

**Pro Bono Partnerships
The State of Pro Bono Service Delivery in Australia**

**Speech delivered by John Corker, Director, National Pro Bono Resource Centre
for National Law Week on Monday 13 May 2013
Banco Court, Supreme Court of Queensland, Brisbane.**

I have been asked tonight to provide a picture of the state of pro bono legal services in Australia in 2013, with reference to pro bono partnerships and best practice.

A recent submission by eight large firms to the Review of the National Partnership Agreement on Legal Assistance Services states:

Much of the pro bono work performed by these firms could not be performed without partnerships or through relationships with Community Legal Centres, Legal Aid Commissions, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Services. Indeed a number of firms do not provide representation to individual clients unless it is within the context of a collaborative pro bono project involving a Legal Assistance Service or Public Interest Law Clearing House.

This perspective demonstrates that partnerships and relationships are fundamentally important to the delivery of pro bono legal services, not just for large firms but across the sector, and is an appropriate starting point for this address.

Nationally, the picture is of an Australian pro bono sector that has become increasingly **organised, diverse, dynamic, and sophisticated** than it was say 5 years ago, when the inaugural Walk for Justice was held), 10 years ago (when the National Pro Bono Resource Centre was established) 12 years ago (when QPILCH was first established), and certainly more than 21 years ago, when the first PILCH was established (in NSW) and the Law Council first published a definition of pro bono legal services.

It is important to remember that pro bono is still a voluntary activity, a limited resource and that providers are subject to the broad economic performance of the economy and other structural factors such as the increasing globalisation of law firms.

Pro bono contribution in context of the legal assistance sector

Some analysis was undertaken late last year about the contribution made by pro bono in the context of the whole legal assistance sector. It indicated that the pro bono legal work undertaken by law firms with more than 50 lawyers as identified in the Centre's survey¹ equates to 5.98% of the overall capacity of government-funded legal assistance services²

¹ National Pro Bono Resource Centre, National Law Firm Pro Bono Survey – Australian firms with 50 or more lawyers – Final report, January 2013.

² Hugh de Kretser, Fiona McLeay and David Hillard, Pro bono burden reflects social gap, The Australian, 9 November 2012.

and over half of this work was done for organisations rather than individuals³, making it likely that this pro bono work for individuals makes up less than 3% of the capacity of legal assistance services.

The analysis is as follows: The pro bono legal work identified in the National Pro Bono Resource Centre's 2012 survey of large firms was equivalent to 191 lawyers working full-time or 343,058 hours. By contrast there were about 2000 lawyers working in the legal assistance sector⁴ at the time with a further 1190 FTE lawyers provided through grants to private lawyers by Legal Aid in that year. So $191/3190 = 5.98\%$.

The lawyers in these large firms constituted about 19.3% of the entire Australian legal profession⁵. There is no reliable data on the amount of pro bono done work by the other 80.7% of the profession but the survey of the Australian legal profession by the Australian Bureau of Statistics in 2008 indicated that lawyers across the nation did 955,400 hours of pro bono work in 07/08. That was 4 years ago and if that amount has grown by say 5 % those large firms are now providing about a third⁶ of the total pro bono hours. The other two-thirds of the pro bono hours would be provided by the other 80% of the profession which includes barristers.

That two-thirds of the total pro bono hours equals about 660,000 hours or 366 FTE lawyers⁷. That would make the pro bono contribution of the entire Australian legal profession about 17.5% of the capacity of legal assistance services remembering that much of this work is done for organisations rather than individuals and therefore not a substitute for legal aid work.

One of the strong characteristics of the Australian pro bono sector, compared to the US and UK pro bono sectors, is that it has developed in a manner that has not led to a significant overlap with work that would or should be done by government-funded legal services. The sector has developed in this way due to, in part strong leadership shown by 'pro bono champions' within the legal profession. Their message continues to be that pro bono providers need to be strategic in deciding the cases, and types of programs and projects with which they become involved if pro bono is to make a real difference to the lives of the disadvantaged and marginalised.

³ National Law Firm Survey n. 1, page 29 shows on average that 62.8% of work is done for organisations, 37.2% is done for individuals.

⁴ This is Legal Aid Commissions, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services.

⁵ 4As at October 2011, there were 59,280 practising solicitors in Australia: see the Law Society National Profile Final Report, July 2012, (prepared by Urbis for The Law Society of New South Wales), available at: <http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/640216.pdf>. The large law firm sample was 11,460 FTE lawyers.

