

# THE QUIET ACHIEVER

A charitable trust run by the legal profession has been helping Victorians for over a decade.

Since its beginnings, litigation funder Law Aid has helped hundreds of Victorians investigate a range of personal injuries matters they would not have been able to fund themselves.

Despite this the scheme remains a mystery to much of the legal profession.

In essence, the non-profit charitable trust funds disbursements, including medical practitioners' and engineers' fees, travelling, filing and jury fees and witness expenses, in civil litigation matters undertaken by law firms on a pro bono and "no-win, no-fee" basis.

Law Aid board member Michael Lombard said the scheme funded initial investigations for those who believed they had suffered an injury through negligence.

"Some litigators with impecunious clients but strong cases know Law Aid is there to provide disbursement funding, however, many solicitors do not know of the trust's existence," he said.

"The unique service to the community and to Victorian solicitors is the opportunity to investigate possible claims without the heavy burden of expensive reports and proceedings and we are assisting in the early investigation, and then if warranted, the continuation of meritorious claims."

Law Aid began in 1996 as a joint initiative of the LIV, Victorian Bar and Department of



ACCESS: Law Aid board member Michael Lombard

Justice and, until 30 June 2012, had received 2287 applications for assistance.

Of those, only 316 have been refused in all and 26 per cent of applications have resulted in a final fund fee payment.

And while 250 individual firms have applied for a grant, almost half of those were "one-off" applications and 75 per cent of applications have come from only seven firms.

Mr Lombard, also Holding Redlich's Advice Line Injury Lawyers group leader, said the scheme assisted the many solicitors wanting to help clients unable to afford civil litigation who were unable to carry the cost of associated disbursements themselves.

"We would like Law Aid to be better known. By encouraging legal practitioners to accept cases of clients who cannot afford to meet their legal costs, Law Aid enhances the ability of all Victorians to access the justice system."

Past cases supported by the scheme include personal and serious injury applications, medical, professional negligence, property damage, common law, wills and estates and testators' family maintenance claims as well as claims against institutions involving discrimination or oppressive behaviour.

Others include VCAT appeals, sexual harassment and sexual assault matters and false imprisonment.

The scheme provides payment of all disbursements apart from counsel's fees. Under the scheme, both the solicitor and the barrister agree not to charge until the successful conclusion of the litigation.

The client is not required to repay the disbursements unless the action is successful, in which case a fee of 5.5 per cent of the sum which the client receives after payment of costs and disbursements is levied.

The state government contributed \$1.6 million as initial funding for the scheme and it has proved viable over its existence.

For further information, visit [www.lawaid.com.au](http://www.lawaid.com.au). ●

## CASE STUDIES



### EXAMPLE 1

"D" saw a dentist who extracted two teeth but after the procedure was carried out severe pain continued

for days. "D" returned to the dentist but was reassured. Four months later the pain was still present and "D" had lost the feeling on one side of his face. He sought a second opinion and that dentist said it could take up to a year for the nerve to settle. After a year the problems continued, and on returning to the original dentist "D" was told that nothing could be done to fix the problem as he had left it too long. Assistance was sought from Law Aid which granted funds for supplementary reports by an oral surgeon. Funding was further granted for the setting down of the proceeding and mediation costs. The action settled at mediation.



### EXAMPLE 2

Solicitors for "W" had a busy Workcover practice but, because of the burden, the firm's bank refused

further funds to be allocated for serious injury disbursements. "W" had a strong case for establishing "serious injury" but could not fund the case himself. An application to Law Aid was made and an initial grant of assistance made to fund the serious injury application and any subsequent common law claim up to the mediation stage. One week before the serious injury application hearing, a certificate for both pain and suffering and economic loss was granted. The common law action was settled four months later for \$150,000.



### EXAMPLE 3

"G" was three years old when his parents approached their solicitors about the cerebral palsy from which he suffered.

There had been significant medical issues during the mother's pregnancy and after a delayed labour "G" was born but was not breathing. "G's" parents were very concerned about the treatment received from their medical advisers and the hospital. Solicitors were unable to advise the parents before viewing hospital notes and an expert opinion regarding the treatment was obtained. Law Aid assisted with funding and an expert report was commissioned. The conclusion reached was that the pregnancy and labour were managed appropriately. No further action was taken and the parents of "G" were able to move on without harbouring any ongoing concerns about past treatment.