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PRO BONO NEWS

Issue 13, October 2014

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Executive Director's report

Thank you to all of our members who recently renewed their membership or joined JusticeNet for the first time. Your support is invaluable and we aim to thank you for your generosity by offering value back.

We are offering all members (including employees of member organisations) generous discounts for our new series of lunchtime CPD masterclasses called "Meeting of the Minds". We have teamed up with press* food and wine to offer the profession quality seminars at a fantastic venue. The first seminar on Complex Litigation will be held **on Tuesday 11 November 2014**. *'Taming the beast? Lessons learnt from Complex Litigation'* will be presented by The Hon. Neville Owen (previously of the WA Supreme Court), Skip Lipman from Lipman Karas and chaired by The Hon. Justice Tom Gray.

The discussion will provide a stimulating insight into the strategies needed to meet the challenges that complex litigation poses for courts and practitioners. The lessons to be learned from the conduct of so-called "mega-litigation" apply with equal force to shorter trials and are sure to be of value to judicial officers and legal practitioners alike. Places are limited so book soon to avoid disappointment.

For more information about Meeting of the Minds and to register click on the banner below:



Organisations and individuals who would like more information about membership of JusticeNet can contact us on 08 8313 5005.

Our [5th Birthday Celebration](#) is just three weeks away, and it is going to be a great event. Apparently, it's creating quite a buzz in legal circles and tickets have almost 'sold out'. There's going to be some great food and entertainment – including a guest appearance by "DJ Linke". We look forward to seeing you on 24 October at the Published Arthouse.



JusticeNet is on Facebook. 'Like' us and keep up to date with upcoming events and issues relevant to pro bono law in South Australia and nationally.

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Pro Bono Success Stories

This calendar year our referral service has so far received 586 enquiries, 138 applications and referred 85 matters to our members and supporters. So for every referral, there six enquiries/applicants that are not eligible for referral for pro bono assistance. But just because they are not referred to a volunteer lawyer does not mean we cannot help them. We routinely provide people who are ineligible for pro bono assistance with practical information, one-off legal advice and referrals to organisations or agencies – legal and non-legal (including our Self-Representation Services) – that may be able to help.

In some cases, JusticeNet invests significant time into helping clients to resolve their matter without getting a lawyer involved or preventing the issue giving rise to formal legal proceedings. A good example is the work undertaken by **Elizabeth Boxall**, the referrals lawyer at JusticeNet, to assist Matthew* to make an application to the Department of Immigration and Border Protection to amend his date of birth. Mathew's date of birth had been recorded incorrectly as 1999 instead of 1994. Matthew is from the Congo and has refugee status in Australia. The incorrect recording of Matthew's date of birth caused significant problems for him as he was unable to access Centrelink benefits and housing support for himself and his child as he was considered a minor. Elizabeth arranged a bone test to confirm Matthew's age and, as a result, the Department accepted Matthew's application. Matthew can now access Centrelink benefits as an adult and live with his partner and child.

Here are some recent outcomes of pro bono referrals:

Lisa Dowdy from **Donaldson Walsh** with the assistance of counsel **Peter Britton-Jones** of **Bar Chambers** represented Natasha* a single mother who appealed a decision of the Residential Tenancies Tribunal to the District Court. In 2012 while Natasha was in hospital her landlord unlawfully entered her premises, changed the locks and removed her belongings. Her lease was still valid at the time. The Tribunal awarded Natasha a sum of money that was far below the cost of replacing her property. Natasha's legal representatives negotiated a settlement with the landlords who agreed to pay Natasha further compensation for her belongings. Natasha and her mother wrote to JusticeNet at the conclusion of her matter:

"Many thanks for the help JusticeNet extended to Natasha which enabled her to pursue the case against her landlords. We will not forget your kind help to us."

