



## Accessing Legal Assistance and Resolving Disputes

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## Introduction

Legal advice and assistance is necessary in many situations. Although advice and assistance can be expensive, it is always advisable to seek good quality legal advice and, if necessary, representation when dealing with difficult legal issues.

Assistance can be obtained for free through community legal centres, Legal Aid Queensland and Aboriginal and Torres Strait Islander legal services. Private lawyers charge a fee; however, some also offer initial advice for free or for a low fixed fee.

Not all legal disputes need to be settled through court processes, and a variety of alternative dispute resolution options are available including mediation and conciliation.

## When to Seek Legal Help

A person with a legal problem should seek help quickly. Many people suffer unnecessarily because they avoid consulting a lawyer when problems first arise. Often, legal problems can be avoided and costs can be minimised if assistance is sought in the early stages of a dispute. Legal advice is especially important in the following situations:

- A person is charged with a criminal offence.
- A person is injured in a car accident or while at work.
- Parenting disputes arise or a marriage or de facto relationship breaks down. Anyone contemplating the break-up of their marriage or de facto relationship should get legal advice to ensure their rights are protected. Simple advice is often all that is needed, especially when the parties agree on fair arrangements for maintenance and child support, property division and the parenting arrangements for any children of the relationship.
- The agreements or disputes involve significant amounts of money or valuable assets.

## Lawyers—Solicitors and Barristers

In order to practise as a solicitor or barrister in Queensland, a person must be admitted as a legal practitioner in accordance with a number of professional rules managed by the Legal Practitioners Admissions Board and hold a current practising certificate issued by the Queensland Law Society or the Bar Association for barristers (ss 21, 24 *Legal Profession Act 2007* (Qld) (Legal Profession Act)). Solicitors generally practise in private law firms and undertake a wide range of legal work on behalf of clients. Some solicitors undertake court appearance work, but many prefer to employ a barrister to undertake court work for their clients.

Barristers are self-employed lawyers and mostly represent clients in the courtroom. Barristers also write legal opinions about clients' cases in order to assist solicitors with the running of client matters. Barristers are usually briefed (engaged) by a solicitor on behalf of a client to undertake court appearances or to provide written opinions about the merits of a case. In some circumstances, clients are able to engage a barrister directly but this is rare. Special practice directions govern this process.

Some lawyers work in government offices such as the Office of the Director of Public Prosecutions, the Crown Law office and Legal Aid Queensland, while others work in not-for-profit organisations such as community legal centres. Corporate lawyers are employed by a private company or business to undertake the legal work for that enterprise.

Increasingly, lawyers are specialising in particular areas of practice. The Queensland Law Society offers an accreditation scheme to allow experienced lawyers to become accredited specialists in the areas of family law, personal injury law, succession law, immigration, property, business law, commercial litigation, workplace relations and criminal law.

Most solicitors and barristers will charge fees for representing a client (see Costs Involved in Engaging a Solicitor later in this chapter).

## Employing a Lawyer

The Queensland Law Society and certain community legal centres can provide referrals to appropriate private solicitors by location and type of law practised. Contact details for barristers can be obtained from the Bar Association of Australia.

The process of employing and working with a lawyer (i.e. telling them what you want them to do for you, getting guidance from them about the best way to proceed with your case and giving them information so that they can prepare your case/documentation for you) is generally called ‘instructing’ or ‘retaining’ a lawyer.

When instructing a lawyer, a person should be aware of:

- the type and amount of work that will be done by the lawyer, including information about the various stages of the legal process (the scope of the retainer)
- the fees that will be charged by the lawyer (sometimes called professional fees)
- the amount of outlays or disbursements that may be needed for additional items such as medical reports and valuations, which often need to be paid up front by the client
- whether the lawyer or a barrister will be undertaking court representation; if a barrister is to be employed, care should be taken to establish the cost of this before the barrister is actually engaged by the solicitor
- the names of the people in the lawyer’s office who will be responsible for running the case (e.g. senior lawyers may have junior or trainee solicitors or clerks working on client matters, and this may affect not only who you need to contact but also the lawyer’s costs)
- the particular timeframe for the handling of the matter. While lawyers are not always able to provide exact dates of particular events in advance (e.g. court dates before an action has even started), they are often able to give an idea of how long matters generally take.

