

## **Australian Lawyers and Social Change**

### **Australian National University Faculty of Law and the National Institute of Social Sciences and Law**

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## **ACCESS TO JUSTICE – THE NATIONAL PRO BONO RESOURCE CENTRE**

This paper does three things:

1. it provides a picture of what is happening with pro bono in Australia at present and describes the current work of the Centre.
2. it argues the good sense in their being a greater role for a national partnership of the national service involved with delivery of services to low income and disadvantaged Australians; and
3. it seeks to answer the question what role can and should Australian lawyers play in the promotion of law reform and the achievement of social justice?

### **1. What is happening with Pro Bono and what role is it playing in the promotion of law reform and access to justice.**

It is not new. Lawyers have been providing pro bono services for a long time. What is new is structured pro bono programs by the larger firms, the formalised referral schemes and clearing houses through which pro bono work is channelled and a generally higher profile for pro bono work brought about by the efforts of the law foundations, PILCHs, larger firms, the legal profession generally and the National Pro Bono Resource Centre. There are significant new initiatives such as the Homeless Persons Legal Clinics in Melbourne, Sydney and Brisbane.

***How much is being done?*** This is a difficult question to answer. Quantifying pro bono is not a straightforward task, not least of all because it necessarily involves defining pro bono. Lawyers being lawyers, a settled definition of pro bono has unsurprisingly eluded the profession. Definitional issues aside, comprehensive and authoritative data about the amount of pro bono is patchy. The Australian Bureau of Statistics has reported on the amount of pro bono work the legal profession undertakes in its periodic survey of the legal services industry. Pro bono clearing houses, and court referral schemes and professional associations also report on their pro bono activity. Some pro bono agencies have translated the amount of pro bono work into monetary terms.

The 2001-2002 ABS survey of the legal service industry reported on lawyer's estimates of pro bono work. According to the survey, as at June 2002, 4,744 private solicitor practices (around 63%) reported doing some sort of pro bono work and 2,878 barrister practices (78%) reported doing some sort of pro bono work.

Solicitors reported 786,100 hours of pro bono work and barristers 203,300 hours for a total of 989,400 hours. Of this just over 12% (123,100 hours) was made up of community legal education and law reform work with the balance presumably comprising advice, transactional work and representation provided to individuals or groups.

the ABS found that practices with only one working principal/proprietor worked an average of 99 hours each in 2001-02. By comparison, practices with 10 or more principals worked an average of 20 hours per lawyer. These figures, however, include all lawyers, not just those who undertook pro bono work.

However, if we break down these figures further, we can see that of those lawyers that *do* undertake some kind of pro bono work (as opposed to all lawyers), the disproportionate load on small practices becomes more evident: practices with one principal/proprietor do 243<sup>1</sup> hours per lawyer compared to their large practice counterparts who average 24 hours<sup>2</sup> per lawyer.

Evidence suggests that smaller firms are doing more per lawyer than larger firms and data in the UK supports this pattern.

### **What is the Centre doing?**

The National Pro Bono Resource Centre ('**the Centre**') commenced operation in August 2002 following a recommendation for its establishment made by the National Pro Bono Task Force to the Commonwealth Attorney-General June 2001. It is based at the University of NSW with its core funding provided through the Commonwealth Attorney-General's Department until July 2005 and assistance with accommodation and overheads from the Faculty of Law at UNSW.

The objectives of the Centre are:

- to promote pro bono work throughout the legal profession;
- undertake research and projects to inform the provision of pro bono legal services;
- provide practical assistance to pro bono providers (including information and other resources);
- develop strategies to address legal need; and
- promote pro bono law to community organisations and the general public.

### **Some key achievements to date**

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<sup>1</sup> calculations based on Table 2.9 and Table 2.10 in ABS, *Legal Services Industry 2001-2002*, Report No 8667.0, 25 June 2003. 3032 sole practice lawyers did 736,500 hours of pro bono work.

