



Peninsula  
Community  
Legal Centre

# ADVICE & CASEWORK GUIDELINES

July 2019



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## 1. Introduction

PCLC's Advice & Casework Guidelines govern the work done by the Centre, in relation to simple advice and ongoing casework.

## 2. Simple Advice & Referral Guidelines

### 2.1. General Guidelines

Services are focused on allowing the client to leave with both knowledge of their legal rights and, where appropriate, a "self-help" strategy to follow.

### 2.2 Third Party Advice

PCLC cannot provide advice to a third person except in exceptional circumstances such as;

- ▶ It is a person who clearly acts with the client's consent or with clear delegated authority from an organisation
- ▶ It is a person representing the client in a professional capacity, for example, a lawyer, social worker and/or financial counsellor
- ▶ The client is physically incapacitated or hospitalised, and the client lacks the capacity to give instructions, and a power of attorney or guardianship is held.

### 2.3 Internal Referral

Matters from intake appointments requiring ongoing assistance will be opened directly by the caseworker concerned, or referred to the Director of Legal Services for allocation to or for assessment by another caseworker/program.

### 2.4 External Referrals

Clients will be referred externally when there is a conflict of interest, the Centre does not have the resources or capacity to assist or if the Centre does not advise in that particular area of law.

### 2.5 Service of Documents

The centre does not usually accept service of documents unless noted as acting 'on the court record' or a Notice of Address for Service has been filed, however staff may elect to use PCLC as an address for service where, for example a client is homeless, or is at risk of family violence repercussions.

## 2.6 No advice at all

- ▶ Business or financial matters/Partnerships, Taxation etc;
- ▶ Loan applications; Guarantees; Binding Financial Agreements; Pre Nuptial Agreements; or other documents which require a Solicitors Certificate;
- ▶ Traders or Landlords in their capacity as such;
- ▶ Conveyancing;
- ▶ Immigration (PCLC does not have an Immigration Agents License).

## 2.7 Community Organisations

PCLC may advise community organisations/incorporated associations about meetings procedure & complaint processes, but does not give advice to these organisations in their capacity as an employer. Please note that Justice Connect provides assistance with incorporation & governance matters for some types of not-for-profit organisations.

## 2.8 Conflict of Interest

All PCLC clients have the right to expect that workers and volunteers of the service will not provide advice or assistance to the 'other party' of the client's matter, nor that any knowledge or information obtained from the client will be discussed, used, or perceived to be used, to the disadvantage of the client in any way.

PCLC cannot act for both parties in a matter where their interest may be, or may be perceived to be in conflict. This means that PCLC can only act for one party to a dispute.

A conflict of interest involves a situation where a lawyer has or may have competing professional or personal interests in relation to the provision of advice and casework to client. Competing interests can make it difficult for a lawyer to fulfil their duties impartially. A conflict of interest can exist even if no unethical or improper behaviour results from it.

Circumstances in which a conflict of interest may arise include, but are not limited to, where the person presenting:

- ▶ Has an other party who is an ex client
- ▶ Has an other party who is a current client
- ▶ Was an other party to an ex client
- ▶ Was or is an other party to a current client
- ▶ The worker or volunteer's firm of lawyers is involved in the matter for the other party
- ▶ A previous PCLC worker is the other party to the matter

- ▶ A PCLC worker or volunteer has acted for the 'other party' in a previous job.

Following the closure of a file a conflict will exist, in the above circumstances, for 7 years.

For further information about conflict of interest, please refer to our Conflict of Interest – Procedure Guide.

### 3. Internal Referral for Ongoing Work Guidelines

The centre targets casework services to individuals or communities who are experiencing financial disadvantage and who fall into certain priority groups. These groups include those experiencing family violence, are at risk of homelessness, single parents, those with low literacy, disabilities or mental illness, indigenous, older, or young people, those from rural or CALD backgrounds.

**Only those cases which have a reasonable prospect of success shall be undertaken.**

**On-going casework can only be undertaken subject to the availability of caseworkers, resources, individual caseloads, time constraints and on-going funding.**

In special circumstances cases falling outside these guidelines may be taken on. Special circumstances will be determined on a case by case basis by the caseworker in consultation with the Director of Legal Services