It is important to appreciate that a lawyer is required to work within both legal and ethical boundaries. This means that a lawyer cannot always do what a client would like them to do. A lawyer cannot, for example, deliberately mislead a court by attempting to present a false story or hide information, even

if this is what a client instructs them to do. Also, a lawyer can only tell a client what the law is, even if this means telling the client unfavourable news.

## The Lawyer's Responsibilities

Lawyers are required to conform to a wide range of professional and ethical standards. The conduct of solicitors is supervised by the Queensland Law Society (QLS) and the Legal Services Commission (LSC), which is governed by the Legal Profession Act. There are also a number of other rules and regulations that regulate the conduct of solicitors, including the *Australian Solicitors Conduct Rules*. Barristers are governed by the Bar Association of Queensland, the LSC and the *Barristers' Conduct Rules 2011*.

There are a number of requirements that solicitors must satisfy:

- Solicitors have a responsibility to act in the best interests of the client. Solicitors must not allow themselves to be placed in a position where they face a conflict of interest between serving the client's interests and their own or others' interests. If this accidentally happens, a solicitor should immediately notify the client and withdraw from the case.
- Solicitors must act in a timely and professional manner, and they are bound to keep their dealings with clients confidential. This means, with very limited exceptions, that a solicitor cannot reveal what a client has told them without permission from that client.
- Solicitors must act within the terms and scope of their retainer (the agreement they have with the client), and are subject to any legal or ethical obligations; they are required to carry out the lawful instructions of their client, even if the solicitor does not agree with those instructions. However, where the client's instructions would involve the solicitor in a breach of their duty to the court, the duty to the court prevails.
- Solicitors are not bound to run a legal case if the client does not pay the bill; however, the solicitor is also not necessarily allowed to simply withdraw from a case at short notice if this will unfairly prejudice the client. This is important in criminal law matters, and the court applies certain restrictions on lawyers withdrawing from matters once court proceedings have commenced.

## Costs Involved in Engaging a Solicitor

### Costs agreements

Solicitors have a professional responsibility to make sure that their clients are kept fully informed of all expected legal costs in a case. Part 3.4 div 4 and 5 of the Legal Profession Act set out laws relating to legal costs and costs agreements. Solicitors will normally prepare a comprehensive written costs agreement. For any work that will exceed \$1500 in costs, solicitors must comply with disclosure rules. They are required by law to disclose certain information about costs to their clients, and this disclosure must be made in writing.

There are two types of costs agreements. One is a conditional costs agreement, which lists fees and expenses that a client has to pay only if their case is successful (also known as a no win, no fee

agreement). The other type is simply called a costs agreement, which applies to all other work where payment for fees and expenses is required irrespective of the final outcome of the case. Costs agreements may also sometimes be referred to as client agreements. A typical agreement will include (pt 3.4 Legal Profession Act):

- a summary of the work to be carried out by the solicitor, the client's rights and any obligations in relation to payment of accounts, including fees and outlays
- the formal requirements for information that must be given to a client as part of this process (ss 308–318). A client must be given written notice of certain things (e.g. the cost or realistic estimate of the cost of the work or information about how the solicitor's fees will be calculated (e.g. whether they are based on a scale of costs) including associated expenses)
- who in the solicitor's office can be contacted to discuss the bill
- a statement about the client's right to receive an itemised bill and progress reports
- an explanation about the variables that might affect the costs
- the client's right to negotiate fees and to be kept advised of costs and costs dispute processes
- billing procedures (e.g. periodic billing patterns and the client's right to receive progress reports/bills)
- interest rates to be charged on overdue amounts
- costs assessment and dispute processes as well as relevant time limits
- other lawyers' fees if they are to be retained to act in the matter
- the costs that a client may have to pay the other party or that the other party may have to pay the client if the matter involves litigation, depending on the outcome of the case and orders made by a court
- any amounts or outlays that clients are expected to pay (e.g. stamp duty, filing fees, barrister's fees)
- information about the amount of uplift fees where relevant
- notice of the five-day cooling-off period (for conditional costs agreements only).

