the report (ie not fishing). The practitioner 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 practitioner 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 practitioner may have regard to the serious nature of the charge in forming the view that there is a ‘reasonable expectation’.

Practitioners 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, practitioners 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, practitioners 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

Practitioners 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, practitioners 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 practitioner, 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 practitioners 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 practitioner recommendation.

#### Supplementary Family Reports

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

A practitioner 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.

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

#### Contact centre reports

Practitioners 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 practitioners 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 practitioners 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 practitioner 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. Practitioners 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 practitioner 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).