

# Self Representation Service – County and Supreme Courts of Victoria

Proposal

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## About Justice Connect

Justice Connect is committed to providing access to justice through pro bono. Our Referral Service facilitates access to pro bono lawyers for people experiencing disadvantage who cannot otherwise obtain free legal help. We are able to achieve this because we have strong established relationships with lawyers and a proven ability to effectively assess legal matters appropriate for pro bono assistance.

Justice Connect has over 20 years' experience working with pro bono lawyers in Victoria and NSW. This means that we are highly skilled and efficient at ensuring that pro bono resources, which are limited, are appropriately matched with unmet legal need. Our pro bono eligibility guidelines allow us to identify those clients who are best served by a pro bono lawyer. We first determine whether a person is able to pay for legal assistance. If they cannot, we then consider whether there are other services available to address their legal need. This could include Legal Aid, a community legal centre or a "no win no fee" arrangement. Finally, based on our extensive knowledge of the pro bono community, we determine whether a pro bono lawyer has the skills and the capacity to be able to assist. The level of unmet legal need is far greater than pro bono alone can address. Our approach ensures that pro bono resources are directed efficiently to where they are most effectively used, to benefit clients and support the maintenance and strengthening of the legal assistance sector.

Justice Connect considers access to legal assistance for self represented litigants (SRLs) crucial to access to justice for people experiencing disadvantage and to the effective administration of justice. Justice Connect works with SRL Coordinators in the County and Supreme Courts to ensure, where appropriate, litigants who qualify for pro bono assistance are directed to Justice Connect for referral to pro bono lawyers. Placing litigants with pro bono lawyers for ongoing representation in the superior courts is difficult due to the significant capacity required to represent someone in these courts.

This Proposal seeks to outline an alternative way to deliver legal assistance to SRLs. The Self Representation Service (SRS) delivered by Justice Connect in the Federal and Federal Circuit Courts in Victoria, NSW, Tasmania and the ACT is modelled on the QPILCH Self Representation Service and is funded by the Federal government. This Proposal also seeks to explore the delivery of a similar SRS in the County and Supreme Courts of Victoria and considers the experience of JusticeNet in delivering the SRS in the District and Supreme Courts of South Australia.

## Background

In late 2015 the Victorian Government announced that it was conducting a review into Access to Justice in Victoria. Term of Reference 9 of the review seeks to explore options for providing better support for self represented litigants throughout the justice system.

As was noted in the background paper to Term of Reference 9 prepared by the Department of Justice and Regulation, SRLs face a number of hurdles when accessing the justice system. These include court rules, court documents and understanding the law. Then there are the cultural and language difficulties SRLs must overcome to engage with the justice system.

The Department held a round table discussion seeking feedback from participants on how to address the needs of SRLs. The Department invited Liz Gallagher from QPILCH to discuss the Self Representation Service delivered in QLD to explain to participants how the service operates in QLD. The service delivers unbundled legal services to unrepresented litigants in QCAT, the District Court of QLD and the Federal and Federal Circuit courts. Justice Connect delivers this Self Representation Service in the Federal and Federal Circuit courts in Victoria, NSW, Tasmania and the ACT. This service is discussed below.

Whilst the County and Supreme Courts have developed resources dedicated to assisting SRLs navigate the court system including dedicated Self Represented Litigant Coordinators, these resources cannot provide legal advice or assistance to litigants. There is a need for some SRLs to receive assistance in these jurisdictions.

# About the Federal Court Self Representation Service (SRS)

With funding committed for four years from the federal government as part of a national program, Justice Connect operates the SRS in the Federal and Federal Circuit Courts in NSW, Victoria, Tasmania and the ACT. The SRS provides assistance to self-represented litigants who do not have access to legal assistance and advice through other sources. The SRS is based on the successful QPILCH service run in several jurisdictions including the Federal Court in Queensland.

The SRS provides advice and assistance to self represented parties involved or preparing to be involved in proceedings.

The SRS is staffed by a Manager, 2 lawyers and 2 paralegals to deliver the service in NSW, Victoria, ACT and Tasmania. The SRS delivers approximately 12 -15 appointments per week with the assistance of pro bono lawyers.