Before asking a client to sign a costs agreement, the solicitor must provide them with the above information. Clients must be promptly notified of any substantial changes to anticipated fees or costs as a result of changed circumstances during the conduct of a case. A failure by the solicitor to comply with the disclosure obligations may affect the amount of the costs payable.

A client is entitled to seek alternative legal advice before entering into a costs agreement with a solicitor. Certainly, a person should never sign a costs agreement unless the terms of the agreement are clear and acceptable.

Costs agreements can be enforced in the same way as other types of contracts, subject to the legal practitioner complying with all relevant provisions as set out in ss 319 and 329 of the Legal Profession Act.

A costs agreement is often only prepared after the first interview between the client and solicitor. This does not mean that the first interview is free. However, some solicitors do offer a free or reduced-fee initial interview. It is wise to confirm this arrangement in writing before proceeding.

All solicitor/client costs disputes in Queensland are governed by the provisions of the Legal Profession Act. Other laws relating to costs in family law matters are contained in ch 19 of the *Family Law Rules 2004* (Cth) and pt 21 of the *Federal Circuit Court Rules 2001* (Cth). Factsheets about costs are also available from the Federal Circuit Court and Family Court of Australia.

## How costs are calculated

There are two broad approaches to calculating solicitors' charges. The first method is by simple agreement between the solicitor and the client, for example the client agreement may specify that the solicitor will charge \$350 per hour for work done on behalf of the client.

The second way costs can be calculated is by a scale of costs (a scale of reasonable charges by a solicitor or barrister) set for each relevant court. Some types of legal work undertaken by solicitors may have a recommended scale of costs. If a scale exists for the particular work, it is usually found in the respective legislation.

## Minimising costs

Clients can limit their costs by working thoughtfully with their solicitor. For example, a client can prepare a detailed (but concise) statement or summary explaining their problem and personal circumstances before attending for an initial interview, generally minimising the costs incurred at this first contact stage. Any phone calls to solicitors will attract a fee and unnecessary calls should be avoided. It is important to remember that solicitors' fees are charged for a range of activities, from receiving a fax, email or telephone call and photocopying documents to negotiating settlements and drafting documents.

A solicitor is required to indicate to a client what sorts of timelines are involved in each step of the proceedings and may explain the time gaps that may pass between contacts. Naturally, if a solicitor fails to contact a client after a reasonable period of time, the client should ask why a matter appears to be getting delayed.

## The solicitor's bill

A solicitor's bill may be a lump sum amount, usually with a statement that the amount relates to all work carried out in relation to the matter or an itemised account of all of the work done. The solicitor's bill must be signed by a legal practitioner or employee of the law practice concerned. Your lawyer also needs to send you a notice with the bill telling you about your rights to challenge legal costs (s 331 Legal Profession Act).

When a person receives a bill from their solicitor, they should carefully read it to ensure the bill is correct. Where the bill is provided as a lump sum amount, the client is entitled to ask the solicitor to

reissue the bill as an itemised account. Your lawyer cannot charge you for doing this, and they must provide you with the requested itemised bill within 28 days of your request (s 332 Legal Profession Act). Significantly, if the solicitor then prepares an itemised account and it is higher than the original lump sum bill, the solicitor will normally be entitled to charge the higher amount.

## Complaints about Legal Costs

One of the most common areas of complaint against solicitors is that the legal bill exceeded what the client was expecting to pay. Fortunately, the widespread use of client agreements has greatly improved this situation. The Legal Profession Act requirement that solicitors provide an estimate of costs should also help to keep clients' expectations realistic.

