

PRO BONO NEWS

Issue 2, April 2010

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Walk For Justice 2010

The **Walk for Justice 2010** is less than two weeks away! Has your firm signed up yet? You can register individuals and teams online at www.justicenet.org.au/walk.html.



Thanks to the following organisations that will be fielding teams (so far): **Lamont Black lawyers, Doman Lawyers, DMAW lawyers, ARTC legal, Murray Chambers and Friends, Bendigo and Adelaide Bank, Fisher Jeffries Lawyers, the Law Society, the University of Adelaide Law Students Society, the University of South Australia, the Crown Solicitors Office, the Legal Services Commission, the Australian Government Solicitors and more.**

Celebrate National Pro Bono Day and join Chief Justice John Doyle AC, Justice John Mansfield AM, the Hon. Catherine Branson, President of the Australian Human Rights Commission and Law Society President Richard Mellows on the Walk for Justice 2010.

The Walk will commence **on Monday 17 May 2010** at 7:30am. It is a pleasant 5km loop starting at the Victoria Square fountain and finishing at the Hilton Hotel for a complimentary light breakfast courtesy of JusticeNet, the Law Society and the Hilton Hotel.

The Walk is an international event to raise awareness and funds for pro bono legal services and access to justice. This year Walks will be held in London, Manchester, New York, Sydney, Melbourne, Brisbane and Adelaide. Last year the Walk attracted over 1,000 walkers nation-wide.

The Walk is organised by JusticeNet and all money raised from the Walk will go towards funding JusticeNet's pro bono referral scheme. There are many ways that individuals, firms, businesses and chambers can participate. It costs only \$15 to register for individuals and \$5 for students to register. Individual walkers and teams are also encouraged to obtain sponsorship from colleagues, friends, family and their employers. There are great prizes for individuals and teams, and a spot prize just for registering.

STOP PRESS: ORDER YOUR WALK FOR JUSTICE T-SHIRT ONLINE BY 10 MAY 2010

To register online and for more information, visit www.justicenet.org.au/walk.html. We hope to see you there!



Referrals

JusticeNet has made 47 referrals to members firms and barristers since inception. We estimate that our members have provided in the order of **\$250,000** worth of pro bono assistance to those in need. Recent referrals that have concluded include:

- **DLA Phillips Fox** assisted an aboriginal corporation to make a winding up application to the Supreme Court. The application was successful and the order obtained, although there were significant complicating factors that entailed a significant investment of resources by the firm.
- **Michael Roder SC** successfully represented Mr E, a client of the Welfare Rights Centre in the AAT. Mr E was a farmer in a drought affected area and was in receipt of Exceptional Circumstances Relief Payments. Centrelink reviewed the treatment of income replacement payments received by his wife and identified a significant overpayment. The SSAT made directions in favour of Mr E and the Department applied to the AAT to review the decision. The AAT found in the client's favour and concluded that the amount of overpayment of ECRP claimed by Centrelink should be wholly extinguished.
- **Ian Robertson** accepted a referral from JusticeNet to assist Ms D with negotiations relating to her equity in the matrimonial home. Ms D's previous relationship was too short for her to rely on the *Family Relationships Act 1975*, forcing her to rely on equity to establish her claim. Counsel assisted Ms D's solicitor who also acted pro bono. The parties agreed on a division of assets in which Ms D's former partner paid her a sum of money and delivered sundry items to her.
- **Gilchrist Connell** agreed to help a woman and her two children who were under animal welfare legislation. The woman had a mental health condition which made it impossible to defend the matter in person. Gilchrist Connell persuaded the prosecuting authority to drop the charges against the two children, and assisted their client with her plea.

Other referrals that are ongoing include:

- **Donaldson Walsh** has accepted a referral to provide a charitable foundation with advice on issues relating to the trust funds under its management, and with certain tax compliance issues.
- **Fisher Jeffries** are helping a subcontractor with a dispute with his employer.
- **Kelly & Co** are assisting a client to defend an application for ejection.
- **Kain C+C** have accepted a referral to assist an client challenge the validity of a loan agreement on grounds of undue influence.
- **AM Legal** are helping out with a wills & estates matter.
- **Piper Alderman** have taken on a client who has a dispute concerning the validity of a property transfer.
- **DMAW Lawyers** are assisting a client to defend an action involving the matrimonial home.

