



Law
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Chief Justice Marilyn Warren
Supreme Court of Victoria
210 William Street
MELBOURNE VIC 3000

By email to: webmaster@supremecourt.vic.gov.au

Cc Rob Hulls, Attorney-General and Deputy Premier: rob.hulls@parliament.vic.gov.au

Dear Chief Justice

Streamlining of processes for waiver of court fees in *pro bono* matters and other similar contexts

The Law Institute of Victoria (LIV), the Federation of Community Legal Centres Victoria and the Public Interest Law Clearing House (PILCH) (the joint authors) wish to note concerns raised by our members that current processes for waiver of court fees in *pro bono* matters and in other similar contexts create a structural barrier to access to justice in Victoria. This submission is provided following previous discussions between you and LIV Councillor Mark Woods in relation to this matter.

As you are aware, lawyers regularly act for clients without fee or expectation of a fee where a client has no other access to the courts or the legal system or where the client's case raises a wider issue of public interest. This legal representation commonly takes the form of *pro bono* representation,ⁱ or, where litigants are unable to access legal aid, the provision by community legal centres (CLCs) of legal representation in court.

Single fee waiver form for all Victorian courts and tribunals

Presently, it is necessary for practitioners acting on a *pro bono* basis or through a CLC to prepare applications on behalf of their clients for waiver of court fees payable in respect of a proceeding. The joint authors note that each Victorian court and tribunal has a different fee waiver application form. Our members report that applications are time consuming and an inefficient use of resources. Moreover, the existence of different guidelines and forms at each court and tribunal creates confusion and prevents streamlining of processes. We also consider that waiver of court fee application forms place an additional burden on unrepresented litigants, who are unlikely to be familiar with the application process.

We therefore propose that there be a single fee waiver application process and form in all matters, including *pro bono* matters, for all courts and tribunals in Victoria. The following outlines a proposed model for a single application process, which includes automatic exemption from fees for express

categories (including receipt of government benefits and a certificate from a pro bono provider), and retention of discretion in cases of financial hardship.

Model for single fee waiver and exemption form

In Victoria, we note that all courts and tribunals have been vested with discretion to waive a prescribed fee where, in the opinion of the relevant officer, payment of the fee would cause financial hardship.

The joint authors note that the Family, Federal and Federal Magistrates Courts of Australia (the federal courts) provide express exemption from court fees for individuals who:

- have been granted Legal Aid;
- hold a health care card;
- hold a pensioner concession card;
- hold a Commonwealth seniors health card;
- hold another card issued by the Department of Family and Community Services or the Department of Veterans' Affairs;
- are an inmate of a prison or are otherwise lawfully detained;
- are a child under the age of 18 years;
- are in receipt of Youth Allowance or Austudy; or
- are receiving benefit under ABSTUDY.ⁱⁱ

In addition, the federal courts have discretion to exercise discretion to waive fees in cases of financial hardship. The federal courts have developed a single application form for fee exemption and waiver.ⁱⁱⁱ Where an individual is able to attach a photocopy of the relevant evidence for exemption, no further evidence of financial hardship is required. Where an individual wishes to be considered for fee waiver, she or he is required to provide a more detailed financial statement.

We suggest that Victorian courts and tribunals should develop express exemption categories, based on the examples identified above, to significantly reduce time spent on applications and ensure more efficient use of resources.

We recognise the importance of retaining discretion to waive fees in cases of financial hardship, to ensure that the system remains flexible. In order to promote transparency in fee waiver processes, and to assist applicants to complete the application form, we suggest that guidelines be published, such as those available on the VCAT website.^{iv}

Certificate from pro bono provider as qualification for fee waiver

In addition, the joint authors propose that where a legal practitioner has received a *pro bono* referral from a recognised scheme, an express exemption from payment of courts fees should be available where a certificate from the Manager of the scheme is provided.

As you are aware, various schemes in Victoria provide referral services for clients seeking *pro bono* assistance. Schemes such as the LIV Legal Assistance Scheme (LIVLAS), which are administered by PILCH, act as facilitators of *pro bono* legal assistance between the community and the private legal profession by assessing whether a client:

- (i) has a meritorious legal problem;
- (ii) has sufficient funds to retain a solicitor; and
- (iii) can obtain appropriate legal assistance from government funded bodies or community based organisations.

This screening process is based on the relevant scheme guidelines and is important to ensure efficient use of *pro bono* resources in Victoria.

The joint authors suggest that a memorandum of understanding could be agreed between PILCH and the relevant courts and tribunals as to the circumstances in which clients of the schemes will be eligible for a waiver of court fees. Recognised schemes could include: the Public Interest Law Scheme; the Homeless Persons' Legal Clinic; the Victorian Bar Legal Assistance Scheme and the LIV Legal Assistance Scheme.

Similarly, where a law firm has been recognised by the courts as a provider of *pro bono* services – for example, through employing a *pro bono* coordinator - we consider that a certificate from the *pro bono* coordinator should suffice for exemption from court fees. A process for recognition of law firms providing *pro bono* services could again be established by a memorandum of understanding with the courts. The courts may wish to consider any guidelines employed by the law firm in the assignment of *pro bono* matters.

We believe that if current processes are streamlined, legal practitioners will be able to dedicate more time to legal representation in *pro bono* and other similar matters, thereby freeing up additional resources in the *pro bono* and community legal sectors.

The Access to Justice Committee of the LIV would be pleased to meet with you to discuss these proposals further. Please contact Laura Helm, Policy Adviser, on (03) 9607 9380 or lhelm@liv.asn.au in connection with this matter.


Yours faithfully



Anthony Burke
President
Law Institute of Victoria



Hugh de Kretser
Executive Officer
Federation of
Community Legal Centres



Mat Tinkler
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ⁱ See further LIV Policy Statement on Pro Bono Work, adopted 24 January 2008 (available at <http://www.liv.asn.au/about/pdf/ProBonoLIVPolicy%20Jan2008.pdf>).

ⁱⁱ Federal Court of Australia Regulations 2004; Family Law Regulations 1984; Federal Magistrates Regulations 2000.

ⁱⁱⁱ Available at http://www.fedcourt.gov.au/pdfsrtfs_a/application_I_v2.rtf.

^{iv} Available at [http://www.vcat.vic.gov.au/CA256902000FE154/Lookup/application_forms_miscellaneous/\\$file/fee_waiver_application_form.pdf](http://www.vcat.vic.gov.au/CA256902000FE154/Lookup/application_forms_miscellaneous/$file/fee_waiver_application_form.pdf)