The service aims are to help provide self represented litigants with:

- legal advice about the issue at court;
- assistance in preparing documents, including correspondence and court forms;
- advice about other options to resolve the issue including representation at mediation where appropriate;
- information about court procedures and court orders;
- assistance to conduct their case in the best possible manner; and
- a referral for pro bono representation where necessary and appropriate.

## SRS Eligibility Guidelines

The SRS helps people who are involved in, or who are considering commencing legal proceedings, and who are unable to afford private legal assistance and are ineligible for legal aid.

Eligibility guidelines include the following considerations:

- Whether the party is currently represented
- Area of law
- Whether there is a conflict of interest – for Justice Connect or the law firm
- Ability to afford legal assistance

Eligible persons are booked for a 1 hour consultation with a volunteer lawyer who provides the following ‘unbundled’ legal assistance:

- legal advice about the issue at court;
- assistance in preparing documents, including correspondence and court forms;
- advice about other options for the resolution of the dispute;
- information about court processes; and
- referral for representation where appropriate.

## Area of Law

The service is able to provide assistance in relation to most matters that fall within the Federal Court and Federal Circuit Court civil jurisdiction.

Family Law matters are expressly excluded from the funding agreement and assistance in this area is not provided through the Service.

## Operation of the SRS

The SRS operates from within the Federal Court of Australia in Melbourne and Sydney. There are two rooms allocated for the service; one housing Justice Connect staff, and the other for appointments. Justice Connect staff are onsite at all times that the service conducts appointments.

The SRS is appointment-based and the SRS staff make these appointments. The appointments are staffed by volunteer lawyers under the supervision of Justice Connect's principal lawyer. The SRS has a triaged appointment system, which means individuals contact the SRS directly. The SRS 'triages' matters and assesses (a) whether the person is eligible for the Service (ie whether they are eligible for pro bono help); (b) whether it is a legal issue that the service can assist with; and (c) the urgency of the matter. If the matter is more appropriate for another service, including a pro bono referral through the Referral Service at Justice Connect for ongoing assistance and representation, we arrange a referral.

If a client is provided with an appointment with a pro bono lawyer, the SRS prepares a 'volunteer brief', which sets out guidance for the volunteer lawyer, including client background, a summary of the legal issue, the task to be completed during the appointment and links to any relevant legal resources, including precedents and proformas.

## Justice Connect Member Firms' Involvement

The responsibilities of the firm include:

- Providing sufficient volunteer lawyers on a periodic basis, to be determined by agreement between Justice Connect and the Firm;
- Coordinating the roster of lawyers to attend the Service;
- Designating a 'Team Leader' within the firm to be the contact point and to oversee the functioning of the Service from the firm's perspective;
- Ensuring volunteer lawyers attend training as required;
- Meeting formally on a six-monthly basis with the Service to review the operation of the Service.

Volunteer Lawyers are required to:

- Have at least 3 months experience in a litigation practice group;
- Attend mandatory training sessions;
- Read volunteer briefs in preparation for appointments;
- Adhere to relevant policies and procedures, including file management procedures

The SRS has expanded to include referral to barristers for assistance at mediations as well as merits advice for judicial review matters.

## Court contribution

The Federal Court provides the following support to the SRS:

- An office in a separate area to the Registry. The room is used by Justice Connect as an office and is furnished by the court including a filing cabinet and a small fridge;
- Access to a small conference room adjacent to the Justice Connect office, with table and chairs, where the lawyer can conduct interviews with litigants and potential litigants;
- Cleaning and Utilities;
- Reasonable requests for postage;
- Telephone/s;
- Access to a registry photocopier;
- Access to library resources (Please check with the local Director of Court Services/ District Registrar, if this is possible);
- Signage in the Registry and public area with contact details for the service;
- Registry staff will also inform people of the service and provide the contact telephone number for the person to make an appointment.

## Benefits for lawyers

Justice Connect has a long history of involvement in outreach legal services, made possible by the involvement of volunteer lawyers from our member firms. Our experience is that volunteer lawyers involved in these programs are motivated by a desire to assist vulnerable members of our community, to develop professional skills, and an enjoyment of the diversity in their work.