<sup>2</sup> calculations based on Table 2.9 and Table 2.10 in ABS, *Legal Services Industry 2001-2002*, Report No 8667.0, 25 June 2003. 75 firms do a total of 206,400 hours. If average large firm size is 115 lawyers(10,431/91), then 75 practices = 8625 lawyers. 8625 large practice lawyers did 206,400 hours.

### The Australian Pro Bono Manual

The Centre, with the Victoria Law Foundation and assistance from the pro bono coordinators of the larger firms produced and published the Australian Pro Bono Manual in October 2003. This is a 220 page practice guide and resource kit for law firms interested in running pro bono programs. It is being kept up to date in an online version available on the Centre's website and will be further promoted to the profession following a hard copy publication of the Manual later in 2004. Best practice sessions directed at medium size firms (based on the Manual) are planned (initially in NSW later this year) to facilitate the flow of knowledge and experience about running a pro bono practice.

### The Second National Pro Bono Conference

This conference, co-hosted by the Centre, was held in Sydney in October 2003. It provided a forum for a broad cross-section of the Australian legal profession to meet and hear about local and international experience and discuss ways in which pro bono service delivery could be improved and expanded in Australia. New initiatives were spawned at this conference, e.g. the ACT Law Society has been developing a proposal for an ACT pro bono clearing house which is now well advanced.

### Brokering pro bono relationships in rural regional and remote ('RRR') areas

The Centre has brokered pro bono relationships between RRR community legal centres ('CLCs') and some mid-tier law firms in NSW. These relationships whilst quite new are now in place between Shoalhaven CLC and Baker & Mc Kenzie, Albury/Wodonga CLC and Coudert Brothers and North and North West CLC (Armidale) and Ebsworth and Ebsworth. A successful "relationship building" event was held in Sydney in May 2004 involving 14 firms and 9 CLCs and a similar event is being coordinated by the Centre to coincide with the National Association of Community Legal Centres Annual Conference to be held in Adelaide on 30 August 2004.

### Advocating for implementation of a protocol at Federal, State and Territory level to address firms perceiving a conflict of interest arising from them providing pro bono legal assistance in matters against government.

As part of the Centre's program to address barriers to firms providing pro bono, the Centre developed a protocol to address this issue that states no firm who conducts pro bono work against government will be adversely affected when government legal services are purchased. In response to advocacy on the issue, the Centre received positive responses from the Federal A-G's department and from four (4) of the State and Territory Attorneys-General. Such a protocol is likely to be implemented into the Federal Legal Service Directions later this year and its implementation at State and Territory level was recently recommended by the Senate Legal and Constitutional References Committee in its June 2004 report on legal aid and access to justice.

### Government lawyers

The government lawyer's project aims to have pro bono work policies introduced by Federal, State and Territory government agencies to encourage and facilitate their

lawyers to do pro bono work and for the Centre to identify and promote opportunities for this to occur. A comprehensive resource paper prepared by the Centre is presently with the Australian Government Solicitor ('AGS') and the Centre has provided comment on a draft AGS pro bono policy. Both papers are due for release shortly and AGS have agreed to organize a government lawyer's forum in Canberra later this year to take this initiative forward.

This project illustrates the unique role that the Centre can play. The Centre has contributed the experience of private sector and overseas government lawyers. AGS has contributed knowledge about pro bono work done by its lawyers and the barriers, real and perceived, that must be addressed if this initiative is to succeed. It is unlikely that this depth of information and exchange would have been brought to the AGS policy development process in the absence of the existence of the Centre. It is the collaboration that has made the process worthwhile.

#### Law Students

The Centre has completed two projects this year that provide a resource for law schools and students.

- An information and issues paper that details research on pro bono and clinical legal education activity at Australia's 29 law schools and addresses issues that face law schools in developing or expanding such programs.
- A new program called Pro Bono Students Australia, a relatively low cost program that expands the opportunities for law students to be involved in their communities by facilitating them to do law-related work for non-profit organizations in their community. PBSA is based on a successful Canadian program and is about to be trialed at the University of Western Sydney.

