# Duty Lawyer Guidelines – Personal Safety Intervention Orders

## 1. Purpose of these guidelines

1.1 To set out who is eligible to access the Duty Lawyer Service in Personal Safety Intervention Order applications at Magistrates’ Court and Children’s Court locations throughout Victoria.

1.2 To help duty lawyers and support staff to prioritise eligible clients in the Duty Lawyer Service.

## 2. Application

2.1 This Guideline applies to all duty lawyers providing services to applicants or respondents at the Magistrates’ Court and the Children’s Court, whether they are Victoria Legal Aid (VLA) staff, briefed counsel or private practitioners.

## 3. Underlying principles

3.1 VLA resources are limited and must be carefully targeted to those who are most in need of legal help bearing in mind the client’s ability to pay for legal representation, whether the client falls into a priority group and the nature of the individual matter.

3.2 A primary goal of the Duty Lawyer Service is to resolve matters on the first day that a person comes into contact with the service, unless it is impractical or unreasonable to do so.

3.3 Lawyers are encouraged to consider their own health and wellbeing when providing duty lawyer services. Lawyers are encouraged to prioritise matters and make service decisions with the reference to VLA’s [Client Priority and Capability Policy](https://www.legalaid.vic.gov.au/information-for-lawyers/how-we-are-improving-our-services/priority-client-framework-review) and any relevant [criminal](https://viclegalaid.sharepoint.com/:w:/r/sites/intranet/policiesandprocedures/employment/health-safety-and-wellbeing/_layouts/15/Doc.aspx?sourcedoc=%7B300882AF-A556-4AD0-A3AA-06190FB74D57%7D&file=ca.pc.%20Summary%20crime%20demand%20management%20and%20workload%20guidance%201.0.docx&action=default&mobileredirect=true&DefaultItemOpen=1) and [family](https://viclegalaid.sharepoint.com/sites/intranet/practiceresources/family-law-resources/Pages/workload--management-and-professional-support-guidance.aspx) workload guidance documents.

3.4 The benefit of doubt about whether a person qualifies for the Duty Lawyer Service is to be exercised in favour of providing a service.

## 4. What the duty lawyer service is

The Duty Lawyer Service is made up of lawyers, and in some locations, support staff based at Magistrates’ and Children’s Court locations.

The duty lawyer service provides legal services to people on the first occasion they appear[[1]](#footnote-1) at Court for a matter. A person requiring further, or ongoing legal assistance is expected to apply for a grant of legal assistance or arrange alternative legal representation. Exceptions to this general rule are set out clearly in section 6.

The duty lawyer service is available to help people in the following ways:

**In-court advocacy** – by a lawyer providing advice to an applicant or respondent, negotiating with the other party and also representing that person in court on the day.

**Legal advice** – by a lawyer providing advice to either an applicant or respondent but not representing that person in court. This can include negotiation with the other party and referral to the Dispute Settlement Centre Victoria. The lawyer should also refer the client to appropriate services.

**Legal information** – by providing information in writing to help an applicant or respondent to understand the legal matter that they face, the process to be followed, how to represent themselves in court and where to access services.

## 5. Personal Safety Intervention Order court events

While Magistrates’ and Children’s Courts may follow different listing practices across the State, generally the following court events apply to Personal Safety Intervention Orders.

**First return date or first mention** – this is the first date that the matter is listed at Court after the application has been filed. This may also be referred to as the “mention date”. In some cases there may be subsequent mention dates ahead of any directions hearing.

**Directions hearing** – a matter may or may not be set down for a Directions Hearing prior to a contested hearing where the matter could not be resolved at mention. This court event may be used to enquire about the preparation of the matter for contest including the number of witnesses to be called.

**Contested hearing** – if a person does not agree to the making of an intervention order, the Magistrate can adjourn the case to a contested hearing. At this hearing, the Magistrate hears evidence and decides if there are grounds to make the intervention order.

## 6. Duty lawyer eligibility criteria

6.1 No income test applies to personal safety intervention order duty lawyer services.

### Children

6.2 When appearing in a proceeding for the first time at a mention or directions hearing, children may receive in-court advocacy, whether they are the applicant, respondent or protected person.

6.3 When appearing in a proceeding for the first time at a contested hearing, children may receive legal advice only, whether they are the applicant, respondent or protected person.

### Adults

6.4 All adult applicants and respondents are entitled to legal information. Adults will only be eligible for legal advice or in-court advocacy if they:

* + 1. Have a related family violence intervention order matter listed on the same day as a personal safety intervention order matter; or
    2. Have a cognitive or neurological disability.

The nature of the assistance to be provided in the circumstances above is set out below.

### Adults with related family violence intervention order matters

#### Applicants

* 1. Applicants may receive in-court advocacy when appearing at a mention or directions hearing, on more than one occasion.
  2. When appearing in a proceeding at a contested hearing, Applicants may receive legal advice only.

#### Respondents

* 1. When appearing in a proceeding for the first time at a mention, Respondents may receive in-court advocacy.
  2. When appearing in a proceeding for the first time at a directions hearing
     1. Respondents who are eligible for a substantive grant of legal aid for the family violence intervention order matter may receive legal advice or in the lawyer’s discretion in-court advocacy, and
     2. Respondents who are not eligible for a grant of legal aid for the related family violence intervention order matter may receive legal information only.
  3. When appearing in a proceeding for the first time at a contested hearing, Respondents may receive legal information only.

### Adults who have a cognitive or neurological disability

* 1. When appearing in a proceeding for the first time at a mention or directions hearing, Applicants and Respondents may receive in-court advocacy.
  2. When appearing in a proceeding for the first time at a contested hearing, Applicants and Respondents may receive legal advice only.

## 7. Universal entitlement to legal information

7.1 All clients presenting at the Duty Lawyer Service are entitled to information in writing or other accessible form to help the client to understand the legal nature of the matter and their options, the process to be followed, how to represent themselves in court, and where to access services, including those of a private practitioner.

7.2 Legal information is provided by VLA through its website, Legal Help and at court through printed brochures, information sheets and self-representation guides.

7.3 The Duty Lawyer Service must pro-actively provide Legal Information to people who are otherwise ineligible for a duty lawyer service because of their income or the nature of the matter.

## 8. Service matrix

8.1 The following table summarises the guidelines regarding the type of service available to each person.

| **Hearing type when client first appears** | **First mention** | **Subsequent mention** | **Directions hearing** | **Contested hearing** |
| --- | --- | --- | --- | --- |
| Child | In-court advocacy | In-court advocacy | In-court advocacy | Legal advice |
| Adult applicant with related family violence matter | In-court advocacy | In-court advocacy | In-court advocacy | Legal advice |
| Adult applicant with cognitive or neurological disability | In-court advocacy | In-court advocacy | In-court advocacy | Legal advice |
| Adult respondent with related family violence matter | In-court advocacy | In-court advocacy | *If eligible for a family violence intervention order grant of aid:*  Legal advice (discretion for in-court advocacy)  *If not eligible for a family violence intervention order grant of aid:*  Legal information | Legal information |
| Adult respondent with cognitive or neurological disability | In-court advocacy | In-court advocacy | In-court advocacy | Legal advice |

1. Appearance includes appearances in Court in person, via video conference or via a lawyer. [↑](#footnote-ref-1)