Many people also do not fully understand how costs in court cases will be awarded by the courts. In the civil courts, the successful party normally will receive their costs unless the court orders otherwise. When cases go to court, the courts have discretion to award standard costs to the successful party. Standard costs are costs for the actual court steps of the case (or costs of the proceedings) and are limited to costs necessary and proper for the running of the case in court. Indemnity costs are all the costs that a client agrees to pay a solicitor during the running of a matter, including the costs before the matter goes to court. Where a party is successful in court proceedings and obtains an order requiring the other party to pay their standard costs, that party will rarely recover their actual total legal costs. The gap between the two amounts can be substantial. Under ch 17A of the *Uniform Civil Procedure Rules 1999* (Qld), a process exists for the appointment of costs assessors to review the costs claimed by solicitors, which can impact upon the amounts of a client's recoverable costs. The Queensland Law Society also has more information about potential costs involved.

In respect of a client's own legal costs, some solicitors will be prepared to offer an arrangement where those costs are only paid at the end of proceedings, usually from the proceeds of any settlement of the client's matter. Others may send out regular accounts at either monthly intervals or at certain stages of proceedings, and may require clients to pay money up front at various stages of proceedings.

Some solicitors are prepared to offer a speculative arrangement whereby the client will pay the full range of legal fees if their matter is successful. While some solicitors may undertake cases on a 'no win, no fee' basis, the *Personal Injuries Proceedings Act 2002* (Qld) severely restricts the ability of solicitors to advertise their services in personal injury matters. Part 3.4 div 8 of the Legal Profession Act also sets out a formula for calculating the maximum payment for legal fees in a speculative personal injury claim. A client who is offered a 'no win, no fee' arrangement should carefully read the terms of their costs agreement before taking up the offer. A five-day cooling-off period also allows a client to change their mind about proceeding with a conditional costs agreement in that time. Written notice of this is required.

In Queensland, the charging by solicitors of contingency fees is prohibited (s 325 Legal Profession Act). Contingency fees are those where some or all of the legal fees payable by the client are calculated according to the amount of any final settlement. There are severe penalties for breaching these rules.

## Disputing a Solicitor's Bill

There are a number of options available to a person disputing a solicitor's bill. However, those options depend on the type of work done by the solicitor, the contents of the costs agreement and the format of the bill.

A solicitor can take action to recover costs, but not until after 30 days have expired from when the client was provided with a copy of the bill. To ensure that extra legal expenses are not unnecessarily incurred, a client who disputes a bill should act promptly to query it.

If someone disputes a bill and wants to have it formally assessed, an application for a costs assessment can be made. This must be done within 12 months after a bill was given, the request for payment was made to the client or third party payer, or from the time when the costs were paid if neither a bill was given nor a request was made (s 335 Legal Profession Act). The costs of an assessment will be ordered against a practitioner if the bill is reduced by 15% or more, or where the solicitor has breached certain other obligations (see s 342 of the Legal Profession Act).

### Mediation

A client who has a dispute with the solicitor about a bill should try to resolve the matter initially through discussion with the solicitor. Once you explain your concerns, your solicitor can explain the costs to you and may agree to review and adjust the bill. If this is unsuccessful, either party has the option to try to resolve the problem through mediation. Because of the strict time limits involved, parties may simply proceed to deal with their costs disputes through the costs assessment process set out in the Legal Profession Act. Clients wishing to try mediation should act quickly in order to leave enough time for the more formal alternatives if the mediation is not successful.

#### Family law matters

Disputes concerning legal costs in family law matters are dealt with in accordance with the provisions of the Legal Profession Act. A detailed brochure on costs that may be ordered in court proceedings in family law matters is available from the Family Court and the Federal Circuit Court.

## Solicitors' bills and client files

Until a person has paid any amounts outstanding to a solicitor, that solicitor usually has a right to retain the person's file. This is known as a solicitor's lien. Where a person wants to have their file transferred to another solicitor, it is usually necessary to pay all outstanding amounts to the original solicitor. In some circumstances, it may be possible for the new solicitor to negotiate with the original one to transfer the file on the basis that the costs of the original solicitor will be paid from the proceeds of any settlement of the client's legal matter. If the problem has arisen because a solicitor has acted improperly or negligently, then an affected client should consider the complaints options discussed below. The legal practitioner may be required to release the file in certain cases, despite fees still being owed. More information about solicitor's liens is available from the Queensland Law Society.

