



HIGH COURT OF AUSTRALIA

Protocol for obtaining *pro bono* legal assistance and appointing *amicus curiae*

The Court may consider it to be in the interests of justice to refer a request for *pro bono* legal assistance in relation to a proceeding where a party does not have legal representation. Alternatively, it may promote the interests of the due administration of justice for the Court to appoint an *amicus curiae* to assist the Court in its consideration of a matter.

The referral of a request for *pro bono* assistance from a barrister or the appointment of an *amicus curiae* will be made by order or written direction of the Court or a Justice.

The order or direction will state:

- a) where the referral is to act for a person, the specific assistance required – for example, assisting with the preparation of a document such as an application or written submission, or presenting oral submissions on behalf of the litigant;
- b) where the referral is to provide assistance to the Court as *amicus curiae*, the specific question or issue in respect of which the Court seeks assistance.

A request for *pro bono* legal assistance or to appear as *amicus curiae* (a “referral request”) should be defined with specificity to increase the likelihood of it being accepted by a *pro bono* barrister. Where the Court considers it desirable, the referral request shall also identify whether the referral requires particular specialist expertise or a barrister of seniority.

The Senior Registrar will forward a referral request to the Australian Bar Association by email to the President and the Chief Executive Officer. The Senior Registrar will provide details of the nature of the referral, the names and contact details of any opposing legal representatives, any critical deadlines including filing or hearing dates, and, where the referral is for *pro bono* assistance, the name of the person to whom *pro bono* assistance is to be provided (“the litigant”).

The Senior Registrar will inform all parties to the case of a referral request by email through the Court’s Digital Lodgment System.

***Pro bono* assistance**

Where a barrister has been offered and accepts a referral request for *pro bono* assistance the Senior Registrar will provide the barrister with the contact details of the litigant to be assisted, a copy of relevant court documents and, where appropriate, instructions for how to join the Court’s Digital Lodgment System for the case. The Senior Registrar will then notify the litigant receiving the assistance that the referral has been accepted by a barrister and provide them with the barrister’s contact details.

The Senior Registrar will also notify Court, or the Justice who made the referral, that the referral has been accepted and the name of the barrister who will provide the *pro bono* assistance.

The Senior Registrar will be the primary point of contact for the *pro bono* barrister for all administrative and procedural matters that arise in relation to the conduct of the matter. Those matters may include:

- a) obtaining court documents, or contact details of any party;
- b) liaising with any party as required;
- c) assisting the *pro bono* barrister with administrative matters not falling within the scope of barristers' work; and
- d) if required at any time, arranging for the matter to come back before the Court or Justice in relation to the terms of the referral.

If, in the opinion of the *pro bono* barrister, an instructing solicitor may be necessary in the matter, the barrister should as soon as possible contact the Senior Registrar who will endeavour to facilitate this by making inquiries of the relevant law society.

Amicus Curiae

A barrister who accepts under the protocol to act as *amicus curiae*, without limiting the role of a barrister, may be required to:

- (a) appear at a hearing to test the content and sufficiency of the evidence relied on in relation to an issue in respect of which the court has appointed them to appear as *amicus curiae*;
- (b) for the purpose of carrying out the above duties:
 - (i) ask questions of any person giving evidence; and
 - (ii) make submissions on the law or evidence;
- (c) assist the Court to reach a correct determination of the issue, including by:
 - (i) calling the Court's attention to reported and unreported decisions which might otherwise be overlooked;
 - (ii) assisting the Court in relation to relevant matters including matters of practice and procedure;
 - (iii) making submissions on important questions of law arising in proceedings.

Other matters

Barristers appearing *pro bono* or as *amicus curiae* under this protocol continue to be bound by the responsibilities and ethical obligations which otherwise apply to them under the relevant bar rules and at common law. The Court may order such costs as it thinks fit, including, in an appropriate case, ordering the other side to pay the costs of *pro-bono* assistance or the participation of an *amicus curiae*.

The Court will keep a record of the referral requests made by the Court each quarter and of the appearances made by barristers under this protocol.