



Reports

Promoting access to justice

Legal Assistance Referral Scheme

The scheme

The New South Wales Bar Association's Legal Assistance Referral Scheme (LARS) aims to provide legal assistance for free or at reduced rates to persons who would otherwise not be able to obtain legal assistance without suffering severe financial hardship. As such, it 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 indigence.

Despite the considerable amount of assistance provided through LARS, the scheme represents only a portion of the pro bono work customarily carried out on an informal basis by members of the Bar. The Bar Association's Legal Assistance Department runs LARS, with the majority of funding for the administrative support provided by the Public Purpose Fund. Since the scheme's inception barristers have contributed approximately 27,150 hours of work.

Eligibility

The scheme has in place a set of strict criteria for determining an applicant's eligibility for assistance. For example, personal injury, medical negligence, neighbourhood disputes and Apprehended Violence Orders are excluded from the scheme. Further, LARS will not consider matters refused assistance by other legal assistance providers due to a lack of legal merit. The income threshold for applicants has been quantified at a gross income not exceeding \$1,000 per week. Further information about applicants' obligations, as well as the nature and criteria for grants of assistance may be obtained from the Bar Association's web site under 'Legal Assistance'. Once an applicant has qualified financially for assistance, an attempt is made to refer the matter to a barrister for an assessment of the legal merit on a no-fee basis. After the provision of the initial advice, if further legal services are recommended, the applicant may deal with the barrister on one of the following bases:

- ❖ the barrister may accept the matter on a speculative basis where the applicant only pays on a successful outcome, and/or the establishment of a costs entitlement, and/or the actual recovery of costs from the other party;
- ❖ the barrister may agree to accept the matter on a reduced fee basis;
- ❖ the barrister may accept the matter for no fee, regardless of the outcome (and hence in the event of success, would not be seeking a costs order which includes payment of any fee to the barrister).

Review of 2005-2006

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 (unannounced) the association's office. All were addressed to the best of our ability to do so.

For the 2005-2006 financial year, 253 formal applications for assistance were received and processed. This is a nine per cent reduction on last year's figures, bringing the figures back to the same level as the 2003-2004 financial year. Of these applications, 115 were eligible under the scheme's guidelines for a referral to a barrister. All applications, whether ultimately referred or not, involve considerable time and resources in their assessment. 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 1,300 hours through the scheme, with 23 matters still in the court system. An additional 1,000 hours work was contributed from matters commenced in the previous financial year.

There were some points to note from an analysis of the activities of the scheme:

- ❖ The number of referrals received from Legal Aid increased nearly 300 per cent.
- ❖ Sixty-eight per cent of the matters referred to barristers were considered to have legal merit/prospects of success.
- ❖ The financial category of matters handled on a continuing basis was highest in the 'no fee' category.
- ❖ There was a 38 per cent drop in the number of referrals received from the District Court of New South Wales. This could be attributed to a general fall in the number of matters filed in the District Court or a higher utilisation of the court's own legal assistance scheme.
- ❖ Referrals received from the Federal Magistrates Service in immigration matters dropped by 60 per cent drop. This could be attributed to a greater utilisation of the Federal Court/Federal Magistrates' Court Refugee Review Tribunal Legal Assistance Scheme (run by the Bar Association and Law Society of New South Wales) or the presiding magistrates only referring matters which, in their view, are meritorious in law.
- ❖ As in the previous financial year, 80 per cent of the applications to the scheme were refused Legal Aid as being outside the commission's guidelines.

Legal Assistance Referral Scheme - continued

Listed below are some results achieved through the scheme:

A District Court judge referred a young man to the scheme in the hope he could be represented in a criminal trial in two days' time. The man was charged with matters arising out of serious allegations of a knife attack, allegedly perpetrated by a co-accused. The trial had been set down for 10 days. The barrister agreed to go to court to do what he could to assist in a possible plea to lesser charges in the proposed indictment. Initially, there was some discussion with the Crown regarding a possible plea to some of the counts. The matter proceeded, however, before a jury for three days until a plea bargain was entered for one matter only. The client pleaded guilty to a technical affray, was convicted and ordered to perform 100 hours community service. The barrister was paid \$500 for 70 hours work.

