



## Queensland Public Interest Law Clearing House Incorporated

### Memorandum

TO : – Productivity Commission

FROM : QPILCH

DATE : 29 July 2014

SUBJECT : Further information re QPILCH's Self Representation Service

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This memo is provided to inform the Productivity Commission of the legal outcomes of self-represented litigants assisted by QPILCH's Self Representation Service (the **Service**) in the Queensland District and Supreme Courts and Court of Appeal, the Queensland Civil and Administrative Tribunal (**QCAT**) and the Federal Court and Federal Circuit Court of Australia.

We note that in our opinion the outcomes below are not fully illustrative of the benefits of the Service. For example our current resources do not make it possible to quantify the social impact of the Service, or the economic benefit to the court/tribunal achieved by the Service assisting litigants to be better prepared generally or convincing a particular litigant to take more appropriate steps in their proceedings. By way of illustration, during the 2013-14 financial year:

- A client was referred to the State Courts for assistance to apply to the Court of Appeal for leave to appeal a decision of QCAT in the Tribunal's human rights jurisdiction. We gave the client some advice about drafting her draft notice of appeal and discussed the 40 grounds that the client had drafted in her proposed notice of appeal. We were able to assist the client to reduce these to eight specific grounds. The client was ultimately unsuccessful in her application.
- In the Federal Courts, we assisted a client involved in an appeal to the Full Court of the Federal Court. We obtained an advice from Counsel on a pro bono basis and assisted the client to prepare his submissions and substantially narrow the scope of his appeal to focus on those grounds that were arguable.
- At QCAT we assisted a mother pursuing complaints of discrimination on behalf of her children against their former school. The client received a number of appointments with the Service throughout the course of her proceedings. One appointment was used to discuss an appeal the client wanted to bring against a decision made by QCAT granting leave for the opposing party to be represented. We explained the difficulties she would encounter in appealing an interlocutory decision in QCAT and referred her to previous QCAT decisions to demonstrate these difficulties. The client accepted our advice that her energy would be best spent preparing for the substantive hearing of the complaints and elected to 'let the matter go'. The client was ultimately unsuccessful in her claim.

### CASEWORK DATA

#### Queensland District and Supreme Courts and Court of Appeal

In the 2013-14 financial year, the Service at the State Courts received 242 applications for assistance and provided 255 appointments. In addition to this, 30 clients received written advice about their matters.

#### *Role of parties*

Of the 242 applications received by the Service in the State Courts, 81 were from parties in potential matters (of which 76 were from the party potentially initiating action and 5 were from the party potentially

responding to action), 60 were from applicants in proceedings already on foot and 101 were from respondents to proceedings.

### ***Diversion from courts***

Of the 76 potential applicants/appellants who approached the Service:

- 47 were advised not to commence proceedings and 38 took that advice; and
- 29 were considered to have arguable cases and were given some assistance to commence proceedings.

In addition, of the applicants whose matters were on foot when they approached the Service, 38 clients were advised to settle or discontinue their matter and 17 of those clients reached an agreement or discontinued their cases.

### ***Other outcomes***

Of the 242 applications received, 204 were eligible for assistance. The below table shows a summary of the outcomes achieved by applicants who were eligible for assistance.

<b>Areas of Law</b>	
Corporations, Business and Commercial Disputes	45
Consumer/Debt	30
De facto Property	5
Defamation	19
Disputes with Lawyers	7
District Court & QCAT Appeals	14
Enforcement	8
Judicial Review	4
Mortgage Repossession	26
Nuisance & Neighbour Disputes	5
Personal Injuries	12
Planning & Environment	7
Property Disputes	34
Wills & Estates	22
Misc	4
<b>Total</b>	<b>242</b>

<b>Reason for file closure</b>	<b>Number of applications</b>
Court decision – favourable	2
Court decision – unfavourable	27
Taken up pro bono by QPILCH member	3
Accepted advice not to continue with or commence proceedings	44
Negotiated settlement	12
Cannot assist further (policy or prospects)	57
Outcome unknown	59

### **Federal Court and Federal Circuit Court**

The Service at the Federal Court commenced operations on 24 February 2014. From that date until the end of the 2013-14 financial year, the Federal Courts received 100 applications for assistance and provided 86 appointments.

