# Guidance note: Adopting a client first approach to legal assistance and proceedings during COVID-19

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## Purpose

This guidance note includes the principles and approach Victorian Legal Aid (VLA) will adopt in working with the rest of the legal system, to enable clients to have access to and participate in legal proceedings and decisions that affect them.

This includes:

* working together to assist vulnerable clients to access appropriate technology and support to participate
* developing processes which are trauma-informed, respectful, informed by client experience and provide just in time information which helps clients engage in and understand their options, rights and obligations
* providing guidance to legal assistance sector staff about how to work with clients who may need extra support to participate or for whom remote proceedings may not be suitable.

## Background

Courts and tribunals in family, civil and criminal jurisdictions have responded in different ways to the COVID-19 pandemic through changing practice approaches, expanding or introducing more phone-based or video conference proceedings, and working with legal service providers to establish processes which support remote proceedings.

VLA and other legal service providers have also continued or where necessary expanded the use of existing remote services. At VLA this includes:

* the Find Legal Answers section of our website
* our Legal Help information online chat service
* our Legal Help phone triage, information, advice and referral service including email or SMS legal information and referral
* legal advice and instruction taking (phone and email) or teleconference for prison clients
* assessment for and conduct of lawyer assisted family dispute resolution via teleconference
* phone-based legal advice
* e-signature processes for legal aid applications.

While virtual proceedings have been introduced primarily for the purposes of health and safety, they also have the potential to bring other benefits for many clients. We are committed to continuing to understand more about what benefits and challenges face people who have legal proceedings during this time and working with justice and practice partners to improve client experience wherever possible.

## What do we mean by remote or virtual proceedings and legal assistance?

* Court or tribunals heard via a remote platform such as Teams or Webex where multiple parties, lawyers and judicial officers can meet at the same time
* Video conference or phone teleconference provided legal advice or mediation
* Legal advice appointment over the phone.

## What is our current experience with remote legal services?

VLA and other legal assistance services have created service pathways for help seekers or people with legal needs to get timely, helpful and appropriate legal advice or casework while face to face advice appointments, duty lawyer services and proceedings have been minimised due to COVID 19.

Remote legal service delivery may have benefits such as:

* The ability for clients who are geographically remote or unable to attend in person to access legal assistance. Staff can be in a different location to clients. In some areas of law it may not even be totally necessary for the legal service to be in the same state (for example migration).
* Intake, triage, referral, booking and information provision processes can be more responsive to client capability and preference, giving the help seeker more capacity to self select or do initial research if they have the capacity to do this. For example, by using SMS messages, email or live chat services, help seekers can get immediate help with general questions which can help them prepare for or understand their next steps and avoid the need for them to wait for us to get to them via traditional means.
* The ability to develop consistent good practice service approaches, processes and practices across multiple programs and service types, rather than investing resources in developing these locally.

However, remote service provision may also have detrimental impacts on the ability of clients to access legal assistance or to participate in legal proceedings and the quality of the experience and the service they receive. In making decisions about how to service at this time, consider:

* how technology can make your legal program more accessible;
* how to use intake, triage and information to enable clients to help themselves and to help find people who can benefit more from direct and face to face contact;
* what you can put in place to support client participation and service quality, however the service is delivered. For example, some people need the support of a worker, interpreter or agency to help them find and connect with legal support. While this presents challenges to ensuring confidentiality when done virtually, the importance of finding ways to provide legal assistance to people most in need of our help means we should attempt to find novel solutions
* how best to upskill yourself and your colleagues on using technology to empower, inform and connect.

## Our client-first approach to remote proceedings: Enable clients to participate in decisions that affect them

### Our broad approach

* We will not make assumptions about who can participate in a remote or virtual proceeding.

We know that this can work for many people, including those working with interpreters, people experiencing a mental health issue, young people and people with disability. However, we will ask clients during assessment processes what they need to participate and help to identify if remote participation is appropriate in their situation. This may include what access to technology they have, privacy and safety considerations, need for support people or an interpreter, trust and relationship considerations.

* We will work to support people to understand, prepare for and engage in proceedings.
* We will aim to provide follow up information to clients confirming the outcome and next steps as soon as possible after the proceeding finishes.
* We will work with practice partners, clients and justice partners to find solutions for people who have limited access to suitable devices or technology to enable them to participate and stay informed.

This may include facilities or support at courts or tribunals or through support organisations. Our commitment is to advocating for system responses that enable vulnerable members of our community to participate in legal proceedings.

* We will continue to gather information about issues and challenges experienced by clients participating remotely through client surveys and staff feedback, and use these to refine our service approach and our work with other parts of the system.
* We will support our staff and other legal practitioners providing legal aid services to provide quality services in remote proceedings, including training or coaching staff to communicate effectively through different technologies with their clients before, during and after proceedings and to enable clients to address concerns in a timely way, take time out if needed or ask questions if needed.
* We will prepare information to help people prepare for and participate in virtual proceedings or legal assistance services.

