

Summary Crime Duty Lawyer and Help Before Court Guidelines

Magistrates' Court criminal law cases

Effective 1 March 2024

1. Purpose

- 1.1. To set out who is eligible to access Duty Lawyer and Help Before Court services in criminal cases listed at the Magistrates' Court of Victoria.
- 1.2. To help lawyers and legal assistants to prioritise eligible clients for these services.

2. Application

- 2.1. These guidelines apply to all lawyers and legal assistants providing Duty Lawyer and Help Before Court services to people with criminal charges listed at the Magistrates' Court of Victoria, whether they are VLA staff, briefed counsel or panel practitioners.
- 2.2. These guidelines do not apply to Children's Court or family violence proceedings and criminal charges listed at Specialist Family Violence Courts.

3. Underlying principles

- 3.1. VLA resources are limited and must be carefully targeted to those most in need of legal assistance.
- 3.2. In accordance with these guidelines, the Duty Lawyer and Help Before Court services aim to ensure people:
 - have their rights protected
 - are supported to participate in the legal process
 - are helped to address the underlying causes that brought them into contact with the summary crime system.
- 3.3. Where there is uncertainty about whether a help seeker qualifies for a service under these guidelines discretion is to be exercised in favour of providing the service.

4. What are the Duty Lawyer and Help Before Court services?

Duty Lawyer service

- 4.1. The Duty Lawyer service is delivered at the Magistrates' Court of Victoria by VLA lawyers, briefed counsel, panel practitioners and legal assistants. The service is available to assist people with cases listed that day without prior arrangement or if referred to the service.
- 4.2. Where possible, the Duty Lawyer service aims to help people resolve cases on the day that a person comes into contact with the service. Where a matter appears too complex to do so, eligible people should be assisted to adjourn the matter and be assisted through other avenues, such as referred to Help Before Court, or assisted to complete a grant of legal assistance.

Help Before Court service

- 4.3. The Help Before Court service is delivered by VLA lawyers, panel practitioners and legal assistants through the provision of legal information and legal advice before an accused person's court hearing as well as in-court advocacy where eligible. It does not service people in custody.
- 4.4. A primary goal of the service is to help people understand, prepare for and have their matter progress before court. The service should:
- provide relevant pre-court legal advice and legal information
 - provide an opportunity for people to engage with early intervention supports before court
 - reduce the time spent at court and number of times people have to go to court, and
 - complement and relieve pressure on the Duty Lawyer service.
- 4.5. People can apply for Help Before Court through the VLA website, Legal Help, or a VLA office. Lawyers providing pre-court legal advice through this service will be provided with the brief of evidence in advance.

5. Service levels

- 5.1. The Duty Lawyer and Help Before Court services help people in the following ways:
- **In-court advocacy:** by a lawyer providing advice to an accused person, negotiating with the prosecution (including to arrange diversion where appropriate) and representing the accused person in court on the day.
 - **Legal advice:** by a lawyer providing advice to an accused person which can, at the discretion of the lawyer, include negotiating with the prosecution (including to arrange diversion). The lawyer should also refer the person to legal and non-legal support services as appropriate.
 - **Legal information:** by providing information to help an accused person to understand the charges they face, the process to be followed, how to represent themselves in court and where to access services, including those of a private practitioner.
 - **Referral for a grant of legal assistance:** by helping an accused person to complete an application for legal assistance and, if necessary, helping the person to get an adjournment for that application to be processed.

6. Services for people in custody

- 6.1. A person who is in custody and has been brought to court for the first time in relation to a matter is a priority. The Duty Lawyer service must prioritise seeing all accused people in this category. No income test is to be administered. The Duty Lawyer will give advice and in-court advocacy on the day or help the person to get in-court advocacy either through an application for legal aid or by a referral to a private practitioner. Wherever possible unrepresented bail applications should be avoided.
- 6.2. Where the person has not requested the assistance of a private lawyer and the Duty Lawyer believes that it is appropriate that a bail application be made on the day then the Duty Lawyer service must prioritise that application. A Duty Lawyer will ordinarily appear to make the bail application.
- 6.3. Where the person identifies as Aboriginal or Torres Strait Islander and instructs the Duty Lawyer to make an application for bail, the duty lawyer should prioritise the making of this application even if the prospects of success are remote.

7. Services for people not in custody

7.1. This eligibility table applies to both Duty Lawyer and Help Before Court services. See the Appendix for examples of straightforward and significant charges.

Service level	Eligibility criteria
Legal information only	Available for a person who is not otherwise eligible for legal advice or in-court advocacy under these guidelines. No income test applies.
Legal advice	Available for a person who meets the income test and is facing a straightforward or significant charge. Non-priority clients facing a straightforward charge should receive legal advice only unless there are compelling reasons the person cannot be reasonably expected to represent themselves (see capability factors for guidance).
In-court advocacy	Available for a person who meets the income test and: <ul style="list-style-type: none"> • faces a significant charge; or • is a priority client facing a straightforward charge or significant charge In exceptional circumstances, a lawyer may determine that a person eligible for in-court advocacy can represent themselves (see capability factors for guidance).

7.2. Advice and in-court advocacy services may be refused for people who have a lawyer for the same matter.

Additional provisions for Help Before Court

7.3. A person who identifies as Aboriginal and/or Torres Strait Islander should be prioritised for pre-court legal advice.