## 4. Specific Guidelines for Matter Types

MATTER	Simple Advice/Referral	Internal Referral
Anti Discrimination & Charter of Human Rights & Responsibilities (Vic )	Simple initial advice may be provided. However, this is a complex area of law and is best referred to a private lawyer or, in cases where the client may be eligible, to VLA.	The Centre does not have particular expertise in this area, but may facilitate referrals to one of our pro-bono partners or to Justice Connect if there are exceptional circumstances.
Consumer	Initial advice is relation to contract law or Consumer Protection Law if appropriate. Refer to either; Consumer Action Law Centre (CALC), Consumer Affairs Victoria (CAV) or the relevant Ombudsman Service if attempts to resolve directly with provider have been exhausted.	The Centre may assist with consumer matters where resources and capacities permit. Unless the circumstances are extraordinary the assistance to clients would be limited to, letters to and/or negotiations with, the provider of the goods or services.
Criminal/Traffic	Advice can be provided regarding defenses and pleas. Criminal matters can be referred to VLA, VLA Duty Service or a private lawyer. In general clients will be only able to access a grant of Legal Aid if a conviction is likely to result in a term of imprisonment. Please note VLA Duty Lawyer services are limited to 'information only' in relation to minor offences and traffic offences where the most severe penalty is a fine.	The centre may assist with negotiation and preparation (including seeking medical reports). Representation may be arranged via a grant of aid or an in-house or pro-bono appearance; particularly where a client would have great difficulty self-representing, or the penalty may have serious consequences. Where pleading not guilty, all matters, but particularly traffic matters, MUST be assessed for merit before agreeing to assist.

MATTER	Simple Advice/Referral	Internal Referral
Criminal Records	If the query is in relation to spent convictions in Victoria, please refer to Human Rights Legal Centre. Alternatively refer to Victoria Police or Vic Roads.	Initial advice can be provided if required, assistance available will depend on the query.
Debt – owed by client	<p>Consider possible referral to financial counsellor. Better Place has a financial counsellor operating out of PCLC head office four days per week.. If the client is considering bankruptcy we recommend that they see a financial counsellor before they make that decision. The impact of bankruptcy will differ on the basis of the client’s circumstances.</p> <p>If the debt is related to a commercial lender the Consumer Action Law Centre is an appropriate referral. The matter can be referred to a private lawyer if the client has available funds.</p>	PCLC may be able to assist with the drafting of a Notice of Defence, but cannot provide representation in these matters. Letters of Demand can be responded to along with negotiations with the other party or their lawyer. How far the matter is taken by the Centre will depend on the circumstances of the client and the capacity of the practice.
Debt – owed to client	General advice in relation to the process for pursuing a debt. The client can be referred to the Magistrates’ Court or, if appropriate in the circumstance, to the Dispute Settlement Centre Victoria. If the client wants to litigate but is not comfortable representing themselves they will have to engage a private lawyer.	PCLC may be able to assist with the drafting of a letter of demand and negotiation with the other party. After assessing the prospects of success and the costs associated with enforcement we may assist with the drafting of a Magistrates Court claim and the associated documents, but cannot provide representation in these matters. How far the matter is taken by the centre will depend on the circumstances of the client and the capacity of the centre.

MATTER	Simple Advice/Referral	Internal Referral
Employment	<p>Initial advice regarding disciplinary matters, eligibility around unfair dismissal, entitlements owed. Consider a referral to Jobwatch, Fair Work Australia, a private lawyer or the relevant union, if the client is a member. Whether making an Unfair Dismissal Claim or a 'General Protections' Claim in relation to dismissal the application must be filed within 21 days of the date of termination. The 21 calendar day time limit does not apply to general protections applications that do not involve a dismissal. Applications where the employee has not been dismissed can be lodged up to six years from the day the alleged contravention occurred.</p>	<p>The Centre may assist with letters &amp; negotiation in simple matters and assist with the completion of applications. Representation will not be provided for conciliation or hearings.</p>
Family & Child Support	<p>Initial advice, particularly where there is specific expertise. Where clients have sufficient means they can be referred to private lawyers (please see volunteer lawyer referral sheet). Alternatives in the legal assistance sector include, Victoria Legal Aid or a specialist Community Legal Centre, such as Women's Legal Services.</p>	<p>Generalist Funded Family Law Service.</p> <p>Family Violence to Family Law Continuity Program ('The Program)</p> <p>Family Advocacy and Support Services ('FASS') (Duty lawyer services only)</p>
	<p><b>Generalist Funded Family Law Service</b></p>	<p>Provides advice, casework and in limited circumstances will arrange in-house or pro-bono representation services in family law matters including:</p> <p><b>Children's Issues:</b> Negotiation, consent orders, legally aided dispute resolution (FDRS), court applications, and representation where appropriate.</p> <p><b>Child Support:</b> Changes of assessment, paternity,</p>



