

# Promoting access to justice

## Legal Assistance Referral Scheme

As in previous years, the Bar Association's staff received in the order of 500 – 600 enquiries about legal assistance and related matters. Many enquiries were made by persons visiting the association's offices unannounced. All legal assistance enquiries were addressed to the best of our ability.

For the 2006-2007 financial year 236 applications (17 applications less than last year) for assistance were received and processed. Of these applications, 117 were eligible under the scheme's guidelines for referral to a barrister. The assessment of all applications involved the application of considerable time and resources, whether they were ultimately referred or not. The breakdown of those applications not referred to barristers is set out in the accompanying statistical report.

For the period in question, barristers contributed approximately 1200 hours through the scheme, with 34 of these matters still in the court system. An additional 200 hours work was contributed from matters commenced in the previous financial year.

Since the scheme's inception, barristers have contributed approximately 28,450 hours of work.

### The following facts arising from an analysis of the scheme's activities over the last financial year are worth highlighting:

- Nearly 70 per cent of the matters referred to barristers were considered to have legal merit/prospects of success;
- The number of matters referred to barristers increased by five per cent compared with 2005-06;
- No fee matters comprised the highest category of those matters handled on a continuing basis;
- Nearly 25 per cent of finalised matters referred to barristers had favourable outcomes for the applicant;
- 70 per cent of the applications to the scheme were refused legal aid as being outside the commission's guidelines;
- There was a 25 per cent increase in the number of applications received in the jurisdictions of the Supreme Court, District Court and Local Court;
- There was a 110 per cent increase in the number of applications received from the northern suburbs of the metropolitan area;
- There was a 50 per cent decrease in the number of applications received in the jurisdiction of the Federal Court, as opposed to the Federal Magistrates Court where referral numbers were consistent with last year. This could be attributed to the general fall in the number of migration matters filed in the Federal Court and/or a higher utilisation of the court's own legal assistance scheme;
- There was also a significant decrease in the number of applications received from Villawood Detention Centre. This could be attributed to the existence of the Federal

Court's Refugee Review Tribunal Legal Assistance Scheme.

### Listed below are examples of some of the results achieved through the scheme:

- The Law Society Pro Bono Scheme referred a man living in Western Australia to the scheme in the hope he could be represented in a forthcoming hearing in the Equity Division of the Supreme Court of New South Wales. He was challenging his late mother's will after having been excluded as a beneficiary. He was also facing significant costs for a medical condition and was living as a boarder. The main beneficiary of the estate also had significant medical problems and was not in a position to provide a roof over her head if the property, the only asset of the estate, was sold. A barrister agreed to appear. The matter was settled after a brief court appearance.
- A young Egyptian lawyer arrived in Australia and sought asylum, claiming to have been persecuted because of his activism on behalf of the Coptic Christian community in his local area in Egypt. The minister's delegate refused his application and that decision was affirmed by the Refugee Review Tribunal on review. The tribunal accepted that the young lawyer was seen as a 'trouble maker' in his local area and that local officials had detained and beaten him on at least one occasion to discourage his activities on behalf of the Coptic minority. However, the tribunal found that his problems were limited to his local area; that he could avoid persecution by moving to another part of Egypt and as such he was not a refugee within the terms of the UN Convention on Refugees and the Migration Act. The Federal Magistrates Court refused the lawyer's request for judicial review of the tribunal's decision. The scheme referred the matter to a barrister who appeared for the applicant on appeal to the Federal Court and successfully argued that the tribunal did not ask itself the right question because it failed to consider whether, if he returned to a different part of Egypt, the young lawyer would continue to act for the Coptic community and thus arouse the same anger from local officials in his new locality as he had in his old one. Stone J ordered that the matter return to the tribunal to be considered according to law. The scheme referred the matter to another member of the Bar, who is also a registered migration agent, who provided significant support in the tribunal rehearing. On the rehearing, the tribunal granted the applicant a temporary protection visa and he is now able to live and work in Australia until the situation significantly changes in Egypt.
- A referral was received from a community legal centre concerning a young university student who was appealing matters arising from a night of celebration for a friend's graduation. A barrister agreed to appear in the District Court, Downing Centre, resulting in no conviction being recorded.