A barrister agreed to assist a client in a re-trial of a matter remitted to the District Court by the Court of Criminal Appeal. The client had been convicted in 2004 of over 30 charges of doing acts as an officer of a body corporate with the intention to cheat or defraud a former employer of \$2.2m. Despite being an undischarged bankrupt Legal Aid had been refused for the re-trial. The client was prepared to represent himself, knowing the maximum penalty was 10 years. The barrister appeared on over 10 interlocutory applications and was successful in obtaining two adjournments, whilst also arguing the case for a grant of legal aid. He was able to gain access to a large quantity of commercial documents which had been resisted and had not previously been made available to the client. A grant of legal aid was made and the barrister appeared at the trial as junior counsel to a more senior criminal barrister. In all, the barrister provided over 200 hours of assistance in addition to that which was funded by legal aid.

A young man made application to the scheme in relation to two charges for alleged breaches of his Fauna Keeper's Licence brought against him by the Department of Environment & Conservation. A barrister agreed to appear on his behalf at the hearing in the Local Court at Parramatta and was successful in having one charge dropped and a small fine imposed on the other charge. The client's dream of being a keeper at Taronga Park Zoo was kept alive.

A solicitor from an inner city church's Legal Counselling Referral Centre referred a young man on a Disability Support Pension to the scheme for assistance in relation to three charges brought against him by NSW Police. The client had been granted legal aid but did not want to plead mental health as a defence, which he had been advised to do. The barrister appeared on his behalf at the hearing in the Local Court. By consent, all charges were withdrawn; there was a costs order against the police.

Volunteers encouraged

The executive director and the manager of the scheme spoke to readers about the scheme at both of the 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 web site under 'Find a Barrister', which has been visited approximately 23,000 times over the last 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 Duty Barrister Scheme which operates 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 new co-ordinator of the scheme has been appointed. She is a barrister who is keen to raise the profile of the scheme even further with the judges and magistrates. There have also been some physical improvements made to the support facilities for the scheme. The Duty Barrister Room has been painted and tea and coffee facilities are now available. A computer is soon to be installed.

The duty barrister scheme operating at the Australian Industrial Relations Commission has been discontinued with the advent of the new industrial relations laws.

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

Legal Assistance Referral Scheme - continued

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.

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.

The manager of the scheme met with customer service officers at LawAccess to outline the scheme's guidelines and give feedback as to the outcomes of the referrals which had been made. The executive director is a board member of LawAccess. The scheme's manager is also a member of the LawAccess NSW Operations 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 and is a member of the Coalition of Aboriginal Legal Services' working party set up, inter alia, to compile a list of service providers in civil law. The Bar Association's director, legal is the association's representative on NLAF's working party investigating conflicts of interest.

In September the Bar Association hosted the annual conference of the Coalition of Aboriginal Legal Services. It was held in the association's common room over a two day period.

There is also a quarterly meeting 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.

There have been many difficult phone calls, which are often 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 invited Dr Jonathan Phillips, a consultant psychiatrist, to address its staff members who deal with difficult members of the public. Dr Phillips gave some welcome practical suggestions to assist staff members to deal with these situations at less cost to themselves.

The Bar Association continues to bear a significant portion of the costs for the administrative infrastructure need 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 aid funding, has contributed significantly to the workload (and stress) of LARS and other Bar Association staff who manage walk-in applicants.

Legal Aid Committee

The focus of the Legal Aid Committee continued to be the maintenance of a good working relationship with the New South Wales Legal Aid Commission.

Consultations between the association and the commission continue to be productive, with one particular ongoing concern, namely fees for counsel in criminal matters, being addressed.

In consultation with the association, a review of the legal aid fee structure has commenced and hopefully will ensure that barristers receive more appropriate remuneration for all the legal aid work.

In addition, travel allowances have been increased.

