

NATIONAL PRO BONO RESOURCE CENTRE

Pro Bono News 1/2003

Welcome to the first edition of the e-Newsletter of the National Pro Bono Resource Centre. In this edition:

- 1. Centre news**
- 2. Second National Pro Bono Conference – October 20-21, 2003**
- 3. Centre activities and projects**
- 4. Pro bono, conflicts and government agencies**
- 5. Proposed Federal Court rule change re disclosure of legal practitioner**
- 6. Victorian Government pro bono scheme**
- 7. Further information about pro bono**

1 Centre news

NPBRC is up and running in the White House at the University of New South Wales. The Centre, established by the Public Interest Advocacy Centre and partner organisations, was launched on 15 August 2002 and is funded by the Commonwealth Attorney-General's Department. In opening the Centre, the Attorney drew attention to the need for the Centre to promote pro bono to the legal profession and the broader community and to address a range of obstructions to the delivery of pro bono services.

(i) The role of the centre

The Centre's brief is to support and promote pro bono in Australia. It will produce guides, directories, information and advice to legal practitioners, community and government based legal services and community organisations. The Centre will also undertake practical research and promote the exchange of ideas and information including through holding conferences and seminars. The Centre's current activities and projects are discussed below.

(ii) Centre website

The Centre will use its website to provide information about the Centre and its activities as well as access to research reports and publications prepared by the Centre and others. Planned features include a directory of pro bono referral schemes and major pro bono providers, practical information for pro bono lawyers and support to networks sharing expertise in particular areas of pro bono and legal aid practice. The first stage of the NPBRC website is available at: www.nationalprobono.org.au

(iii) Centre staff

The Centre has a core staff of 3: the Director, Gordon Renouf, a part time Policy and Research Officer, Jill Anderson and a part time Publications Coordinator, Lynne Spender. We currently have a part time administration officer, Jacqui Houston and are assisted by three student interns from the University of New South Wales and Wollongong University. The Centre will employ other staff as resources and project

funding permit. The Centre has received assistance on particular projects from pro bono coordinators, summer clerks and other staff at a number of law firms.

(iv) Ongoing Consultation

The Centre is well into its ongoing program of consultation in each State and Territory. We have met with law firms, bar representatives, professional associations, pro bono referral agencies, community legal service providers and legal aid organisations, academics and government policy makers in most jurisdictions, and will conduct workshops and consultations in Western Australia and South Australia in May and June. Beyond the specific matters encompassed in the projects already undertaken by the Centre, issues arising in consultation to date include pro bono needs in rural, regional and remote communities, the role of pro bono in family law, public recognition of pro bono, and the need to develop ways for pro bono firms to target areas of greatest need. The Centre will work with the legal profession and community sector to develop responses to these issues. The 2nd National Pro Bono Conference will be a key opportunity to explore them further.

2 2nd National Pro Bono Conference

Sydney, 20-21 October 2003

Following the success of the First National Pro Bono Conference held in Canberra in 2000, the Centre and the Public Interest Law Clearinghouses will organise the Second National Pro Bono Conference in Sydney on October 20-21. The Conference program will be designed to interest current and potential pro bono lawyers, pro bono referral organisations, legal aid organisations and community legal centres, academics and students, advocates for disadvantaged groups and government policy makers.

A number of international keynote speakers will participate in the conference, including Esther Lardent, President of the Pro Bono Institute in Washington. The conference will be an opportunity to learn from successful pro bono initiatives in Australia and from a diverse range of overseas jurisdictions including South Africa and South American countries, the USA and UK.

The conference will facilitate the development of links between organisations that may be interested in working together on particular pro bono projects. Conference information will be posted to our web site in the near future. In the meantime, for further details contact the Centre:

Email: info@nationalprobono.org.au

Phone: 61 2 9385 7381

3 Centre activities and projects

A full list of the Centre's current activities and projects in development are set out on our web site at www.nationalprobono.org.au/activities.html. Here we highlight two of those projects.

(i) Good Practice Guide and Resource Kit

The Centre is developing a *Pro Bono Good Practice Guide and Resource Kit*, a substantial publication aimed at law firms interested in establishing a pro bono program or wanting to build on their existing pro bono practice. The Guide will draw on the experience of Australian firms in building their pro bono programs and provide insights and useful material from pro bono activities in the UK and the USA. It will include sample policies and other documents for firms to adopt or adapt.

The Guide will be published jointly with the Victorian Law Foundation in September 2003.

(ii) Indigenous legal organisations and pro bono

The NPBRC Board has approved a project to explore the current uses and future pro bono needs of Indigenous legal organisations including Aboriginal and Torres Strait Islander Legal Services, Indigenous Women's Legal Services and Land Councils.

The project will:

- seek information on current use of pro bono services by Indigenous legal organisations and their clients,
- identify barriers to access to these services and offer potential solutions,
- provide information to Indigenous legal organisations about pro bono models and the availability of pro bono assistance, and
- attempt to identify key areas of need.