MATTER	Simple Advice/Referral	Internal Referral
		<p>departure orders, child support debts. Assistance with documents, negotiation, paternity testing, representation where appropriate. PCLC assists either carer OR liable parents.</p> <p><b>Family Law Property:</b> Where there are also welfare issues for the client or a child, the centre may negotiate, &amp; assist with consent orders where the net asset base to be divided is insubstantial, or where there is little or no monetary benefit to our client. Some exceptions may be made where there is substantial family violence or risk of homelessness.</p> <p><b>Divorce:</b> Assistance with divorce applications, applications to dispense with service or for substituted service. Please note we will only assist with electronic drafting and filing of divorce application where the client possesses specific disadvantage or vulnerability.</p> <p><b>DUTY LAWYER SERVICES</b> The Generalist service also provides daily duty lawyer assistance at the Federal Circuit Court, Dandenong Registry. This means that PCLC provides two duty lawyers daily at the Federal Circuit Court, Dandenong, one FASS funded, the other generalist funded.</p>

MATTER	Simple Advice/Referral	Internal Referral
Family (cont)	<p align="center"><b><i>Family Violence to Family Law Continuity Program (‘The Program’)</i></b></p>	<p>The Program provides on the record advice, case work and representation to clients in family law matters including:</p> <ul style="list-style-type: none"> <li>▶ parenting and ancillary matters (such as recovery order or airport watch list orders matters),</li> <li>▶ child support,</li> <li>▶ property,</li> <li>▶ spousal maintenance and;</li> <li>▶ divorce.</li> </ul> <p>All clients must have experienced family violence (either as a victim or perpetrator) and be either:</p> <ul style="list-style-type: none"> <li>▶ eligible for a grant of legal aid (day staff will assess) and/or</li> <li>▶ satisfy PCLC's Advice and Casework Guidelines for internal referral</li> </ul> <p>Please note: 80% of matters conducted by the Program must be legally aided. 20% of matters can be conducted where the client is ineligible for aid but otherwise satisfies PCLC's Advice and Casework Guidelines. Due to the difficulty in obtaining legal aid, the 20% capacity is generally directed to urgent children's matters where there are serious family violence and other welfare concerns for the client or children. Assistance in property and spousal matters can only be given where the client meets VLA's Family Law Guidelines for Assistance (day staff can assess). Generally this means that the client must also be</p>

MATTER	Simple Advice/Referral	Internal Referral
		<p>seeking parenting orders and will receive no payment from the proposed property settlement, or a superannuation split only is sought);</p> <p>There is some very limited discretion to assist clients with property matters who are not eligible for legal aid, but in practice this is taken up with children's matters as stated above.</p> <p>Program lawyers provide visiting advice services at the Frankston Magistrates' Court on Tuesdays and the Moorabbin Justice Centre on Tuesdays and Fridays. Please note this for family violence clients who require family law advice.</p>
	<p><b><i>Family Advocacy and Support Services ('FASS') (Duty lawyer services only)</i></b></p>	<p>FASS provides daily duty lawyer services and legal and non legal referrals at the Federal Circuit Court, Dandenong Registry.</p> <ul style="list-style-type: none"> <li>▶ Client must have experienced family violence to be eligible for assistance;</li> <li>▶ Clients receive advice, assistance with "at Court" negotiations, the drafting of urgent documentation and representation in limited circumstances.</li> </ul> <p>FASS clients can receive ongoing PCLC family law assistance by referral to Pilot or PCLC's generalist funded family law service</p>

MATTER	Simple Advice/Referral	Internal Referral
Family Violence Intervention Order (FVIO)	Advice can be provided in relation to options, court processes and support services. Provide pamphlets or refer to our Duty Lawyer service at Frankston Magistrates' Court where appropriate. If at another court, refer to the duty lawyer services there.	The Centre has a duty lawyer service at Frankston Magistrates' Court on Monday, Tuesday and Wednesdays as well one Friday per month. Our Duty lawyers advise, negotiate, and represent. We are also able to assist with initial applications, urgent VOCAT applications & liaison with other services. Note that the first date is a 'mention' day only, and if not settled, matters will be adjourned to a Directions Hearing or a contest on another date. PCLC will represent at directions hearings. We do not generally provide representation at contest.
Personal Safety Intervention Order (PSIO)	Only advice in relation to prospects of success and procedure can be provided. For a client to be eligible for a grant of legal aid there needs to be an 'obsessed stranger' level of stalking for an applicant or a real risk of homelessness for a respondent. If these criteria are not met they will need to be referred to a private lawyer.	Only advice in relation to prospects of success and procedure can be provided. PCLC does not offer representation in PSIO matters.
Fencing Dispute	First step should be discussing the matter with the neighbour, or if that isn't possible, communicating through a letter or notice to fence. If the matter remains unresolved refer to the Dispute Settlement Centre Victoria (DSCV). The only other options are to self-represent in the Magistrates' Court or to engage a private lawyer. There is generally a limit of 3 advices in relation to one matter depending on the circumstances.	Depending on the vulnerability of the client the centre can draft letters and assist with relevant notices. PCLC does not assist with representation in these matters.

