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## VICTORIAN BAR PRO BONO SCHEME

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# ELIGIBILITY GUIDELINES

**The Victorian Bar Pro Bono Scheme (VBPBS)** facilitates the delivery of free legal services to the community by barristers who are members of the Victorian Bar and have volunteered to provide legal assistance on a pro bono basis (without a fee).

Applications for pro bono legal assistance are assessed against the VBPBS eligibility guidelines.

Justice Connect administers the VBPBS by connecting eligible applicants with pro bono barristers who have the capacity, and the relevant expertise and experience to assist.

Justice Connect cannot and does not provide help-seekers with legal advice and cannot act as their solicitor. Justice Connect collectively refers to any person or organisation seeking to access, or who is accessing its services as “help-seekers”.

### Who we help through VBPBS

#### *Who the VBPBS can help*

The VBPBS helps individuals who are represented by community legal centres, legal aid or solicitors acting on a pro bono basis (the Pro Bono Instructor). It can also assist community organisations, and farms/small businesses impacted by natural disasters. Only in special circumstances can the VBPBS assist individuals who do not already have a solicitor.

#### *What is a solicitor?*

Normally, an individual’s first port of call when seeking legal advice is a solicitor. A solicitor is a lawyer who provides legal advice and assistance to individuals and organisations. Solicitors take instructions from clients, provide advice, and prepare a case before it goes to court. Solicitors normally work in a law firm with other solicitors.

#### *What is a barrister?*

Generally, barristers specialise in court appearances and advising in complex cases. Barristers are usually engaged by a solicitor to appear in court on their client’s behalf and can only assist individuals without a solicitor in limited circumstances. Barristers are self-employed, rather than working in a law firm.

### Overview of VBPBS eligibility guidelines

In determining help-seeker eligibility for assistance through the VBPBS, Justice Connect will consider their ability to pay for legal costs, the nature of their legal matter, and any personal circumstances that may affect their ability to access legal help.

In assessing help-seeker applications, Justice Connect will rely on the information provided by the help-seeker’s Pro Bono Instructor and/or the help-seeker.

Justice Connect may stop or change the scope of pro bono barrister assistance available to a help-seeker if they:



1. do not provide full disclosure about their legal matter and personal circumstances
2. fail to advise Justice Connect of any changes that may affect their eligibility; and/or
3. do not follow the reasonable requests of Justice Connect, for example, to provide more information (such as documents relating to the legal matter).

The decision to grant access to pro bono barrister assistance under the VBPBS is in the absolute discretion of Justice Connect.

### **Eligibility guidelines:**

#### **1. Involvement of a Pro Bono Instructor**

- i. To be eligible for pro bono barrister assistance under the VBPBS, a help-seeker who is an individual should be represented by:
  - a. a community legal centre;
  - b. Victoria Legal Aid; or
  - c. a solicitor acting on a pro bono basis;

(a “Pro Bono Instructor”).

- ii. Individuals are only eligible for direct pro bono barrister assistance in special circumstances. The decision to grant access to direct pro bono barrister assistance is at the discretion of Justice Connect.

#### **2. Ability to pay for legal costs**

- i. Justice Connect will consider the financial means of a help-seeker or the status of a help-seeker as a not-for-profit organisation. To be eligible:
  - a. individuals must have a household income of up to \$150,000 gross per household, or \$75,000 gross per individual; and equity in a home or other investments of \$300,000 or less;
  - b. community organisations must be not-for-profit; and
  - c. farms/small businesses must not be able to afford the cost of legal advice, and their request for assistance must relate to a legal matter that arose because of a disaster or is harder to resolve because of a disaster.

Justice Connect may apply a more flexible means test for help-seekers it identifies as experiencing a high level of legal need having regard to the nature of the help-seeker’s legal matter (see section 3 below) and the help-seeker’s personal circumstances (see section 4 below).



- ii. Pro bono barrister assistance through the VBPBS is not available if:
  - a. the help-seeker can pay for their own legal costs;
  - b. the help-seeker is already represented by a paid solicitor or barrister or has already received legal help with their matter;
  - c. the legal matter is more suitable for a No-Win-No-Fee firm (for example, where a help-seeker is seeking financial compensation);
  - d. a grant of legal assistance is available to the help-seeker through Victoria Legal Aid; or
  - e. more appropriate assistance is available from a community legal centre.