Paul Heywood-Smith QC of **Anthony Mason Chambers** accepted a referral from JusticeNet to assist solicitor **Andrew Wright** of **WK Lawyers**. Andrew's client sought to appeal a decision of the Full Court of the Supreme Court upholding the trial judge's decision in the District Court that there was no need to imply a term of reasonable notice of termination in the client's contract of employment. Mr Heywood Smith QC provided pro bono assistance in relation to the application for special leave to appeal to the High Court. Paul was junioried by **Rick Manuel**, also on a pro bono basis. Unfortunately, the High Court dismissed the application for special leave stating that an appeal would not enjoy sufficient prospects of success. We would like to extend our gratitude to all of the lawyers involved for their efforts in pursuing this matter.

Tony* and his wife operated a small business. During a period of expansion they were joined by a third director / investor. After a disagreement about the direction of the business, the third director was removed. The ex-Director then commenced proceedings in the Supreme Court of South Australia against Tony under the Corporations Act. Tony spent all of his savings defending the protracted proceedings (and prosecuting a counterclaim). On a limited income, including more recently, the aged pension, Tony was eventually forced to represent himself. Tony then approached JusticeNet for help. We determined that Tony was eligible for limited assistance in the form of legal advice and help to mediate a resolution to bring the long running proceedings to an end. **Kirsten Dow** of **Finlaysons** and **David Blyth** of counsel helped Tony negotiate a favourable settlement.

Candida D'Arcy, **David Johns** and **Alison Cowley** of **Lawson Smith** advised a client on the merits of his claim for unpaid employment benefits in relation to his son who died while working as a fisherman on a fishing boat. In a separate trial in the Industrial Court, the skipper of the vessel was held to be an employee and the employer was fined for breaching workplace safety laws. The son's employment contract was almost identical to the skippers and Lawson Smith successfully negotiated with three fishing companies and to recover unpaid employment benefits.

*Names changed to protect privacy

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Refugee and Asylum Seeker Project Update

The Refugee and Asylum Seeker Project has been very busy over the past few months. Since the end of July we have made 13 referrals to barristers and solicitors. The majority of these referrals have been to either provide us with advice about the merits of judicially reviewing adverse immigration decisions or to represent applicants in judicial review proceedings. There are currently judicial review proceedings underway in relation to 9 applicants.

In July 2014 Caroline Scholefield, solicitor, and Paul Charman, counsel, successfully represented two Iranian brothers in their judicial review application of their negative Independent protection Assessment. Their cases have now been remitted back to the Department for consideration.

In August our Referrals Lawyer Elizabeth Boxall had the pleasure of meeting with a group of lawyers from the Crown Solicitors Office who have been providing advice and assistance on RASP matters. This was a great opportunity for Elizabeth to thank the group for their ongoing work and to provide them with an update about the bigger picture for refugees and asylum seekers in our community at this time.

Our thanks also goes to Bar Readers Kaz Eaton, David Fabbro, James McMillan and David Blyth who have established a new group to review negative immigration decision and to Paul Charman who provided Elizabeth with advice in relation to a number of matters that we had not been able to refer.

There is currently significant demand for legal advice concerning merits reviews of the negative immigration decisions. If you are in a position to accept referrals in this area please contact Elizabeth at referrals@justicenet.org.au. There are opportunities to work with other people if you don't have any experience in this area but would like to learn.

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Supreme Court Self-Representation Service Update

JusticeNet's Supreme Court Service has now been operating in the Supreme Court for 12 months. Over that time the service has received 72 applications from people who are, or who are anticipating, representing themselves. Volunteer and service lawyers have provided 75 appointments to clients to help clients with advice and legal task assistance over the same period.

The service is currently being evaluated by the Office for Crime Statistics and Research. JusticeNet is hopeful that the evaluation will confirm the important role that the service plays in assisting not only self-represented litigants, but also the courts and even the other parties to disputes. The feedback we have received from clients and key stakeholders to date has been positive and we hope to release the evaluation report before the end of the year.