Costs in Pro Bono Matters

JusticeNet often refers litigious matters in which there is the real possibility that the client will have a win and therefore be in a position to seek costs. Some might question the appropriateness of a lawyer who is acting pro bono recovering costs – even from the opponent pursuant to a court order – on the basis that the work is done out of a sense of professional responsibility, rather than to earn fees. But why should an opponent benefit from the fact of pro bono assistance to the other side? Or considered from a different perspective, why should the pro bono client alone have to face the risk of an adverse costs order?

While JusticeNet refers matters on the basis that clients are not charged professional fees (we distinguish pro bono from reduced fee arrangements, or what is sometimes known as 'low bono'), we encourage member firms to include a costs clause in their written pro bono retainer agreement that entitles the firm to charge costs in the event of a successful outcome in a litigious matter. Importantly, the clause should be drafted so as to limit the client's liability to the amount taxed under a costs order. 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.

An appropriate costs clause might read:

"The firm will not charge for its services, save that in the event that the work 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 don't 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 costs order (in the event that the firm gets a costs order on an indemnity basis).

JusticeNet encourages member firms to donate any costs they do recover in a pro bono matter to JusticeNet, so as to assist with the continued operation of our referral scheme and other projects. We are happy to discuss alternative arrangements for handling costs on a case-by-case basis, such as when a member accepts the referral of a complex or large-scale litigious matter that may involve significant demands on a firm's resources.

A final word on costs: whatever costs clause you adopt, it is important for members to ensure that clients understand how the contingent liability established by the costs clause operates

Training for the NFP Sector

JusticeNet has identified a need for the provision of low cost legal training for the NFP sector in South Australia. NFPs operate in an increasingly complex legal and regulatory environment, and many have limited discretionary resources for educating and training staff of legal and compliance issues.

We are in the process of developing a seminar series to meet this need. The seminars will be delivered by member and barristers on legal issues that are of particular interest to the NFP sector. The seminars will be held at the premises of our member law firms.

We think that this is an excellent opportunity for firm's to showcase their expertise in this area whilst also making an active contribution to pro bono work in South Australia. We already have two expressions of interest from members firms. Potential topics include:

- Governance issues and decision making
- Risk management
- Employment law issues
- Intellectual property issues
- OHS issues/managing volunteers
- Tax exemptions and concessions

Similar training programs have been successfully run by our 'sister' organisations interstate (the Public Interest Law Clearinghouses or PILCHs) and well attended by the NFP sector.

If your firm would like to be involved in this initiative, please contact Julia Dreosti at jdreosti@claytonutz.com or on 0409 967 167. Julia is a solicitor at ClaytonUtz on part-time secondment to JusticeNet.

News & Events

Hot off the Press!

JusticeNet has printed 10,000 brochures that have been widely distributed to members and the Courts, Community Legal Centres and other relevant organisations and agencies throughout South Australia. The brochure contains important information about the service we provide, our eligibility requirements and how people can apply for assistance. Our member firms and organisations (as at March 2010) are acknowledged on the back panel.

Website Update

Our website has been updated with new content and some improvements to navigation. Our Members & Volunteers page has also been updated with the logos of our member firms. Clicking on each logo will take the visitor to the member's website. To find your logo, either click *About Us>Members*, or click *Members & Volunteers>JusticeNet Members*.

National Access to Justice and Pro Bono Conference 2010

The 3rd National Access to Justice and Pro Bono Conference is on 27 – 28 August 2010 at the Sebel Citigate, Brisbane. The theme for this year's conference is *Access to Justice at the Crossroads – Where to Now?*



The conference will cover key issues in the area of access to justice including the case for funding the legal assistance sector, identification of gaps in legal need and improving coordination across the sector. Sessions will be in four streams, criminal justice, pro bono, civil and family law, and topics will include:

- Legal Aid funding – why is it important to the criminal justice system?
- Achieving focus and depth – building unique and innovative pro-bono models
- Issues arising from the Moynihan review of the civil and criminal justice system in Queensland and the Law Reform Commission proposals
- Barriers to criminal justice for Aboriginal and Torres Strait Islander people
- Pro bono in the Asia Pacific region
- Child protection
- Coordinating the legal response to natural disasters

The conference will feature many prominent local, national and international speakers such as:

- The Hon Robert McClelland, Commonwealth Attorney-General
- Glenn Ferguson, President, Law Council of Australia
- Esther Lardent, President and Chief Executive Officer, US Pro Bono Institute
- Clare Martin, Chief Executive Officer, ACOSS

The full program will be available soon on the Queensland Law Society's website <http://www.qls.com.au>.