## Guidance for staff assisting clients: understand, respond, communicate

### 1. Understand

Understand what access to technology the client has to participate.

* Is it a phone, video conference or online process?
* Can they participate on a phone or device they can readily access?
* Do they have reception or internet access, enough battery?
* Do they need help to get access to a particular application or website?

Understand what barriers to participation they experience.

* Are they a person who has priority characteristics or whose capacity to participate is limited?
* What things might affect their capacity to attend and participate?
* Can these be mitigated or is an alternative process necessary?

#### Considering and addressing barriers to participation: Applying the VLA client priority and capability policy

| **Person** | **Consider** |
| --- | --- |
| Children and young people  | With the child’s support people or guardians/parents, assess their: * capacity to participate virtually
* access to a suitable device
* privacy/location the process will take place in.

Practice before the proceeding and explore ways to keep the child focused/comfortable.  See the guidance note on working with children remotely <http://www.vla.vic.gov.au/information-for-lawyers/practice-resources/changes-to-our-services-due-to-covid-19#good-practice-guide> |
| People living with a cognitive impairment (such as an intellectual disability, acquired brain injury or other serious cognitive condition) | May have difficult accessing without support, reading instructions or knowing when to speak during the proceeding.  |
| Aboriginal and Torres Strait Islander people  | May prefer a face to face service or feel greater trust knowing who is on the call or online forum. How can the forum be made more culturally safe through who is participating, acknowledgements and other mechanisms?  |
| People who experience a mental health issue that significantly affects their ability to engage in everyday activities  | Consider impact of remote service delivery on their ability to trust in the process.  |
| People experiencing financial hardship (as assessed under VLA’s means tests for grants of legal assistance or income tests for other services). This will include people who are unemployed or relying on government benefits as their main source of income or otherwise living on a low income. | Lack of access to appropriate devices to participate remotely, including insufficient phone or internet data or wifi access. |
| People who have experienced family violence, including non-partner violence such as elder abuse, or a recent serious trauma including being a victim of violent crime  | Virtual participation risks considered in safety assessment - can the person participate without interference or surveillance? Refer the client to appropriate family violence support services to help them find a safe way to participate.  |
| People who have nowhere to live or who live in crisis or temporary accommodation   | Refer the client to appropriate support agencies to help them establish ways to stay in touch with lawyers and the court (eg set up and access email or SMS), get access to a device and a suitable location for the time of the proceeding.  |
| People in prison or a psychiatric facility  | Is access to teleconference or phone service available? Is there a way the person can access internet-based services?  |
| People who have recently arrived in Australia who experience significant challenges interacting with Australian legal and government systems, including refugees/humanitarian entrants and asylum seekers | Do they feel they can trust the process?    |
| People with low educational attainment or who have difficulty reading and writing  | Technological confidence may be impacted and may have difficulty if it requires typing.   |
| People who are elderly and have limited family support  | May have difficulty hearing or seeing the proceedings well or need help to establish connection online or in a phone-based proceeding.  |

### 2. Respond

Help clients to prepare for and participate in the process by:

* negotiating an alternative way for the client to participate if necessary - discuss options with the court or tribunal, such as:
	+ support to access a device
	+ access to a facility to participate in the proceeding safely and comfortably
	+ support to log on, practice and join in a proceeding electronically.
* supporting or advocating for clients to gain access to and be comfortable using a particular application, device or location. For instance:
	+ provide written or verbal information on the legal process, which includes how to prepare for and join a proceeding electronically or attend in person and how to use facilities at court or with the support of a community agency
	+ make a time to practice with the client before the proceeding.

### 3. Communicate

Communicate with the court, other parties and any relevant referral services about preferences or arrangements for a client to participate (with the client’s consent).

Regularly seek client feedback, identify common problems, and feed this into discussion between senior VLA staff, courts and tribunals and other organisations involved in supporting clients.

## Owner and review of this guidance note

The Executive Director Civil Justice, Access and Equity is the sponsor for this guidance note. It was developed by VLA’s COVID-19 Service Response Group and approved by the Senior Executive Team.

Feedback on this guidance note is welcome and can be directed to the Client Intake and Inclusion team at clientintakeandinclusion@vla.vic.gov.au.

## Appendix 1: What clients have told us

**What clients have told us has been good about participating over the phone or online**

* It’s good not having to travel all the way to Melbourne for a medical appointment connected to my court case.
* Talking to the legal service before court reduces stress about how it will go.
* Having a chance to practice the technology before the real thing helps.
* It helps to have a follow up call or email to understand what happens next.

**What clients have told us is difficult about participating over the phone or online**

* It can be difficult to hear everything, stay connected and follow if people talk too fast.
* It can be hard to get privacy or feel safe to participate especially for longer discussions.
* Not having access to internet, email or phone reception, storage or battery capacity can be difficult for some people.
* Not always knowing who is on the call or in the room with someone on the call.
* Unsure or not feeling they can trust the process or that they will be listened to.
* Not sure about protocols for when they can speak or how to communicate with their lawyer.