



# PRO BONO NEWS

Issue 17, March 2016

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## Executive Director's Report

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### Free Volunteer Practising Certificates in SA – one step closer

After several years of advocacy by JusticeNet SA and others, South Australia has moved a big step closer toward the introduction of free 'volunteer' practising certificates (VPCs). On 11 November last year the Legal Practitioners Education and Admission Council gazetted amendments to the LPEAC Rules to create four new categories of practising certificate, including:

*Category D – a volunteer practising certificate which enables the practitioner to undertake legal practice in the manner they are otherwise entitled to in accordance with Rule 2, but only as a volunteer for a community legal centre (as defined in the Act) or for an institution or project approved by the LPEAC and where the practitioner will be covered by professional indemnity insurance.*

JusticeNet supports the creation of VPCs because they make it easier for volunteer lawyers to donate their time and skills and improve access to justice for low-income and disadvantaged members of the community.

It is not yet clear when VPCs will be available. The fees which attach to the issue or renewal of a practising certificate in South Australia are set by the Attorney-General pursuant to the Legal Practitioners Regulations 2014. We are hopeful that the Attorney-General will follow the lead of the five other jurisdictions that have made VPCs free - Queensland, NSW, Victoria, ACT and Western Australia. We will keep you posted.

### JusticeNet submission to the Joint Rules Advisory Committee

JusticeNet SA was recently invited to make a submission to Joint Rules Advisory Committee (JRAC). JRAC is responsible for ensuring that the rules of court adequately deal with the requirements of contemporary litigation, and to assist in the efficient running of the courts.

JRAC convened a special meeting on Wednesday 9 March 2016 to consider several key topics, including Self-Represented Litigants (SRLs). JusticeNet's submission to JRAC advocated for changes to the rules to improve access to justice for Self-Represented Litigants, including creating a supervised case list and facilitating limited appearances / limited scope representation.

JusticeNet submission to JRAC: [http://justicenet.org.au/sites/default/files/public/Publications/JRAC\\_Submission.pdf](http://justicenet.org.au/sites/default/files/public/Publications/JRAC_Submission.pdf)

JusticeNet considers that much remains to be done to give effect to the fundamental right of SRLs to appear before a court in person, while being mindful of the rights of other parties to have litigation conducted efficiently and the community's interest in having courts operate in a cost effective way.

### **State Government encourages pro bono**

JusticeNet SA congratulates the Crown Solicitor's Office on recent changes to its prequalification panel application process for firms that provide legal services to government. The changes are intended to encourage and promote pro bono legal work among South Australian law firms. The changes include:

- encouraging firms to undertake pro bono work and become signatories of the National Pro Bono Aspirational Target (the Target);
- asking new applicants to detail (on an hours per solicitor basis) the level of pro bono work undertaken in South Australia in the previous financial year, their target for the coming financial year and whether they are signatories to the Target.

The changes will not impose mandatory targets or reporting requirements on panel firms.

The changes are consistent with the recent recommendation by the Productivity Commission for state governments to consider adopting the Target as part of their tender arrangements for legal services.

It should be noted that the CSO is itself a strong supporter of JusticeNet SA and pro bono work in South Australia. Under the CSO's Pro Bono Legal Work Policy, CSO solicitors contributed 406 hours of pro bono legal work in the 2014/15 financial year.

More information about the Target, please visit, [www.nationalprobono.org.au/target](http://www.nationalprobono.org.au/target)

### **A new website for JusticeNet SA**

JusticeNet SA has a new website: [www.justicenet.org.au](http://www.justicenet.org.au). Check it out!

### **Annual Report**

JusticeNet's Annual Report for 2014/15 is now available here: <http://www.justicenet.org.au/news-and-events/news/2015-annual-report>.

## **Walk for Justice 2016 – it's back!**

**Registrations are now open for Walk for Justice 2016 - Tuesday 17 May**



As you know, Walk for Justice is our flagship fundraising event, which raises funds to help JusticeNet SA connect disadvantaged South Australians with pro bono lawyers.

In 2015, more than 500 people participated in Walk for Justice, helping to raise \$53,000, which was a great result.

We'd love to see you back again this year, so register NOW for Walk for Justice 2016: [www.justicenet.org.au](http://www.justicenet.org.au)

This year there is a small registration fee, which includes your Walk for Justice T-shirt which you need to wear on the Walk!

Get a team together and join the largest gathering of the legal community on an early morning walk around Adelaide, followed by breakfast served by our very own Chief Justice Kourakis and his friends in the 'Breakfast Club'.