- A Sydney-based barrister travelled to Wollongong Local Court to appear on behalf of a young man who had been charged with negligent driving occasioning grievous bodily harm. He had been towing a trailer on a dual carriageway when it began to 'fishtail'. The trailer was carrying a car and the force of the swinging trailer took the towing vehicle across the median line and into incoming traffic. A collision with a van caused serious injuries to two people in the oncoming vehicle as well as to the young man's own passenger. His ability to work was at stake as his job necessitated him having a licence. His evidence was that at the time the trailer began to fishtail he did not brake and in fact accelerated. Evidence was presented in court that this was the technique recommended by the Roads & Traffic Authority for dealing with swinging trailers. The magistrate was not persuaded the young man had been negligent and dismissed the charge.
- A member of the public came to the scheme seeking assistance when her elderly father, visiting from overseas, was charged with assault and indecent assault. A barrister agreed to assist and began to prepare for a hearing. However, in the course of contacting the prosecution it emerged there were difficulties in the prosecution case leading to the charges being withdrawn. One final appearance was required with the father and an interpreter in the Local Court, Downing Centre to consent to the withdrawal. The father subsequently returned to his residence overseas.
- A solicitor referred a client to the scheme in relation to Supreme Court Equity proceedings in which the client was being sued in proceedings commenced in 2004, together with his former employer and others, for declaratory relief and damages arising from alleged removal and pumping of used cooking oil. The client was an employee truck driver who acted according to his employer's direction. The plaintiff's claim alleged that the client had been engaged in knowing participation of the breach thereby attracting personal liability. A barrister agreed to assist and provided a written advice as to an assessment of the plaintiff's pleadings against the client. The client had ceased to be employed in early 2006 and accordingly had no financial interest in the proceedings. The matter was settled by filing Short Minutes of Order.
- A member of the Bar referred a woman to the scheme for assistance in relation to defending a civil action in the Local Court, Downing Centre. The woman, of Chinese nationality and resident in Australia for 20 years, but with a poor command of English and limited means, had taken her car to a mechanic in early 2004 to obtain a pink slip for registration purposes. She was under significant financial pressure at this time. When she returned to collect her car, she was informed that over \$700 worth of brake repairs had been performed by the mechanic without her consent. The car was thereafter held by the mechanic for over two and a half years, with 'storage fees' allegedly amounting to over \$20,000. The vehicle was at all times subject to a hire purchase agreement with the client having to continue payments without the use of her vehicle. The repairer commenced court proceedings to recover an amount

exceeding \$5,000 allegedly owed for repairs together with ongoing 'storage fees' of \$30 per day. The scheme referred the matter to a barrister who agreed to assist. A solicitor also agreed to assist through the Law Society's Pro Bono Scheme. After multiple court appearances over many months, the client recovered possession of her car when it was placed on a public street. She maintained her defence of the repairer's claim and her claim for damages in respect of the withholding of the car for a period of approximately two and a half years. After several aborted attempts at hearing the matter was concluded when it was determined that the repairer's company had been de-registered. The magistrate dismissed the company's claim and the client's claim and made orders in favour of the client as to costs. The costs order in the client's favour secure some measure against the repairer reviving the claim.

#### **Volunteers encouraged**

In 2006-07, the executive director and the manager of the scheme spoke to readers about the scheme at bi-annual Bar Practice courses, with a pleasing response in each instance. The president and the executive director, by circular and personal representation, have also encouraged members to participate in all schemes administered by the association and in the various court appointed pro bono schemes.

