

# LEGAL AID MATTERS

BE AFRAID WITHOUT LEGAL AID

## HOW THE LEGAL AID CRISIS HURTS REAL PEOPLE

**Sue** and **Joe** separated 6 years ago and have three children together. The eldest son lives with Joe whilst the younger two children live with Sue. Joe applied for a grant of legal aid to arrange mediation with Sue for issues he has been having contacting and seeing his children. His grant was approved.

Sue did not want to mediate without a solicitor and she felt she would be intimidated negotiating with Joe and his solicitor. So she applied for a grant of legal aid but was refused on the grounds of means. Sue is in receipt of Centrelink but had a small amount of money in the bank which meant that she was ineligible. But Sue's savings have been dwindling in the care of the two children she lives with, and she cannot afford a solicitor.

Now, as mediation could not take place, Sue and Joe are unable to resolve their dispute. Sue is worried that she won't be able to contact her son, and that Joe won't have contact with the two children living with her.

**Ash** had just turned 18 and was in his HSC year at school, when he was stopped by police and searched on the street. He had no criminal record. Police found a fishing knife and \$2500 in cash.

Ash was advised he was ineligible for a grant of Legal Aid as he was not facing jail. He pleaded guilty to custody of knife and pleaded not guilty to the Goods in Custody charge, and was prepared to give evidence that this was his money.

He was not represented at the court hearing. He felt intimidated and didn't know what was happening. He was cross-examined after giving evidence about how he possessed the cash. He was given a chance to cross-examine the police but didn't know what to ask.

Ash was found guilty of the goods in custody offence and was sentenced straight away to a section 9 good behaviour bond for 6 months with a conviction. He was also fined \$220, with a conviction, for possessing the fishing knife.

Ash now has a criminal record. He has just started University, but is worried his record will affect his job prospects.



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**Alice** is a 19-year-old single mother, with a three-year-old child, living in regional Victoria.

Her relationship with the child's father was violent and she obtained an intervention order against him. Later, however, Alice decides to reconcile and she seeks to discharge the order.

She is told at her Community Legal Centre that it cannot open files, and she is advised to attend at the local Court.

She does, and is given a form to complete that is incomprehensible to her. So she asks a deputy registrar to complete the form for her. She is then told that the Court will arrange for the police to be served.

She is given a document which advises her to attend Court on a particular day when her application will be heard. But Alice cannot read the paper, so she leaves it on the seat and departs.

Alice is relieved that the process has gone so smoothly and she calls her partner and tells him she's "done it."

They move in together that afternoon, but two days later, a neighbour who witnessed the previous violence notifies the Department of Health and Human Services that the perpetrator is back living with Alice.

The DHHS notify the local police of a clear breach of the intervention order.

Alice's partner is arrested and charged and bailed with strict conditions. The DHHS apprehend Alice's three-year-old, on the basis that Alice has permitted the perpetrator of violence to come into contact with the child.

**Result:** criminal charges against the partner, a protection application hearing before the Children's Court, and an interim accommodation order meaning a three-year-old is without her mum for three weeks.



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**Jessica** is a 22-year-old trainee retail worker, who obtained her position after a long period of job-hunting, which her employment counsellor says is largely due to her lack of education.

She has attempted certificate courses at her local TAFE, but has not succeeded in completing any of them. She earns slightly more than the unemployment benefit.

At work she is bullied by a permanent co-worker. The co-worker taunts Jessica about her boyfriend and her out-of-work clothing.

One afternoon, Jessica "cracks" and there is a physical altercation, during which Jessica wrenches the co-worker's earring, causing a laceration to her earlobe.

Jessica is charged with intentionally causing serious injury, among others. However, the CCTV footage shows a reasonable prospect of a self defence contest.

Jessica applies for and is refused legal aid because there was "no real prospect of immediate imprisonment".

The duty lawyer has a summary case conference with the prosecutor, although neither see the CCTV footage, which is not attached to the brief of evidence. The prosecutor is prepared to accept a plea to a recklessly cause injury.

Jessica now has two choices: offer the plea, and have the matter dealt with by the duty lawyer, or book it in for a contest mention hearing, when she will have to represent herself. She opts for the hearing.

The duty lawyer assembles some good plea material and a without conviction undertaking (with a condition that Jessica undergo anger management counselling) is the outcome.

**Result:** Jessica is sacked because, despite the CCTV footage, "you were found guilty in a Court of law". After eighteen job applications made over several weeks, she secured three interviews. A police check was required for each, and she was questioned about the circumstances of her Undertaking. She remains unemployed.

**Ronald** is a decorated former volunteer firefighter who suffers from PTSD following the unsuccessful attempted rescue of two victims of a housefire.

He has been unemployed for almost a year.

His marriage broke down and he is accused by his estranged wife of stalking by the sending 760 text messages over a 15 day period. The messages are abusive, threatening, and in many cases, vulgar.

The police arrest Ronald and bail is refused on the grounds that Ronald is an unacceptable risk to reoffend.

Legal aid for a bail application is refused on the grounds of merit, and he is remanded in custody after a failed "in person" bail application.

His lawyer eventually is successful in seeking legal aid to represent him on a plea, but only after he has spent six weeks in custody, during which he is badly assaulted.

He is released upon a plea, to comply with a community corrections order.

**Result:** significant deterioration of Ronald's mental health, requiring more intense treatment. A plea on the remand hearing date would have likely produced the same sentencing result. A claim by Ronald for compensation as a victim of crime is likely to be successful.



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**James** is a widower living in a retirement village.

He has paid for his modest unit through the sale of the home he occupied with his late wife. He subsists on the aged pension.

James is an avid golfer and volunteers at his local club to tend some of the gardens, and mow some of the fairways. He is popular and productive.

One day James is accused by a female committee member of indecently assaulting her, by fondling her breasts at the club premises. She complains to the police, who ultimately take the matter no further, since there is no corroborative evidence of the complaint, and some issue with some of the complainant's account.

But the female makes a formal complaint to the club committee, seeking James' expulsion from the club. A disciplinary committee and, after hearing from both, it determines it is satisfied that the acts occurred and James' is fired from the club committee.

Three weeks later, a member of the disciplinary committee tells James that he really didn't believe the complainant, but she was on the committee and would have resigned if the decision went against her.

James, who is devastated and humiliated by the outcome, is advised by a friend to seek legal advice as he can "appeal". He sees a volunteer solicitor at his local Community Legal Centre and is advised he has a right to appeal to the Magistrates' Court under the relevant associations incorporation legislation. The CLC does not do casework. He is refused legal aid, as it is a civil matter which does not come under the guidelines.

The golf club has an honorary solicitor, who writes to him, pointing out the numerous flaws in his application and his lack of compliance with the Rules of Court. It threatens an application for costs if the application is not withdrawn.

James is frantic. His health suffers. He does not respond to the club's solicitor and does not appear when the application is called before the Court. His application is dismissed, and a costs order in favour of the club is made for almost \$3,000.

**Result:** James has been diagnosed with depression, and the issue of his satisfaction of the costs order remains unresolved.



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