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## Pro Bono Referral Service Update

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### Helping Jenny to defend against a sham contract

Jenny was referred to JusticeNet by the Young Workers Legal Service (YWLS). The YWLS had offered to help Jenny recover unpaid wages for administrative services she provided to a small business in the Adelaide CBD. Jenny had worked at the business for approximately 6 months in 2013. She endured very difficult working conditions and eventually left when it became clear the business was not a success. The business owner responded to the efforts of the YWLS by threatening legal proceedings against Jenny. The business owner alleged Jenny had entered into a partnership agreement and was liable for 20% of the debts of the failed business. The YWLS could not represent Jenny due to limited resources and so referred her to JusticeNet.

Sparke Helmore Lawyers accepted a referral from JusticeNet to help Jenny. Shortly thereafter, the business owner lodged a claim for \$13,500 against Jenny in the Magistrates Court Minor Civil Division. At the time she was served with the claim, Jenny was 22 years of age and was working casually a waitress.

Luke Holland and Daria McLachlan from Sparke Helmore Lawyers acted for Jenny throughout her matter. Although they could not appear for her in court (being a Minor Civil Matter), they spent approximately 70 hours advising and assisting Jenny with every aspect of her defence including discovery, submissions, strategy and preparation for court appearances. In particular, the claim against her was lacking in particulars and evidence and, with the help of her lawyers, Jenny was able to put the Plaintiff to proof of her claims.

Despite the flimsy evidence, the business owner was determined to pursue the matter to trial. The matter was heard in August 2015 and Luke and Daria arranged for an experienced law clerk to accompany Jenny. To Jenny's great relief, the Magistrate dismissed the case brought against her in its entirety.

### Recovering costs in pro bono matters: a reminder to members

We would like to remind our member firms who have taken on pro bono referrals from JusticeNet, that we encourage firms to seek to recover their costs in successful matters wherever possible. In order to do so, however, you should make sure that you have an appropriate term in your retainer agreement which provides that your firm can charge costs in the event of a successful outcome in a litigious matter. The clause should be drafted so as to limit the client's liability to the amount taxed under a costs order, and to the extent of costs actually recovered from the losing party.

Costs agreements actually benefit pro bono clients because the risk of adverse costs creates an incentive for the opposing side to take a reasonable stance in negotiations or in their conduct generally.

In our view, referrals in these circumstances retain their 'pro bono' character because the client is not required to pay for the legal services provided. Further, such a clause, if properly drafted, will not offend the indemnity principle. An appropriate costs clause might read:

*'The firm will not charge for its services, save that in the event that the work is litigious and the work is successful, the firm shall be entitled to charge costs to the client calculated on a party/party basis under [nominate the applicable court scale]. If a costs order is obtained by the client in the proceedings, the solicitor shall tax that costs order and shall accept as full costs the amount taxed under that order and will take no proceedings against the client to recover costs until that order has been taxed.'*

Costs do not have to be limited to party/party costs, so long as it is clear that the firm will accept as full costs the amount taxed under a cost order.

JusticeNet encourages member firms to donate some or all of the costs they recover in pro bono matters to JusticeNet, so as to assist with the continued operation of our referral scheme and other projects. We are happy to discuss arrangements for handling costs on a case-by-case basis.

Please check your pro bono retainer agreement to make sure that an appropriate costs clause is in place. If you need any further information, then please get in touch with us or ask for a copy of our Referral Guidelines.

## Migration Legal Service Update

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In light of the growing legal need in this area JusticeNet has, with the support of a grant from the Law Foundation, employed a part-time coordinator for a Refugee and Asylum Seeker Project (RASP). We are delighted to have appointed Lara Proske to the position of RASP referrals coordinator. Lara brings a wealth of migration law experience after working in both public and private practice. Lara can be contacted via email ([migration@justicenet.org.au](mailto:migration@justicenet.org.au)) or phone (08 8313 5005) on Mondays, Wednesdays and Thursdays.

To date this financial year, RASP has made 22 referrals for pro bono legal assistance. The majority of those referrals have been to obtain legal advice about the merits of judicially reviewing adverse immigration decisions or to represent applicants in judicial review proceedings. There are currently 8 applications for judicial review pending in the Federal Circuit Court for RASP referred clients, and 1 appeal to the Full Court of the Federal Court. Pro bono lawyers are currently assessing a further 5 RASP referrals to determine whether there are grounds for judicial review.

JusticeNet is extremely grateful for the assistance provided by members who accept referrals for pro bono assistance in refugee related matters. Special mention must be made of the Crown Solicitor's Office, who at this time have the conduct of 10 RASP referred matters, 3 of which have been picked up in the last fortnight.