## Complaints against Lawyers

Complaints against lawyers are often the result of miscommunication or a lack of communication between the client and the lawyer, although some complaints involve serious professional conduct breaches. There are a number of ways to complain about a lawyer.

### Direct complaints

In the first instance, a complaint about a solicitor should usually be raised with the solicitor directly or with the firm in which they work. The costs agreement will list the name of the person at the firm to be contacted about such matters. This allows for the matter to be sorted out at the earliest opportunity. Where possible, a complaint should be made in writing and should specify the reasons why a person is unhappy with the services provided. It should also itemise the costs or outlays that are in dispute.

Where the complaint is one in which the solicitor is alleged to have been dishonest, it may not be appropriate to raise the matter with the solicitor directly. In such circumstances the matter should be promptly referred to the LSC for assistance and investigation. Criminal conduct should be reported to the police.

Where a direct approach to the solicitor or firm fails, a client should contact the LSC. A complaint about a barrister also can be made directly to the LSC.

### Complaints to the Legal Services Commission

All complaints that cannot be resolved directly with the relevant solicitor or law firm should be made to the LSC. Any complaints involving allegations of fraud or dishonesty by a solicitor or barrister should be reported urgently to the commission.

The LSC receives and processes complaints about the conduct of legal practitioners, unlawful operators and law practice employees.

The LSC must assess all complaints lodged (but will dismiss unfounded or baseless complaints), will mediate appropriate consumer disputes and must investigate other conduct complaints. Conduct complaints, if proven, normally would amount to either unsatisfactory professional conduct or professional misconduct. These terms are defined in ch 4 of the Legal Profession Act. Unsatisfactory professional conduct includes 'conduct ... that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner'. Professional misconduct is either unsatisfactory professional conduct that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, or conduct occurring in connection with providing legal services that would justify a finding that the lawyer is not a fit and proper person to provide legal services.

The Legal Services Commissioner can initiate an investigation of their own accord in cases of possible unsatisfactory professional conduct or professional misconduct. The commissioner also oversees and, where necessary, directs investigations conducted by the QLS and the Bar Association. They are required to report back to the commissioner, who will then review their findings and recommendations before deciding what action to take on the complaint. Only the commissioner can decide what action to take after investigation.

If, after the initial investigation, the commissioner finds there is a reasonable likelihood of a disciplinary body making a finding against a legal practitioner of unsatisfactory professional conduct or professional misconduct, and it is in the public interest to do so, the commissioner will initiate disciplinary proceedings in one of two forums, either the Legal Practice Committee or, for more serious matters, the Queensland Civil and Administrative Tribunal (QCAT).

Normally complaints must be made within three years of when the relevant conduct occurred. The LSC may accept complaints about conduct that happened more than three years prior if the alleged conduct would amount to professional misconduct, or if there are good reasons for the delay in making the complaint, and if it is fair and reasonable and in the public interest for the complaint to be investigated.

Any person or entity (including the QLS and Bar Association) concerned about the conduct of a legal practitioner or law practice employee can make a complaint. Complaints normally can only relate to the conduct of individuals in the practice of law, unless the conduct in question demonstrates that someone is not a fit and proper person to remain a legal practitioner.

The LSC cannot accept complaints about government legal officers unless the complaint is made by the chief executive officer of the government department or agency that employs or supervises them, the QLS, the Bar Association of Queensland or another legal practitioner. Complaints against a government legal officer should therefore be made to the head of the relevant department first.

## **Making a complaint**

Under the Legal Profession Act, a complaint to the LSC must be made in writing and must be signed. There is no fee for making a complaint, and a solicitor cannot bill a client for the time it takes to respond to a complaint. A complaint form can be obtained from the LSC.