In 2013, Justice Connect's Homeless Law surveyed their 200 volunteer lawyers to gain a greater understanding of the reasons for their continued involvement. The results showed that 78% indicated they were motivated by a desire to provide access to justice for vulnerable clients. In addition to this, lawyers reported they had further developed their professional skills including file management (75%), client interview skills (73%), client management (62%) and interpersonal skills (53%).

## Support Provided by Justice Connect

Volunteer lawyers from firms are well supported by the SRS staff. Justice Connect has a 13 year history of running pro bono outreach services, and have built in processes that ensure volunteer lawyers are appropriately supported and supervised, and gain additional professional skills and knowledge through their involvement, as well as ensuring that pro bono legal services are appropriately directed. Some of the key aspects include:

- Compulsory induction training for all new volunteer lawyers on key areas of law, dealing with challenging clients and risk management.
- Applications for assistance will be assessed against eligibility criteria and Service staff will book appointments where appropriate with a volunteer lawyer or will otherwise refer applicants to alternative services where available.
- Intake memos – at the outset of a matter, volunteer lawyers are provided with an intake memo setting out the legal issue, timeframes, relevant law, scope of assistance, suggested steps and key resources.
- Practice resources to provide volunteer lawyers with the necessary guidance to attend the client appointments. These can include template correspondence and submissions.
- Justice Connect staff lawyer guidance – regular support from staff lawyers to volunteer lawyers by phone and email prior to an appointment. The Service staff will be onsite to provide support at all times during service hours.
- Clear pro bono team structure and well defined roles, expectations and responsibilities, including team leaders within the participating firms.
- Clear policies and checklists for attending appointments, using PIMS (information management system), dealing with challenging clients, and terms of engagement with the Service clients.
- Regular operational and service review between firms, Service Staff and the registry.

## Other Self Representation Services

### Evaluation of the JusticeNet Supreme Court pilot

In February 2015 the Attorney General's Department of South Australia published an evaluation<sup>1</sup> of the JusticeNet self representation service pilot. JusticeNet is an independent not for profit organisation that brokers pro bono legal assistance for individuals who cannot afford a lawyer and community organisations, predominantly in civil matters.

In September 2013, JusticeNet commenced a pilot self representation service in the civil jurisdiction of the Supreme Court of South Australia based on the QPILCH SRS. The objectives of the pilot were to:

1. Increase access to legal advice and assistance, including alternative dispute resolution, for disadvantaged litigants in person.

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<sup>1</sup> [http://www.ocsar.sa.gov.au/docs/evaluation\\_reports/JusticeNet\\_SRS\\_Evaluation\\_Report.pdf](http://www.ocsar.sa.gov.au/docs/evaluation_reports/JusticeNet_SRS_Evaluation_Report.pdf)

2. Promote orderly and timely resolution of court proceedings.
3. Divert unmeritorious matters from court.
4. Decrease demands on court staff.
5. Increase access to representation for clients with meritorious cases.

The JusticeNet SRS is delivered in the combined District and Supreme Court registry and courtrooms building. Advice and assistance with discrete legal tasks is provided to eligible applicants during a one-hour appointment with a volunteer lawyer co-ordinated by JusticeNet. The JusticeNet SRS provides the following unbundled assistance:

- Impartial advice, including the risks and costs associated with litigation and advice in relation to appealing a Court decision;
- Assistance with drafting documents, including Court forms and pleadings;
- Advice about other options for the resolution of a dispute;
- Advice about Court processes; and
- Referrals, if appropriate, for further advice or representation.

Feedback from various respondents surveyed as part of the evaluation indicated there was a strong sense of social justice benefits derived due to the Service. It was felt there was a need for disadvantaged parties to obtain just and fair outcomes in court and that the Service delivered this. There were also comments that the Supreme Court in particular could be challenging and that any help for self-represented parties was beneficial.

## Evaluation of the QPILCH model

In March 2014 The University of Griffith and The University of Queensland published<sup>2</sup> an evaluation of the QPILCH Self Representation Service.