⁶ $343,058 / 1003,170 = 34.2\%$

⁷ Calculated assuming a 48 working week year and 37.5 hour weeks. (same assumptions used to arrive at the 191 lawyers in the Centre's 2012 large firm survey)

Definitions

For the purposes of the discussions this evening, it is useful to have a common definition of pro bono legal work. There are a number of definitions used in Australia as the wonderful pamphlet prepared by the UQ Pro Bono Centre students and available here tonight shows. The definition the Centre uses for the purposes of the National Pro Bono Aspirational Target and its survey of firms clarifies a number of grey areas and states that the following are not pro bono:

1. giving legal assistance to any person for free or at a reduced fee without reference to whether he/she can afford to pay for that legal assistance or whether his/her case raises an issue of public interest.
2. free first consultations with clients who are otherwise billed at a firm's normal rates;
3. legal assistance provided under a grant of legal assistance from Legal Aid;
4. contingency fee arrangements or other speculative work which is undertaken with a commercial expectation of a fee;
5. the sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; or
6. time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

QLD Law Society President, Annette Bradfield, in her editorial in Proctor magazine this month identifies 'casual pro bono' as distinct from 'formal pro bono' and suggests that it might be useful to include a question in the annual practising certificate renewal process that asks members to estimate their annual number of pro bono hours worked.

I think this is a great idea but if data is to be collected every year, then the definition of what is being counted needs to be clear, otherwise the results have no integrity.

I am not convinced that the distinction between 'casual' and 'formal' pro bono is that clear-cut but a distinction that is often made, that might be useful for reporting purposes in Queensland, is that between 'pro bono work' and 'pro bono **legal** work', the former being work done for the public good generally and the latter being **legal** work done for the public good. Lawyers are, after all, quite familiar with quantifying their legal work.

Lawyers often volunteer for community work, particularly in smaller communities such as sitting on committees, or for example, being the judge of a writing competition. A number of Queensland lawyers have asked me previously, 'why isn't this counted as pro bono work?' The answer is that this is important work that should be highlighted, but it's not easy to quantify and it's not only lawyers that can do this work. The Centre's role is to promote pro bono **legal** work because that's where lawyers add the most value.

More organised

Here are a few facts from our 2012 survey of large firms that demonstrate how the profession has become more organised in its pro bono legal activities (figures in brackets represent the results in 2010):

- All but one of 35 (28) firms surveyed indicated having someone coordinating pro bono work.
- Twenty (17) firms reported having a designated pro bono coordinator or director with 14 (13) firms indicating this was a designated partner, 6(4) a designated employee solicitor. Twelve (9) full-time coordinators, 10 (8) part-time. Two firms have more than one pro bono coordinator.
- Fourteen (10) firms had a pro bono committee.

There is little doubt that amongst the large and mid tier firms, structured and coordinated pro bono has become more organised and thus more efficient for the firm and the pro bono seekers.

Players

However pro bono in Australia is not just all about large firms. If we are looking at the national picture of pro bono service delivery in Australia today it is important to mention the following groups and entities because each plays a unique role and each faces different issues in their endeavours to assist. This is illustrative of the increased **dynamism** of the pro bono movement.

- **Pro Bono Clearing Houses and Referral Schemes** – these have become increasingly sophisticated. There are now 12 pro bono clearing houses in Australia, at least one in each state and Territory. The consolidation of PILCH Victoria and PILCH NSW, commencing operation as a new entity from 1 July 2013, will herald in a new era of increased efficiency and sophistication in these vital points of focus and coordination for pro bono legal activity.
- **QPILCH** has also grown and shown unique leadership nationally through its broad range of law student clinics and pioneering work done through the introduction of the pro bono self represented litigant's services in the Queensland courts and at QCAT.
- In recent times a number of the **mid –tier firms** have followed the lead of the large firms in developing more structured pro bono practices. Just in the past twelve months, six mid-tier firms have become signatories to the National Pro Bono Aspirational Target of at least 35 hours per lawyer per year of pro bono legal work.
- This has certainly been spurred along by the **Commonwealth government** making it a condition for a firm who wishes to be on its **Legal Services Multi-Use List** for the purchase of legal services from the private profession. Each firm must either be a signatory to the Target or specify a value of pro bono legal work that they aim to provide. Annual reporting by the Commonwealth of each firm's pro bono performance has made this issue much more visible than previously was the case. Agencies are required to take their pro bono commitment into account when hiring firms to undertake their legal work. The similar Victorian government scheme introduced in 2002 has also certainly had the effect of

encouraging a number of firms to increase their pro bono contribution and it is an idea that the Queensland government should examine.

