

DISBURSEMENT FUNDING BRINGS JUSTICE

A charitable trust run by the legal profession has been helping the community for 25 years.

Since its inception in 1996, litigation funder Law Aid has helped thousands of members of the community investigate and prosecute a range of personal injuries matters which, due to their financial circumstances, they would not have been able to fund themselves. Law Aid funds disbursements to enable initial investigations for those with limited financial resources who believe they have suffered an injury as a result of the fault of another.

Law Aid is a non-profit charitable trust that funds disbursements in civil litigation matters undertaken by law firms and counsel on a pro bono and “no-win, no-fee” basis. Disbursements funded include FOI fees, the cost of medical records, fees for expert opinions from professionals such as medical practitioners, accountants and engineers, court fees if not otherwise waived and witness expenses. Law Aid can then continue to provide disbursement funding through the course of proceedings from commencement to conclusion.

Law Aid began in 1996 as a joint initiative of the LIV, Victorian Bar and Department of Justice. The state government contributed \$1.6 million as initial funding for the scheme and it has proved viable over its 25-year existence. To 30 June 2022 Law Aid had received 4646 applications for assistance.

As well as assisting members of the community to access justice, Law Aid enables legal practitioners to accept matters on a pro bono and “no-win, no-fee” basis, without having to carry the cost of associated disbursements on behalf of their clients. With access to disbursement funding through Law Aid, legal practitioners are placed in a position to pursue the claims of those of their clients unable to meet legal costs, benefitting their practices and ensuring wider community access to the justice system.

Law Aid’s chair James Mighell KC notes: “By providing the community and legal practitioners the opportunity to investigate possible claims without the financial burden of funding expensive records and reports, and then funding ongoing disbursements in any proceedings that may be issued, Law Aid ensures that Victorians (or those whose cause arises in Victoria) with meritorious claims have access to the justice system regardless of their financial circumstances”.

The process of applying for Law Aid’s assistance is simple. An application form, available on Law Aid’s website, is completed by both solicitor and client providing the client’s personal and financial information and outlining basic information about the potential claim and the disbursements sought to be funded. The application is lodged together with a letter from the solicitor with greater detail of the facts and circumstances giving rise to the potential claim per instructions. Applications, along with requests for further funding in already funded matters, are then considered by Law Aid’s board of trustees meeting monthly. The board is currently comprised of four senior counsel and four senior solicitors.

Law Aid can fund any disbursement relevant to the investigation or prosecution of a claim apart from counsel’s fees or fees that may otherwise be waived by a court. It is a term of Law Aid funding that both the solicitor and counsel agree not to charge any professional fees unless there is a successful conclusion of the litigation.

Past cases supported by the scheme include personal and serious injury applications, medical negligence, 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. Other claims include VCAT appeals, sexual harassment and sexual assault matters.

A Law Aid assisted applicant is not required to repay the disbursements funded by Law Aid unless their claim results in a successful outcome, in which case a fund fee of 5 per cent of the net sum which the client receives (after payment of all charges, costs and disbursements including professional costs) is levied. As a not for profit scheme, fund fees paid to Law Aid then provide the basis to assist future meritorious applicants to fund their investigations and claims. ■

For further information, contact Law Aid’s manager Heather Masters on 9225 6703, or visit www.lawaid.com.au.



LAW AID CASE STUDIES

- M suffered back pain following a fall. Conservative management over ensuing months did not improve her worsening pain, and she underwent spinal surgery to relieve symptoms. Following the surgery M was diagnosed C5 ASIA C quadriplegia rendering her non-ambulant with no further prospect of improvement. Law Aid funded expert opinions which supported negligence and causation – inappropriate surgical technique and deficient post-surgical management. Assessments and numerous quantum reports were also funded. M’s claim resolved for \$11 million plus costs.
- S, a self-employed electrician, approached his solicitor about severe and multiple injuries he sustained when his motor bike was struck by a vehicle unlawfully entering the highway in his path. Law Aid funded disbursements in S’s application for a serious injury certificate and his subsequent common law claim including medical records, treaters’ reports, and expert reports from medical practitioners and a forensic accountant. The certificate was granted and S’s subsequent claim resolved for \$700,000 plus costs.
- Despite A consulting GPs and a cardiologist over a four-year period, his doctors failed to diagnose a cardiac condition. A ultimately suffered a cardiac arrest causing hypoxic brain insult, rendering him wheelchair bound and with cognitive disabilities. Records and expert opinions funded by Law Aid supported failures to appropriately refer A for further investigations of his ongoing cardiac symptoms and supported that had early intervention occurred the arrest, the cause of his catastrophic injuries, would have been avoided. Assessments and quantum reports funded by Law Aid provided support for a significant claim which resolved for \$4 million plus costs.
- Medical negligence – mismanagement of birth resulting in cerebral palsy. Child F was formally diagnosed with cerebral palsy on 26 March 2019. Solicitor had obtained some records and on the basis of those lodged an application and obtained funding for opinions from an obstetrician, paediatric neurologist and paediatric radiologist. Law Aid funded further records and extensive expert opinions which concluded F’s condition was not considered to result from injury at birth but from other complex issues including genetics. After these investigations F’s parents accepted that F’s injuries were not due to negligence and their concerns about management of her birth were alleviated. Funded disbursements were not required by Law Aid to be repaid.

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