We are anticipating that demand for pro bono legal help in relation to judicial review of immigration decisions will increase significantly as the asylum claims of the "IMA legacy caseload" (asylum seekers who arrived from 13 August 2012 to 1st January 2014) are processed. It is estimated that 2000 people within that IMA legacy caseload reside in South Australia. Their asylum claims are being assessed under the Fast Track Assessment process, which includes an automatic limited merits review by the Immigration Assessment Authority (IAA) for eligible applicants. IMA's who receive a negative decision at the IAA, or IMA's who are ineligible for merits review, could make an application for judicial review if their adverse immigration decision is affected with jurisdictional error.

JusticeNet acknowledges the support of the Law Foundation of South Australia for this project.

## Self-Representation Services Update

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### State Courts Self-Representation Service reaches 6 month milestone

The last 6 months have been very busy for JusticeNet's State Courts Self Representation Service. The service expanded to the civil jurisdiction of the District Court in September 2015, and increased from one day/week to four days/week. In the 6 months from September 2015 the SCSRS has:

- received 155 enquiries;
- received 84 applications from new clients;
- conducted 104 appointments (and in addition many clients have received advice outside of formal appointments).

The Self-Representation Service has the dual aims of supporting disadvantaged clients who cannot afford representation, while also discouraging unnecessary litigation. Here are some snapshots of the work done by the service over January / February to encourage the early resolution of disputes and divert appropriate matters out of the courts:

- Bill (not his real name) approached the service for help with an appeal that had been listed for hearing. Bill (when represented) had pleaded guilty with no conviction to breaches of an intervention order. The fact of the plea subsequently caused unexpected difficulties in relation to a licence he held. The basis of Bill's appeal was to set aside the plea entered on his behalf. Once Bill understood the nature of appeal and the way in which an appeal is presented, he understood that it was not in his best interests to pursue the appeal given that it was not likely to be successful. He appreciated the time taken to explain the appeal process to him and assistance provided to draft a notice of discontinuance which was filed and served. The respondent confirmed that no costs would be sought in relation to the appeal.
- Two other clients were provided with advice that there were limited prospects of success in relation to their matters. One of those clients sought to appeal a guardianship order. Another sought to commence an appeal to the Administrative and Disciplinary Division the review of the Registrar of Motor Vehicles in respect of a decision made requiring the client to undergo a medical assessment before being issued with a drivers licence (due to the client's medical conditions). The clients confirmed an intention to accept the advice and refrain from commencing proceedings.
- Three clients were provided with assistance in drafting correspondence seeking to resolve disputes not yet before the courts.

- Three clients received appointments specifically for the purpose of drafting offers of settlement to resolve proceedings.

**The Self-Representation Service (State Courts) is supported by the following firms: MinterEllison, Fisher Jeffries, Finlaysons, Cowell Clarke and HWL Ebsworth.**

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### **David vs Goliath: Federal Court Self-Representation Service helps client with long-running tenancy dispute**

David was involved in a long-running dispute with his former landlord arising from David's eviction from a commercial property in 1999. David brought proceedings in the District Court but they were eventually dismissed for want of prosecution after David was unable to pay security for costs. The landlord bankrupted him based on a costs order debt arising from part of the District Court proceedings. David unsuccessfully appealed various aspects of the District Court proceedings and the first sequestration order.

David came to the FCSRS when the landlord applied to bankrupt him again (shortly after his first bankruptcy was discharged) using costs orders that had been made over 3 years earlier.

David had no assets at all and visited the FCSRS office with trousers held up with a piece of string. He had left school in year 9 and struggled to understand why he had never been given a chance to prosecute his original eviction claim which had arisen from events 16 years ago. David could easily have been dismissed as a nuisance and vexatious-type litigant, however a careful examination of his case suggested that he had some legitimate reason for feeling aggrieved.

David had filed long, rambling and incoherent documents with the Federal Circuit Court. The FCSRS assisted him (and indirectly, the court) by preparing affidavits which set out the history of his litigation and his financial means, or lack thereof, and assisted him to oppose the Creditor's Petition on the grounds that the Creditor's Petition was an abuse of process and was being used for a collateral purpose (to thwart David's proceedings in the State Courts, which the trustee in bankruptcy would likely discontinue) and not as a bona fide debt collection process.

The FCSRS and JusticeNet's pro bono referral service worked to obtain pro bono representation for David to argue his application in court. But at the last minute the pro bono lawyer was unable to act. Fortunately, the lawyer had prepared some submissions for David based on the FCSRS's detailed instructions and research, which were served on the landlord. After receiving the submissions the landlord withdrew the Creditor's Petition.