- The **no-win no-fee firms** have developed a different model to the defendant firms as they already do a lot of ‘free work’ but they do this under a contingency fee business model which is not pro bono. Their approach has been to take on some of the more difficult public interest litigation which is a welcome addition to the pro bono contribution of firms as some defendant firms are becoming decreasingly willing to take on litigation because of the risk and the open ended nature of the commitment. Maurice Blackburn’s ‘Social Justice Practice’ is a leading example of this trend.
- It is important to acknowledge the pro bono contribution of **small firms and sole practitioners**. Survey data has shown that sole practitioners are often the ones one who report doing more than 100 hours per year pro bono legal work. It’s simply the way they run their practice. Small firms have unique issues when it comes to pro bono. There are specialist practices that feel that they only know one area of practice and therefore have difficulty finding appropriate pro bono work. There are also small suburban and regional firms where the line between pro bono work and business development is necessarily grey. These firms are sometimes willing to take on contested deceased estates, family law and migration law matters that larger firms can not or will not take on and so are a vital part of the overall mix of pro bono legal providers.
- **In-house lawyers (government and corporate)** – These lawyers are starting to become more involved in pro bono service delivery now that the regulatory barriers to their participation have been removed. In all states except Western Australia, the National Pro Bono Professional Indemnity Insurance Scheme run by the Centre which started in June 2009, is able to provide PI insurance without charge to in-house lawyers who want to undertake a pro bono project where no other insurance exists. Westpac, Telstra and ASIC lawyers have all recently become involved in pro bono projects, often initially through existing law-firm pro bono projects but then branching out with their own projects. Over forty pro bono projects have now been approved under this Policy and there is still plenty of capacity to approve others. In-house counsel pro bono is expected to grow.
- The state of pro bono in Australia can not be discussed without mentioning the contribution of **individual volunteers** – often referred to as the lifeblood of community legal centres (CLCs). In 2012, 106 CLCs reported that 3637 volunteers provided 8369 hours per week. Interestingly, 55 per cent of all individual volunteering hours came from law students contrasted with 26% from lawyers, with the rest being provided by administrative volunteers, social work students and financial counsellors.

- **Law students** are increasingly enthusiastic and involved in the delivery of legal service and I want to say a few things about the idea of mandatory student pro bono in a moment.
- **Barristers** make a vital contribution to improved access to justice through their pro bono work. Much demand for pro bono is still for representation in a court or tribunal. It is not unusual to find a person who has a barrister willing to act pro bono but finding it difficult to find a solicitor willing to go on the record. Like sole practitioners, barristers are self-employed and a current issue is whether barrister's fees should be paid when there is a costs order in favour of the party being acted for on a pro bono basis. A purist might say no, as there was never an expectation of a fee being paid. However, payment in these rare circumstances may make it more likely that the barrister will have capacity to take on another pro bono matter in the future, which he or she might not have been able to otherwise.
- **Courts** have an important role to play in facilitating pro bono legal services. The procedural 'green-lighting' that has facilitated the representation of persons on a pro bono basis in some courts, needs to develop further. Queensland courts and QPILCH ought to be congratulated for providing national leadership on the civil self representation services that now exist in your Court of Appeal, Supreme Court, District Court and at QCAT. Unlike duty lawyer schemes, these services allow and encourage litigants to visit the service a number of times and so facilitate the passage of these people through the court system. The Victorian Supreme Court has had for a number of years a self represented litigant's coordinator and the Federal Court trialled (and will hopefully continue) a self representation service in Brisbane. I suspect we will see other Australian courts and registries follow these examples.
- The other current issue concerning pro bono in the courts is whether there should be a legislative power for courts to make **pro bono costs orders**. Such a power exists in the UK. The recent NSW Law Reform Commission report on public interest costs orders sees merit in there being a specific power to make pro bono costs order. I note the Queensland Court of Appeal case of *King v King* [2012] QCA 81 where the court declined to award costs in a pro bono matter. Whilst this case can probably be confined to its unique facts, uncertainty continues and the Centre takes the view that legislative change would be beneficial particularly to clearly distinguish between pro bono matters and no win-no fee matters. The issue yet to be worked through in Australia is what regime if any should exist to make sure that the costs recovered are used in a way that confirms the matter was a pro bono matter not a contingency matter. It may be that a self-regulatory protocol endorsed by law firms would address this issue. The protocol could indicate that any costs recovered will be paid to barristers who opt to have their fees paid, then either put towards the costs of running a firm's pro bono program, or paid to a charity of their choice.