Legal Assistance Referral Scheme statistics

	2004-2005	2005-2006
High Court		
Application for special leave	4	7
Original jurisdiction	5	3
Total	9	10

Federal Court		
Full Bench appeals	5	5
Immigration	29	26
Administrative	1	4
Discrimination	1	1
Intellectual property	-	3
Veterans & Social Security entitlements	3	-
Industrial relations	-	-
Trade practices	4	4
Native title	-	2
Bankruptcy	4	7
Total	47	52

Federal Magistrates Service		
Discrimination	1	1
Family law – access	-	1
Family law – child support	-	-
Family law – residency	1	-
Immigration	32	14
Bankruptcy	-	1
Total	34	17

Supreme Court		
Court of Appeal	5	4
Court of Criminal Appeal	2	7
Common Law	12	16
Administrative	1	-
Equity	27	23
Criminal	4	2
Commercial	-	-
Family provisions	2	2
Defamation	2	-
Professional negligence	-	1
Total	55	55

	2004-2005	2005-2006
Family Court of Australia		
Full bench appeals	1	2
Access	8	3
Residency	7	7
Child support	2	-
Spousal maintenance	1	-
Property settlement	2	8
Other (costs hearing)	1	2
Total	22	22

District Court		
Criminal	13	10
Civil	14	10
Commercial	2	-
Medical Tribunal	-	-
Care proceedings	2	1
Defamation	2	-
Professional negligence	-	-
Victims compensation	1	-
Total	34	21

Land & Environment Court	6	7
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NSW Industrial Relations Commission	3	6
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Local Court		
Criminal	19	16
Civil	13	9
Family matters - access	1	-
Total	33	25

Children's Court	6	2
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Coroner's Court	4	1
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Tribunals		
Administrative Appeals Tribunal	5	5
Administrative Decisions Tribunal	12	12
Social Security Appeals Tribunal	1	-
Mental Health Review Tribunal	-	-
Consumer Trader & Tenancy Tribunal	4	4
Equal Opportunity Tribunal	-	-
Victims Compensation Tribunal	1	-
Anti-Discrimination Board	-	-
Licensing	1	-
Total	24	21

Legal Assistance Referral Scheme Statistics - continued

	2004-2005	2005-2006
Referral source		
Member of public	68	45
Instructing solicitor	40	43
Community legal centre	40	34
Law Society Pro Bono Scheme	36	36
Judge	24	18
Member of the Bar	19	8
Law Access	17	16
Legal Aid	8	22
Registrar	7	9
Welfare/community groups/ social worker/other	7	4
Non-instructing solicitor	5	3
Pro bono director – large firms	4	1
Director of Public Prosecution	2	1
PIAC	1	-
Attorney-General's Department	-	-
Member of parliament	-	4
Web site – approx hits	1,300	3,000
Client location		
Sydney Metropolitan Area		
West	75	80
North	24	20
South	40	37
East	16	14
Inner City	38	27
Central Coast	14	5
Country	22	27
ACT	-	1
Interstate	6	6
Villawood Detention Centre	32	22
Baxter Detention Centre	1	1
Prison	10	13
Overseas	-	-
Total	278	253
Type of work done		
Merit assessment	135	115
Advice (over and above initial merit assessment)	73	62
Conferences	76	53
Appearances	57	45
Appearances at hearing	49	38
Other (including second opinion & preparation of submissions)	6	19

These figures reflect that barristers have been involved in more than one of the listed categories per matter.

	2004-2005	2005-2006
Rejection / no action		
Outside guidelines	45	43
Too late notification	10	3
No further information received/ no further contact from client	31	36
Requires a solicitor	21	24
Eligible for legal aid	4	5
Referred to a community legal centre	-	4
Briefed barrister privately	4	3
Briefed solicitor privately	2	7
Conflict of interest	-	-
Matter discontinued	1	3
Subject to Federal Court Refugee Review Tribunal Legal Advice Scheme	24	10
Subject to Federal Court Pro Bono Scheme	1	-
Required a migration agent	-	-
Total	143	138

	2004-2005	2005-2006
Turnaround time		
Same day	30	18
Less than a week	28	22
1 – 2 weeks	29	26
2 weeks plus	48	49

	2004-2005	2005-2006
Basis brief accepted		
No fee – merit assessment	135	115
No fee – continuing involvement	38	59
Reduced fee	26	31
Speculative/costs recovery	21	25
Market rates	-	-

	2004-2005	2005-2006
Refused legal aid on basis of		
Merit	22	17
Financial	33	39
Outside guidelines	223	197

	2004-2005	2005-2006
Matters considered by a barrister to have legal merit/prospects of success		
Yes	85	78
No	50	37