7.4. Wherever possible, people eligible for in-court advocacy should be represented in court by the lawyer who provided pre-court legal advice.

7.5. Where a person appears suitable and eligible for diversion, assistance should be provided to negotiate this with the prosecution.

Universal entitlement to legal information

7.6. All people who face a criminal charge are eligible for legal information relevant to their circumstances including information about the charge, the legal process and how to represent themselves in court.

7.7. The Duty Lawyer and Help Before Court services must proactively provide legal information to accused people who are otherwise ineligible for legal advice or in-court advocacy.

8. Priority clients and capability factors

Priority clients are people:

- who identify as Aboriginal and/or Torres Strait Islander
- with a cognitive impairment (such as an intellectual disability, an acquired brain injury or other serious cognitive condition)
- with experience of a mental health issue that significantly affects their ability to engage in the court process
- who are experiencing homelessness
- who cannot effectively communicate in English
- who have experienced family violence (including non-partner violence) or recent trauma including being a victim of violent crime, or
- non-citizens who appear to hold a temporary (including bridging) visa, or may not hold any visa (unlawful non-citizens).

Capability factors include:

- the person's previous experience in the Magistrates' Court (including prior criminal history) and their understanding of the summary crime legal process
- the number of charges the person currently faces
- the person's experience of cultural or community practices, traditions or ideas that create a power imbalance or mistrust of authorities
- the person's English language proficiency or literacy.

9. Income test

9.1. People not in custody must satisfy this income test to receive advice or in-court advocacy services.

9.2. If the person has a Health Care Card or Pensioner Concession Card, they are considered to meet the income test automatically. Otherwise, the income test requires a simple declaration of income.

9.3. A person seeking assistance passes the income test if:

9.3.1. they receive a Centrelink benefit as their primary income source or have a current Health Care Card or Low Income Health Care Card, or

9.3.2. they are not supported by anyone else and their weekly after-tax income is less than:

- \$850 if they have no dependent children
- \$1000 if they have a dependent partner or one dependent child, with an additional \$50 for each additional dependent child
- a combined income of \$1000 after tax per week, if they are supported by a partner or another person, with an additional \$50 for each additional dependent child. This can be waived if the accused person cannot reasonably rely on that person to fund their legal costs (for example because of family violence).

9.4. The person is not required to produce any proof of income (pay slip or Centrelink benefit card). They will simply be asked to state their income which will be noted on the Duty Lawyer Record. If they have only been working for a short period of time, the person can give their average income over the last three months.

Service decision guide

Charge category	Remand ✓	Income ✖	Income ✓ Priority ✖	Income ✓ Priority ✓
Significant	In-court advocacy	Legal information only	In-court advocacy	In-court advocacy
Straightforward			Legal advice	

Charge categories and common examples

Significant charges	Straightforward charges	Legal information only charges
<p>Legal issues (including application of sentencing law) are more complex. Sentencing submissions are likely to impact the outcome. Penalty likely to be imprisonment, CCO or a substantial fine (>\$1500). Consider priors and aggravating circumstances.</p>	<p>Legal issues are narrow and penalty likely to be moderate fines/licence loss.</p>	<p>Exception: multiple charges in this category that make it likely the penalty will be more than a low-level fine.</p>
<p>Against a person Any assault (including unlawful assault) or cause injury charge Stalking Threat to kill Breach of FVIO/PSO</p> <p>Property/deception Burglary Criminal damage Possess prohibited weapon Social security prosecution Theft over \$500</p> <p>Drugs Drug charges other than use or possess a small quantity of cannabis</p> <p>Traffic/infringements 3rd drink/drug driving 3rd drive while suspended/disqualified Infringements with s 165 <i>Fines Reform Act</i> submissions</p> <p>Public order/procedural Fail to appear with straightforward or significant charges</p>	<p>Property/deception Shop theft under \$500</p> <p>Traffic/infringements 1st or 2nd drink/drug driving 1st or 2nd drive while suspended/disqualified Dangerous driving Breath test refusal Infringements where person not elected to contest (enforcement warrant) but penalty is more than low-level fine</p> <p>Public order/procedural Hinder police CCO/bail variations by consent, outstanding warrants Rehearings</p>	<p>Traffic/infringements Unlicensed driving Careless driving Unregistered vehicle Interlock removal and licence restoration applications Infringements where person has elected to contest in court (no enforcement warrant) Infringements where there is an enforcement warrant but there is no risk of a penalty greater than a low-level fine, including:</p> <ul style="list-style-type: none"> most agency prosecutions (eg parking fines, local council, Department of Transport, RSPCA, Fisheries) low-level traffic fines such as fail to wear a seatbelt, fail to display P plates etc <p>Drugs Use or possess small quantity of cannabis</p> <p>Public order Public drunkenness</p>

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- have experience of a mental health issue that significantly affects their ability to engage in the court process
- are experiencing homelessness
- cannot effectively communicate in English
- have experienced family violence (including non-partner violence) or recent trauma including being a victim of violent crime, or
- non-citizens who appear to hold a temporary (including bridging) visa or may not hold any visa.

Capability factors

- the person's previous experience in the Magistrates' Court (including prior criminal history) and their understanding of the summary crime legal process
- the number of charges the person currently faces
- the person's experience of cultural or community practices, traditions or ideas that create a power imbalance or mistrust of authorities
- the person's English language proficiency or literacy.