### **Role of parties**

Of the 100 applications received by the Service in the Federal Courts, 44 were from potential applicants/appellants, 28 were from applicants in proceedings already on foot and 17 were from respondents to proceedings.

The remaining 11 applications related to the Fair Work conciliation program the Service is coordinating, where both parties to the proceeding were provided with assistance in the form of a conciliation conducted by a pro bono mediator.

### **Diversion from courts**

Of the 45 potential applicants/appellants who approached the Service:

- 8 were advised not to commence proceedings and all 8 took that advice;
- 4 had arguable cases but received assistance to pursue/settle the matter outside of court;
- 12 were considered to have arguable cases and assisted to commence proceedings (and 10 are still receiving assistance);
- 1 had an arguable case but decided not to commence proceedings for personal reasons;
- 11 were ineligible for assistance or otherwise did not receive assistance (usually because they could not be contacted or withdrew instructions); and
- The remaining 9 applications from potential applicants/appellants are still to be finalised.

In addition, 4 applicants to proceedings on foot were advised to discontinue their claims and 2 accepted that advice.

One respondent to proceedings decided not to defend the claim against him after receiving advice, allowing the court to deal with the matter more quickly.

### **Other outcomes**

Of the 100 applications received, 90 were eligible for assistance and offered an appointment. At the time of writing, 52 of the eligible applications received had been finalised. The below table shows a summary of the outcomes achieved by eligible applicants for assistance.

<b>Reason for file closure</b>	<b>Number of applications</b>
Court/Tribunal decision – favourable	3
Court/Tribunal decision – unfavourable	2
Taken up pro bono by QPILCH member	0
Accepted advice not to commence/continue/defend proceedings	11
Negotiated settlement	5
Client withdrew instructions/proceedings	7
Cannot assist further (policy or prospects)	6
Outcome unknown	3
Settlement conference – no settlement reached	4
Settlement conference – settlement reached	7
Advice only	4

<b>Areas of Law</b>	
Anti-discrimination	3
Bankruptcy	21
Competition and consumer	4
Fair Work	46
Enforcement	6
Information privacy	2
Judicial Review	1
Appeals (federal tribunal)	5
Appeals	5
Other	7
<b>Total</b>	<b>100</b>

## QCAT

In the 2013-14 financial year, the Service at QCAT received 267 applications for assistance and provided 311 appointments.

### *Role of parties*

Of the 267 applications received by the Service in QCAT, 104 were from potential applicants/appellants, 122 were from applicants/appellants in proceedings already on foot and 41 were from respondents to proceedings.

### *Diversion from QCAT*

Of the 104 potential applicants/appellants who approached the Service:

- 11 were advised not to commence proceedings and 5 took that advice (1 did not and the remaining 5 we are unsure of); and
- 93 were considered to have arguable cases and assisted to commence proceedings.

<u>Areas of Law</u>	
Administrative Review	25
Anti-Discrimination	21
Building & Construction	4
Children & Young People	2
Enforcement	2
Guardianship & Administration	50
Manufactured Homes	5
Other MCD	31
Residential Tenancy	95
Appeals	32
<b>Total</b>	<b>267</b>

In addition, 6 applicants to proceedings on foot were advised to discontinue their matter and 4 took that advice (the remaining 2 we are unsure of).

### *Other outcomes*

Of the 267 applications received, 218 were eligible for assistance and offered an appointment. As at 30 June 2014, 145 of the eligible applications received had been finalised. The below table shows a summary of the outcomes achieved by eligible applicants for assistance.

<b>Reason for file closure</b>	<b>Number of applications</b>
Tribunal decision – favourable	10
Tribunal decision – unfavourable	1
Taken up pro bono by QPILCH member	1
Accepted advice not to commence/continue with proceedings	9
Negotiated settlement	7
Cannot assist further (policy or prospects)	15
Client withdrew instructions/did not return	75
Outcome unknown	16
Referred within QPILCH	6
Referred outside of QPILCH	5