The service would like to thank our most recent student volunteers from Flinders University: Donna Murphy, Nadia Pisto and Lorolee Towler. Here are some recent examples of assistance the service has provided:

- An elderly client sought assistance from the service to resolve legal problems arising from the joint ownership of her home. A written agreement provided that the co-owner was responsible for the mortgage repayments and other matters. The other party defaulted on the mortgage repayments and other obligations under the agreement. As a result the client was forced to sell the property to avoid a repossession order being made. The service helped the client negotiate with the co-owner in an effort to ensure that the client was compensated for the extra costs she was liable for arising from the co-owners default under the agreement. The relationship between the parties did not give rise to the possibility of a de facto property settlement under the *Family Law Act*.
- The service assisted a client seeking assistance to challenge a settlement agreement concerning his deceased father's estate. The client was reluctant to perform certain obligations under the agreement because in his view the other side had breached the agreement by unlawfully taking possession of sentimental items belonging to the deceased. Following advice from the service the client decided to comply with the agreement and avoid further court proceedings.

The Self-Representation Service is made possible by the generous support of the Flinders University, the Law Foundation of South Australia, IMF (Australia) Ltd and our participating firms: Minter Ellison, Fisher Jeffries, Finlaysons, Gilchrist Connell, Cowell Clarke and Lawson Smith.

Please contact Tim Graham at tim.graham@justicenet.org.au or on (08) 8313 5005 if your firm is interested in participating in the service.

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Self-Representation Service SA / NT (Federal Courts)

With funding from the Commonwealth Attorney-General's Department JusticeNet has established a Self-Representation Service in the Adelaide and Darwin Registries of the Federal and Federal Circuit Court. The service opened its doors in June 2014. The service helps clients who have problems in a range of general federal law matters including bankruptcy, fair work, anti-Discrimination, information and privacy, competition and consumer law, judicial review, and appeals.

Here are some recent examples of assistance the service has provided.

- We provided advice to two clients who had commenced proceedings in the Federal Circuit Court seeking back pay from their previous employers. They were helped to amend their pleadings to join the directors of the employer company to the proceedings and given advice in regards to an offer of settlement from the other side. The clients have now been referred on to a private firm who have agreed to negotiate a settlement and draft a deed of release on their behalf on a pro bono basis.
- We advised a client in who was seeking leave from the Federal Court to continue proceedings in the Fair Work Commission for unfair dismissal against a company under a Deed of Administration. The service assisted the client to draft his application seeking leave from the Federal Court and provided guidance on how to draft a supporting affidavit. The matter is ongoing but due to the substantial amount being sought in the Fair Work Commission, the service has referred the client to private employment law firms.

The expansion of our Self-Representation Service has been possible by funding from the Commonwealth Attorney-General's Department and the support of our participating law firms: Minter Ellison, Finlaysons, Fisher Jeffries and Cowell Clarke.

JusticeNet welcomes referrals to the Self-Representation Service. The contact details for the Service are as follows:

Email: srs@justicenet.org.au
Telephone: 1800 283 661
Post: GPO Box 11024, Adelaide SA 5001

If your firm is interested in being involved in the new service, please contact Tim Graham at tim.graham@justicenet.org.au

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Costs in Pro Bono Matters

A recent decision in the Victorian Court of Appeal, [Mainieri v Cirillo \[2014\] VSCA 227](#), held that a successful party in litigation who is represented on a pro bono basis can be awarded costs. Specifically, the court held that the client was eligible for costs in circumstances where the retainer provided that her liability to pay legal costs was contingent on a costs order being made in her favour. Both the solicitor and counsel in the case were acting on a pro bono basis. The decision is welcome as the law in this area has been somewhat uncertain.

JusticeNet considers pro bono matters to be those in which there is no fee or expectation of legal fees. But this definition of pro bono should not, in our view, be taken to mean that legal costs can never be recovered. Indeed there are good reasons why pro bono lawyers should enter into costs agreements with their clients. The threat of an adverse costs order encourages parties to litigate prudently. Why should an opposing side be able to avoid exposure to costs just because their opponent has a pro bono lawyer?