#### **Barristers' Referral Service**

The Barristers' Referral Service is aimed at addressing the increasing number of requests to the association for assistance in obtaining the services of a barrister. Enquiries have been directed to the association's website under 'Find a Barrister', which has been visited 500,000 times over the past twelve months. This category of assistance is invaluable for many applicants who have not qualified for assistance through LARS on financial grounds. If the enquirer does not have access to the internet, staff fax or post to them a list of barristers in the relevant area of practice.

#### **Duty Barrister schemes**

The manager and staff of LARS manage the operation of the Duty Barrister Scheme which operate at the Local and District courts at the Downing Centre.

Barristers are rostered to attend each day at the courts. The schemes are promoted to Readers at each of the Bar Practice courses, which resulted in additional volunteers being added to the roster.

A computer has now been installed at the Duty Barrister Room.

Duty barristers see an average of four clients per day, which equates to approximately 2,000 clients per year.

#### **Court appointed pro bono schemes**

The manager of LARS assists with the administration of the court appointed legal assistance schemes concerning day to day queries which may arise, together with the provision and updating of the list of barristers who have volunteered their services. Barristers now support pro bono schemes in the Federal Court, Federal Magistrates Court, Supreme Court, Land & Environment Court and District Court. The

executive director has ongoing discussions with members of the judiciary and court staff in relation to these schemes, which impose a significant burden on members of the Bar and Bar Association staff.

aid funding, has contributed significantly to the workload (and stress) of LARS and other Bar Association staff who manage walk-in applicants.

### **Interaction with other pro bono service providers**

LARS works closely with the Law Society Pro Bono Scheme. There is almost daily contact between the two schemes. Together with the Law Society Pro Bono Solicitor, the manager of the scheme on two occasions this year met with customer service officers at LawAccess to outline the scheme's guidelines and give feedback as to the outcomes of the referrals which have been made. The executive director is a Board Member of LawAccess. The association's director of law reform & public affairs is also a member of the LawAccess NSW Strategy Committee. The manager has acted for the executive director at meetings of the trustees of the Pro Bono Disbursement Fund when he is interstate. She also attends the Law & Justice Foundation's quarterly NSW Legal Referral Forum.

The Bar Association is a member of the NSW Legal Assistance Forum (NLAF). The scheme's manager attends board meetings, to be accompanied next year by the director of law reform & public affairs. She continues to be a member of the Coalition of Aboriginal Legal Services' working party and the pro bono working party. She is also a member of the Mental Health working party.

There is also a meeting every two months between representatives of LARS, the Law Society Pro Bono Scheme and PILCH. From time to time, a representative from the National Pro Bono Resource Centre attends.

The manager and staff of the scheme attended a seminar at Legal Aid on 'Demystifying Mental Illness.' Ongoing training for staff has included attendance at PIAC's 'Law for Non-Lawyers' course, the abovementioned Legal Aid seminar and 'Dealing with Difficult People', a course conducted by Sydney University's adult education program.

There have been many difficult phone calls, which often involve multiple calls from the one person, or from different individuals, which are dealt with by the scheme. Reception staff of the association also have to deal with the applicants who attend unannounced. There have been several unpleasant scenes where senior staff or security have had to intervene.

The Bar Association continues to bear a significant portion of the costs for the administrative infrastructure needed to support the operation of the scheme. The staffing component of this support, in terms of time and salary, is significant.

### **Conclusion**

The pro bono landscape has changed significantly since the inception of the scheme in 1994. There are now many more organisations, including courts, offering assistance. LARS is a scheme which operates at the coalface of offering legal services to people in need of legal help. We feel that the scheme embodies and reflects the strongly held view of the profession that a person's rights and access to justice should not be diminished because of impecuniosity.