#### In-house corporate lawyers

The Australian Corporate Lawyers Association (ACLA) have been and remain keen to facilitate their members to take on pro bono work and are well aware of how developed this sector is in the US but have lacked an independent broker like the Centre to identify possible projects and address the logistic difficulties of making this happen. The Centre has been working with ACLA and the Public Interest Law Clearing Houses ("PILCHs") in NSW and Victoria to identify suitable projects and models to better involve in-house corporate counsel and tackle the issues with a national approach in mind.

#### Pro bono and family law

Through a series of meetings coordinated by the Centre in Sydney some limited pro bono assistance is starting to be provided. Two firms have agreed to provide financial assistance analysis in child support departure application and similar matters thus providing an opportunity for their banking and finance lawyers to provide pro bono services. The Centre organised training for these firms provided by Illawarra CLC. 'Writing of Affidavits in family law matters' training, to be provided by a small firm family law specialist has been organised by the Centre for firms in September 2004.

### Knowledge collection and distribution

The Centre provides data, advice and research which informs government and assists it in making the policy settings for effective legal service delivery. It has made substantial submissions to the Federal Civil Justice Strategy Review and the Senate Legal and Constitutional References Committee in its inquiry into legal aid and access to justice. The Centre's current national mapping project will provide data about different models of pro bono service delivery across Australia. Since commencing in August 2002, the Centre has become a repository of significant knowledge and expertise about the delivery of pro bono services and a source of advice for many persons operating in the pro bono environment.

### **Key Priorities 2004 - 2005**

- 9 Pursue strategy to obtain ongoing funding for the Centre after July 2005
- 9 Promote the 'Australian Pro Bono Manual' and its contents (conduct best practice sessions and produce training materials for the profession)
- 9 Complete project 'Mapping Pro Bono' and conduct a national survey of pro bono work done by firms
- 9 Pursue IT strategy to provide better online tools for the pro bono community
- 9 Continue to broker partnerships between CLCs (particularly from RRR areas) with law firms
- 9 Monitor the trial of the Pro Bono Students Australia program and promote its uptake by other law schools
- 9 Publish findings on pro bono and Indigenous Legal Organisations and pursue matchmaking opportunities
- 9 Build pro bono capacity amongst government lawyers and facilitate service delivery
- 9 Build pro bono capacity amongst in-house corporate lawyers and facilitate service delivery
- 9 Continue to lift the profile of pro bono across the profession and in the community

### ***Pro Bono and Legal Aid***

Pro bono is not a substitute for legal aid. It is a significant contribution made by the private legal profession towards the low income and socially disadvantaged and thus comes at no direct cost to Government.

Legal aid can not cover the field when it comes to providing services to the low income and socially disadvantaged. Pro bono legal services are an essential element of the overall mix of legal services being delivered. Pro bono continues to grow as a sector within the legal services market and thus adds to the overall amount of legal services delivered particularly for low income and disadvantaged Australians.

Even if legal aid was fully funded there is a unique role for pro bono. It can provide support which is not available elsewhere. This can include litigation support, mentoring, research, submission writing, word processing and publishing support that firms are well equipped to provide. Increasingly we are seeing co-counseling arrangements whereby

the expertise of a community legal centre and the expertise of a large firm are combining to run an important public interest case.

## **2. *A national partnership of national service delivery organisations.***

In October 2003 NACLC released the publication, 'doing justice- acting together to make a difference'. In it they made a strong case for a new 'justice partnership'. They called for the various arms of government at both federal and state levels, the different parts of the legal profession, peak bodies and service providers in related disciplines and sectors and other interested community groups to join with them in a new partnership to build a fairer and more effective system that can deliver justice for all. This idea of a partnership is a key one.