4 Pro bono, conflicts and government agencies

The Centre has produced and circulated a Paper '*Pro bono, conflicts and Government*' Law firms are sometimes reluctant to provide pro bono legal services in matters against government agencies because of a perception that this will prejudice them in securing or retaining government legal work. The Paper proposes that governments in Australia adopt a Protocol aimed at minimising this obstacle to pro bono. The Centre invites comment on the Draft Protocol and on issues relating to conflicts of interest by Monday 31 March 2003.

The Paper is available at the NPBRC website at www.nationalprobono.org.au/publications.html

5 Victorian Government pro bono scheme

In Victoria, law firms tendering to provide legal services to government were recently required to commit to providing pro bono legal services to the value of between 5% and 14% of the value of the tender. Ultimately 33 law firms were successful and the pro bono commitments in the contracts commenced on 1 January 2003.

The contracts oblige firms to provide pro bono legal services to causes or organisations approved from time to time by the Attorney General. This raises difficult questions of definition – for example, whether work done at a reduced fee, or on a 'no win, no fee' basis should count in discharging a pro bono commitment; whether work done benefiting causes outside of Victoria (for example for refugees in South Australia or Indigenous organisations in the Northern Territory) should count; and whether non-legal assistance provided by firms should be counted.

In our submission to the Victorian government we suggested that a public interest and rights-based approach should govern the response. That is, for the purposes of the tender arrangements, pro bono should be defined broadly to include any activity that constitutes or promotes legal assistance for the direct or indirect benefit of disadvantaged or low income people or which advances a particular public interest. A copy of our submission is available at www.nationalprobono.org.au/publications.html.

On March 11, 2003 the Victorian Attorney General released the document *Policy Guidelines for the Delivery of Pro Bono services for an Approved Cause under the Government Legal Services Contract*. The Guidelines issued are consistent with the submissions made by the Centre in that they include a broad definition of pro bono, focus on activities that will enhance access to justice by disadvantaged people or groups or advance the public interest and allow the possibility of pro bono for the benefit of people or groups outside Victoria. The Guidelines also cover issues about which the Centre was not in a position to make comment. We would be interested in any views about the likely effect of the Guidelines on pro bono in Victoria.

6 Proposed Federal Court rule change

The Federal Court has sought the Centre's comments on a possible new provision in Order 45 of the Federal Court Rules. The aim of amending the rules would be to ensure that the Court knows the identity of any legal practitioner who has prepared a document that is used by an otherwise unrepresented litigant. The rules currently require that a practitioner disclose that she or he has prepared a pleading (Order 11 rule 1A; see also rule 1B). The rule being considered would extend the disclosure obligation to other documents. It would require that a document intended to be used in connection with a proceeding in the Court must set out the name of any legal practitioner who prepared the document and include a statement by the legal practitioner that she or he prepared the document.

Some reasons why the possible additional rule might be desirable are set out in the decision of Justice Branson in *NADG of 2002 v MIMA* [2002] FCA 893 at paragraphs 7-11. These include that "unless the court knows ... to what extent a legal practitioner is acting ... the Court [will be] disempowered from taking appropriate steps to deal with instances of impropriety" and that the obligation on the Court to provide assistance to unrepresented litigants may be abused. On the other hand, some may take the view that the proposed rule might have implications for practitioners asked to provide assistance to unrepresented litigants, including pro bono lawyers and lawyers at advice clinics operated by community legal centres, Indigenous legal organisations and legal aid commissions. Would a rule such as the one under consideration by the Court deter practitioners from providing pro bono assistance in the form of preparing documents for use in connection with Federal Court proceedings? Could the rule be modified or supplemented to overcome any such concerns?

The Court has asked for our comments by 11 April 2003. In order to assist us to meet that deadline we would appreciate any comments by Monday 7 April 2003.

7 Information about pro bono in Australia and around the world

Legal Services 'for the public good', an article by Centre Director Gordon Renouf and Policy Research Officer Jill Anderson, was published in the February 2003 edition of the *Alternative Law Journal*. The article summarises issues relating to pro bono legal services, nationally and internationally, and outlines the benefit of forging links between pro bono service providers, publicly funded legal service providers and community organisations. The paper is one of a number of articles of interest in this issue of the *Alternative Law Journal* titled 'Practicing law in the public interest'.

The paper is available at www.nationalprobono.org.au/publications.html. Abstracts of the Alternative Law Journal are available at www.altlj.org.

The Centre's web site includes a number of links to publications of interest, including the Report of the National Pro Bono Task Force and links to the web sites of the NSW and Queensland public interest law clearinghouses and to Law Access WA. We will shortly expand our list of publications and add links to other sites of interest.

8 To subscribe or unsubscribe to *Pro Bono News*

To subscribe or unsubscribe to this newsletter please go to our subscription page <http://lists.nationalprobono.org.au>

This newsletter is available on the web at www.nationalprobono.org.au/publications.html

Please forward this newsletter to anyone else you think may be interested.

9 The Centre's contact details

National Pro Bono Resource Centre

www.nationalprobono.org.au

email: info@nationalprobono.org.au

phone: +61 2 9385 7381

fax: +61 2 9385 7375

post: The White House, University of New South Wales, Sydney, NSW, 2052