**The Self-Representation Service SA/NT (Federal Courts) is supported by the following firms: MinterEllison, Finlaysons, Fisher Jeffries, Cowell Clarke, Clayton Utz (NT), DMAW, McDonald Steed McGrath and O'Toole Lawyers.**

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## **Summer CPD Intensive Wrap Up**



JusticeNet's annual CPD intensive was another big success, raising vital funds for our pro bono legal services. A big thanks to our presenters who donated their time:

- **Legal aspects of critical incidents** (practice management) presented by Darren McGeachie (ACCESS programs)
- **Tax issues for trustee clients** presented by Julie van Der Velde (DW Fox Tucker Lawyers)
- **Litigation funding and your legal practice** (practice management) presented by Susanna Khouri (IMF Bentham)
- **Ethical issues in pro bono representation** (practical ethics) presented by Tim Graham (JusticeNet SA)

- **Legal research: how to make the most of electronic resources** (and not rely on wikipedia) presented by Josephine Battiste (Griffins Lawyers)
- **The fate of statutory interpretation's second class passengers** presented by Chad Jacobi And Anna Wells (Crown Solicitor's Office)
- **Valuations of equity in business including professional practices and goodwill** presented by Peter Holmes Ferrier Hodgson
- **Apprehended bias – 2015 in review** presented by Enzo Belperio (Bar Chambers)

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## Become a 'Friend of JusticeNet'

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JusticeNet SA plays a vital role in facilitating access to justice for low-income and disadvantaged South Australians who fall through the gaps. While membership subscriptions are a significant source of income, they cover less than 50% of our core operating costs.

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

Heath Barklay, Grace and Matilda Bawden, Katrina Bochner, Janet Cheung, Kieren Chester, Tim Graham, George Karzis, the Hon Robyn Layton AO QC, The Hon Christopher Legoe, Nicholas Linke, Shaun Mercer, Robyn Milera, Geoff Muecke, Greg Parker, Alex Reilly, David Sedorkin and Paula Stirling

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## JusticeNet Members

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JusticeNet acknowledges the ongoing support of our members:

**Corporate members:** Adelaide Law School, Aged Rights Advocacy Service, am legal, Ashurst Australia, Beach Energy Limited, Bourne Lawyers, Budwal Lawyers, Camatta Lempens, Campbell Law, Central Community Legal Services, Clayton Utz, Cowell Clarke, DMAW Lawyers, Environmental Defenders Office, Finlaysons, Fisher Jeffries, Flinders Law School, DW Fox Tucker Lawyers, Gilchrist Connell, Hanson Chambers, HWL Ebsworth, Hutt Street Law, Lipman Karas, Minter Ellison Lawyers, Ombudsman SA, O'Toole Lawyers, Piper Alderman, Riverland Community Legal Service, Ruth Beach Lawyer & Mediator, 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, Samara Bell, The Hon David Bleby QC, Elizabeth Boxall, Simon Bourne, Darren Blight SC, Paramjit Budwal, Peter Cannell, Gabrielle Canny, Kerry Clark, Jane Cox, Thomas Cox, Larissa Detmold, Samuel Doyle SC, Carrie Eames, Phillip Foreman, Rachel Garland, Sanzhuan Guo, Tim Graham, Rachel Gray, Joseph Harding, James Hartnett, Jenny Hirst, Chad Jacobi, Andrew Jantke, Scott Jelbert, Clare Jobson, Peter Kassapidis, Manjit Kaur, Margaret Kelly, Lisette Knobel, Robert Lawton, The Hon Robyn Layton QC, Nina Lagzdins, The Hon Christopher Legoe QC, Karen Lehmann, Cathrynne Lester, Nicholas Linke, Melanie Little, Mark Livesey QC, Philip McNamara QC, Joseph Maniscalco, Adrian Meegan, Alan Merritt, Beth Midgely, Michael Mills, Carolyn Mitchell, Angela Moffa, Neville Morcombe QC, Geoffrey Muecke, Leah Mundy, The Hon Margaret Nyland, Claire O'Connor SC, Karen O'Keefe, Mark Parnell, Harry Patsouris, Kim Pedler, Megan Philpot, Rebecca Plummer, Jocelyn Redden, Ian Robertson SC, Emily Rutherford, Rick Sarre, Catherine Sarre, Carolyn Scholefield, Nerissa Schwarz, Holly Stanley, Cabrini Shepherd, Paula Stirling, George Stathopoulos, Edward Stratton-Smith, Jayne Stinson, Tania Sulan, Anna Tallis, Ian Thomas, Elise Thomson, Natalie Wade, Mike Wait, Gillian Walker, Helen Ward, Noëla Washyn, Belinda Wells, Jonathan Wells QC, Penny Wright, Kate Wycherley

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

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## Subscription and Feedback

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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](http://www.justicenet.org.au).

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