

# Child Protection Duty Lawyer Guidelines

March 2019

## 1. Purpose of these guidelines

- 1.1 To set out how Victoria Legal Aid (VLA)–funded duty lawyer services are to be delivered at Children’s Court (Family Division) locations across Victoria (the child protection duty lawyer service).
- 1.2 To define the nature and the scope of the child protection duty lawyer service.
- 1.3 To establish a consistent service that supports people in the child protection jurisdiction across Victoria.

## 2. Application of these guidelines

- 1.4 These guidelines apply to people delivering the child protection duty lawyer service across Victoria, including VLA staff lawyers, support staff involved in the process, panel practitioners and their agents.
- 1.5 These Child Protection Duty Lawyer Guidelines will be reviewed by VLA 3 months and 6 months after commencement, and annually on an ongoing basis.

## 3. Underlying principles

- 1.6 The child protection duty lawyer service provides legal help to people involved in child protection court proceedings<sup>1</sup>, targeting those who are most in need of legal help.
- 1.7 Decisions about the delivery of the child protection duty lawyer service must be clear, fair and made in line with these guidelines.
- 1.8 The child protection duty lawyer service promotes the vision and purpose<sup>2</sup> of the VLA child protection program.
- 1.9 Any person accessing the child protection duty lawyer service will be eligible for the type of service set out in these Guidelines, regardless of where the service is delivered.

<sup>1</sup> Any reference to ‘court proceeding(s)’ in these Guidelines refers to a proceeding in a primary application to the court, including a protection application; or an extension, breach, variation or revocation of a protection order. It does not include breach, variation or revocation of an interim Accommodation Order.

<sup>2</sup>**Our vision** – that the Victorian child protection system advances children's best interests.

**Our purpose** – to support the vision by ensuring that people affected by decisions or actions of the child protection system, particularly children, young people and parents, are informed, are supported to participate or have a voice in decisions that affect them, have their rights protected and upheld, and are treated fairly and according to law.

## 4. What does the child protection duty lawyer service do?

4.1 Duty lawyer services, defined in the *Legal Aid Act 1978*, involve legal services provided to a person who attends at court without having made prior arrangements for legal representation.

4.2 The child protection duty lawyer service is designed to increase access to legal services at Court. This means that, where possible, facilities such as video-conferencing may be used to help people who cannot travel to Court to be involved in their case.

4.3 The child protection duty lawyer service provides the following types of services:

- 1) Legal information
- 2) Legal advice
- 3) In-court advocacy

See paragraph 4.6 for the definition of each of these types of services.

4.4. The child protection duty lawyer service provides legal services to people on the first occasion they appear<sup>3</sup> 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.

4.5. A second duty lawyer service will only be provided where:

- 1) a hearing is adjourned within 2 business days; and
- 2) the adjournment is for reasons beyond the person's control; and
- 3) a grant of legal assistance is not available.

### 4.6. Type of services

4.6.1. **Legal Information** means general information in writing, by phone or face to face provided to help a person understand the child protection legal system; the application before the Court; the process to be followed; how to make an application to join proceedings; how to represent themselves in Court; and where to access services, including those of a private practitioner. It does not involve any information or advice that is specific to the person's circumstances nor in-court advocacy. Legal information may be provided by a lawyer or support staff.

It may include:

- 1) provision of relevant brochures and fact sheets
- 2) referrals to appropriate services
- 3) provision of a legal aid application form

4.6.2. **Legal Advice** means a lawyer providing information and advice about a person's Court proceedings, their options and the merits of each option, based on an understanding of that person's specific circumstances. It also includes assistance in applying for a grant of legal assistance. It may also include general legal information. It does not include in-court advocacy.

4.6.3. **In-court advocacy** means a lawyer providing information, advice, negotiation with other parties and representation in Court on the day.

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<sup>3</sup> Appearance includes appearances in Court in person, via video conference or via a lawyer.

## 5. Extent of service to be provided

5.1 No income test applies to the child protection duty lawyer service.

5.2 The child protection duty lawyer service uses a triage and referral process<sup>4</sup> to determine the type of service a person is eligible for on that day. The services that a person may receive are as follows and greater or a higher level of services should not be provided:

### 5.2.1 Child<sup>i</sup>

A **child** is entitled to **in-court advocacy** when appearing in a court proceeding for the first time at **any type of hearing**.