### 3. Nature of a help-seeker's legal matter

- i. In assessing whether a help-seeker's legal matter is appropriate for referral for pro bono barrister assistance under the VBPBS, Justice Connect will consider the nature of the help-seeker's legal matter. In doing so, Justice Connect will consider:
  - a. the merits of the matter (see sub-paragraph ii below);
  - b. the area of law involved and whether there is sufficient pro bono capacity in that area of law at the time the assistance is sought;
  - c. the urgency of the matter and whether assistance can be arranged within the required timeframe;
  - d. the complexity of the matter — for cases that are very resource intensive, the VBPBS may not be able to assist;
  - e. any special circumstances relevant to the nature of the matter — for example, disadvantage, oppression, or discrimination;
  - f. any unfairness or injustice which may affect the help-seeker or a group to which they belong;
  - g. if the services of an instructing solicitor are required and have not already been obtained, the ability to secure such services on a pro bono basis - Justice Connect will only seek instructing solicitors where the case has merit and there is sufficient notice; and
  - h. any other relevant considerations.
- ii. To assist with an assessment of the merits of a matter, Justice Connect may seek advice from a barrister. Where the advice is in writing, Justice Connect will not provide the advice to the help-seeker unless the barrister who prepared the advice agrees to that occurring.
- iii. If the help-seeker has or has previously had a solicitor or barrister acting for them in relation to the matter, the help-seeker must give their authority in writing to Justice Connect to request and receive information and documents (including previous advice received) from that solicitor or barrister.



#### **4. Personal circumstances**

Justice Connect will consider any personal circumstances that may affect a help-seeker's ability to access legal help, including whether they:

- a. live in public housing;
- b. are aged 55 or over;
- c. are experiencing barriers to justice due to geographical remoteness;
- d. identify as a member of any group or cohort experiencing marginalisation;
- e. are currently incarcerated;
- f. identify as Aboriginal or Torres Strait Islander;
- g. are experiencing homelessness or are at risk of losing their home because of their legal matter;
- h. are experiencing or at risk of experiencing family violence or another form of abuse;
- i. identify as a member of a culturally and linguistically diverse (CALD) community and/or require an interpreter; and/or
- j. live with disability.

#### **5. Administration of Justice**

- i. Upon the request of a judicial officer from a Court or Tribunal, Justice Connect will consider whether the administration of justice would be served by providing pro bono barrister assistance to a help-seeker who is involved in a current legal proceeding.
- ii. In considering such a request, the VBPBS will have regard to the matters set out in sub-paragraphs 3(i)(a)–(h) above.
- iii. If Justice Connect considers that the administration of justice would be served by the provision of pro bono barrister assistance to a help-seeker, Justice Connect may take a more flexible approach to the other aspects of the eligibility guidelines.

#### **6. Pro bono capacity**

- i. If a request for pro bono assistance meets the eligibility guidelines, Justice Connect will endeavour to find a barrister willing and available to act on a pro bono basis.
- ii. If there is no barrister willing or available to act in the matter on a pro bono basis, the VBPBS may not be able to assist. There is no guarantee that a barrister will be able to act for a help-seeker even where the help-seeker meets the eligibility guidelines.



## 7. Types of assistance

- i. Assistance through the VBPBS extends to any service that a member of the Victorian Bar is permitted ethically to provide, including:
  - a. the provision of legal advice as to a prospective or existing proceeding;
  - b. the preparation and settling of pleadings or other documents for use in any court, tribunal, arbitration, mediation or other proceeding;
  - c. representation before a court, tribunal, arbitration, mediation or other proceeding; and
  - d. acting as an arbitrator or mediator.
  
- ii. Where the *Legal Profession Uniform Conduct (Barristers) Rules 2015* allow, a barrister may accept a pro bono referral in a direct access matter.<sup>1</sup> However, circumstances may arise in which a barrister is unable to continue to act on a direct access basis and the involvement of an instructing solicitor is required. In such circumstances, Justice Connect will seek to find an instructing solicitor where the case has merit and there is sufficient notice. If it is not possible to find an instructing solicitor who can assist, it may no longer be possible for the barrister to provide pro bono assistance under the VBPBS.