Models of pro bono service delivery

There are many existing models of delivery, with new and innovative models being developed. Existing models include:

- Case referral
- Clinics
- Outreach
- Secondments
- Fellowships
- Co-counselling
- Secondary Consults – informal contact.
- Technology based services –telephone, video conferencing, email
- Law Reform and Policy Work – good for firms –discrete task, not so time sensitive
- Community Legal Education – low risk for firms –good introductory pro bono
- Assistance to not for profit organisations, particularly charities
- International or Global Pro Bono – this is increasing due to clients increasingly operating in multiple countries and thus the rapid globalisation of law firms.

New models and increased diversity

There are some new and unique corporate structures sitting behind the pro bono service delivery models. Three examples of this are the Salvos Legal Service, the Cancer Council Legal Referral Service and the Office of the Registrar of Indigenous Corporations (ORIC) Law Help Scheme.

The unique aspect of the Salvos Legal model is a commercial law firm (doing largely property law work) generating profits to support a pro bono humanitarian law practice. It now has offices in Sydney and Brisbane, and may soon be operating in Melbourne. The unique aspect of the Cancer Council Legal Referral service is that it has an army of referral workers – i.e. social workers and medical staff in hospitals and Cancer Treatment Centres, who are able to pass requests for assistance to a central point of coordination where the request can be reviewed and if appropriate, find a suitable firm or legal practitioner to assist. The ORIC model is unique in that is coordinated by government employees who seek to place requests from corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* for help in many legal areas (but excluding Native Title matters and litigation).

What Works

I have been asked to talk about what constitutes best practice in pro bono partnerships. It just so happens that we are about to launch a new online resource called *Pro Bono Partnerships and Models: A Practical Guide to What Works* that illustrates contemporary best practice. This is a practical resource divided into two parts, partners and models. It is based on interviews with over 75 people with experience working with each of the above models, including both pro bono recipients and pro bono providers. It aims to provide useful information, not only for those seeking to provide or obtain pro bono legal services or expand their activities, but also for all in the legal assistance sector

and related policy areas to better understand how pro bono works. If you understand it better you can make it work better for you and, as I said the way in which pro bono services are sought and delivered are becoming more sophisticated and diverse.

For each model, 'What Works' provides a full discussion of the benefits, challenges and **features of effective projects** using that model, supported with direct quotes from people who have experience with the use of that model. I would refer anyone who is striving to achieve best practice, to this new resource. Some of you in the room will have contributed to this and we thank you.

There is much more that can be said about the state of pro bono in Australia but I would like to raise three current issues.

Law students

The first is the role of law students in pro bono and the recent suggestion that Australia might follow the New York precedent and introduce mandatory student pro bono.

The interest in pro bono, human rights and social justice by law students has been increasing for a number of years. There is also increased demand from law schools for opportunities for their students to be involved in clinics and law related placements. QPILCH, through its various student clinics with the University of Queensland, but also Griffith and Bond Universities provides some of the best examples in the country of student clinics working with pro bono lawyers. This is perhaps because universities have been key partners of QPILCH since it started.

The Commonwealth Attorney-General, the Hon. Mark Dreyfus QC stated in March 2013 that he feels very strongly that innovations such as compulsory pro bono requirements for students to be admitted as lawyers would enhance the sense of social justice in aspiring lawyers in universities around Australia, and help foster a pro bono culture, whilst also providing very valuable and practical legal experience. This is an interesting idea as it will certainly expose more students to the service ideal of the legal profession but if not done well, risks putting a student off the idea for life.

We know from the clinical legal education programs in Australia that skilled staff and good coordination systems are essential to ensure that the pro bono ethos is positively reinforced through good experiences for students, but also so that high quality legal services are provided to clients. It is important therefore that this idea proceed carefully with sufficient time for proper consultation and consideration.

RRR Areas

It is not possible to talk about pro bono in Queensland without mentioning the considerable need that exists in regional rural and remote (RRR) areas. How legal services are delivered in RRR areas is a much bigger issue than pro bono. New communications technologies have been cited as being a possible part of the solution.