In a written complaint, the person complaining must say who they are and name, if possible, the legal practitioner or law practice employee about whom they are complaining. A complainant needs to describe in as much detail as possible the conduct that is the basis of the complaint. The declaration on the back page of the form must be signed before it is sent, and photocopies of any relevant documentation should be attached.

The LSC can answer questions about the complaints process and can provide you with advice about filling out the form. Complaints can also be made online. The LSC can also arrange telephone interpreters or any other appropriate assistance if required.

## **The handling of a complaint**

The LSC considers all complaints and may ask for further information. If a complaint is accepted, it will be divided into either a consumer dispute or a conduct complaint. In some cases, the commission deals with hybrid complaints, which are a combination of consumer and conduct complaints. This categorisation will determine whether the LSC will try to resolve the matter by mediation or investigation.

In serious cases that later proceed to a hearing before the Legal Practice Committee or QCAT, the person complaining will most likely be required to give evidence by way of a sworn statement

(affidavit). A complainant may also be required to give evidence in person at the hearing and to be cross-examined.

## Formal disciplinary bodies

### *The Legal Practice Committee*

The role of the Legal Practice Committee is to hear and decide disciplinary applications lodged by the LSC. The committee hears the relevant evidence, decides if the legal practitioner is guilty of unsatisfactory professional conduct and decides the appropriate penalty.

The committee determines less serious cases, which will not end up with the practitioner being struck off the roll or suspended from practice. It also hears and decides disciplinary applications involving the employees of law practices.

The committee of seven comprises a chairperson, two solicitors, two barristers and two laypeople possessing a high level of relevant experience, particularly in the area of consumer protection and other relevant issues.

When hearing and deciding disciplinary responses, three members must participate: the chairperson or deputy chairperson, a solicitor or a barrister and a lay member.

Committee hearings are open to the public unless ordered otherwise due to the nature of the evidence. The committee decides if a legal practitioner is guilty of unsatisfactory professional conduct and whether a law practice employee is guilty of misconduct. Law practice employees found guilty of misconduct can be banned from being employed in legal practices for up to five years. Where a legal practitioner is found to be guilty, the committee can order that the person be publicly reprimanded, be fined, pay compensation and costs, or be allowed to work but be managed and inspected in a particular way in the future.

If parties are dissatisfied with the decision of the committee, they can appeal to QCAT.

### *The Queensland Civil and Administrative Tribunal*

The Queensland Civil and Administrative Tribunal is made up of various appointed tribunal members, which includes judicial members. The president of QCAT is a Supreme Court judge.

A judge of the Supreme Court must be allocated to hear and decide disciplinary applications concerning legal practitioners. In this role, the judge is assisted by a panel, which includes a lay member and a legal member (either a barrister or a solicitor). These panel members (appointed from the practitioners' panel) and the lay panel sit with QCAT to help hear and decide cases. The lay panel comprises people with a high degree of knowledge and relevant experience. The legal panel is made up of solicitors and barristers with at least five years experience.

Upon application by the LSC, QCAT decides if a legal practitioner is guilty of unsatisfactory professional conduct or professional misconduct.

Tribunal hearings are open to the public unless ordered otherwise. If QCAT finds a practitioner guilty, it can order that the lawyer be struck off (prohibited from practising law), suspended from practice or only be allowed to practise under certain conditions (e.g. in a supervised way). It can also order that the practitioner be publicly reprimanded and/or pay a penalty. The relevant practice of the practitioner

may also be ordered to pay compensation. A practitioner who loses a case must also pay the complainant's and the commissioner's costs, except in exceptional cases. The Queensland Court of Appeal can hear appeals from QCAT, although strict time limits apply.