The seemingly general increase in the numbers of unrepresented litigants, due in the main to the lack of legal

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## Legal Assistance Referral Scheme statistics

2005 - 2006    2006-2007

High Court		
Application for special leave	7	6
Original jurisdiction	3	1
<b>Total</b>	<b>10</b>	<b>7</b>

Federal Court		
Full bench appeals	5	4
Immigration	26	11
Administrative	4	2
Discrimination	1	1
Intellectual property	3	-
Trade practices	4	2
Native title	2	-
Bankruptcy	7	2
<b>Total</b>	<b>52</b>	<b>22</b>

Federal Magistrates Service		
Discrimination	1	-
Family law - access	1	-
Family law - child support	-	-
Family law - residency	-	-
Immigration	14	11
Bankruptcy	1	2
<b>Total</b>	<b>17</b>	<b>13</b>

Supreme Court		
Court of Appeal	4	11
Court of Criminal Appeal	7	5
Common Law	16	18
Administrative	-	1
Equity	23	23
Criminal	2	5
Commercial	-	1
Family Provisions	2	2
Defamation	-	3
Professional Negligence	1	-
<b>Total</b>	<b>55</b>	<b>69</b>

2005 - 2006    2006-2007

Family Court of Australia		
Full bench appeals	2	-
Access	3	9
Residency	7	4
Spousal maintenance	-	1
Property settlement	8	10
Other (costs hearing)	2	1
<b>Total</b>	<b>22</b>	<b>25</b>

District Court		
Criminal	10	23
Civil	10	15
Care proceedings	1	1
Defamation	-	-
Professional negligence	-	-
<b>Total</b>	<b>21</b>	<b>39</b>

Land & Environment Court		
	7	3

NSW Industrial Relations Commission		
	6	5

Local Court		
Criminal	16	21
Civil	9	10
Family matters - access	-	1
Family matters - child support	-	1
<b>Total</b>	<b>25</b>	<b>33</b>

Children's Court		
	2	1

Coroners Court		
	1	1

2005 - 2006 2006-2007

Tribunals		
Administrative Appeals Tribunal	5	6
Administrative Decisions Tribunal	12	4
Consumer Trader & Tenancy Tribunal	4	2
Victims Compensation Tribunal	-	1
Anti-Discrimination Board	-	1
<b>Total</b>	<b>21</b>	<b>14</b>

Referral Source		
Member of public	45	34
Solicitor	43	42
Law Society Pro Bono Scheme	36	35
Community legal centre	34	31
Legal Aid	22	25
Judge	18	19
Law Access	16	17
Welfare/ community groups/ social worker/ other	13	18
Member of the Bar	8	11
Member of parliament	4	1
PILCH	-	1
Director of Public Prosecution	-	1
Pro bono director – large firms	-	1
Web site	Approx 3,300 hits	Approx 6,000 hits

Client Location		
Sydney Metropolitan Area		
West	80	77
North	20	47
South	37	26
East	14	10
Inner City	27	24
Central Coast	5	9
Country	27	25
Interstate	6	4
Villawood Detention Centre	22	6
Prison	13	8
<b>Total</b>	<b>251</b>	<b>236</b>

2005 - 2006 2006-2007

Type of work done		
Merit assessment	115	117
Advice (over and above initial merit assessment)	62	67
Conferences	53	41
Appearances	45	48
Matters settled	no data	21
Appearances at hearing	38	29
Other (including second opinion & preparation of submissions)	19	10

Rejection / no action		
Outside guidelines	43	55
Too late notification	3	7
No further information received/no further contact from client	36	25
Requires a solicitor	24	19
Eligible for legal aid	5	3
Referred to a community legal centre	4	1
Briefed barrister privately	3	4
Briefed solicitor privately	7	3
Matter discontinued	3	2
<b>Total</b>	<b>128</b>	<b>119</b>

Turnaround time		
Same day	18	15
Less than a week	22	22
1 – 2 weeks	26	27
2 weeks plus	49	53

Basis brief accepted		
No fee – merit assessment	115	117
No fee – continuing involvement	59	64
Reduced fee	31	29
Speculative / costs recovery	25	24

Refused legal aid		
Merit	17	20
Financial	39	58
Outside guidelines	197	158

Matters considered by a barrister to have legal merit/prospects of success		
Yes	78	81
No	37	34