

## **Federal Court of Australia and the New South Wales Bar Protocol for Pro Bono Assistance Scheme**

The New South Wales Bar has, at the request of the Federal Court, agreed to provide assistance to certain litigants unable to obtain legal representation.

This document sets out the guidelines which will operate when unrepresented litigants are referred to the Bar. It is expected that the Scheme will be provided for under a specific Rule of the Federal Court. \*

This Scheme is not intended to be a substitute for Legal Aid, or impinge upon areas in which Legal Aid might be provided.

### **Definitions**

"the Bar" means the New South Wales Bar

"the Bar Rules" means the New South Wales Barristers' Rules

"litigant" means a person who is or may become a party in a Federal Court proceeding, or has been served with a summons or subpoena in a Federal Court proceeding

"Scheme" means the pro bono scheme provided for under this protocol

### **1. Nature of matters to be referred**

**1(1)** Matters which may be referred will be primarily in the following areas of law:

- (a)** migration
- (b)** administrative law (eg AAT appeals, ADJR applications)
- (c)** veterans' and social security entitlements
- (d)** human rights & equal opportunity

[\* See FCR Order 80]

- (e)** bankruptcy
- (f)** industrial relations
- (g)** trade practices/consumer protection

(h) native title

1(2) Matters may also be referred in other areas of law, at the discretion of the Court.

## **2. Panel of pro bono practitioners**

2(1) The Bar will provide to the Court a list of barristers willing to accept work under the Scheme in each of the areas of practice listed in c11(1) The Bar will provide the Court with an updated list from time to time.

2(2) Barristers are invited to apply to be members of such of the panels as they deem appropriate including a general panel which will cover all jurisdictions of the Court.

## **3. Referral by the Court**

3(1) The Court may refer a litigant to the Bar under the Scheme for assistance when the Court or a Judge is of the opinion that representation is appropriate in the interests of the administration of justice.

3(2) Matters will be referred under the Scheme by the Court by way of a Referral Certificate (see attachment "A").

3(3) When considering a referral, the Court or a Judge can be expected to have regard to:

- (a) the impecuniosity of the litigant;
- (b) the litigant's capacity to obtain legal advice or representation from outside the Scheme;
- (c) the nature and complexity of the matter; and
- (d) such other matters as the Judge or the Court considers appropriate.

- 3(4)** The Court will endeavour to ensure that matters are referred as far in advance as possible before any hearing dates or other relevant deadlines.

#### **4 Nature of work which may be undertaken**

Referrals to a barrister may be made for assistance of the following nature:

- (a)** to enable litigants to obtain representation for appearances, whether for directions hearings, interlocutory or final hearings or for mediations;
- (b)** for advice to be obtained in relation to proposed or existing proceedings;
- (c)** for Court documents to be drafted or settled, such as originating process, pleadings, affidavits, written submissions or outlines of argument; and/or
- (d)** for such other purposes as may be appropriate.

#### **5. Mechanism for referral**

- 5(1)** Once the Court has made a referral, the Court file and the Referral Certificate will be forwarded to a Registrar of the Court to endeavour to arrange representation.
- 5(2)** The Registrar will contact a barrister directly from the appropriate list of area of practice to discuss whether that barrister is able to take the referral. When a barrister is available the Registrar will arrange contact between the litigant and the barrister.
- 5(3)** The Registrar will provide copies of relevant documents from the Court file for the Barrister's use if necessary, as well as a Referral Form (see attachment "B").
- 5(4)** The Registrar will provide the manager of the Bar's pro bono scheme with a copy of every Referral Form.
- 5(5)** The Registrar will ensure that, as far as practicable, referrals are fairly spread amongst barristers.

## **6. Engagement of practitioner**

- 6(1)** The Bar does not guarantee that a barrister will be available to accept a referral.
- 6(2)** Once a barrister has agreed to accept the referral, then, subject to this clause, that barrister will act for the litigant pursuant to the referral notwithstanding that no solicitor has been engaged to act in the matter.
- 6(3)** Subject to any direction of a Judge, a barrister may only cease to act for a litigant pursuant to the referral:
- (a)** in the circumstances provided for in the Bar's Rules;
  - (b)** with the written consent of the litigant; or
  - (c)** with the leave of a Registrar of the Court.
- 6(4)** **(a)** A barrister who ceases to act for a litigant pursuant to cl 6(3)(a) must notify a Registrar and the litigant in writing within 7 days of cessation.
- (b)** A barrister who wishes to cease to act for a litigant pursuant to cl 6(3)(b) must notify a Registrar in writing within 7 days of cessation.
- (c)** A barrister who wishes to cease to act for a litigant pursuant to cl 6(3)(c) must notify a Registrar and the litigant in writing of his or her intention to do so as soon as possible before applying for leave to do so, briefly stating the reasons for wishing to ceasing to act.
- 6(5)** A notification to a Registrar under cl 6(4) is to be confidential and is not to form part of the Court file in the matter in which the barrister has accepted a retainer.
- 6(6)** Where a barrister who has accepted a referral considers that it is necessary to have a solicitor on the record for the litigant, the barrister will contact a Registrar to discuss the question of representation. If the Registrar considers it appropriate to do so the Registrar will make inquiries with the Law Society of

New South Wales or such other bodies as may be appropriate as to whether arrangements can be put in place with a solicitor.

**7. Professional fees**

**7(1)** Subject to cl 7(2), a barrister who accepts a referral under the Scheme is not to recover any professional fees for the work undertaken on behalf of the litigant.

**7(2)** A barrister will be entitled to charge and recover his or her taxed fees including disbursements for acting for a litigant under the Scheme pursuant to an order of the Court.

**8. Disbursements**

**8(1)** A barrister may request a litigant to pay any reasonable disbursements which are required to be incurred in the course of the proceeding.

**8(2)** If a litigant is unable or unwilling to pay any disbursement which the barrister considers it is necessary to incur to undertake the terms of his or her engagement under the referral, the barrister will discuss the matter with a Registrar of the Court, who will attempt to resolve the matter.

**9. Review Committee**

**9(1)** The Court and the Bar will establish a Review Committee, which will meet from time to time to review the implementation and operation of the Scheme.

**9(2)** The Review Committee will initially consist of the Executive Director of the Bar, a Judge and a Registrar of the Court, but other staff or members of either the Bar or the Court may attend meetings of the Committee from time to time.



**Attachment "A"**

**CERTIFICATE OF REFERRAL TO BAR'S PRO BONO SCHEME**

I, Associate to the Honourable Justice \_\_\_\_\_, certify that his or her Honour has determined that it is appropriate in the interests of the administration of justice that the following matter has been referred to the Bar's pro bono scheme:

**Proceeding number:**

**Proceeding name:**

**Name of party referred:**

**Purpose of referral** (eg to obtain advice, to appear at the hearing of the matter scheduled for a certain date):

**Date:**

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**Attachment "B"**

**FEDERAL COURT OF AUSTRALIA  
REFERRAL TO NEW SOUTH WALES BAR  
PRO BONO SCHEME**

**LITIGANT WHO HAS BEEN REFERRED**

**BARRISTER TO WHOM LITIGANT HAS BEEN REFERRED**

**DETAILS OF PROCEEDING**

**Proceeding number:**

**Docket Judge:**

**Parties and their legal representatives:**

**Short description of nature of proceedings:**

**Status of proceedings:**

(ie what interlocutory steps have been completed, what orders have been made which must still be complied with)

**NATURE OF REFERRAL**

(ie purpose for which proceeding has been referred)

**COPIES OF THE FOLLOWING COURT DOCUMENTS ARE ATTACHED:**