Justice Connect may agree to refer a matter to a pro bono barrister, but the pro bono legal assistance to be provided may be more limited in scope than what the help-seeker originally requested. The scope of the referral to be made is at the discretion of Justice Connect.

## 8. Responding to special help-seeker requests and supporting barristers

- i. Justice Connect takes a trauma-informed and client-centred approach to delivering pro bono legal services. From time to time, help-seekers or their representatives may make special requests in relation to the provision of pro bono assistance because of the help-seeker's personal circumstances or experience of trauma.

In these cases, Justice Connect will attempt to accommodate special requests related to the provision of pro bono assistance, such as in relation to the gender of a barrister or solicitor, where the help-seeker has complex needs and a history of trauma which may affect their ability to provide instructions and receive legal assistance or call for a barrister with particular experience or expertise.
  
- ii. Justice Connect may not be able to accommodate special help-seeker requests, for example, where pro bono assistance is required in a limited timeframe or where there is a limited pool of barristers available to act on a pro bono basis.

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<sup>1</sup> The *Legal Profession Uniform Conduct (Barristers) Rules 2015* apply to barristers undertaking pro bono work pursuant to the VBPBS. It is the obligation of the barrister to assess what is in the interests of the client under Rule 22 and to comply with the requirements of that rule.



## 9. Applying for assistance

- i. Community legal centres seeking pro bono assistance for matters they are running, including merits assessments, can apply for help using Justice Connect's online Community Legal Centre form: <https://justiceconnect.org.au/help/pro-bono-for-clc-matters/>.
- ii. Professionals seeking assistance on behalf of a help-seeker can make a referral using Justice Connect's online referral tool: <https://help.justiceconnect.org.au/refer>.
- iii. Help-seekers who wish to apply for assistance directly can apply using Justice Connect's [online help tool](#). As part of this process, Justice Connect will in the first instance assess whether the help-seeker is eligible for a pro bono solicitor referral.
- iv. The information provided to Justice Connect in referrals or applications for assistance will be received on a confidential basis, as explained in section 11 below.
- v. Alternative application pathways can be arranged for help-seekers who are unable to access Justice Connect's online application tools.

## 10. Feedback and complaints handling

- i. Feedback (both positive and negative) is welcomed by Justice Connect, and this data is used to ensure continuous reflection and improvement of the organisation.
- ii. Justice Connect is committed to ensuring that any help-seeker or third party (e.g. a support worker or advocate for a help-seeker) has the right to lodge a complaint about the conduct of a Justice Connect worker or to appeal a decision of the organisation about the provision of legal assistance, and to have their concerns addressed in a way that ensures access, equity, fairness, accountability and transparency.
- iii. Justice Connect will maintain a complaints and appeals management procedure and policy that contains information on the following:
  - b. how to make a complaint or lodge an appeal;
  - c. the contact person for lodging a complaint or appeal;
  - d. how the organisation will deal with the complaint or appeal, the steps involved and the timelines; and
  - e. how the person will be informed about the outcome of their complaint or appeal

This policy will be made available to help-seekers and other stakeholders on request.



- iv. Justice Connect may share VBPBS client stories in its publications and/or with the Victorian Bar where the help-seeker's prior consent has been obtained.

## 11. Confidentiality

- i. Justice Connect will handle help-seeker personal information in accordance with its [Privacy Policy](#).
- ii. Justice Connect will also comply with the *Legal Profession Uniform Law, Legal Profession Uniform Conduct (Barristers) Rules 2015*, the *Privacy Act 1988* (Cth) and other relevant legislation and rules.
- iii. Justice Connect will not disclose, cause or permit to be disclosed any confidential information related to a help-seeker's legal matter to any person without that help-seeker's prior consent other than:
  - a. any solicitor or barrister who is acting for a help-seeker;
  - b. any solicitor or barrister who is considering accepting a help-seeker's matter on a pro bono basis; and
  - c. any solicitor or barrister who has agreed to assist a help-seeker on a pro bono basis.