What I can share with you is the Centre's experience from its involvement in establishing and monitoring one of the first National Broadband Network supported legal services situated in southern Tasmania. The Centre brokered a relationship between DLA Piper and the Hobart Community Legal Service (HCLS) to provide services at an existing outreach location at Sorell, a small town about 40 minutes drive out of Hobart. The trial is ongoing and the experience to date is that lawyers like using the sharp and clear video-conferencing facility but some clients are rather wary of it and taking some time to adapt.

The main constraint has been the time taken for double handling of information with instructions passing through two sets of lawyers. The main benefit of the trial to date has been the development of a good working relationship between DLA Piper and the HCLS that has led to useful legal support being provided to the HCLS lawyers. The relationship has also led to the delivery of effective onsite legal training in areas of law and practice where such knowledge was unavailable in Tasmania (as most other Tasmanian firms had irreconcilable conflicts) e.g. in employment law.

The models that have shown some promise in regard to RRR pro bono service delivery are secondments, outreach and regional co-operation and again I refer you to the case studies on these models in "What Works" for more detail.

Joined Up Solutions

The third issue concerns solutions. One of the key messages given to us tonight by Professor Pascoe Pleasance is that the research shows that 'joined-up problems' require 'joined-up solutions' and that many people just have 'problems' rather than 'legal problems'. How to achieve 'joined-up solutions' is an issue currently exercising the minds of policy developers in the legal assistance sector and we are seeing new developments in the area of the co-location of medical, legal and other social services.

My contribution to this question is the suggestion that a "joined up solution" is likely to involve lawyers making their services available in places where potential clients feel safe and they trust the persons with whom they interact in these places.

Here are four examples of this "**safe and trusted place**" concept where legal services have been successfully provided as part of a "joined-up solution" with other service providers:

- Lou's Place, a women's shelter in Kings Cross where since the year 2000, lawyers from law firm, Ashurst have provided pro bono legal services to women who may have migration difficulties; have been subjected to violence; suffer from severe mental illness; and have drug and alcohol issues. Many of them are illiterate and unable to negotiate their way through the system. This is a safe and trusted place for them. This service was the recipient of the 2010 Pro Bono Partnership Award at the NSW Justice Awards.
- The Homeless Persons Legal Services where lawyers from around the country have provided pro bono legal advice, each one situated in a community centre

where homeless people know that they can find food, shelter and support. If success is judged by the number of firms involved in one type of pro bono program then this has been the most successful pro bono program in the past decade. A recent quote from an article⁸ about the Homeless Persons Legal Clinic in Brisbane provides a great example:

New 'lounge sessions' operate each Monday afternoon, enabling residents to get a hair-cut, see a nurse, connect to other community services and get a legal health check.

- A UK example of this concept is the Pro Bono in the London Muslim Centre service established by London lawyers in the East London Mosque and London Muslim Centre. This service exists as part of the social welfare services available to users of the Mosque. It is only here that the members of the Muslim community of East London are likely to seek legal assistance for their problems.
- The medical-legal partnership movement in the United States and the emerging Advocacy Health Alliances in Australia are partnerships that have broken down the barriers to accessible legal services to people experiencing health issues by co-locating legal with medical services.

Further support for this idea can be found in the research of the NSW Law and Justice Foundation⁹ that found that many people are seeking legal assistance from professionals other than lawyers such as doctors, accountants, psychologists and counsellors in their consulting rooms - safe places. People confide in these professionals. They trust them to listen to their problems.

I suggest that the community legal centre movement have understood this principle for a long time as reflected in their establishment of outreach services in places where 'people with problems' frequent, but perhaps now is the time to move one step beyond that and say that these are the spaces where any new services should be established and perhaps, over time, where existing services should consider moving.

Conclusion

Pro bono legal service delivery by Australian lawyers is becoming increasingly organised, diverse, dynamic, and sophisticated. I have provided examples of this.

⁸ 'There's no place like HPLC', by Sue Garlick, Proctor Magazine June 2013 – Vol 33 No 5, p.27.

⁹ Law and Justice Foundation of NSW, Justice made to measure: NSW legal needs survey in disadvantaged areas (2006); See Table 5.1: Type of adviser used, all six LGAs, 2003.

However, at the heart of good pro bono service delivery remains strong relationships and culture. For their maintenance and growth, both of these aspects require effective and continued communication.

The pro bono culture is quite different in each State and Territory but I can say that Queensland has a vibrant strong culture which will grow further as you continue to work at it and make it visible, which we will be doing tomorrow morning in the Walk for Justice.