It is rare for pro bono referrals to go to trial. Nonetheless, JusticeNet has encouraged pro bono lawyers to provide that costs are payable whether or not a costs order eventuates. This approach was driven by concern that making costs conditional on an actual costs order risked offending the indemnity principal. We have relied on pro bono practitioners to exercise their discretion not to enforce the agreement where no order is made.

Moreover it has been our policy to encourage practitioners to limit the recovery of costs to the extent of a costs order made in favour of the client. That way the lawyer is rewarded for their efforts but the client is not out of pocket. JusticeNet's approach is consistent with the Law Society's pro bono policy which you can see here:

http://lawsociety.ssa.asn.au/LSSA/Sign_In.aspx?returnurl=%2fLSSA%2fLawyers%2fGuidelines%2fLawyerGuidelinesHm.aspx

In our view what distinguishes a pro bono retainer from a traditional conditional costs arrangement is that there is not the same assessment of the commercial viability of taking on the matter. Providing access to justice for the client is the principal concern.

The VCA in *Mainieri v Cirillo* unanimously held that making an obligation to pay contingent upon an actual award of costs is valid and satisfies the indemnity principle. In the absence of local authority we hope that this decision is followed in South Australia. The reasoning of the unanimous decision relied on wording of the Victorian Legal Practitioners Act (s3.4.27) which is almost identical to the equivalent section of the South Australian Legal Practitioners Act (Sched 3, s25). The approach adopted by the VCA removes ambiguity and gives greater clarity to pro bono clients concerning their liability for costs.

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JusticeNet is turning five!



For five years, JusticeNet has had amazing support from Adelaide's legal community, enabling us to provide pro bono legal assistance to many disadvantaged South Australians.

We are using the opportunity of our 5th Birthday to thank you for your ongoing support - we are holding a party! The event will be hosted by MC's Anthony Durkin and Alex Ward and you will be entertained by a cool little jazz band, roaming entertainment ... and DJ Linke.

Special guest, the Hon. Justice Mansfield will be present to formally launch our Federal Courts Self-Representation Service SA/NT.

The best of Adelaide's Food Trucks will make sure you don't go hungry and sponsors [Byrne Vineyards](#) and [Lion](#) will make sure your thirst is quenched!

Places are limited and are filling fast. Don't miss out and book online: <http://www.trybooking.com/FJSN> or call us on 08 8313 5005.

If you have already RSVP'd we encourage you to like our Facebook page for the latest updates: <http://www.facebook.com/JusticeNetSA>

As this is our thank you to you, tickets are free. However, the party would not have been possible without the support of the following sponsors. Please share the love and like their Facebook pages and, if you are in the market for what they are selling, buy from them!

- [Bentham IMF Limited](#) – Australia's largest litigation funder
- [Byrne Vineyards](#) – Recognised as 4.5 star winery in 'James Halliday 2015 Australian wine companion', a family owned vigneron's hand crafting estate grown wines and celebrating 50 years in South Australian wine.
- [Data Mobility Voice](#) - leaders in designing, providing and maintaining tailored communication systems for all sectors of South Australian business
- [Phil Hoffmann Travel](#) – South Australia's premier travel agency
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- [Spartan Electrical](#) - South Australia's leading retailer of kitchen, laundry & home entertainment appliances
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Byrne Vineyards Special Offer

JusticeNet is delighted to announce 10-15% off cellar door prices on Byrne Vineyards wines to our members and supporters courtesy of Byrne Vineyards, sponsors of our 5th Birthday Celebration.

To take up this offer, please complete the attached order form and return it direct to Byrne Vineyards.

Data Mobility Voice iPad Competition

Data Mobility Voice are offering a free, no obligation business transformation consultation with Greg Fletcher-Harriss, Managing Director of Data Mobility Voice. Greg will walk your business through the "6 key IT and Communications Strategies" which will be integral in assisting you run a more productive, efficient and, most importantly, profitable business over the coming years as your staff and your customers become leaders of the 'Connected Generation'.

Book your consultation before 12 December 2014 for the chance to win a new iPad Air – just call 1300 731 123 and mention JusticeNet.