## Compensation for Financial Loss Due to Lawyer's Conduct

Where a client has suffered significant financial loss as a result of a lawyer's or a firm's conduct, financial compensation will usually be a very important issue. Unfortunately, the Legal Profession Act limits the compensation that can be awarded under a compensation order to \$7500, unless the parties agree otherwise. If someone has lost more than \$7500 as a result of a lawyer's conduct, they might need to think about other ways to recover the loss, such as by suing the legal practitioner for negligence and/or breach of contract. People in such situations should seek independent legal advice on these matters and be aware that they normally only have six years from the date that the cause of action arises in which to sue a lawyer for professional negligence (causing financial loss) and/or breach of contract. The LSC is unable to make a determination that a lawyer has been negligent.

If a person is unhappy about the LSC's handling of a case, they can contact the LSC to discuss the outcome. Complaints can be addressed to the LSC Director of Investigations. The LSC can consider new and relevant information and can review its decision in appropriate special cases, although decisions complained about more than 12 months after notification of the decision will only be reviewed in exceptional cases. A person can also challenge a decision by seeking judicial review under the *Judicial Review Act 1991* (Qld) or can refer their concerns to the Crime and Corruption Commission if the commissioner or staff member of the LSC is suspected of being guilty of official misconduct. Complaints can also be made to the Queensland Ombudsman (see also the *Complaints to the Ombudsman* chapter).

## Legal Assistance at Community Legal Centres

All community legal centres are independent of government, and services provided by the centres are usually free. The type or level of service provided differs from centre to centre but may include initial advice, referral to private solicitors or other avenues of legal assistance, help with the preparation of court documents and the provision of self-help materials to assist people who need to represent themselves in court. Some centres may also offer social work assistance or, in some cases, may represent clients. Due to limited resources, there are usually very tight restrictions about who can get casework assistance. Many community legal centres produce self-help booklets and undertake law reform and community legal education/development activities.

A list of community legal centres operating in Queensland including their contact details, areas of legal expertise and choice clientele can be obtained from Community Legal Centres Queensland, the peak state body for all community legal centres. It is important to remember that some centres are purely voluntary, part-time organisations. Bond University also hosts a free legal service staffed by law students and supervised by appropriate qualified legal practitioners.

For a directory of centres across Australia contact the National Association of Community Legal Centres, which is the national network of community legal centres.

Caxton Legal Centre also operates a family law and domestic violence duty lawyer service at the Family Law Courts and the Magistrates Court, and a specialist service (the Seniors Legal and Support Service) for older clients who experience physical or emotional abuse, non-spousal domestic violence or financial abuse.

## **Other Services Offering Legal Assistance**

### **Legal Aid Queensland**

Legal Aid Queensland (LAQ) was established under the Legal Aid Queensland Act 1997 (Qld) and is the major legal aid agency in Queensland, providing legal assistance to financially disadvantaged people either for free or for a contribution.

Legal services may be provided either by LAQ staff lawyers, or LAQ may enter into arrangements with private solicitors, barristers and some community legal centres to provide those services.

For more information about the location of Legal Aid offices, the services they provide and eligibility criteria for free assistance contact LAQ.

### **Aboriginal & Torres Strait Islander Legal Service**

The Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd is a non-profit, community-based Indigenous organisation responsible for the provision of legal representation under a contract for services with the federal Attorney-General's Department. Services are delivered to Aboriginal and Torres Strait Islanders.

The key areas of service delivery are:

- criminal law representation and advice
- family and civil law representation and advice
- prison-based advice and assistance in relation to legal and sentence-management issues
- advocacy, law reform and community legal education programs.

### **The Public Trustee**

The Public Trustee provides information about wills, powers of attorney, inheritance and the administration of estates. The Public Trustee provides a free service for people wishing to make a will and will also hold the will in safe custody free of charge. The Public Trustee can also prepare a power of attorney for a fee.

### **Union solicitors**

Many unions have arrangements with firms of solicitors to provide free services to union members. Generally, this service covers only workers compensation, accident claims and other matters arising out of the course of a person's employment. Union law firms may also provide free legal advice to members. Direct enquiries should be made to the relevant union.

## Working Women Queensland

Working Women Queensland provides specialist confidential industrial law advice to women about work-related issues such as pay, working conditions, unfair dismissal, discrimination, sexual harassment, entitlements, workplace safety and workplace bullying.

## Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) consists of processes and practices that are used as alternatives to, or in conjunction with, litigation for resolving conflicts. This resolution is based on the principles of interest-based negotiation, consensual decision making and collaborative problem solving as opposed to the determination of rights. Most of these processes involve the parties negotiating to resolve their differences with the help of a neutral, independent third party who assists the parties to identify common interests and goals, and work out their own solution to a problem.

In many commercial contexts, parties will agree to use set ADR processes instead of litigation to resolve disputes.

More information about mediators, arbitrators, adjudicators, restorative justice practitioners and other professionals working in this field is available from the Resolution Institute and the Queensland Government publishes a list of dispute resolution centres.

## Mediation

The most well-known ADR process is mediation, which is an attempt to settle a legal dispute through active participation of a third party (mediator), who works with all parties to develop options, consider alternatives, find points of agreement and facilitate those in conflict to agree on a fair result.

This definition does not apply to all forms of mediation because of the variability in practice, process and objectives. Variables include the:

- commitment of the parties to the process
- choice and qualifications of the mediator
- degree of intervention by the mediator
- degree to which the parties can define the issues and relevance of matters
- legal status of any agreement reached.

### Community-based mediation

Generally, community-based and non-court-linked mediation services focus on the interests and needs of the parties. Participation is voluntary, and the mediator has a facilitative role and does not comment on the strengths of the parties' cases. Agreement is reached by consensus and usually is not enforceable. Often these processes may have an educative and even therapeutic focus, with an emphasis on improving the parties' relationship and understanding of past issues.

### Disputes that suit mediation

The most common disputes dealt with by mediation are:

- neighbourhood disputes involving fences, noise, children, pets and overhanging trees
- family and intergenerational disputes
- workplace disputes
- commercial disputes
- disputes relating to relationship separation
- property settlement disputes
- multi-party disputes, sometimes involving whole communities.

Further information about mediation is available from the Queensland Government's Dispute Resolution Centre, and applications for mediation can be submitted online.

## Court-based alternative dispute resolution

Dispute resolution services associated with courts or tribunals are intended to improve the efficiency of the court and reduce costs and delays of court hearings. Accordingly, these processes tend to be more focused on legally relevant issues, on the parties' rights and on the strengths of their cases. Participation may be compulsory. The mediator is more likely to be interventionist and may even make suggestions about outcomes, and any final signed agreement resolving the matter is usually enforceable (as an order of the court). Case appraisers can also make provisional determinations, which may later become court orders.

The mediator may be a member of court staff (e.g. a registrar of the court), a member of the tribunal or court, or a private practitioner. Private mediators associated with courts and tribunals tend to be either lawyers or content experts.

In Queensland, all state courts can order parties to attend mediation or a case appraisal process under the *Uniform Civil Procedure Rules 1999* (Qld) (see also *the Supreme Court of Queensland Act 1991* (Qld), the *District Courts Act 1967* (Qld) and the *Magistrates Courts Act 1921* (Qld)). The Queensland Civil and Administrative Tribunal also regularly refers cases for mediation (see the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld)). You can also read more in the *Dispute Resolution Centres Act 1990* (Qld).

## Dispute Resolution Centres

### Relationships Australia

Relationships Australia provides a Family Dispute Resolution Service for separating couples. Fees are charged on a scale according to the income of the parties. There are branches across Queensland.

### Queensland Law Society

The Queensland Law Society has a list of lawyers who are approved mediators and who are available to undertake mediations in a range of matters. Mediators do not make decisions for you but can help you draw up an agreement if you are able to reach agreement during your mediation. Fees are negotiated on a case-by-case basis between the parties and the mediator.

## Queensland Bar Association

Many members of the Queensland Bar Association will act as mediators, conciliators and arbitrators particularly in the areas of construction law and other commercial and civil disputes. The Bar Association's list of members indicates which barristers are qualified mediators.

## Legal Notices

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