The objectives of this evaluation related to:

- Identifying the demand for such services and the data processes for recording demand and service by the court and the Service;
- Understanding the utility/appropriateness of the current services, in terms of cost-effectiveness, accessibility, addressing the legal and emotional needs of litigants;
- Considering access to justice for self-represented litigants; and
- Identifying appropriate arrangements (in terms of both service provision and resourcing) to sustain this type of service.

The key recommendations of the evaluation included:

- Improving data collection as between the court and the service.
- Communication with key court staff is central to the effective operation of the service.
- Early referral appears to be recognised as the most constructive.
- Judges and their associates and court registry staff appeared to be screening SRLs rather than referring them to the service. The service would have a better opportunity to fulfil its potential and support both the SRLs and the courts if all SRLs are referred for consideration and it was recommended that court officers and registry staff refer all to the service for assessment and advice.
- Overall the support provided by the service was well received by clients and had a positive impact on clients' subjective experience of their legal issues.

The review concluded that, "...the support provided by the Service is well received by clients, and generally has a positive impact on clients' subjective experience of their legal issues. The Service should be commended for the support they are already providing, and it is recommended that some attention is given to building clients' sense of efficacy, perhaps by identifying the particular aspects of their legal

<sup>2</sup> <http://www.civiljustice.info/cgi/viewcontent.cgi?article=1002&context=srl>

issues that clients do not feel capable of managing and providing some clearly defined steps that can be followed.”<sup>3</sup>

## Fair Work Commission Unfair Dismissal Pro Bono Pilot

As part of its efforts to increase access to justice the Fair Work Commission (FWC) initiated a pilot program to facilitate the provision of pro bono legal advice and representation to unrepresented parties in hearings concerning jurisdictional objections. The pilot was limited to hearings conducted in Melbourne and ran from May 2013 to December 2013 with the involvement of 14 firms rostered to provide assistance.

RMIT University’s Centre for Innovative Justice (CIJ) was asked by the FWC to provide an assessment of the program. A report was published in December 2013.<sup>4</sup> The review included data from the FWC, surveys of participants and feedback from the FWC, FWC staff and pro bono lawyers.

The main learnings from the review are outlined below:

- Participants benefited from the legal assistance however they thought assistance should have been available earlier and be available only to people who can’t afford assistance.
- FWC members thought the assistance was of benefit and suggested that matters heard under the General Protections provisions would benefit from pro bono assistance. A number of members thought it might be worth considering being more selective in the cases that receive assistance or that resources should be focussed on complex matters.
- FWC staff reflected on the additional pressure placed on the team managing the pilot without additional resources and suggested additional staff would be needed to meet the demand. In addition, staff noted that a number of participating lawyers had suggested that the program’s criteria were too broad and had observed that some parties would not fit within their firm’s pro bono eligibility criteria.
- Pro bono firms agreed that the program provided valuable experience for their lawyers, however they also indicated that the work involved had been greater than anticipated, with many firms strongly suggesting that materials be provided earlier in the process to give lawyers more time to prepare. Firms also expressed wider concerns about the public interest of providing pro bono representation to parties who may otherwise be able to afford legal assistance, particularly employers.

The CIJ in their report referred to the QPILCH SRL service as a model that the FWC could seek guidance from as to how such a scheme can be provided. The report also noted that it would be reasonable to expect further resources to be allocated if the scheme were to continue. In particular, given the feedback on eligibility criteria being applied in determining who receives assistance, the reviewers encouraged a source of further support to be identified – whether through an allocation of internal funding, or through assistance of an external pro bono facilitator.

## Next steps for County and Supreme Court SRS

Preliminary conversations with Justice Connect Member firms suggest that matters in some Lists in the County Court and Supreme Court are appropriate for pro bono assistance and others are more appropriate for assistance by no win no fee arrangements.

It is recommended that funding be sought from the Department of Justice to scope and pilot a self representation service in the County and the Supreme Courts modelled on the SRS now operating in the Federal and Federal Circuit Courts and delivered by Justice Connect.

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<sup>3</sup> Page 31, <http://www.civiljustice.info/cgi/viewcontent.cgi?article=1002&context=srl>

<sup>4</sup> Report for Fair Work Commission, Review of Unfair Dismissal Pro Bono Pilot, Centre for Innovative Justice, RMIT December 2013