National Pro Bono Resource Centre Pro Bono Manual Available Online

The National Pro Bono Resource Centre Pro Bono Manual for law firms is accessible online at their website www.nationalprobono.org.au. The Manual contains information comprising a mixture of commentary, advice, precedents and background information to assist law firms wishing to establish, develop or expand their pro bono practices. It is an invaluable resource that provides guidance for best practices within the pro bono community.



\$10,000 donation from IMF (Australia) Ltd



JusticeNet was thrilled to accept a \$10,000 donation from IMF (Australia) Ltd. IMF is a leading litigation funder in Australia and the first to list on the Australian Securities Exchange. IMF has a strong commitment to pro bono and aims to continue the profession's long tradition of providing free support for worthy public, social, family or ethnic causes. Tania Sulan, IMF's Litigation Manager based in Adelaide, presented the cheque to JusticeNet in February. The funds will help to ensure the growth and sustainability of JusticeNet in its formative years.

Secondees to JusticeNet

Vesna Vuksan, senior solicitor at the Australian Government Solicitor, recently completed her tour of duty at JusticeNet. During her secondment Vesna made a significant contribution to the operation of our referral scheme and provided valuable guidance to our law student volunteers. Vesna leaves us to have her second child and we wish her all the best. Jumping into the breach is Kate Sullivan from the AGS, to commence a one-day a week secondment. Thanks to the Australian Government Solicitor for their continued support.

We are fortunate also to have the services of a second secondees, Julia Dreosti, senior Associate with Clayton Utz, who helps us out half a day per week. Some of our members have met Julia as she is in the process of organising our program of legal training seminars for not for profit community organisations.

JusticeNet Members

JusticeNet acknowledges the ongoing support of our members, including:

Corporate members: am legal, Blake Dawson, Campbell Law, Clayton Utz, Cowell Clarke, DLA Philips Fox, DMAW Lawyers, Donaldson Walsh, Fisher Jeffries, Gilchrist Connell, Griffith Hilditch, Hanson Chambers, Johnston Withers, Kain C+C Lawyers, Kelly & Co, Piper Alderman, Sparke Helmore, The University of Adelaide, the University of South Australia, and Wallmans Lawyers.

Individuals: Hugh Abbott SC, Martin Anders, Melissa Ballantyne, Justice Barry Beazley, Justice D.J. Bleby, Malcolm Blue QC, Christopher Brohier, Peter Cannell, Gabrielle Canny, Kerry Clark, Elizabeth Connolly, David Crocker, Phillip Foreman, Tim Graham, Dianne Gray, Gregory Holland, George Karzis, Margaret Kaukas, Margaret Kelly, Kerry Kovacs, Justice Robyn Layton, Nicholas Linke, Mark Livesey QC, Judge R. M. Lunn, Arlene Macdonald, Roxanne McCardle, Philip McNamara QC, Alan Meritt, Michael Mills, Carolyn Mitchell, Neville Morcombe QC, Mark Mudri, Justice Geoffrey Muecke, Justice Margaret Nyland, Claire O'Connor, Ilya Ozerov, Cecilia Pascale, Harry Patsouris, Alex Reilly, Ian Robertson SC, Neville Rochow SC, Michael Roder SC, Emily Rutherford, Roger Sallis, George Stathopoulos, Joanne Staugas, Paula Stirling, Justice John Sulan, Gillian Walker, Noëla Washyn, Jonathan Wells QC.

JusticeNet also acknowledges the support of the Law Foundation of South Australia, the University of Adelaide, the Law Society of South Australia and the South Australian Bar Association.

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

Subscription and Feedback

To subscribe or unsubscribe to Pro Bono News or for more information about any item in this newsletter, please send an e-mail to admin@justicenet.org.au or contact us by phone (08) 8303 5005 or fax (08) 8303 4344.

What is JusticeNet?

JusticeNet is an independent not for profit organisation that coordinates pro bono legal assistance in South Australia. JusticeNet facilitates access to justice by matching charitable organisations and those individuals who do not have the means to afford a lawyer, and cannot otherwise obtain the requisite legal assistance, with a 'safety net' of member law firms and barristers.

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