### 5.2.2 Child sibling<sup>ii</sup>

A **child sibling** is entitled to:

- a. **In-court advocacy** when appearing in a court proceeding for the first time at a **mention or a directions hearing**.
- b. **Legal advice** when appearing in a court proceeding for the first time at **any other hearing type**.

### 5.2.3 Applicant Parent<sup>iii</sup>

A **parent who has made an application** is entitled to **legal information** when appearing in a court proceeding for the first time at **any type of hearing**.

### 5.2.4 Respondent Parent<sup>iv</sup>

A **respondent parent** is entitled to:

- a. **In-court advocacy** when appearing in a court proceeding for the first time at **a mention**.
- b. **Legal information** when appearing in a court proceeding for the first time at **any other hearing type**.

### 5.2.5 Long-term Carer<sup>v</sup>

A **long-term carer** is entitled to:

- a. **Legal advice** when appearing in a court proceeding for the first time at **a mention**.
- b. **Legal information** when appearing in a court proceeding for the first time at **any other hearing type**.

### 5.2.6 Other person or non-party<sup>vi</sup>

Another **person or non-party involved in the proceeding** is entitled to **legal information** when appearing in a court proceeding for the first time at **any type of hearing**.

5.3 The following service matrix summarises the above guidelines regarding the type of service available to each person.

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<sup>4</sup> This process is documented in the child protection duty lawyer service manual. Note that in the referral process, Aboriginal people will be offered the first choice to be assisted by an Aboriginal legal service.

**Table 1: Service Matrix**

Hearing type when client first appears	Mention	Conciliation conference	Directions hearing	Contested hearing
Child	In-court advocacy	In-court advocacy	In-court advocacy	In-court advocacy
Child sibling	In-court advocacy	Legal Advice	In-court advocacy	Legal Advice
Respondent parent	In-court advocacy	Legal Information	Legal information	Legal Information
Applicant parent	Legal information	Legal Information	Legal Information	Legal Information
Long-term carer	Legal advice	Legal Information	Legal Information	Legal Information
Other person or non-party involved in the proceeding	Legal Information	Legal Information	Legal Information	Legal Information

<sup>i</sup> **Child** is defined as the person to whom the legal proceedings relate.

<sup>ii</sup> **Child sibling** is defined as a sibling of the child to whom the legal proceedings relate, who is under 18 years old and not party to the same protection application, nor already represented by a lawyer in related child protection legal proceedings.

<sup>iii</sup> **Applicant Parent** is a parent who makes an application to the Court. Parent is defined by section 3 of the *Children, Youth and Families Act 2005* and includes:

- the spouse of the father or mother of the child
- the domestic partner of the father or mother of the child
- a person who has parental responsibility for the child
- a person whose name is entered on the Register of Births, Deaths and Marriages as the father of the child
- a person who acknowledged that he is the father of the child by an instrument pursuant to the *Status of Children Act 1974*.

<sup>iv</sup> **Respondent Parent** is a parent who responds to an application made by the Department of Health and Human Services, a Community Controlled Aboriginal Welfare Organisation as defined in section 18 of the *Children, Youth and Families Act 2005* or another party. Parent is defined by section 3 of the *Children, Youth and Families Act 2005* and includes:

- the spouse of the father or mother of the child
- the domestic partner of the father or mother of the child
- a person who has parental responsibility for the child
- a person whose name is entered on the Register of Births, Deaths and Marriages as the father of the child
- a person who acknowledged that he is the father of the child by an instrument pursuant to the *Status of Children Act 1974*.

<sup>v</sup> **A long-term carer** is a person who has been appointed by the Court or the Department of Health and Human Services and has been the primary carer for a child on a final order for more than 2 years.

<sup>vi</sup> **Other party or non-party involved in the proceeding** includes any other adult family member, carer or other person of relevance to the child not defined as a parent in section 3 of the *Children, Youth and Families Act 2005*.