Become a 'Friend of JusticeNet'

JusticeNet plays a vital role in facilitating access to justice for low-income and disadvantaged South Australians. While membership subscriptions are currently our most significant source of income, they cover less than 50% of our annual operating costs, and we don't receive recurrent government funding.

As a Friend of JusticeNet you can help ensure the long-term future of our service for as little as \$10 per month. Benefits of becoming a Friend of JusticeNet include:

- Complimentary registration for one JusticeNet CPD seminar per year.
- Reduced JusticeNet membership fee (50% discount).
- Public recognition of your support (unless you advise us otherwise).
- Your donation is 100% tax deductible.

[Click here to join Friends of JusticeNet using the secure online facility of GiveNow.com.au](#)

Current Friends of JusticeNet:

Grace and Matilda Bawden, Katrina Bochner, Kieren Chester, Tim Graham, George Karzis, Robyn Layton, Christopher Legoe, Nicholas Linke, Shaun Mercer, Geoff Muecke, Alex Reilly and Paula Stirling.

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JusticeNet Members

We welcome our new corporate members:

O'Toole Lawyers

HWL Ebsworth

JusticeNet acknowledges the ongoing support of our members:

Corporate members: Adelaide Law School, Aged Rights Advocacy Service, Ashurst Australia, Beach Energy Limited, Bourne Lawyers, Budwal Lawyers, Campbell Law, Central Community Legal Services, Cowell Clarke, DMAW Lawyers, Donaldson Walsh, Environmental Defenders Office, Finlaysons, Fisher Jeffries, Flinders Law School, Fox Tucker Lawyers, Gilchrist Connell, Hanson Chambers, Johnston Withers, Kelly & Co, Lawson Smith Lawyers, Lipman Karas, Minter Ellison Lawyers, Piper Alderman, Riverland Community Legal Service, Ruth Beach Lawyer & Mediator, SANTOS, South East Community Legal Service, Southern Community Justice Centre, Sparke Helmore, UniSA Law School, Wallmans Lawyers

Individual members: Warwick Ambrose, Lucas Arnold, Melissa Ballantyne, The Hon Barry Beazley, The Hon David Bleby QC, Elizabeth Boxall, Darren Blight SC, Paramjit Budwal, Peter Cannell, Gabrielle Canny, Kerry Clark, Jane Cox, Samuel Doyle SC, Carrie Eames, Phillip Foreman, Rachel Garland, Tim Graham, Rachel Gray, Jenny Hirst, Chad Jacobi, Andrew Jantke, Margaret Kelly, Lisette Knobel, Robert Lawton, The Hon Robyn Layton QC, The Hon Christopher Legoe QC, Cathrynne Lester, Nicholas Linke, Mark Livesey QC, Philip McNamara QC, Michael Mills, Carolyn Mitchell, Neville Morcombe QC, Geoffrey Muecke, The Hon Margaret Nyland, Claire O'Connor, Mark Parnell, Harry Patsouris, Megan Philpot, Jocelyn Redden, Ian Robertson SC, Emily Rutherford, Rick Sarre, Catherine Sarre, Carolyn Scholefield, Nerissa Schwarz, Paula Stirling, George Stathopoulos, Edward Stratton-Smith, Tania Sulan, Ian Thomas, Elise Thomson, Natalie Wade, Mike Wait, Gillian Walker, Helen Ward, Noëla Washyn, Penny Wright, Kate Wycherley

For more information about membership of JusticeNet go to: <http://justicenet.org.au/members.html>.

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What is JusticeNet SA?

JusticeNet is an independent not-for-profit organisation that coordinates pro bono legal assistance in South Australia. JusticeNet matches individuals who do not have the means to afford a lawyer, and cannot otherwise obtain the requisite legal assistance

elsewhere, with lawyers who are willing to act pro bono. We also assist not-for-profit and community groups.

For more details of our referral service and eligibility criteria, see the JusticeNet website at www.justicenet.org.au.

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