MATTER	Simple Advice/Referral	Internal Referral
Fines (infringements)	If the number of infringements is minimal initial advice in regards to options can be provided.	Where there are multiple fines, or where special/exceptional circumstances exist, the Centre can assist with enforcement review, internal review and family violence scheme applications. Where appropriate the clinic may arrange internal or briefed appearances.
Guardianship, Administration & Powers of Attorney (POA)	VCAT website has good explanatory information along with all the necessary forms. The Office of the Public Advocate (OPA) has numerous publications in relation to these matters and also provides a phone advice service. If the client has a disability it may be appropriate to refer them to Villamanta Disability Rights Legal Service.	The Centre may assist clients with Guardianship and Administration and POA matters, but the matter would need to be assessed by the caseworker and the Director of Legal Services.
Liable/Slander - Defamation	Major awards for defamation tend to be restricted to politicians, celebrities or prominent professionals because the courts must look at the cost of damage to reputation. Occasionally ordinary people can get embroiled in defamation claims. Without particular expertise it is difficult to provide advice, it would be appropriate to refer to a private lawyer who practices in the area.	The centre does not have the expertise to run on-going matters in these areas. However if there are exceptional circumstances it may be referred to a pro bono partner or Justice Connect.

MATTER	Simple Advice/Referral	Internal Referral
Motor Vehicle Accident (property damage)	<p>Advice can be provided in relation to options available to the client, depending on whether they are liable and/or insured. Frequently a third party debt will arise from a motor vehicle accident. This is where the other parties' insurance company is pursuing our client for the cost of the repairs to the insureds vehicle. Please refer to the 'Debt owed by client' guideline. If the client has means refer to a private lawyer.</p>	<p>Clients can be assisted with a letter of demand or response to a letter of demand. In certain cases we may take matters on depending on the merits of the case and the circumstances of the client, including vulnerability to any judgement. We do not have the resources to represent clients in civil matters at this time but may assist them to draft the necessary court documents.</p>
TAC, Workcover, Claims for Personal Injury	<p>No advice on TAC or WorkCover matters unless lawyer has particular expertise. Referral to a private lawyer with expertise in the area.</p>	<p>If the PI matter is a minor one and only expenses are sought, we <b>may</b> draft letters and conduct negotiation/settlement. Representation is not available for these matters.</p>
Tree & neighbourhood disputes	<p>First step should be discussing the matter with the neighbour, or if that isn't possible, communicating through a letter or email. If the matter remains unresolved refer to the Dispute Settlement Centre Victoria (DSCV) or to the local council for a complaint to be lodged, if it is a matter the Council deals with. If the matter remains unresolved and the client wishes to initiate proceedings in the Magistrates' court they should be referred to a private lawyer.</p>	<p>The Centre may assist with tree and neighbourhood disputes where, letters to and/or negotiations with, the other party are required; this assistance depends on the resources available. PCLC do not assist with representation in these matters.</p>

MATTER	Simple Advice/Referral	Internal Referral
Social Security	Initial advice followed by a Referral to Social Security Rights Vic or VLA if specialist information required. A Centrelink prosecution should be treated as a general criminal matter. SSRV do not handle prosecution matters.	The Centre may do some on-going work in this area, however there is no particular expertise so it will depend on capacity and resources. PCLC has a close relationship with SSRV and may be able to call on their guidance or make a warm referral.
VOCAT & crime compensation	Initial advice should include the 2 year time limit applicable to VOCAT applications. Clients can be referred to VOCAT website and Helpline. Referrals can also be made to Southport Community Legal Centre who have secured funding for a Victims of Crime Service that is available to clients all over Victoria.	The Centre assists with VOCAT matters when resources allow. Generally priority will be given to clients seeking compensation as a result of family violence. Assistance can be initial advice right through to running the matter from beginning to end. In FV matters, assistance may be given with urgent VOCAT applications for interim awards.
Wills & Estates	Basic advice about probate and the role of the executor can be provided. If there is a serious dispute in relation to a deceased estate the matter should be referred to a specialist private lawyer.	The Centre does not have particular expertise in this area, but may facilitate referrals to one of our pro bono partners or Justice Connect if exceptional circumstances exist.
Wills & Powers of Attorney (drafting)	<p><b>PCLC DOES NOT WITNESS WILLS OR POAs DRAFTED BY OTHERS</b></p> <p>Basic advice in relation to the operation of Wills &amp; Powers of Attorney.</p>	Due to the risk to the practice and lack of expertise PCLC only drafts simple Wills and POA's for people receiving palliative care, whether at home or as an inpatient. This is arranged through day staff and most frequently comes through requests from Peninsula Health or a similar agency