On 8 June 2004, the NSW Attorney-General, Bob Debus launched the Cooperative Legal Service Delivery (CLSD) model trial that proposes to extend the reach of legal services for the community in the Central and Far West of NSW.

The trial aims to co-ordinate the Legal Aid Commission, Community Legal Centres, ATSILS, pro bono providers and other community based legal service providers. NPBR is on the steering committee for that trial. Two national law firms that have active pro bono practices, BDW and Allens are involved in that trial and are willing to provide free services for those who do not qualify for Legal Aid, but cannot afford to pay a lawyer.

“CLSD brings together the government, community and private sector agencies, as partners in a distinctly regional approach to legal services,” said Mr Debus.

In the Federal Civil Justice Strategy Paper December 2003, it is stated “Greater coordination of referral mechanisms and cooperation regarding service delivery would have the advantage of ensuring that clients are referred to an appropriate firm of service for their needs, and that similar services were not unnecessarily duplicated in the same region.” ... support for the co-delivery of legal services is made in the paper “ so that experience and expertise can be used complementarily” such as private firm pro bono practices working with community legal centres both bringing unique experience and expertise to a matter. The paper acknowledges that ‘moves in this direction are clearly desirable, since they assist in ensuring that governments are obtaining value for money, by promoting more efficient service delivery with tangible benefits for clients of the legal services concerned.

It's not rocket science –to avoid unnecessary duplication and to target limited resources to areas of greatest need, greater co-ordination and co-operation is required. Many different models of pro bono-need for co-ordination within the sector as well as with other sectors. ALAF provides this national partnership at present –it is a partnership of NACLC, LCA, National Legal Aid and NAILSS. It represents those organisations that provide services to the low income and disadvantaged. The centre has approached ALAF to seek involvement with ALAF and believes that this is a way forward. On the recent govt

proposal to tender for provision of legal services to ATSILS, ALAF was able to meet and prepare a submission to government.

Shared understandings can lead to co-ordinated and targeted joint action.

**3. *The question posed by this conference is what role can and should Australian lawyers play in the promotion of law reform and the achievement of social justice?***

A theme that the Centre and the PILCH (VIC) have been pursuing with Community Legal centres is to think of the possibility of a law firm preparing a law reform submission for you under your instruction. This is an activity that a private law firm can be very good at and a good submission (particularly if government knows it has been prepared by a firm with a reputation for good legal work) can and does influence government thinking. Eg The Federation of CLCs was assisted by ABL to prepare its submission to the Cth Government's Charities Bill inquiry in late 2003. ABL also assisted VALS to make a submission in relation to the Cth tender for Aboriginal Legal Services.

Lawyers who undertake pro bono work generally have a genuine belief in law as an agent of social change. They are the ones willing to take on difficult cases where there is a principle of justice involved or law reform is sorely needed. Good examples of this are the pro bono work done in the *Mabo* and *Tampa* cases. Pro bono work is becoming better co-ordinated in this country through the advent of the National Pro Bono Resource Centre, the Public Interest Law Clearing Houses in Victoria, NSW and Queensland and the efforts of some of the large firms and law foundations but a lot more can be done. It is vital that the profession and government support these initiatives and organisations.

The profile of pro bono work has lifted in recent years and there are some great examples of legal communities working together to address access to justice and social justice issues. (E.g. 70% of the South Australian bar involved on a pro bono basis in asylum seeker cases, three large law firms partnering with Marrickville Community Legal Centre in Sydney to represent women and children who are the victims of domestic violence and sexual assault). The National Pro Bono Resource Centre believes that two key aspects to make this happen more widely are better relationships and better culture both which require lawyers to go into unfamiliar territory to seek new relationships and to change culture but this is where the greatest personal rewards for a lawyer are often found.

It is vital that we instill a pro bono ethos in our law students and continue to support the institutions and lawyers who take their professional responsibility to do pro bono work seriously.

John Corker  
22 September 2004