

QUEENSLAND PUBLIC INTEREST LAW CLEARING HOUSE INCORPORATED

GOVERNMENT LAWYERS AND PRO BONO WORK

Purpose

To establish a system for government lawyers to participate in pro bono legal work.

Background

There are many people who cannot afford private legal services or access publicly funded legal aid or other free legal services. With a larger pool of volunteer lawyers, more people can be assisted on a pro bono basis.

There are many lawyers employed in government who are keen to assist disadvantaged Queenslanders and who do volunteer after hours through CLCs, but do not participate in structured pro bono schemes which primarily operate in work hours.

Pro bono work is not just a professional responsibility of private legal practitioners. It is the responsibility of all lawyers, irrespective of where they are employed.

As part of the Self Representation Service (Courts) (SRS), QPILCH coordinates a free mediation service. The SRS encourages clients to resolve their disputes as far as possible without going to trial, yet many people who cannot afford a lawyer are also prevented from attempting mediation due to cost.

The QPILCH mediation panel would be strengthened and more mediations would be held with access to government lawyers with mediation accreditation.

Proposal

On a trial basis, we propose the involvement of government lawyers with mediation accreditation in QPILCH's free mediation panel.

Issues

Concerns have been raised that government lawyers are excluded from doing pro bono work because of conflict of interest and lack of resources.

Conflict

Conflict is an issue for all pro bono providers, particularly law firms, which is easily overcome through a conflict check prior to accepting a referral.

In any event, few applications for assistance each year involve government, even fewer of which are suitable for mediation. The scheme would ensure any matter involving government was not offered to government lawyers on the mediation panel, and as is QPILCH's current practice, interested mediators would be provided the names of the parties before taking up the referral to ensure a conflict does not exist.

Resources

A strength of the pro bono resurgence through a structured scheme like QPILCH is that the work is done by lawyers in work hours with the support of their firm and by barristers at their own expense. They do this as part of their professional responsibility and because there is insufficient public funding, particularly for civil law services.

Law firm and barrister members are able to manage their pro bono commitment by taking on only those matters within their capacity and expertise. QPILCH's current pro bono referral scheme is not compulsory. Members are free to accept only those referrals they choose.

Demands on government resources would therefore be minimal, as like firms, the government agency would make a decision based on its staff members other work commitments in deciding whether to take up a referral. The benefit of this scheme is that with a larger pool comprising government lawyers, there is more likely to be a mediator with the capacity to assist.

Just as government accepts that private practitioners should forego income and profit to undertake pro bono work, there should be no impediment to government lawyers contributing to fill this social need.

There are currently no regulatory barriers to government lawyers providing pro bono mediation services as proposed. Volunteers in QPILCH work are fully covered by QPILCH's insurance.

This proposal would be easy to implement and would:

- give government lawyers broader knowledge and experience;
- introduce more resources into pro bono services for disadvantaged Queenslanders;
- provide experience for accredited mediators to maintain their accreditation; and
- signal to the profession at large that the State Government takes pro bono seriously.

The scheme could be coordinated by a central agency such as Crown Law and a limit on the amount of work hours given to pro bono set each year. The commitment is unlikely to be onerous as QPILCH's mediation service is developing slowly.

If the scheme is shown to work, it could be expanded to include other types of pro bono assistance.

Recommendation

That the Attorney negotiate with other Government Ministers to involve lawyers in all government departments in pro bono activities and issue a directive to permit government lawyers with a mediation accreditation to participate in QPILCH's Mediation Panel, with a view to considering wider pro bono involvement after a trial period of 2 years.