# Guidance note: Public interest and strategic litigation

## Overview

In making decisions in relation to the funding of strategic litigation (including appeals to and judicial reviews in the Supreme Court), Victoria Legal Aid (VLA) relies upon the advice of counsel briefed to determine whether there are reasonable grounds of appeal or review.

The purpose of this note is to provide guidance to counsel when drafting advices in relation to the merits of public interest and strategic litigation.

## Guideline 8 – Public interest and strategic litigation

[Guideline 8](https://handbook.vla.vic.gov.au/handbook/8-public-interest-and-strategic-litigation) of VLA’s *Handbook for Lawyers* provides that:

Legal assistance may be granted to a person for a legal proceeding that:

* is not otherwise covered by Victoria Legal Aid (VLA) guidelines and
* carries significant public benefit by seeking to either:
  + clarify or test the scope of existing legal rights and duties
  + challenge the accepted interpretation of legal rights and duties
  + establish new legal rights and duties in the common law or under statute
  + improve administrative decision making, and the efficiency and fairness of the justice system.

## Content of the merits advice

The purpose of the merits advice is to assist the VLA decision maker to make a timely decision about whether guideline 8 has been met. It is therefore recommended that the nature of the alleged error (for example, admission of inadmissible evidence*,* misapplication of precedent, incorrect interpretation of statutory provision, procedural error), be clearly set out.

Counsel should also explain how judicial determination of the case would benefit a wide range of people, not merely the individual client. The question is whether the case raises an issue of legal principle which is likely to have practical implications for the administration of justice in future cases.

As far as possible, counsel should give clear reasons.